

Committee Name:

Senate Committee – Universities, Housing & Government Operations (SC-UHGO)

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Mark Meyer

State Senator • 32nd Senate District

October 4, 2001

Phyllis Dube`, Secretary
WI Dept. of Health & Family Services
1 W. Wilson St, Rm. 650
Madison, WI 53708

Dear Secretary Dube`:

Pursuant to s. 227.19(4)(b), Stats., the Senate Universities, Housing and Government Committee requests that the department not promulgate CHR 00-172, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status.

If you have any questions please feel free to contact my office at **266-5490**.

Sincerely,

Mark Meyer

Mark Meyer
State Senator
32nd District

MM/gh





Mark Meyer

State Senator • 32nd Senate District

November 13, 2001

TO: Members, Senate Committee on Universities, Housing and Government Operations

FROM: Senator Mark Meyer

RE: Lead Paint rules (Update)

Please find attached a letter submitted by the Department of Health and Family Services (DHFS) seeking additional germane modifications to Clearinghouse Rule 00-172. Those modifications are attached.

As you recall, DHFS had requested germane modifications on October 29th, which extended the Committee's review period to November 16th. According to Legislative Council, the submission of these additional germane modifications will now extend the committee's review period until **December 3rd**. (The DHFS letter had incorrectly noted the date as November 27)

I will keep you apprised of any further changes concerning the status of this clearinghouse rule.





Mark Meyer

State Senator • 32nd Senate District

December 3, 2001

TO: Members, Senate Committee on Universities, Housing and Government Operations

FROM: Senator Mark Meyer

RE: Lead Paint rules (Update)

Please find attached a letter submitted by the Department of Health and Family Services (DHFS) seeking a third set of additional germane modifications to Clearinghouse Rule 00-172.

As you recall, DHFS last request had extended committee's review period until December 3rd. According to the Legislative Council, this latest set of modifications will extend that review period to **December 17th**.

Please feel free to contact my office if you have questions or would like a copy of these rule modifications.





State of Wisconsin
Department of Health and Family Services

OCT 29 RECD

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

October 29, 2001

The Honorable Mark Meyer, Chairperson
Senate universities, Housing and Government Committee
Room 131 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Meyer:

Clearinghouse Rule 00-172 is currently within the final 10 days of the Assembly Committee on Housing's review period. Under s. 227.19 (4) (b) 3., Stats., if an agency, on its own initiative, submits a germane modification to a proposed rule to a committee within the final 10 days of a committee review period, the review period of the assigned committees in both houses is extended for 10 working days. The Department has modified subdivision HFS 163.41 (2) (a) 4., a section of proposed chapter HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status, and hereby submits this germane modification, contained on the following page, for your committee's consideration.

It is our understanding that this submission extends your committee's review until November ~~12~~, 16, 2001.

Sincerely,

A handwritten signature in black ink, appearing to read 'Phyllis J. Dubé'.

for Phyllis J. Dubé
Secretary

attachment

HFS 163.41 (2) (a) 4. 'Clearance.' A lead-free inspection shall include clearance under s. HFS 163.14 (1) of the work area where more than 2 square feet of paint was removed or more than 2 square feet of paint was disturbed in removing a painted component ~~was removed~~, if known, or of the dwelling units and common areas inspected under subd. 2., unless one of the following is obtained:

a. ~~A~~ When the paint has not been proven to be lead-free, a clearance report issued by an appropriately certified person after the most recent removal of more than 2 square feet of paint or removal of a painted component when the removal disturbed more than 2 square feet of paint ~~unless the paint is proven to be lead-free~~. A certified individual involved with conducting clearance that is included in a lead-free inspection may not be a property owner or an immediate family member, agent or employee of a property owner or associated with a certified lead company that is directly or beneficially owned, controlled or managed by a property owner, or by an immediate family member, agent or employee of a property owner.

b. The following statement signed by the property owner or the property owner's agent or employee and dated at the time of signature: "During the previous 12 months, no person removed a total of more than 2 square feet of paint or disturbed more than 2 square feet of paint when removing a painted component from the real property included in this lead-free inspection. ~~This statement is made based on my own personal knowledge and statements made to me by the property owner and any agent of the property owner.~~"



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

November 12, 2001

The Honorable Mark Meyer, Chairperson
Senate universities, Housing and Government Committee
Room 131 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Meyer:

On October 29th, our Department submitted to your office germane modifications to Clearinghouse Rule 00-172. Our submission extended your committee's review period for 10 additional working days. Under s. 227.19 (4) (b) 3., Stats., our Department is submitting with this letter an additional germane modification to CR 00-172. The Department has modified two additional provisions of proposed ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status, and hereby submits this germane modification, contained on the following page, for your committee's consideration.

It is our understanding that this submission extends your committee's review until November 27, 2001.

Sincerely,

A handwritten signature in cursive script that reads "Phyllis J. Dubé".

Phyllis J. Dubé
Secretary

attachment

HFS 163.41 (3) (c) The lead-free inspection does not support that the property meets the registered lead-free property standards under sub. (1) because the lead-free inspection protocol under sub. (2) was not followed in determining that the dwelling, dwelling unit, child-occupied facility or other premises met the standards for registered lead-free property and a subsequent lead-free inspection does not verify that the dwelling, dwelling unit, child-occupied facility or other premises met the lead-free standards.

HFS 163.42 (5) (g) The lead-safe investigation does not support that the property meets the registered lead-safe property standards under sub. (1) because the lead-safe investigation protocol under sub. (2) was not followed in determining that the property met the registered lead-safe property standards and a subsequent lead-safe investigation did not verify that the property met the lead-safe standards.



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

November 27, 2001

The Honorable Mark Meyer, Chairperson
Senate universities, Housing and Government Committee
Room 131 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Meyer:

On November 12th, our Department submitted to your office a second set of germane modifications to Clearinghouse Rule 00-172. Our submission extended your committee's review period for 10 additional working days. Under s. 227.19 (4) (b) 3., Stats., our Department is submitting with this letter a third set of additional germane modifications to CR 00-172. The Department has extensively modified additional provisions of proposed ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status, and hereby submits these germane modifications for your committee's consideration. The modifications are presented in two versions. One version indicates every change to the chapter the Department proposes to make (other than the previously submitted germane modifications). Given the complexity of the "marked-up" version, the second version is a clean copy that presents the chapter with all proposed changes incorporated.

It is our understanding that this submission extends your committee's review until December 11, 2001.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Phyllis J. Dubé'.

Phyllis J. Dubé
Secretary

attachments



State of Wisconsin
Department of Health and Family Services

Scott McCallum, Governor
Phyllis J. Dubé, Secretary

December 11, 2001

The Honorable Mark Meyer, Chairperson
Senate Universities, Housing and Government Committee
Room 131 South, State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Meyer:

On November 27th, our Department submitted to your office a third set of germane modifications to Clearinghouse Rule 00-172. Our submission extended your committee's review period for 10 additional working days. Under s. 227.19 (4) (b) 3., Stats., our Department is submitting with this letter a fourth set of additional germane modifications to CR 00-172. The Department has modified additional provisions of proposed ch. HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status, and hereby submits these germane modifications for your committee's consideration.

It is our understanding that this submission extends your committee's review until December 26, 2001.

Sincerely,

Phyllis J. Dubé
Secretary

attachment

12-11-2001 Germane Modifications

s. **HFS 163.03 (41)** "Employee" means an individual who an employer can require or direct to engage in any employment, or to go to work or to be at any time in any place of employment, except that an employee does not include an individual ~~who meets the criteria under s. 108.02 (12) (b) 1. and 2., Stats., and whose sole~~ relationship with the employer is contractual and limited to performing periodic services for which the individual, not the employer, controls the means and method of performing the services and the individual meets the criteria under s. 108.02 (12) (b) 1. and 2., Stats.

s. **HFS 163.14 (5) (b) 3.** For registered lead-safe property, a person may not conduct clearance of a non-abatement lead-based paint activity subject to restricted work practices under s. HFS 163.44 (3) (d) or an abatement activity unless the person meets all of the criteria under s. HFS 163.40 (2) (c) 3. ~~e. to f.~~

s. **HFS 163.40 (2) (c) 3.** 'Who may sample or test paint for a lead-free inspection or lead-safe investigation.' To be included in a lead-free inspection or lead-safe investigation, sampling or testing of paint shall be conducted by an individual appropriately certified person who is:

~~a. Certified in an appropriate lead investigation discipline.~~

~~b. Associated with a lead company that is certified under s. HFS 163.12.~~

~~e.a.~~ Not a property owner, or an immediate family member, agent or employee of a property member.

~~e.b.~~ Not a lead company or associated with a certified lead company that is directly or beneficially owned, controlled or managed by the property owner, or by an immediate family member, agent or employee of the property owner.

~~e.c.~~ Not a person hired by or under contract with the property owner to manage or maintain the property owner's real property as directed by the property owner.

~~f.d.~~ Not a person who has been authorized by the property owner to manage or maintain the property owner's real property on the property owner's behalf.

e. Not a person who has a financial interest in the laboratory results of the sampling or testing or in the determination of whether the property meets the registered lead-free property standard or the registered lead-safe property standard.

s. **HFS 163.42 (1) (h).** *Painted floors and stairs.* Painted interior and exterior floors and the traffic area of stair treads ~~shall have an intact protective covering or topcoat that does not contain lead-based paint~~ shall be free of deteriorated paint and evidence of abrasion unless all existing paint on the floor or stair tread is proven to be lead-free.

s. **HFS 163.42 (2) (e)** *Expiration date.* 1. 'General criteria for determining the expiration date.' For property meeting the registered lead-safe property standards under sub. (1), a certificate of lead-safe status shall be given an expiration date based on the component that is

most likely to cause or become a lead-based paint hazard before any other component. A component that is proven to be lead-free shall be excluded from consideration. A component that has been enclosed or encapsulated according to documented methodologies shall be excluded from consideration under subds. 1 to 5. To determine the expiration date, select the shortest duration under subds. 2. to 7. based only on the components subject to the lead-safe investigation under sub. (2) (a) 2.

2. 'Nine months.' The presence of paint on an impact or friction surface of a window well or trough, window channel, or window sash shall result in a certificate of lead-safe status being issued for no more than 9 months when paint is not proven to be lead-free and the painted surface is not enclosed by a durable material that protects the paint from impact and abrasion.

Note: The 9-month certificate is intended to allow recognition of temporary measures, such as removing dust-lead and debris created by impact and friction, while more permanent lead hazard reduction continues. Under sub. (4), no more than 2 applications for a 9-month certificate may be submitted unless the property owner provides the department with a reason why an additional 9-month certificate is necessary.

3. 'One year.' The presence of any of the following conditions shall result in a certificate of lead-safe status being issued for no more than one year unless the paint is proven to be lead-free:

a. In a dwelling unit or common area, paint is present ~~under an intact lead-free topcoat of an interior on a floor or the traffic area of an interior stair tread~~ and the painted surface is not covered by an intact lead-free topcoat or by a durable material or by carpeting that protects the paint from abrasion.

b. In an interior ~~dwelling unit or common area that is likely to be subject to daily traffic, such as a laundry, entry hallway or stairway between floors of apartments,~~ paint is present under an intact lead-free topcoat of ~~a floor or the traffic area of a stair tread~~ and the painted surface is not covered by a durable material or ~~by carpeting~~ that protects the paint from abrasion.

c. Paint is present on a drawer of a built-in cabinet, malfunctioning door, or on any other interior friction surface not otherwise described and the painted friction surface is not covered by a durable material that protects the paint from abrasion.

d. Deteriorated paint is present on the exterior, but only at a height above 5 feet from ground or floor level, and the total amount of deteriorated paint is less than 5 square feet.

4. 'Three years.' The presence of any of the following conditions shall result in a certificate of lead-safe status being issued for no more than 3 years unless the paint is proven to be lead-free:

a. Paint is present on an exterior sill, interior sill or stool, casing, head, jamb, glazing, caulk, putty or any other component of a window that is not an impact or friction surface under subd. 1.

b. Paint is present and exposed on any exterior horizontal surface or any of the following exterior components: floor, porch, stair system.

c. Other than paint on a window well or trough under subd. 1., paint is present and exposed to damage by the impact of another component striking the painted component, such as a door striking a baseboard or chair rail.

d. Paint is present on an interior or exterior door.

e. A component shows evidence of mold, mildew, moisture or water damage where paint is present, but no evidence of an active leak.

f. In a dwelling unit or common area, paint is present under an intact lead-free topcoat of a floor and the painted surface is not covered by a durable material or carpeting that protects the paint from abrasion.

g. In an enclosed area that is locked and secured against access by occupants other than the property owner or the property owner's family, agent or employee, paint is present on a floor or the traffic area of a stair tread and the painted surface is not covered by a lead-free topcoat or by a durable material or carpeting that protects the paint from abrasion.

5. 'Five years.' Unless the paint is proven to be lead-free, the presence of paint on an exterior component not described under subds. 1. to 3., 5. or 6., such as siding, porch ceiling, gutter, downspout, soffit or fascia, shall result in a certificate of lead-safe status being issued for no more than 5 years.

6. 'Ten years.' Unless the paint is proven to be lead-free, the presence of paint on an interior component that is not described under subds. 1. to 3., 5. or 6., such as a wall, ceiling or painted floor covered by wall-to-wall carpeting, shall result in a certificate of lead-safe status being issued for no more than 10 years.

7. 'Twenty years.' A certificate of lead-safe status shall be issued for no more than 20 years when all paint that has not been proven to be lead-free has been fully enclosed with durable material that does not allow dust or debris from the paint to escape into the environment.

s. HFS 163.42 (3) (e) 4. Under this paragraph, the property owner is deemed to not allow the occupant to conduct the activity under any of the following circumstances:

a. When the property owner can demonstrate that the occupant received a written rental agreement that prohibits the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

b. When the property owner can demonstrate that the occupant received the property owner's written rules prohibiting the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

c. The property owner's written rules were posted where the occupant should reasonably have been expected to see the prohibition and the rules prohibit the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

s. HFS 163.42 (3) (f) 3. Under this paragraph, a property owner is deemed to not allow the occupant to conduct the activity under any of the following circumstances:

a. When the property owner can demonstrate that the occupant received a written rental agreement that prohibits the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

b. When the property owner can demonstrate that the occupant received the property owner's written rules prohibiting the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

c. The property owner's written rules for the property were posted where the occupant should reasonably have been expected to see the prohibition and the rules prohibit the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

s. HFS 163.42 (3) (g) 2. Under this paragraph, a property owner is deemed to not allow the occupant to conduct the activity under any of the following circumstances:

a. When the property owner can demonstrate that the occupant received a written rental agreement that prohibits the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

b. When the property owner can demonstrate that the occupant received the property owner's written rules prohibiting the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

c. The property owner's written rules for the property were posted where the occupant should reasonably have been expected to see the prohibition and the rules prohibit the occupant from disturbing paint and performing lead-based paint activities on the property without certification.

s. HFS 163.43 (2) (c) 1. The total amount of paint to be disturbed during any one project, such as all activities conducted in response to a visual inspection or notification of a potential lead-based paint hazard, is equal to or less than 2 square feet when all paint to be disturbed in all dwelling units and common areas involved in the project are added together and the activity is not, including all paint disturbed when the project is conducted as a series of small jobs that would total more than 2 square feet, such as activities conducted in response to a visual inspection or notification of a potential lead-based paint hazard.

s. HFS 163.43 (2) (c) 1. Note: An example of a small job that would not require certification is scraping less than 2 square feet of paint in a dwelling unit when preparing to paint at turnover. However, if the rental agreements of multiple units expire at the same time, the preparation of those units would be one project and the scraping for all units would be added together.

s. HFS 163.43 (2) (e) Certification is not required when an occupant repairs nail holes at the end of tenancy and all of the following apply:

1. The total amount of paint to be disturbed during the repair of nail holes in the occupant's unit is equal to or less than 2 square feet.

2. The occupant receives no compensation for performing the repair.