Report From Agency

ADMINISTRATIVE RULES
REPORT TO LEGISLATURE
CLEARINGHOUSE RULE 08-036

By the Department of Health Services relating to ch. HFS 159, Certification and Training Course Requirements for Asbestos Activities

Basis and Purpose of Proposed Rule

Sections 250.04 (1) and (2), 254.20, and 254.21, Stats., give the department general supervision throughout the state of the health of citizens and all powers necessary to fulfill the duties prescribed in the statutes, the authority to promulgate any rule necessary to administer asbestos abatement certification, and require the department to promulgate rules for the management of asbestos in schools.

Chapter HFS 159 establishes certification and training accreditation requirements for persons who perform asbestos abatement or management activities, including standards for individual certifications, company certifications, instructional courses and instructor approvals. The Department proposes to repeal and recreate ch. HFS 159 to achieve the following goals:

1. Increase program revenues to support the continued mission of the asbestos certification program. When chapter HFS 159 was promulgated in 1988, fees were established to implement asbestos training and certification requirements. Fees have not been adjusted since 1988 and are no longer sufficient to support the program. To provide needed program funding, the Department proposes the following fees:
   - An increase in individual certification fees of $25 per discipline.
   - New fees for company certification - $100 for exterior abatement companies, $200 for other companies.
   - New fees for asbestos abatement notification - $50 for 2-day or more notification, $100 for less than 2-day notification.
   - New fee for principal instructor approval - $50.
   - Revised training course fees - annual accreditation fees of $250 per refresher course and $500 per initial course.

2. Increase options and flexibility for individuals and companies, including:
   - Allow an individual to work with provisional certification after the individual has completed training and submitted a certification application.
   - Reduce initial training and certification requirements needed to conduct asbestos work on building exteriors when the material remains intact, or non-friable. Exterior supervisor training would reduce from 5 days to 2 days and exterior worker training from 4 days to 1 day.
   - Reduce annual refresher training requirements for exterior supervisors from 4 hours to 2 hours and for exterior workers from 4 hours of training from an accredited training provider to a requirement for annual training that may be provided by the employer or other provider.
   - Shorten the project notification requirement from 10 days prior notification to 2 days or less prior notification.

3. Reduce paperwork by eliminating the need for a company to submit most asbestos abatement activity notifications to both the department and DNR.

4. Better protect employees and building occupants by requiring persons to be certified before conducting regulated asbestos work in any building or facility except the person's own single-family house. This would better protect both workers and occupants of small rental apartment buildings,

because the current rule allows an owner to use uncertified employees to do asbestos work in residential buildings with fewer than 10 units. This work poses a substantial risk for the workers and for tenants. In addition, the proposed rules would require an abatement company to develop and post an occupant protection plan whenever conducting abatement in an occupied building. The plan would outline the measures the company was taking to ensure proper containment of asbestos fiber during the abatement project. This would help occupants determine if the contractor was working safely and following the plan.

5. Assist schools in complying with federal AHERA regulations by requiring a school to annually submit contact information for its designated asbestos coordinator (required under EPA regulations) to facilitate better communication between the school and the Department regarding asbestos issues and requirements.

6. Improve worker compliance safeguards by requiring training course providers to collect additional identifying information on students attending training courses. Specifically, training providers would be required to review student ID's, take and print student photos on training certificates, and electronically submit student photos and class training rosters to the department. This requirement will help ensure that the person who attends training is the same person who applies for and receives certification from the department.

Individuals entering Wisconsin from other states would be required to take an initial or refresher training course in Wisconsin to qualify for Wisconsin certification. This would help prevent individuals from coming into Wisconsin to perform regulated asbestos work without proper training based on falsified or unreliable training documents. Currently 25% of persons certified in all asbestos discipline in Wisconsin come from out of state with out of state training credentials and nearly 40% of asbestos workers come from out of state. Wisconsin has accredited asbestos worker training courses in both English and Spanish to facilitate training in the language of the student.

The proposed rule would also require that an individual conducting regulated asbestos work be associated with a certified asbestos company. The certified company would be responsible for ensuring proper certification of the individuals conducting asbestos work, properly supervising its asbestos abatement work sites, notifying the department of its regulated abatement activities, and maintaining records of its regulated asbestos activities.

Responses to Legislative Council Rules Clearinghouse Recommendations

The Department accepted the comments made by the Legislative Council Rules Clearinghouse and modified the proposed rule where suggested, except as explained below.

Comment 1. "Under what authority does the department propose to directly assess forfeitures under s. HFS 159.45 (5) for violations of the asbestos certification and training rules? Is "all powers necessary to fulfill the duties prescribed in the statutes" (s. 250.04 (2) (a), Stats.) being interpreted to include that power? In the relatively few cases where agencies have such power, it is expressly stated in the statutes. Of particular pertinence, notwithstanding the broad authority given in s. 250.04 (2) (a), Stats., quoted above, the statutes specifically authorize the department to directly assess forfeitures for violations of the women, infants, and children food program statutes (s. 253.06 (5) (d), Stats.), and the radiation protection statutes (s. 254.45 (2), Stats.), but do not include similar language regarding forfeitures for violations of any other public health statutes."

Response: Section 254.20 (11), Stats., provides that "any person who violates this section or any rule promulgated by the department or order issued under this section shall forfeit not less than $25 nor more than $100 for each violation." Although s. 254.20 (11), Stats., does not explicitly authorize the department to directly assess forfeitures, as the statutes do with respect to violations of the WIC and

radiation protection regulations, it does not appear that such explicit statutory authorization is necessary for the department to directly assess a forfeiture that a statute authorizes for the violation of a public health rule the department administers. For example, under s. HFS 163.32 (3) (a), the department may directly assess a forfeiture for the violation of the lead certification rules, notwithstanding the absence of explicit statutory authorization to directly assess a forfeiture. Similarly, despite the lack of explicit statutory authority to do so, s. HFS 172.07 (2) (c) and (3) implicitly empowers the department to directly assess a forfeiture for the violation of rules regulating to public pools and water attractions by providing a right to an administrative appeal of a forfeiture.

It is necessary that the department be able to directly assess the forfeitures authorized by s. 254.20 (11), Stats., in order to effectively and efficiently enforce the asbestos abatement certification and training requirements. The department would not be able to effectively and efficiently use forfeitures as an enforcement tool if it had to use the more formal, cumbersome and drawn-out process of asking district attorneys to bring actions in circuit court for the relatively small forfeitures the statute imposes. If the department directly assesses forfeitures, department staff with expertise regarding asbestos abatement issues can communicate directly with violators to resolve compliance issues informally, persons who have been assessed forfeitures can readily defend themselves through the administrative appeals process, and contested cases can be adjudicated by administrative law judges who have developed expertise in this narrow regulatory area.

Because it makes administrative sense that the department have the authority to determine whether a forfeiture is due for a violation of an order it has issued or a requirement it is responsible for enforcing, and because s. 250.20 (9), Stats., authorizes the department to "promulgate any rule it deems necessary to administer this section," s. 254.20 (11), Stats., "impliedly authorize[s]" the department to directly assess the forfeitures it imposes. *See Oneida County v. Converse*, 180 Wis. 2d 120, 125, 508 N.W.2d 416 (1993).

Comment 2.v. "There is a great deal of duplication in the sections establishing training course curricula, resulting in some 30 pages of very repetitive text. It appears that common elements of certain training courses could be identified once; the requirements for individual training courses would then be the basic course elements with any additions or deletions specific to that course. For example, it appears that the various worker and supervisor training courses include many of the same elements, which could be listed in a section titled, "Basic curriculum requirements for worker and supervisor training." The curriculum requirements for the asbestos worker initial courses, for example, would be the basic curriculum requirements for worker and supervisor training, plus any additional items required for asbestos worker training, minus any elements of the basic curriculum not needed for asbestos worker training. A second basic curriculum might be identified for inspectors, management planners, and project designers. This approach could potentially save many pages of rule text."

Response: Although there is repetition of common elements in the curricula requirements for the different training course disciplines, there are good reasons to set out the requirements for each discipline separately, rather than combining the common requirements for different courses in one place and setting out the unique requirements for each course elsewhere. The EPA Model Accreditation Plan for States at 40 CFR 763, Subpart E, Appendix C, section I. B. states, "Each accredited discipline and training curriculum is separate and distinct from the others," and the model plan lists the topics for each course separately. The Asbestos Model Accreditation Plan provides the program requirements that states administering their own asbestos abatement certification programs in lieu of the EPA program must meet.

Setting out all the requirements for each course separately makes it easier for training providers to identify all the requirements for each course because they do not need to search back and forth through the rule to find the "basic" and "unique" requirements they must provide for each course. The

format is “user-friendly” and will assist the training providers in understanding and complying with the rule.

Comment 2.z. “Section HFS 159.46 (2) appears to establish procedures for the division of hearings and appeals, which the department does not have the authority to do. Presumably, this subsection is summarizing the procedures that the division of hearings and appeals has established, in which case this should be either omitted or placed in a note.”

Response: The Division of Hearings and Appeals acknowledges that the department has authority to establish procedures for the filing and service of appeals under s. HFS 159.46 (2), notwithstanding that administrative hearings are conducted by Division of Hearings and Appeals hearing examiners. Wis. Admin. Code s. HA 1.01 (2) provides: “This chapter shall apply in all contested cases proceedings and hearings before the division of hearings and appeals under ch. 227, Stats., except as specifically provided otherwise. . . . Agencies for which the division conducts proceedings, including . . . health and family services . . . may have specific administrative code provisions or administrative decisions that govern the conduct of those proceedings. In the event of a conflict between this chapter and an agency administrative code provision or administrative decision, the agency administrative code provision or administrative decision is controlling.”

It is appropriate that the department establish procedures for administrative appeals for which Division of Hearings and Appeals examiners conduct hearings on behalf of the department secretary, pursuant to s. 227.43 (1) (bu), Stats. The department has done so in a number of other rules, including the following: HFS 106.12, HFS 108.02 (9) (d) & (e), HFS 110.09 (5), HFS 111.08 (5), HFS 112.08 (5), HFS 113.05 (4), HFS 157.91, and HFS 172.09, HFS 195.12 (3), HFS 196.06 (3).

Although proposed s. HFS 159.46 (2) incorporates many of the requirements for the appeals process that are stated in ss. HA 1.03 and HA 1.04, it sets out the requirements in a readily-accessible and more direct format and specifies a time limit for filing appeals.

Final Regulatory Flexibility Analysis

The proposed rule would affect a significant number of small businesses; however, the proposed rule would not have a significant economic impact on a those small businesses.

Changes to the Analysis or Fiscal Estimate

Analysis

Summary of, and comparison with, existing or proposed federal regulation:

- Based on public comment, the department revised language relating to the federal Asbestos Hazard Emergency Response Act (AHERA) requirements that state AHERA ”directs” states to develop accreditation and certification programs to more accurately state that AHERA ”authorizes” states to develop accreditation and certification programs.
- Based on public comment, the department corrected language that indicates the entire AHERA regulation was extended to public and commercial buildings, to read, “extended the AHERA Model Accreditation Plan regulations in Appendix C to Subpart E to other public and commercial buildings, including multi-family residences.”

Comparison with rules in adjacent states:

- Based on public comment, the department removed the section titled, “Course Application - Initial Fees,” from Table 1 because the department eliminated the course application fees from

the proposed rule and because the department had incorrectly listed other states' accreditation fees as application fees.

- Based on public comment, the department revised Table 1 because the department reduced the initial course annual accreditation fee from $900 to $500 in the proposed rule.
- Based on public comment, the department corrected language stating that Wisconsin currently does not charge a notification fee was corrected to read, "Most of the states charge notification fees. The department currently does not."

Fiscal Estimate

Based on all the fee revisions described below, the Department revised the fiscal estimate to reflect the fee changes and recalculated total revenues.

- Based on public comment, the department eliminated course applications fees, which ranged from $200 to $1000. No loss in revenue is expected in the first year. Expected revenue lost in subsequent years would range from $0 to $5,000.
- Based on public comment, the department exempted schools subject to AHERA that conduct regulated asbestos abatement using school district employees from paying course notification fees, reducing the department's expected revenue from course notification fees by approximately $5,000.
- Based on public comment, the department reduced the annual course accreditation fee for initial courses from $900 to $500 per course, reducing the department's expected revenue from course accreditation fees by approximately $12,400.
- Based on public comment, the department revised the length of certification for companies from 12 months to 24 months and increased company certification fees, as follows: asbestos company fee increased from $200 to $400, exterior asbestos company fee increased from $100 to $200, satellite office of a certified asbestos company from $100 to $200 and satellite office of a certified exterior asbestos company from $50 to $100.

Public Hearing Summary

The Department began accepting public comments on the proposed rule via the Wisconsin Administrative Rules website on April 18, 2008. Four public hearings were held on June 17 in Green Bay, June 18 in Eau Claire, June 19 in West Allis, and June 20 in Madison and were attended by 28 persons. Public comments on the proposed rule were accepted until June 30, 2008.

List of Public Hearing Attendees and Commenters

The following is a complete list of the persons who attended the public hearings or submitted comments on the proposed rule, the position taken by each commenter and whether the individual provided written or oral comments.

Name and Address		**Position Taken** (Support or Opposed)	**Action** (Oral or Written)
1.	Gerald Kohlenberg 1253 S Irwin Green Bay WI 54301	No position taken	Oral
2.	Rick Van Roy Heat, Frost, Insulation & Asbestos Workers International, Local 127 33 E 3rd St Clintonville WI 54929	Oppose	Oral
3.	Mark Jadin	No position taken	Oral

	Asbestos Removal, Inc. 130 Warren Ct Green Bay WI 54301		
4.	Gerald Breuer Environet, Inc. 8362 Pheasant Run Trail Larsen WI 54947	Opposed	Observed only
5.	Teresa Adkins Heat, Frost, Insulation & Asbestos Workers International, Local 127 33 E 3rd St Clintonville WI 54929	Opposed	Observed only
6.	James Zanto Zanto Environmental 54870 Karissa Dr Eau Claire WI 54701	Opposed	Oral
7.	Robert Rogalla Lake States Environmental PO Box 645 Rice Lake WI 54868	Opposed	Written
8.	Cheryl Reist Environmental Plant Services 4111 Schofield Ave, Ste 8 Schofield WI 54476	No position taken	Observed only
9.	Craig Wentworth Milwaukee Public Schools 2209 E Park Place, #4 Milwaukee WI 53211	Opposed	Oral and written
10.	Bonnie Good Good Armstrong & Associates PO Box 210195 Milwaukee WI 53221	No position taken	Oral and written
11.	Jeff Grzeca Milwaukee Public Schools 1124 N 11th St Milwaukee WI 53233	Opposed	Oral
12.	Eric Feldmeyer Milwaukee Lead & Asbestos Information Center 2223 S Kinnickinnic Ave Milwaukee WI 53207	No position taken	Observed only
13.	Marla Cherti Good Armstrong & Associates PO Box 210195 Milwaukee WI 53221	No position taken	Observed only
14.	Pat O'Donnell Milwaukee Public Schools 1124 N 11th St Milwaukee WI 53233	Opposed	Observed only
15.	Beth Nethery Balestrieri Environmental & Development, Inc. PO Box 860	Opposed	Observed only

	Elkhorn WI 53121		
16.	Mark Davis WI-DNR	No position taken	Observed only
17.	Sean Beinecke WE Energies 333 W Everett St, #231 Milwaukee WI 53203	No position taken	Observed only
18.	Bonny Reiske Midwest Environmental, LLC 2905A S Wentworth Ave Milwaukee WI 53207	Opposed	Observed only
19.	Chuck Cunningham Insulation Removal, Ltd. N85W5444 Warwick Sq Cedarburg WI 53012	Opposed	Written
20.	Dan Day DOA Division of State Facilities 101 E Wilson St Madison WI 53707	Opposed	Oral
21.	Julia Smith Environmental Construction Services, Inc. PO Box 7394 Madison WI 53707	No position taken	Observed only
22.	Rick Hopke Madison Metropolitan School District 477Pflaum Rd Madison WI 53718	Opposed	Written
23.	Amy Walden WI-DNR	No position taken	Observed only
24.	Sheri Krause Wisconsin Association of School Boards 122 W Washington Ave Madison WI 53703	No position taken	Observed only
25.	James Bible Project Home 1966 S Stoughton Rd Madison WI 53716	No position taken	Observed only
26.	Phillip Downs Project Home 1966 S Stoughton Rd Madison WI 53716	No position taken	Observed only
27.	Ryan Sopha ARC Environmental W8963 Hall Rd Poynette WI 53955	Opposed	Observed only
28.	Ada Duffey Milwaukee Lead & Asbestos Information Center 2223 S Kinnickinnic Ave Milwaukee WI 53207	No position taken	Written
29.	Todd Hoffman SRS Roofing & Sheet Metal, Inc	No position taken	Written
30.	James Schey	No position taken	Written

	DOA – Division of State Facilities PO Box 7866 Madison WI 53707-7866		
31.	Jeffery Beiriger Wisconsin Roofing Contractors Association 660 E Mason St Milwaukee WI 53202	Support	Written
32.	Rep. Mary Hubler State Capitol PO Box 8952 Madison WI 53708	No position taken	Written
33.	Cynthia Balestrieri Balestrieri Group PO Box 860 Elkhorn WI 53121	No position taken	Written
34.	Kenneth Harenda II S.A. Herbst & Associates, LLC PO Box 511275 New Berlin WI 53151	No position taken	Written

Public Comments and Department Responses

The number(s) following each comment correspond to the number assigned to the individual listed in the Public Hearing Attendees and Commenters section of this document.

Rule Provision	Public Comment	Department Response
General	The department's goals in repealing and recreating HFS 159 include to "reduce the regulatory burden whenever possible, while continuing to protect citizens and the environment." The current rule is approximately 14 pages in length. The current revised rule is approximately 80 pages in length and deviates from the purpose of the rule which is to establish certification requirements for persons conducting asbestos abatement activities. **30**	The proposed rule is longer than the existing rule, in part because the department has sought to improve readability and ease of use and in part because the department has added provisions. One of the department's goals in drafting the proposed rule was to communicate information in a way that is understandable by those persons who must comply with the rule. As explained later in this report, the additional provisions in the proposed rule are necessary if the department is to fulfill its duties to protect public health and administer and enforce the certification requirements required under s. 250.20, Stats. It should also be noted that the proposed rule and the existing rule are printed in different formats, which would also account for some of the differences in the length of the proposed and existing rules.
General	The department's goal in repealing and recreating HFS 159 includes to "assist schools in complying with federal school asbestos regulations administered by EPA." The revisions to the rule require schools to register a "designated person" with HFS who is responsible for compliance with the	The EPA AHERA regulations at 40 CFR 763.93 require that school management plans be submitted to the agency designated by the Governor of the state to receive and maintain all school asbestos management plans for the state. The department is that agency. The

	Asbestos in Schools Rule 40 CFR, Subpart E (AHERA). Because the federal EPA, Region V, rather than Wisconsin HFS, is the enforcement agent for this rule (AHERA-40 CFR, Subpart E); this revision, which is a requirement of the AHERA rule, appears to assist the EPA in identifying a contact at each "local education agency," rather than assisting the schools in Wisconsin. **30**	department needs current contact information for school designated asbestos persons to communicate more effectively and efficiently with schools regarding asbestos management plan issues and to promote compliance with AHERA and other asbestos requirements.
General	Wisconsin is following the path of Ohio in requiring payment of different fees to different agencies depending on the type of or quantity of material and whether a project involves renovation or demolition. This is burdensome and confusing, and it adds cost of $50 or $100 to small abatement projects, which are extremely common in the industry. For example, the demolition phase of construction projects frequently encounters small, residual amounts of asbestos. This includes hidden materials that were not removed in previous abatement projects, such as pipe insulation in the walls or above plaster ceilings, or original asbestos floor tile under cabinets, sinks, walls, etc. Most of these projects require the material to be removed on short notice to allow for continued demolition work and are often completed within 48 hours of the discovery, which means an additional $100 will be required as a notification fee. The purpose of notification is to ensure the workers conducting the work are trained and certified and a HFS representative can inspect the workers on-site. Scheduling a HFS inspector to check these types of projects for proper training and certification will be challenging as many will require only a few hours on-site. The fee will therefore add 5-25% of the cost of these small removal projects ($400-$2500) with minimal additional enforcement of training and certification. This will also delay prompt response to emergency maintenance issued in industrial settings such as a steam leak and make it impossible to comply without paying the $100 fee for less than a two day notice. **30**	The department estimates that, under the existing rule, the department and DNR receive at least 2,500 duplicate notices each year. This duplication will be eliminated under the proposed rule because asbestos companies will only need to notify the department of projects for which DNR does not require notification. The proposed notification fees will not be as burdensome as suggested by the commenter. As long as a notification is open with the department or DNR, a revised notification that changes the amount of material to be removed may be submitted without paying any additional fee to the department. In addition, if the asbestos company submits notification of a planned renovation under proposed s. HFS 159.20 (4), it may submit a sub-project notification for the removal of small amounts of asbestos with no additional fee for 2-day notice or a $50 fee for less than 2-day notice, not the $100 fee as the commenter states. Although a fee will be required for notifications submitted less than 2 days before the start of abatement, this is not likely to impose a substantial burden on asbestos companies because out of the more than 4,000 notifications received by the department annually, only between 50 and 125 of these notifications are emergency notifications. Because notifications generate much of the onsite inspection work conducted by the department, notification fees are a reasonable means of supporting this work.
General	We question DHS comparing themselves to neighboring state agencies (Iowa DNR and Illinois EPA) in the comparison of states' asbestos notification requirements. Iowa DNR and Illinois EPA responsibilities more closely resemble the WDNR's responsibilities under Wisconsin statutes. The most arbitrary and capricious of the DHS points made in the proposed rules is	The department compared its asbestos notification requirements to the asbestos notification requirements in other states regardless of which agencies administered the requirements in order to provide a better picture of the range of requirements. Some states administer these programs through state EPA or DNR agencies; others do so through state departments of

	the external vs. internal supervisor. Since when did outside asbestos become less dangerous than inside asbestos? Roofing and siding contractors already enjoy special DHFS interpretation of OSHA, NESHAP and DNR law. **33**	health or labor; and some, such as Wisconsin administer the programs through two agencies. Most neighboring states do not require certification to conduct exterior work. Wisconsin has required certification for this work for the past 20 years, but has made considerations for exterior work that disturbs only non-friable material that remains non-friable throughout the abatement project. The roofing certifications in the existing rule and the proposed rules for exterior certification are in compliance with OSHA Roofing Settlement Agreement of June 15, 1995 and OSHA Directive CPL 2-2.63 dated 11/3/1995. OSHA allows Class II asbestos work on roofing, flooring, siding, ceiling tiles and transite panels to be conducted by 8-hour trained workers who are supervised by a person who has been trained to the level of supervisor for Class II work. The department chose to not reduce the training and certification requirements for flooring removal under the proposed rule, even though this is considered Class II work by OSHA, because there is more potential for occupant exposure from interior work than from exterior work. The EPA model accreditation plan does not regulate work on exteriors, except for projects on mechanical system equipment used to condition interior space, such as HVAC equipment. In setting specific training and certification requirements for roofers and siders, the department has gone beyond what EPA requires. Department asbestos staff believes that large quantities of transite asbestos-containing siding are being removed from houses by persons without proper training and certification. Because DNR air management generally does not regulate asbestos removal on single-family housing, when this work is conducted by a contractor, regulatory responsibility for potential public health problem rests with the department and OSHA. The department has chosen to require 1 and 2 day exterior work certification to encourage more siding and roofing companies to use properly-trained workers.
General	The Madison Metropolitan School District opposes any changes to HFS 159. .The proposed rules are costly and burdensome to LEAs. **22**	The department shares EPA's stated goals of protecting human health and the environment. The proposed rule helps achieve these goals in light of new information, obtained since EPA published its rules, about potential asbestos hazards

		such as vermiculite insulation, without unduly burdening regulated entities. In recognition of the economic constraints on schools, the department has eliminated the proposed notification fees for schools that conduct asbestos projects using certified school employees. However, the department has retained other rule changes that were instituted specifically to protect health and safety, such as the requirement for an occupant protection plan when work is conducted in an occupied or furnished building.
General	Are there plans for more auditing of classes? With more fees coming in but no additional staffing, will that change the amount of auditing? **28**	The department does not anticipate additional auditing, but will continue with its current auditing program including a focus on auditing courses with contingent level accreditation with the purpose of determining eligibility for full accreditation status.
General	Are there plans to enforce HFS 159 when DHS inspectors inspect lead paint jobs for which the department has been notified under HFS 163, since so much lead work is on windows? Would the exterior certification be required for lead jobs that involve window work? **28**	The department enforces ch. HFS 159 when it inspects lead jobs. However, as long as the amount of asbestos removed with the windows does not exceed one waste bag, a certified lead contractor conducting regulated lead work can conduct the operations and maintenance (O & M) asbestos work without also being asbestos certified.
General	Home renovators in particular have not been compliant with HFS 159. More outreach and enforcement needs to be conducted with renovators about the need to comply with HFS 159. **28**	The department plans to conduct such outreach.
General	Will the department mail out reminder notices for renewal of course accreditations and instructor approvals, as it now does for certifications? **28**	Yes.
General	Department information has indicated that contractors are on site less than 50% of the time when the Department inspects. Is there a plan to increase the likelihood that contractors will be on site when DHS inspects? **28**	The shorter project notification time deadline in the proposed rule is intended to help improve accuracy of project dates provided by contractors and thereby increase the on-site inspection rate. The department plans to track the accuracy of information provided on notification forms under the proposed rule to determine if the inspection rate improves
General	Are there plans for inspecting renovation jobs for which the department has not received notification? **28**	The department currently inspects work sites for which it has not received notification when tips or complaints are received, upon referrals from other agencies, or when an inspector drives by a worksite and observes potential asbestos violations. The department will continue to do so under the proposed rule.
General	An increased frequency of compliance visits would improve the quality of work that	Over the past several years, the department has inspected18-20% of

	is delivered by asbestos contractors. If compliance activities were increased, there would be a desire in the regulated community for high quality training as it would become more important to the contractors that the competencies of the trainees are high upon the completion of training. The proposed rule does not enable such an increase in compliance activity. Areas of worker protection and work practices and procedures to achieve worker protection are areas that appear outside of your rulemaking authority. I believe that you could establish work practice requirements to protect public health and the environment, but I do not find any real requirements in the proposed rule. There is a requirement for an occupant protection plan, however I have concerns about how much of an effect that requirement actually will have as it is currently written. I will address that separately. There are several references to the fact that certified persons must follow the rules and regulations of any and all other agencies governing their activities. However in the absence of any enforcement from those agencies, how can the Department determine compliance, as the Department doesn't have authority to enforce other agencies' rules? Although there would be a contractor certification and additional enforcement mechanisms established by this proposed rule, I don't see any significant change over what the department currently has the ability to do regarding what it can do to enhance public health and safety. You note some of Minnesota's requirements in your adjacent state comparison. Minnesota has extensive work practice and monitoring requirements that must be adhered to on all regulated projects. I believe that this has both increased the health and well being of the public, and also established requirements that Minnesota Department of Health can enforce. **7**	notified asbestos projects (600-700 inspections of around 4,000 notified projects). The number of inspections conducted appears to be adequate; however, the department needs to improve the rate at which contractors are actually onsite working when department inspectors visit job sites. To address this problem, the department has reduced the notification deadline from 10 to 2 days or less prior to the start of abatement. The reduction of the notification deadline will help contractors provide more accurate project start and end dates. Regarding worker protection, OSHA and WI Department of Commerce have regulations intended to protect asbestos workers. The proposed occupant protection plan is intended to protect occupants, residents, patients, clients and visitors to buildings where asbestos abatement is being conducted, who are not otherwise protected by other agencies' regulations. The occupant protection plan will enable the department to enforce safe work practices. If department inspectors observe failure to implement or follow an occupant protection plan, under the proposed rule, the department would have various enforcement options ranging from issuing a notice of violation to revocation of certification. The proposed rule adds an entire subchapter on enforcement, Subchapter VI, to give the department tools for reasonable and necessary enforcement actions. The department is not attempting to enforce other agencies' rules; rather, pursuant to its statutory duties, it is seeking to protect public health in areas not covered by other regulations. Minnesota is an OSHA-plan state, which means that it directly enforces the OSHA regulations in the state. Wisconsin does not have this authority; however, the department works closely with OSHA in Wisconsin when its inspectors observe potential OSHA violations. The department also works with the DNR in much the same manner.
General	In my view, the proposed rule does not increase enforcement, and without enforcement, training in the proper techniques has less impact. It would appear that certified persons are required to adhere to regulations of various state agencies, including DHS. I share my constituent's	The proposed rule strengthens notification requirements and improves enforcement options. The strengthened language requires more accurate notice of project start and end dates, which it is hoped will result in more efficient and effective worksite inspection visits.

	concern that DHS lacks authority to enforce the rules of other agencies. Worker protection does not seem to be sufficiently addressed and is apparently outside DHS jurisdiction, as are public safety and environmental concerns. **32**	The department does not attempt to enforce other agencies' regulations but does refer cases to those agencies when possible violations of their rules are found. While worker protection is under the jurisdiction of OSHA and WI Dept. of Commerce, the department has responsibility under s. 250.04, Stats., for public health. The proposed rule adds occupant protections that strengthen the department's ability to protect the public health, especially for those persons not protected under other agencies' rules.
General	The agency has too little authority and limited jurisdiction, particularly in view of the funding sought for administration of the rule. **7, 32**	The department has not sought increased fees since the program inception in 1988 – 20 years ago – and has been operating in deficit for the past 3 years. Even with the fee increases, it is projected to take 3 years to erase the current operating deficit. The requested increase in fees is necessary if the department is to provide the services and oversight with which the asbestos program is charged. The program is responsible for processing certifications for over 3,500 persons annually, for approving and accrediting initial and refresher training courses in seven disciplines for multiple training providers, and for overseeing, monitoring and inspecting the work of these certified and accredited entities, which involves processing over 4,000 project and training notifications and conducting 600-700 site inspections and audits annually.
General	I'm glad that you're looking at the asbestos area. It's a very serious area, especially in the trades. Thank you for the opportunity to present that. **1**	No response necessary.
General	I don't have an issue with the need for government agencies to raise additional revenues but I have concerns that multiple agencies require reporting and fees to be paid. Is there a way to file paperwork and fees to only one agency that would then distribute fees and information to appropriate agencies to simplify things for the regulated industry? **3**	There is currently no mechanism by which paperwork and fees can be submitted to one agency and then distributed to other agencies. The department does not have authority to unilaterally create such a mechanism. However, redundancy of paperwork between agencies will be reduced significantly under the proposed rule by eliminating most duplicate notifications submitted to both DNR and the department.
General	Although the fee is a little burdensome, it's understandable, even with the company certification. Enforcement of company certification should be such that only certified and properly licensed companies are doing work. **6**	The department shares the goal that only properly certified persons and companies conduct regulated asbestos work. To that end, the department needs adequate funding to sustain the resources to conduct compliance oversight and to take appropriate enforcement actions when needed.

General	The proposed rule no longer defines small scale short duration, and applies a new standard for certification and notification exemption of what can be fit into a glove bag or a waste container bag. From a practical aspect, repair of a system that breaks down does not conform to the size of a glove bag. A repair requires what a repair requires. In a sampling of seventy incidents that were considered using the old definition of O&M (operations and maintenance), we found that only 33% comply with Class III work, so in terms of what we had been doing, around 66% is now going to require notification and a fee under the proposed rule. This will require office personnel. It will also require us to comply with many more regulations, such as requirements for work plans and occupant safety programs. And all of this has to be implemented. **9**	The department's long-standing interpretation that certification and notification are required when work will result in more than one glove or waste bag of asbestos debris is in close agreement with the EPA definition of "Small-scale, short-duration activities" under 40 CFR Part 763, Subpart E, Appendix C, and the OSHA definitions of "Class III asbestos work" and "Disturbance" under 29 CFR 1926.1101. The proposed rule maintains these requirements and clarifies the intent to exempt persons from certification who are performing only operations and maintenance activities that remove no more than one glove bag or disposal bag of asbestos-containing material, and to exempt from notification, asbestos work that removes no more than one disposal bag of asbestos-containing material.
General	Will the department notify weatherization people that if they disturb vermiculite they have to be certified to perform asbestos abatement? **10**	Yes, the department is planning outreach.
General	One of the changes that we feel will greatly impact us on a day to day basis, will cost us, and will be a significant burden on our labor and fee structure is the change in the O&M program or maintenance repair program. Considering the state imposed revenue caps that are imposed on all school districts MPS would further advocate that there be NO increases in fees to schools. **9, 11**	The department has revised the proposed rules to exempt schools subject to AHERA (all public and non-profit private schools) from paying notification fees when the work is conducted by school district employees.
General	The changes proposed to HFS 159 go much further than the EPA requirements. MPS is currently regulated by the USEPA under the AHERA and NESHAPS programs. Worker and employee health and safety are currently governed by OSHA and DCOM. In addition we are subject to the requirements of the Milwaukee Health Department. Any additional requirements imposed by the rule are unnecessary burden for the MPS. We suggest that, except for the requirement to be certified in the necessary AHERA disciplines, all schools in the state that are subject to AHERA be exempted from all other aspects of the rule. **11**	Schools in Wisconsin are regulated directly by EPA under the school AHERA rules, but are also subject to state certification regulations. The department is EPA-authorized to regulate asbestos training accreditation and certification in Wisconsin in lieu of the EPA. The department believes that the requirements in the proposed ch. HFS 159 for occupant protection plans are needed to help protect building occupants, including school children, and impose minimal burden on regulated entities. Section 254.20 (9), Stats., authorizes the department to write any rule it deems necessary to administer the asbestos certification program. The department deems that the requirements for project notification, occupant protection and project logs are necessary to administer the certification program. These

		requirements enable the department to ensure that persons who are certified to perform asbestos work do so in a manner that is consistent with the standards for maintaining certification. Department requirements for project notifications, occupant protection plans and project logs are necessary to monitor and assure adequate protection for vulnerable people such as tenants, patients in hospitals, school children, building visitors and users, and homeowners and their families.
General	In an effort to improve the oversight of abatement projects, MPS would like to see a requirement that consultants that oversee the work of abatement contractors have no conflict of interest. Currently, the majority of consultants who oversee projects have close ties to the removal companies and are reluctant to identify problems on projects. Both the EPA Model Accreditation Plan and the American society for Testing and Materials (ASTM) recommend a certification for a "Project Monitor". The public would be well served by implementing this requirement in Wisconsin. **11**	The department determined that regulations requiring third-party project monitoring would present an undue financial burden to property owners. In an effort to address safe work practices, the department included language requiring abatement contractors to provide and to post occupant protection plans whenever work takes place in an occupied facility. A building owner may provide for project oversight the owner deems necessary to assure proper and safe work practices, by contracting with certified persons who are not affiliated with the abatement contractor or the owner to monitor the project.
General	The term "disturb" and its variants are ambiguous. They are not adequately defined. **11**	The department did not define this term because the common meaning is used.
General	If the purpose of notification is to help the department target inspections, those that notify are most likely compliant. What the department needs to do is find those that have no regard for the rule. To that end I suggest that you require a notification every time a dumpster or a dump truck hauls a load of construction debris. **11**	The notification requirement promotes a certain level of compliance; however, the department agrees that those who do not comply with the notification requirement are more likely to be in violation of other requirements. This is true in most regulated fields. The department responds to all tips and complaints alleging asbestos abatement certification violations. Department inspectors also stop and investigate any suspicious construction activities they observe while in the field and check dumpsters for suspect material. The department has no authority to require notification by waste haulers transporting construction debris. DNR has authority for waste handling and disposal in the state. Persons may contact DNR with any concerns in this area. DNR shares with the department information regarding complaints and tips that may involve certification issues.
General	The proposed new regulations will cost us and every other legitimate abatement contractor in the state a minimum of $50,000 per year to hire additional staff to fill out and	The department revised the proposed rule reduce department-required record keeping for asbestos companies, including eliminating air monitoring and personal air

	track DHS paperwork before and after the project is complete - in addition to the proposed new DHS fees. This will then be passed on to our clients, making it more costly to build, renovate or maintain a building. **33**	monitoring records, and asbestos abatement work plans and specifications as required records. The proposed rule adds requirements for only 2 new documents that are not required under the existing rule; a project log and an occupant protection plan. These documents are important to help determine whether abatement contractors have performed work in compliance with the certification standards required to protect the public health. Other records that must be kept under the proposed rule, including contracts, inspection reports and sampling results are only required to be retained if they already exist, the rule does require that they be created. There may be some additional costs related to creating and maintaining a project log and occupant protection plan. These costs will vary among contractors based on the volume of work, but will likely be significantly less than the $50,000 suggested.
General	In general, I am concerned about the wording of the new regulations. 1) From operational considerations, 2) From a cost standpoint on small projects, 3) Required inspections by the department based on the wording of the regulation. **19**	Because of the generality of this comment, the department is unable to interpret the issues for response.
General	In your proposed changes you are requesting additional authority, in addition to significant fee increase, not only to the certified asbestos trainers in this state, but also to the workforce, contractors, and consultants that supply asbestos related services in the State of Wisconsin. Over the past three to four years we have been informed that DHS had intended to rewrite HFS 159, but only received an updated draft of what was being proposed last month. The last draft that the asbestos trainers as well the entire industry had been working from was over three years old. The current proposed draft was released last month with little notice to the trainers and asbestos industry. We have had little time to review and digest the changes let alone prepare comments on the revisions. The only notice that we received was an email dated May 15, 2008, from the DHS Lead and Asbestos Section of the upcoming public hearings. This notice was only sent to individuals with which the department had access to an email address. I am not aware of a formal notification to the asbestos trainers of the state by mail or by any other means.	For the most part, the proposed rule is based on the meetings the department held with various industry groups in 2004. All fee increases were discussed and agreed upon by those present at meetings held with the various industry groups at that time. The department gave public notice of the proposed rule, as required under the statutes, on April 18, 2008. In addition, the asbestos program sent courtesy emails with the links to the proposed rule to everyone in the program database who had an email address listed. The emails were sent on May 8, 2008, giving those for whom this was their first notice well over 5 weeks to review the rule before the public hearings in June. A second notice to the same mailing list was emailed on May 15. The rule was open for written comments until June 30, 2008. All of the major provisions for training providers, including training course fees and requirements for reviewing student ID's and submitting student photos and class rosters to the department, were discussed and agreed upon at the 2004 meeting the department held with training

	34	providers. None of these provisions have been added to the proposed rule in the intervening time between those meetings and the publication of the proposed rule.
General	Some elements of this revision do offer positive advantages to this industry and will help protect health and safety. These acceptable new changes include: • Allow an individual to work with provisional certification after the individual has completed training and submitted a certification application. • Shorten the project notification requirement from 10 days prior notice to 2 days less notice. • Individuals entering Wisconsin from other states would be required to take an initial or refresher training course in Wisconsin to qualify for Wisconsin certification. The proposed rule, including the fees being proposed, however, will have a significant impact on small businesses that perform asbestos work in the state. The rule increases fees, recordkeeping for training providers, overlaps regulations of other agencies, and results in overregulation. We do not believe that the cost increases are distributed fairly across the industry and we don't believe this is in the best interests of this industry. Any new fees will create a trickle down effect to the students. Has the rule been submitted to the Small Business Regulatory Review Board? **34**	Rather than simply raising certification fees, the department chose to distribute fees among the various activities and entities regulated under the proposed rule, including training, certification, project notification and companies. Due to public comment, fees in the proposed rule have been modified or eliminated to address concerns expressed. For example, the course application fee is being eliminated and the annual initial course accreditation fee is being reduced for training providers. The steady state of the industry does indicate that the department needs additional resources to adequately administer the certification and accreditation program and to oversee the industry are still needed. In the 20 years since current fees were set, program costs have increased but revenues have not – because of steady numbers of persons being certified each year. The department did look at areas of overlap. As a result, duplication of most notices with the DNR was eliminated to improve efficiency; however, the department has no statutory authority to require another agency to carry out the regulatory responsibilities of this rule. Additional documentation training providers are required to maintain, including student photos and recording student ID's, are required in the best interests of students by streamlining the certification process while enhancing security by helping ensure that persons applying for certification are the same as those who attended the training. Training providers already keep course and class records and should be well prepared to incorporate the few additional documents (student photos, identifications viewed, and student birth date) into the record. The department has attempted to keep fee increases as low as possible and has made additional accommodation to training providers based on comments received on the proposed rule. These are explained in the department's response to comments on s. HFS 159.26. The department has submitted a copy of the proposed rule to the Small Business Regulatory Review Board as required under statute.
General	The only interaction that the Asbestos	Additional funding is needed to continue

	Industry has occurs at the Annual Asbestos Conference. You had stated in a previous power point presentation that new activities that can be provided under this rule revision are: "Different ways to enforce HFS 159 or at least encourage compliance." A couple of your examples were: outreach to flooring/siding contractors and outreach to Building Inspectors/Health Departments. These are initiatives that should be currently ongoing. Since the majority of the asbestos regulations have been around for more than 20 years, why now propose these revisions and ask for more funding? These initiatives can be provided with the assistance of the industry you regulate and they can be conducted without increasing fees and expanding already subjective regulations. **34**	carrying out the daily responsibilities of the program such as processing certification applications and conducting training audits and compliance monitoring. The program is currently not adequately funded to carry out these basic responsibilities. The department recognizes the need to conduct outreach, especially to groups not traditionally part of the asbestos industry. However, by their nature, these groups (small renovation contractors and siding contractors) are particularly difficult to reach because of there are no statewide organizations representing them. The department welcomes the offer of assistance in this endeavor.
159.01	The proposed rule change goes beyond and extends the Department's authority to promulgate rules regarding training and certification, including in regulating buildings other than schools, copy records, and taking samples. **6, 10, 19, 34**	The department has authority to establish work practice standards for asbestos abatement and management pursuant to its general responsibility for safe-guarding public health under s. 250.04, Stats., and its specific authority to establish asbestos abatement certification requirements under s. 254.20, Stats. Under s. 250.04 (1), Stats., the department has general supervision throughout the state of the health of citizens, may upon due notice enter upon and inspect private property, and has power to execute what is reasonable and necessary for the prevention and suppression of disease. Under s. 250.04 (2) (a), Stats., the department possesses all powers necessary to fulfill the duties prescribed in the statutes. The purpose of the asbestos abatement certification requirements in s. 254.20, Stats., is to protect persons performing asbestos abatement or management activities and other persons whose health and safety could be adversely affected by these activities. To accomplish this purpose, and consistent with the department's general responsibilities for protecting public health, s. 254.20 (2) and (3), Stats., authorize the department to establish by rule certification requirements for persons who perform asbestos abatement or management activities, s. 254.20 (4), Stats., authorizes the department to establish requirements for the renewal of asbestos certification, and s. 254.20 (9), Stats., authorizes the department to promulgate "any rule it deems necessary to administer" s. 254.20, Stats.

		To fulfill the department's responsibility for protecting public health and to accomplish the purpose of s. 254.20, Stats., proposed ss. HFS 159.13 and HFS 159.21 establish work practice standards a person must comply with to maintain certification. These standards are based on what persons learn in the training required for certification. They enable the department to ensure that the knowledge and skill required for certification are actually applied when asbestos abatement or management activities are performed. If the department were unable to enforce these work practice standards, the certification and training requirements would not serve their intended purpose of protecting public health. The department's specific authority to establish work practice standards for buildings other than schools derives from s. 254.20 (2) (d), Stats., which extends the department's authority to establish certification requirements for asbestos abatement and management activities beyond schools. The department's authority to inspect worksites, review records and take samples is set out in ss. 250.04 (1) and (2), 254.20 (9), and 254.20 (10), Stats. Sampling is necessary to determine if asbestos is present at a worksite and thus whether the worksite is subject to the requirements of s. 254.20, Stats.
159.02	Suggest changing the exemption from abatement certification requirements in current s. HFS 159.02 for an owned or leased residential building of fewer than 10 units to an exemption for a building with 4 or fewer units, to be consistent with DNR 477. **30**	Proposed s. HFS 159.06 limits the exception to the asbestos abatement requirements to abatement performed by an owner on his or her single-family owner-occupied unit in order to provide greater protection of residential occupants and workers. Under existing rule s. HFS 159.02 and the DNR rule, a person can own dozens or even hundreds of single-family, duplex and four-plex rental buildings, yet each building is exempt from regulation of asbestos abatement, and thus many residents and workers are at risk of exposure to asbestos. The DNR regulation exempting abatement activity on buildings with fewer than 5 residential units leaves many tenants and property owner employees at risk of exposure to asbestos hazards. Because of the department's unique statutory duty to protect public health, the department needs to address asbestos hazards in those places where people live and work that are not covered by the DNR rule.
159.02	This comment is on applicability. Most	Under s. HFS 159.06, single family

	states' regulations indicate less than 10 residential units or some exception from the rule for residential situations. I'm a little unclear reading the applicability of this regulation whether single family home owners are able to do their own asbestos work. **20**	owners are exempt from certification when doing work on their own homes. To eliminate possible confusion, the department has revised s. HFS 159.06 to clarify the exception.
159.02 (2), 159.04 (9) & 159.04 (57)	Delete "For purposes of this chapter, all suspect asbestos containing material shall be treated as asbestos containing material," delete "and a material meeting the definition of suspect asbestos containing material" from definition (9), asbestos-containing material, and delete definition (57), suspect asbestos containing material. These only add confusion and are inconsistent with EPA, DNR and OSHA definitions. **20, 30**	The concept of suspect asbestos containing material is not inconsistent with the intent of other regulations. Regulations administered by DNR, EPA and OSHA require persons to either determine whether materials being disturbed contain asbestos or to assume they do. DNR and EPA regulations require a thorough pre-inspection before renovation or demolition work is begun to determine the presence of any asbestos. EPA NESHAPS regulation requires that suspect material either be sampled and tested or assumed to contain asbestos. EPA AHERA regulation allows materials to be assumed to contain asbestos, rather than requiring all materials to be tested, for purposes of the school asbestos inspection. EPA AHERA also uses the term "suspected" asbestos-containing building material (ACBM) in its description of the inspection that must be conducted in school buildings, which includes visually identifying all suspected ACBM, touching all suspected ACBM to determine friability, and identifying all homogeneous areas of friable suspected ACBM, etc. OSHA considers thermal system insulation and surfacing materials to be Presumed Asbestos Containing Material (PACM) and also requires that resilient flooring material to be treated as "assumed" asbestos-containing unless it is properly tested and found to be asbestos-free (29 CFR 1926.1101 (k). Under all these rules, contractors, facility owners, and employers are required to either determine whether asbestos is present or assume that it is present.
159.03 (1)	This seems to say that DHS can change HFS 159 anytime they want to, either temporarily or permanently. Under what process will this occur? Will the public have an opportunity to comment? **34**	Comparable compliance under s. HFS 159.03 does not involve changing. Chapter HFS 159, but rather authorizes the department to exercise reasonable discretion in approving an equivalent alternative to a requirement of the chapter on a case-by-case basis. A person may submit a written request for department approval of an alternative to any requirement of ch. HFS 159 that is not mandated by state statute or federal law. Public comment is not part of the process.

159.04 (4) and (5)	Air monitoring and air sampling definitions -- Change from …"concentration of asbestos fibers and "presence of asbestos fibers" to "for the purposes of identifying asbestos fibers". The typical analytical method used for asbestos air sampling, phase contract microscopy (PCM) using the NIOSH 582 method, does not actually measure asbestos fibers, but rather a fiber concentrations in fibers/cubic centimeter (not asbestos fibers/cubic centimeter F/CC). **20, 30**	Based on Clearinghouse recommendations, the definition for "air monitoring" and "air sampling," have been deleted as unnecessary to the administration of this rule.
159.04 (7)	Definition of "Asbestos abatement activity" is overly broad (i.e., including . . . repair, operation, service, maintenance) inasmuch as a commercial plumber changing out a fitting in a residential home or an electrician drilling holes in a wall could be construed as disturbing asbestos). How does DHS anticipate educating the general public and the general construction industry regarding (a) pre-testing of suspect materials, and (b) certification of trades people or other employees who may disturb suspect asbestos-containing materials. **10**	The proposed definition is substantially similar to the definition in the existing rule. It is the amount of asbestos-containing material removed or disturbed that determines the training and certification required. Under s. HFS 159.06 (2), if a person has O&M training, certification is not required when no more ACM is removed or disturbed than would fit in a single glove bag or waste bag no larger than 60"x60.
159.04 (8)	Does this imply that companies who train their personnel only in operations and maintenance for the routine service and maintenance of suspect ACM must be certified as an asbestos company? **10**	A company conducting only (O&M) work will not need to be a certified asbestos company because the work does not require certification under proposed ss. HFS 159.06 (2) and HFS 159.14 (1).
HFS 159.04 (9) and (57)	Is it a violation of HFS 159 to not sample building materials prior to conducting the residential work? Is there a plan for outreach to residential contractors for compliance? **28**	Residential contractors will need to be certified to disturb or remove more than one glove or waste bag of asbestos material, just as they are currently required to be certified to conduct asbestos work other than operations and maintenance activities. This means that they need to know if they will be removing or disturbing this material before they start. They may either assume any suspect material contains asbestos or have it sampled to determine whether it contains asbestos. It would not be a violation to not sample, but it would be a violation if an uncertified contractor removed or disturbed suspect material that had not been proven by sampling to be asbestos-free.
159.04 (9)	"Asbestos-containing material" is vague in that EPA recognizes several analytical methods including PLM, TEM, SEM, gravimetric reduction etc., but has not approved all of those methods. Does DHS allow use of all of the methods that are recognized and, if so, which will govern if there is a discrepancy between two or more methods that are used on the same	Schools are governed by EPA AHERA requirements under 40 CFR Part 763, Appendix E to Subpart E, that specify the analytical methods that may be used to test bulk samples for asbestos. Other regulations, such as OSHA and NR 447also reference phase light microscopy (PLM) as described in Appendix E to Subpart E of 40 CFR Part 763, Section I,

	material? The EPA and DNR regulations state that asbestos containing materials means >1% asbestos. How will your definition apply to residential structures of 4 or fewer units, which the DNR exempts? How will you enforce this, including notifications and abatement? **11, 34**	so this is the most widely used method. Based on this, the department revised the language of the definition to reference 40 CFR Part 763, Subpart E, Appendix E, Section I. The definition of "asbestos containing material" is applicable to all buildings, including residential structures of 4 or fewer dwelling units. The department enforces based on notifications of asbestos projects, tips and complaints received, referrals from other agencies, and observations of inspection staff in the field.
159.04 (9), Note	Please clarify that the note under definition #9 does not apply to materials that have no detectable asbestos (which technically have less than 10%) and therefore might have to be considered ACM based on an interpretation of the referenced note. **11**	The department has deleted the proposed note. The note had included language from EPA NESHAP and NR 447. Due to public comment, the department revised the definition of "asbestos containing materials" by adding the citation to 40 CFR part 763, Appendix E to Subpart E, Section I, Polarized Light Microscopy, making the note no longer necessary.
159.04 (10)	Asbestos inspection is a visual process only as defined by AHERA. Adding the phrase "physical examination," unless this is further defined as limited to the determination of friability, may imply that a physically destructive investigation is required. **11**	The department's definition is substantially the same as the EPA definition under AHERA. 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan, defines "inspection" to mean, "an activity undertaken. . . to determine the presence or location, or to assess the condition of, friable or non-friable asbestos-containing building material (ACBM) or suspected ACBM, whether by visual or physical examination, or by collecting samples. . . ."
159.04 (25)	The definition of "designated asbestos coordinator" (designated person) states that the designated asbestos coordinator is someone who works with the LEA. It should state that it is someone who works for the LEA. It is impossible for a non-employee to fulfill the requirement to insure that AHERA will be complied with. MPS is aware that there are consultants who provide designated person consulting services. However, if you were to look closely at those contracts, the consultant does NOT take on the responsibilities required under AHERA and the LEA (typically a small school system) is misled into thinking that it has contracted for that service. In the end there is NOBODY that is the actual designated person. **11**	EPA does not require that the designated person or be an employee of the LEA. 40 CFR 763.80 (a) allows LEA's to delegate the duties of their designated person under the rule, but the LEA's remain responsible for the proper performance of those duties. If a school district contracts for these services then it has the responsibility to ensure the contract clearly states the responsibilities of the person with whom it is contracting.
159.04 (26)	The phrase "direct supervision" is vague in the reference to readily available. **11**	The department believes that the proposed definition sufficiently describes the requirement for onsite supervision.
159.04 (31)	The term "enclosure" is vague in that it appears to require an absolute prevention of	The proposed rule uses the definition of "enclosure" from EPA AHERA at 40 CFR

	fibers into the air. This is not practical. In addition NESHAP prohibits the construction of barriers that prevent access to a material for testing and thus indirectly would prohibit an enclosure. **11**	763.83. The NESHAP regulation, 40 CFR Part 61, does not prohibit building enclosures around asbestos-containing materials.
159.04 (33)	How will the definition of "exterior asbestos company' be interpreted if the material they work on is non-friable but RACM? What happens if the siding material becomes friable during removal? Are exterior asbestos companies or exterior asbestos supervisors required to have an asbestos supervisor or "competent person" on site in the event material becomes friable? Your department is looking to eliminate the roofing disciplines and create an exterior abatement discipline. We do not see how public health and safety is improved by deregulation of some activities that are now performed by higher skilled and certified individuals. Windows - glaze and caulk - is that interior or exterior work? What if it is just storm windows? What if it is just exterior caulking getting removed? What if the building is vacant? If wiring or pipes are attached to an exterior wall, are they considered exterior material? **10, 11, 19, 28, 34**	The department has added the phrase, "that remains non-friable," to the definition "exterior asbestos company" to clarify requirements. An exterior asbestos company may only conduct work on non-friable materials and may not conduct the work in any way that causes the non-friable materials to become friable or 'RACM' (an EPA NESHAP / NR 447 term for regulated asbestos containing material). RACM is not a term used under EPA AHERA or by the department. The same changes have been made to the definitions of "exterior asbestos supervisor," and "exterior asbestos worker". The exterior supervisor training class teaches how to recognize friable material and what to do when non-friable material becomes friable. The certified exterior supervisor may act as the competent person for OSHA purposes, and under both the department's and OSHA regulations, has authority to respond when asbestos-containing material becomes, or is found to be, friable. The certified exterior supervisor shall shut down the job and call in persons with full asbestos abatement training and certification to handle the friable material. The department has added specific language to the exterior supervisor curriculum requirements to ensure that these duties are covered in the class. A note has also been added with the definitions of exterior asbestos company, supervisor and worker to clarify the intent.
159.04 (36)	The definition of "Friable asbestos-containing material" appears to include RACM as friable asbestos. MPS takes exception to this. Materials may be RACM without being friable. This impacts all schools in that testing is required for friable materials (within the definition of a response action) but not for non-friable RACM. **11**	The proposed definition of "friable asbestos-containing material" does not address RACM and is nearly identical to the EPA AHERA school regulation definition of "friable." The proposed ch. HFS 159 definition reads, "means asbestos-containing material that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure, including previously non-friable asbestos-containing material when that material is damaged to the extent that when dry it may be crumbled, pulverized or reduces to powder by hand pressure." The AHERA definition reads, "…means that the material, when dry, may be

		crumbled, pulverized, or reduced to powder by hand pressure, and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure."
159.04 (43)	Regarding the standard of 3 square feet or 3 linear feet of friable ACM: what is the strict definition of O&M and when will people need to send in a notification? What about the "small" amounts of material definition? What about electricians or sprinkler system people that are drilling hundreds of holes throughout an entire multi-floor building: what type of work is that? **28**	These questions are answered, for the most part, in proposed HFS 159.06 (2), which exempts from regulation operations and maintenance work that incidentally removes no more asbestos-containing material than would fit in a single glove bag or waste bag no bigger than 60 by 60. Under proposed s. HFS 159.20 (2), an asbestos company is required to notify the department only if an asbestos project removes more than one disposal bag or asbestos-containing material or encloses, encapsulates or repairs more than 3 square feet or 3 linear feet of friable asbestos-containing material.
159.04 (46)	Delete the definition of "planned renovation project" and all further references to it. This definition is associated with DHS notification requirements, but it adds confusion to DNR asbestos rules in ch. NR 447, which provides definitions of "demolition" and "renovation" for purposes of DNR notification. **30**	. The definition of "planned renovation project" does not create confusion with respect to the definitions of "demolition" and "planned renovation operations" in ch. NR 447. The meanings of department's term and the DNR's terms are clear in relation to the different purposes for which they are used in the respective rules. Although "planned renovation project" is similar to "planned renovation operations" in s. NR 447.02 (32), the meaning of "planned renovation project" is clear from its use in ss. HFS 159.20 (5) and (8) (c). These sections permit an asbestos abatement company to reduce the notification fees that would otherwise be due for notifying the department of individual abatement activities, if the company notifies the department in advance that it will be conducting a renovation project over a period of up to 12 months, during which time it anticipates multiple sub-projects, each of which may involve asbestos abatement requiring notification to the department. Abatement companies familiar with the definitions of "demolition" and "planned renovation operations" in ch. NR 447 and the different meanings of these terms in common usage are aware that "renovation" involves different activities than "demolition" and will not be confused as to when they may submit a notification for a planned renovation under s. HFS 159.20 (5).
159.04 (56)	The definition of "structure" is poorly	The department has replaced the term

	worded. A chair would fit the definition. In addition it does not differentiate between the use of structure as it is used in transmission electron microscopy (TEM) analysis, which references asbestos fibers as structures. **11**	"structure" with the term "facility," as used and defined in NR 447.02 (14). The term "facility" is also used in the EPA NESHAP regulations.
159.04 (57), (61), and (62)	The definition of "suspect asbestos containing material" requires that all vermiculite insulation be treated as suspect ACM when in fact it may not be asbestos. This is an unnecessary burden to anyone who may have the non-asbestos variety. When test methods evolve, they should be mandated at the Federal level subject to scientific support. As proposed, this definition lacks a solid basis in science. Delete the definitions of "vermiculite" and "vermiculite insulation." These definitions are not present in other state or federal regulations and will likely create confusion on the vermiculite insulation issue. If DHFS considers vermiculite to be an asbestos-containing material, how does its position relate to DNR/NESHAPS issues where, as long as lab results show material contains less than 1% asbestos, the material may be left in the building for demolition. If DNR allows the material to be left in a structure for demolition, how would DHS enforce the application of its definition of vermiculite? How would the proposed rule regarding vermiculite affect weatherization agencies and trades people who disturb vermiculite in the course of their duties? **10, 11, 20, 28**	The department defined "suspect asbestos-containing material" to include vermiculite insulation because of the unacceptable health risks posed by vermiculite insulation, which may be contaminated by asbestos. Most vermiculite insulation used in the United States came from one asbestos-contaminated mine in Libby, Montana, and was sold mainly for use in residential buildings, especially single-family homes. During its production years from 1920 to 1990, over 80% of all vermiculite insulation produced in the U.S. came from the Libby mine, which is known to have produced asbestos contaminated vermiculite. It is extremely likely that homes in Wisconsin were insulated with the Libby insulation because processing plants in Wisconsin and neighboring states processed Libby vermiculite for insulation. When asbestos-contaminated vermiculate is disturbed, it can quickly create levels of asbestos fibers in the air that exceed the OSHA permissible exposure limit (PEL) for workers. Based on these facts, the department believes the need to protect persons from the asbestos hazards presented by vermiculite insulation outweigh the potential burden that treating this material as asbestos-containing may pose for property owners. The department has included in the definition the option for testing vermiculite material for asbestos content upon publication of a recommended EPA protocol for such testing. To date, EPA has not determined a method appropriate for bulk sampling vermiculite insulation because of the very random distribution of asbestos fibers in the loose fill insulation material. If workers disturb vermiculite in the course of demolition, the department would consider the disturbance to be an asbestos abatement activity (see definition) because the demolition work would disturb the suspect asbestos containing material. The department would require either that a certified asbestos company remove the vermiculite prior to the demolition or that a certified asbestos company conduct the demolition with the vermiculite in place (not

		a recommended option) with proper engineering controls to contain the fibers to the work area and limit exposures. Under s. HFS 159.06 (3), for demolitions only, an uncertified person may conduct the demolition if that person operates a motorized vehicle to demolish or remove a structure when asbestos-containing material is allowed to remain under s. NR 447.08 (1) (a) to (d). Weatherization agencies, insulating companies, and other renovators and trades people will need to use persons trained to the proper level for the amount of disturbance and asbestos-containing debris generated. Their work will require department certification if the amount of asbestos debris generated from a single activity exceeds one disposal bag. Thus, if the activity involves removing all the vermiculite insulation before doing other work, certification will be required.
159.04 (61)	From a geologic perspective, the definition of "vermiculite" is bad because it includes any micaceous minerals. **11**	The department agrees that this definition does little to specifically define vermiculite. The department has deleted the definition of "vermiculite" but kept the definition of "vermiculite insulation" to provide a description of this regulated material.
159.04 (62), Note	The note associated with this is a guidance and not a required protocol. **11**	Notes in the administrative rules are for informational purposes only..
159.04 (63)	Please consider making the definition of a working day the same as the DNR definition at NR447.02 (43). **28**	The department has revised the definition of "working day" to be consistent with the DNR definition.
159.05 (1)	Generally, the roofing industry is supportive of the new rules. It is especially good that we finally have clarification regarding the requirements for refresher training for those who have been previously certified to work on roofs with asbestos. We are supportive of continued initial training requirements for those wishing to perform work on roofs containing asbestos. Many of our members have a significant investment in the training of supervisors and workers to perform this work. To allow other companies to perform this work without having similar safeguards in place would have been a step in the wrong direction. **31**	No response necessary.
159.06	Please clarify, or provide guidance after the rule is issued, regarding the exception to the certification requirement when asbestos activity is performed by the owner on his or her own single-family non-rental residential property that is occupied or intended to be occupied solely by the owner's family. What	The department believes the exemption from certification for an owner working on his or her own single-family non-rental residential property that is occupied or intended to be occupied solely by the owner's family is clear. If the residence is vacant and will not be

	if a single family home owner purchased a home and is knocking down the house to build a new home and never will live in it? What if a single family home owner donates their home to the fire department and DNR notification is required for the fire burn? Will the Department of Health require notification- knowing that one of the intents of your new rules is to avoid duplicate notifications? **28**	occupied by anyone other than the family, then the owner may conduct the asbestos removal himself or herself. If the building will be donated for a fire burn, then if the asbestos is removed by the owner before the property is donated to the fire department, the owner would be exempt from certification requirements. If the asbestos material is not removed until after the property has been deeded to the fire department, the fire department is responsible for the removal and would need to use a certified asbestos company and the property would fall under DNR regulations for the fire burn.
159.06 (2)	It has been my understanding that the goal of the Department was to limit operations and maintenance (O&M) to no more than 3 square feet and 3 lineal feet of material. A lot more than 3 square feet of floor tile, ceiling tile and other material can fit in a disposal bag. It is very important that more guidance be given considering that the Department of Health Services wants notification and fees for any work that is more extensive than O&M. Is the DHFS official definition of operations & maintenance, "no more ACM than would fit in a single glove bag"? Can you clarify the definition of O&M work? **10, 11, 28**	OSHA uses the amount of no more asbestos than can fit in a standard glove bag as the limit for the amount of removal under the Class III work designation. Likewise, the EPA MAP in Appendix C to Subpart E of 40 CFR Part 763, limits small-scale, short-duration removal to "not to exceed amounts greater than those which can be contained in a single glove bag." Since most companies are familiar with this standard, which is used by OSHA and EPA, and since it is easy to visualize what it means, the department has used it to define O&M work. The definition of "operations and management or "O&M", identifies O&M work; it does not identify the amount of asbestos disturbance that requires notification. Proposed s. HFS 159.06 (2) identifies the amount of asbestos-containing material that an individual who is not certified may disturb or remove during activity limited to operations and maintenance work. Under s. HFS 159.20 (2) notification is required for abatement activities that involve either the removal of more than one disposal bag of friable or non-friable ACM, or the enclosure, encapsulation or repair of more than 3 square feet or 3 linear feet of friable ACM.
159.07	Are individuals going to be able to apply for certification over the Internet? **28**	The department is unable to accept certifications over the Internet at this time.
159.08 (1)	The proposed rule unfairly provides reduced fees for exterior workers and supervisors. There are currently 600 individuals with those certifications, compared to 1975 regular asbestos workers and supervisors, representing approximately 23% of those doing asbestos removal. However, after the first year of certification, the exterior certifications will only pay $11,250 per year compared to $213,125 that the other group will pay - or only 5% of total	The proposed rule does not reduce fees for exterior supervisors. Certification fees for all disciplines are increased under the proposed rule, though the fee for exterior worker becomes a one-time fee. The fees collected from exterior worker and supervisor certifications are expected to total significantly more than the $11,250 suggested by the commenter. Based on the average number of initial roofing certifications over the past five years, the

	certification fees. The users of the program are workers and supervisors who should shoulder the larger burden of the fees. MPS has 4 individuals that are certified as project designers, management planners, inspectors and supervisors (for the purposes of air monitoring) and under the proposed rule we would have to pay $2400 per year in fees. Because the department incurs no costs to audit our work, the proposed and current fees are excessive in relation to the expenditures of DHS. The fees for management planners and project designers are too high and are particularly burdensome to MPS. As these disciplines are only required for work in schools, any fees charged for them is directly and solely targeted at schools. MPS has over 5% of the management planners and project designers certified by the state, so MPS is certainly impacted more than any other district in the state. **11**	amount will be approximately $30,000. This means exterior disciplines will pay approximately 14% of all certification fees collected by the department while conducting only 1.6% of all projects that require notification. The department does not consider a $25 increase in certification fees per discipline to be overly burdensome for any one entity and believes that it represents a fair distribution of the regulatory costs across the industry. Employers are not required to pay for an employee's certification fee under the proposed rule. If MPS chooses to pay the individual certification fees for its employees, MPS would pay an additional $400 per year in certification fees for the 16 certifications indicated by the commenter.
159.08 (2) (b)	For additional processing of an application, required because an incomplete or incorrect application has been submitted, a fee of $25 is charged. I would encourage the department to make the certification application forms easy to fill out. If, as training providers we are going to give students time in class to complete the application, it will be easier to assist them if the form is more user friendly. **28**	The department has attempted to create an application form that is as easy to complete as possible while obtaining the information needed to process applications. Instructions are provided with the application.
159.09	159.09 was crafted in response to removal companies complaining that it took too long to receive the certification card. Since it is possible to walk into the DMV and get a drivers license or go to the DNR and get a hunting license while you wait, it should be possible to get the same level of service from DHFS. If need be this is where an additional fee may be warranted. **11, 33** Provisional certification gives the worker and supervisors the ability to work during the application process. However, it represents another level of monitoring for the contractor. The contractor should be notified by the Department if the provisional certificate is not updated to a full certification. **19**	The department does not have resources to provide statewide walk-in services. Therefore, most applications come by mail. This adds 2-4 days turn-around time to each application. The department's average processing time, once an application is received, is 3 days. Thus, the average total wait time for a certification card from the date the applicant mails the application to the department is 5 to 7 work days. When an application is submitted by mail, the applicant is not present to provide information missing from the application, and the department will need additional time to obtain this information. Wisconsin asbestos certification processing times are better than most neighboring states where the wait time for licenses is 2 to 4 weeks. An applicant for certification is not required to list an employer on the application. It would be more appropriate for employers to require their employees to

		provide them with copies of their training certificates and department-issued certification cards.
159.09 (1)	Provisional certification - submitting an application – allows for fax, email or "other method approved by the department" - I would presume that mailing it is also acceptable. **28**	Currently, fax, email and personal delivery are the only approved methods of receiving an application for provisional certification. These methods provide immediate receipt of the application by the department. A person working under provisional certification must have submitted the application to the department before starting to work. If the department conducts a work site inspection and has not yet received the person's application because it was sent by U.S. mail, then the department will not consider the application submitted and the person would not be in compliance.
159.11	One commenter opposed issuing lifetime cards to exterior workers and one commenter supported the one-time fee for exterior workers. **11, 31**	The department accepted the roofing industry's recommendation of lifetime certification for exterior workers because it is not inconsistent with federal requirements, is more stringent than regulation in other states, and is sufficient to protect public health. Consistent with OSHA requirements, the rule requires exterior workers to obtain annual refresher training but does not require that the training be accredited. (The EPA does not regulate roofing and siding work.) By requiring that exterior workers be certified in order to do non-friable asbestos work, the proposed rule is more stringent than the regulations in most other states. Although exterior worker certification does not need to be renewed, the department can take enforcement action, including de-certification, against a worker or company, if a worker does not obtain annual refresher training or has failed to comply with safe work practice standards.
159.12 (2)	Regarding requiring in-state training for persons who come into the state from another state to work. Sometimes it takes up to a month to get an individual in a refresher class and as we know sometimes there is critical work to be done and we don't have a month to wait. **3**	This provision assures that persons working in Wisconsin have received training on the state's specific asbestos regulations, which the department believes is important. There are persons certified in every discipline in Wisconsin and an in-state person could be hired in lieu of an out-of-state person. Once an out-of-state applicant has successfully completed an in-state course, the person may apply for provisional certification, which would allow the person to perform regulated work immediately. Several other states in our region have in-state training requirements.
159.12 (3)	One question we have is the "grandfathering" of our existing workers who have been certified. As we understand it,	The department has added language at s. HFS 159.05 (3) in the proposed rule to address this concern. The new

	the roofing classification has been melded into an "exterior" classification. We are uncertain as to the necessity for our employees to receive training in order to qualify for this revised designation. To be able to evaluate siding and caulk is an extension of our current knowledge base and would likely require at least some additional training. At the same time, we do not want to have all of our workers go through a refresher class to pick up a small amount of information that would be seldom, if ever, used in our trade. **31**	language states that persons currently certified as roofing workers or roofing supervisors at the time the proposed rule is published will be allowed to conduct roofing work until the certification expiration date. A person who does other exterior asbestos work, such as siding or window glazing, will need to take the appropriate exterior training course and apply for exterior worker or exterior supervisor certification before performing such work. For the exterior supervisor, the appropriate course would be the Exterior Supervisor Refresher Course. For the exterior worker, the appropriate course would be the Exterior Worker Course.
159.13 (2)	How should people comply when regulations conflict, specifically regarding vermiculite and NR447 and 40CFR Part 61 Subpart M? Places responsibilities on individuals for compliance with Comm 32, NR 502.06 and USDOT 49 CFR parts 100-185. Until these are taught in class, it is inappropriate to hold individuals responsible for compliance. Further it would make more sense to hold the employer responsible as they have the economic leverage to insure that their employees are acting properly. As it is structured in the proposed rule any violations would be the responsibility of the individual and the employer would continue to do business as usual. Can you explain why DHS is duplicating the enforcement of these regulations? **10, 11, 34**	Unless the work is exempt from certification under s. HFS 159.06, if a person does work that disturbs vermiculite, the person must be certified under s. HFS 159.05 and the person must notify the department under HFS 159.20. A person should notify DNR if the project meets DNR's notification requirements. When in doubt, persons should contact the appropriate agency or agencies for assistance.. When in doubt, persons should contact the appropriate agency or agencies for assistance. These regulatory topics are covered in appropriate training curricula, such as the Asbestos Supervisor Course. When performing asbestos abatement work, certified individuals have a duty to follow all relevant asbestos regulations. The department does not enforce the regulations of other agencies; however, if an individual has a history of multiple or serious violations of these regulations, the department may determine that the individual is not fit and qualified for certification and pursuant to s. HFS 159.44 (3) (t), deny, suspend, or revoke the individual's certification. Certified companies likewise have a duty to comply with all relevant asbestos laws under s. HFS 159.19 (8).
159.13 (3) (c) 1, 2, and 3	A person's original certificate should not be required. **11**	Copies of training certificates are not adequate proof of completion. Only original certificates, notarized copies of the originals, or state certification program records are acceptable for proof of completing training. Persons who take training that qualifies them for certification are responsible for keeping all of their original certificates. This is especially important when a person comes into Wisconsin from another state and needs to provide their complete training history with

		their application.
159.13 (5)	Section HFS 159.13 (5), is ambiguous and could leave a person open to erroneous interpretations. . **10, 11, 19**	The department revised s. HFS 159.13 (5) to prohibit the release of fibers outside the regulated area.
159.13 (6)	This provision indicates that department representatives will not enter a work area. If that is the case how will they insure compliance with all of the work related requirements of the rule? It also allows undocumented individuals to hide in the containment and simply not exit. How would the department know if this was the case? It will cost employers to have employees exit containment (in PPE use, time, lost productivity). Department inspectors should enter the regulated area in proper PPE to inspect and check certifications without requiring workers/supervisors to exit the regulated or contained area. **11, 19**	Nothing in the proposed provision would prohibit the department from entering a work area. The department cannot adequately inspect for certifications within a regulated area when people are wearing full PPE, including respirators. The department needs to be able to compare the certification card picture with the person using the certification card. A person wearing a hooded Tyvek suit with a respirator is simply not adequately recognizable. It has always been the department's practice to require persons to exit containment.
159.13 (6) (a)	Is DHS assuming the enforcement responsibilities of OSHA, DNR, EPA, DOT and local regulatory agencies for compliance with "relevant asbestos regulation? If so, are they being reimbursed by those agencies for expenses incurred? **10, 34**	The department's intent is not to enforce other agencies' regulations, and it has deleted the words, "and compliance with relevant asbestos regulations" from s. HFS 159.13 (6) (a).
159.13 (6) (c)	The District proposes deleting HFS 159.13, paragraph (6) (b) 2, (copying records). This is a burdensome duplication of authority already delegated to other federal and state regulatory agencies. The responsibilities of DHS during the department inspections would include entering any property where regulated asbestos activity is being conducted. They are asking for authority to collect air, bulk or dust samples, to take photographs or video recordings, interview any person on the premises and to conduct any public activity necessary to determine compliance with this chapter. Their rules do restrict them to training and certification. Collecting dust samples should be deleted, the reason being that there are no established regulatory levels, to my knowledge, for dust. **10, 19, 20,22, 30**	These powers are within the department's has authority under s. 250.04, Stats., to do what is necessary to protect the public health, and under s. 254.20 (9), Stats., to promulgate rules it deems necessary to administer an asbestos abatement certification program. Because there are no established regulatory standards for asbestos in dust, the department has removed references to dust sampling from the proposed rule.
159.14	The proposed rule requires training providers to become certified companies even though they may not conduct any other asbestos activity. This is burdensome to the training provider that focuses solely upon training. Training companies that do consulting or contracting are already certified for that purpose, so they do not experience the burden that this poses for the specialized training organization.	Training providers play a critical role in the asbestos abatement certification program under s. 250.20, Stats., because they provide the training required to certify individuals to safely perform asbestos abatement and management. It is important that the department have the ability to not only assure that the training courses meet curriculum standards through the process of accreditation, but

	Additionally, no other state in your list of comparison states has this requirement. Companies providing only training should not be required to be certified like companies conducting asbestos abatement or consulting services. **7**	also to require providers to fulfill administrative responsibilities identified in s. HFS 159.19 and s. HFS 159.22, which include maintaining class records, submitting accurate student data to the department, engaging in accurate advertising, giving the department accurate notification of scheduled classes, following appropriate student admissions procedures, and cooperating with department inspections and audits. The requirement that training providers be certified gives the department the authority it needs to assure that training providers will fulfill these responsibilities. Accreditation involves the approval of the curriculum of a specific course. The regulatory responsibilities under s. HFS 159.19 and s. HFS 159.22 apply to the business of providing accredited courses and are not tied directly to individual training course accreditations. Abatement companies have similar administrative responsibilities under s. HFS 159.19 and s. HFS 159.21. The company certification requirement applies to these administrative requirements of companies, and the fee paid for company certification helps to cover department oversight, investigation and enforcement when a provider fails to meet these requirements.
159.14 (2)	If a company only performs regulated asbestos activities within its own facilities, must it be certified? If a company only trains personnel above and beyond O&M as a precaution in the event of an unintended emergency, must the company be certified? If a company pays for training of an employee as Inspector so that bulk samples can be taken internally, would the company have to be certified as an asbestos company? **10**	Under the proposed rule, a company that performing regulated asbestos activities (abatement, management or training), using its own certified employees within its own facilities, must be a certified company. If employees directly respond to an emergency, for which certified persons would be required to conduct the work, the company would need to be certified, as would the individuals responding. If a company uses its own employee to take bulk samples of materials to determine asbestos content, the employee must be certified and the company must be certified.
159.15 (1) (f)	Is the company authorized representative listed on the company certification application form required to be certified in an asbestos discipline? **10**	An authorized company representative is not required to be certified in an asbestos discipline, but is responsible for compliance with the rules and must be able to direct certified employees or sub-contractors to comply with the rules and any department orders.
159.15 (1) (g)	Does DHS have to be notified if an individual quits a company or if they move to another company? Can a certified company disassociate itself from a certified individual?	The department has deleted s. HFS 159.15 (1) (g).

	Delete “names of current certified employees of the company…” Labor in the abatement industry is in a constant state of flux with certified individuals moving from one company to another on a weekly or even daily basis. **10, 20, 30**	
159.15 (1) (h)	Does the department have the right to refuse company certification based on the disclosure of company violations of asbestos regulations within the past three years? **10**	Yes, if the department determines that the person applying is not fit and qualified to conduct regulated asbestos activities in compliance with the regulations.
159.16	We support the effort in company certification; however, we feel it falls well short of the mark as it relates to insurance qualifications and fee amount. If you want to take anything from the Illinois EPA - revisit their insurance requirements. The company certification fee should be based on the number of employees, not whether the company is a roofing or siding contractor performing "outside" asbestos abatement activities or a full-fledged professionally trained and certified abatement contractor performing abatement activities inside or outside of a building. Make this the area monitored to pro-rate annual or semi-annual fees based on the quantity of notices submitted and move away from a plan that adds burdensome administrative functions to pay with every single notice submitted. A "per notice" fee may sound feasible to DHS when considering smaller abatement companies (although it is far from it) but can become quite a hardship for both DHS and the abatement company that has large-scale customers. Will there be staff to keep up with all aspects of this proposal? **33**	The department considered insurance requirements during rule development but decided that such requirements would be difficult to enforce and are outside the scope of its responsibility for public health. It would not be practical or feasible for the department to determine company fees based on the number of company employees because of the frequency that workers change employers and the fluctuations in the volume of work that affect employment
159.16 (1)	Persons with education agencies and government agencies and state agencies are exempt from paying certification fees .Are federal agencies and Indian tribes are also exempt? **10**	No one is exempt from paying individual asbestos certification fees; however, companies are not required to pay for employee certifications. The employer may require employees to pay for their certifications. Local education agencies, local government and state government are exempt from paying the company certification fees, but federal government agencies and American Indian tribal government agencies are not exempt.
159.18 (2)	We propose that the rule allow for companies to be certified by DHFS on a two-year or even a four-year cycle (as is the case with many of the regulations we work with under the Department of Commerce). Not only does this save time for us as	The department has revised the proposed rule consistent with the comment to extend company certification from one year to 2 years and has revised the company certification fees accordingly: asbestos companies from $200 to $400,

	contractors, it also saves time for the Department. **28, 31**	exterior asbestos companies from $100 to $200, satellite asbestos companies from $100 to $200, and satellite exterior companies from $50 to $100.
159.19 (4)	How is annual refresher training for exterior workers going to be implemented? For example, will students who already are asbestos roofing workers and are due for a refresher need to take a refresher from an accredited training provider to become an exterior asbestos worker? Will they need to take an initial exterior asbestos worker course? How will existing roofing workers be transitioned into exterior workers? For the refresher course conducted in house – are there required training course topics? Does DHS plan to monitor or audit such training? Is an exterior asbestos company obligated to notify DHS prior to conducting exterior worker refresher training? Who is qualified to instruct the exterior worker refresher training? We understand that "in-house" refresher training does not come with any specific requirements for the amount of time that must be spent training nor an outline of the subjects that must be covered. Further guidance in this area would be appreciated. There is much greater direction from OSHA regarding the subjects that must be covered and the qualifications of the instructor. **10, 28, 31**	To become a certified exterior worker an individual, including an individual who is currently a certified roofing worker, will need to complete an accredited 1-day exterior worker course. This will ensure that all persons certified as exterior workers have received information and hands-on training for working on roofs and on siding. Once certified, the exterior worker is required to obtain annual refresher training. but may do so through a non-accredited refresher course provided by the employer, as long as the employer documents the training and retains the documentation. The department has added s. HFS 159.05 (3), to allow an individual with an unexpired roofing certification to conduct roofing work until the certification expires and to convert the certification to an exterior asbestos certification by completing appropriate training. OSHA provides standards for the required annual training for exterior workers.
159.19 (4) -	Some roofers indicate that they don't encounter asbestos very frequently. This would suggest that they have not had many opportunities to exercise their training as is common for those persons certified as abatement workers. These are the very candidates that benefit the most from accredited refresher training. I suggest that Exterior Workers be required to complete a minimum 2 hours of annual refresher training through an accredited provider, and Exterior Supervisors be required to complete a minimum of 4 hours of annual refresher training because they are responsible to know regulatory and project monitoring requirements, which require more than the currently proposed 2 hours. **7, 32**	According to department data, 87% of current roofing supervisors have more than 2 years asbestos certification and 63% have 8 years or more. Because the data indicates that this is a fairly experienced workforce and the department concluded that public health would not be jeopardized, the department accepted the roofing industry's request and agreed to reduce the training requirements.
159.19 (6) (b) 5	Is DHS assuming all enforcement responsibilities of other applicable statutes or regulations? Do the other regulating agencies cover the expenses of DHS	The department is not assuming enforcement of other agencies' regulations and agrees that this sub-paragraph may be misleading. Therefore, the department has

	enforcement of their regulations? **10**	deleted the words, "or another applicable statute or regulation."
159.19 (7)	The recordkeeping requirements go well beyond the scope of the rule and the whole section should be removed that requires air monitoring records, contracts, inspection reports, sampling analysis. The recordkeeping demanded under this regulation is already a burden to schools. My suggestion is for it to read, "shall retain records related to asbestos abatement or management activities for at least three years or until the building is demolished" and that would be more reasonable and be less burdensome on the industry. **6, 20, 22, 30, 34**	Certain records are required in order to document regulated work and compliance with certification requirements under ch. HFS 159. These include records generated when conducting asbestos abatement, including the project notification, occupant protection plan and project log. These documents must be kept for a minimum of 3 years by the company generating them and may be kept in either paper or electronic form. Other records are considered necessary and useful in determining whether an asbestos project is, or was, regulated and, if so, who conducted it. These records include any written contracts for services, abatement and inspection reports, management plans and project designs, and asbestos sample laboratory results. The rule does not require that there be a written contract for services, only that if there is one it needs to be retained. Inspections, management plans and project designs are written documents and need to be retained. Lab results are written documents and need to be retained. The department agrees that certain records are less closely related to the department's ability to adequately enforce ch. HFS 159 and has deleted these records from the record keeping requirements. These include air monitoring records including personal air monitoring records, asbestos air clearance laboratory results, and asbestos abatement work plans and specifications. The department disagrees that a record is only needed until a building is demolished. For purposes of determining compliance, it may be necessary to review records after a demolition is completed.
159.19 (7) (b) 3	This section requires that asbestos companies retain: "For each class conducted, the course test questions, answer key, date the test was administered, discipline of the training course, name of the person who administered the test, names of students that completed the test, and the scored test or answer sheet for each student including passing and failing tests." The tests are approved by the department. The answer key is included with the submitted test. The test date is both on the training diploma and on the electronic submittal required by the department by another subpart. To retain this information again for	The proposed rule requires that certain course test information be retained by the provider, but it does not set the format for retention. There is no requirement to create new records when required information is available elsewhere in the training provider's files.

	each class conducted is redundant and unnecessarily burdensome. **7**	
159.19 (7) (b) 6.	Graphic images take up a tremendous amount of computer memory, which could result in extensive equipment costs for trainers. Why would it be necessary for the training provider to retain copies of the photographs which are on-file at DHS, and also appear on the student certificates? **10**	Student photo files may be saved to CD's as an inexpensive storage option, which would not require buying new computer equipment. Each CD can be labeled with the classes or date range during which the photos were taken. The proposed rule requires training providers to keep copies of their students' training certificates, and since it also requires that certificates include student photographs, the provider must retain copies of student photographs. It is important that training providers keep copies of student photographs so the department can verify that the photographs placed on certification cards are correct.
159.20	The rule concerning asbestos abatement notification is complicated and should be maintained in its current state where notification is still required but there are no fees. If additional fees need to be generated fees should be tacked on to certification card fees and not on to notification. This creates a burden for us. We frequently encounter small amounts of asbestos that wasn't previously abated on construction and demolition projects. When encountered, a lot of that material needs to be removed immediately. Those projects are often $300-$400 and would require an additional $100 notification fee that would be a quarter of the cost of removing small amounts of material. That's an issue for us on a daily basis this time of year. The trigger point for filing notification to DHS is impractical. The other regulating bodies (EPA, OSHA and DNR) have determined that notification on smaller jobs is not necessary. While DHS wants notification for all projects that involve more than one glove bag or waste bag this is impractical. This type of scheduling is unduly burdensome. MPS would support notification of projects that will require at least one 8 hour shift to complete the work. Regarding notification, I'd like to offer an alternative with respect to the O&M program. What we have implemented is we worked with the current OSHA regulation in defining the scope of providing a cutoff of what we feel is acceptable as a definition for short scale small duration project and we used the OSHA cutoffs for the class one	Because the department conducts abatement project inspections based on notifications received, the department believes it is appropriate that fees for notifications should help pay the inspection and data handling expenses they generate. The major change under the proposed rule, other than the addition of a notice fee, is that the department no longer requires that notices submitted to DNR must also be submitted to the department. This reduction in the number of notices required is accomplished in s. HFS 159.20 (2) (b) and (3). Companies, for the most part, will either send notice to DNR or to the department, not to both. In addition to eliminating duplicate filing, the department has sought to minimize the burden of filing notifications in other ways. The one page notification form may be faxed or emailed to the department. Parts of the form may be pre-filled and saved for future use to make completing it more efficient. A company can reduce its notification fees by submitting a notification of planned renovation under s. HFS 159.20 (5). Section HFS 159.20 requires that notification be given to the department for asbestos abatement activities that involve either the removal of more than one standard disposal bag of friable or non-friable ACM, or the enclosure, encapsulation or repair of more than 3 square feet or 3 linear feet of friable ACM. This requirement is essentially no different than the current rule, which requires notification of any asbestos abatement activity, except O & M work involving small

	containments for friable materials which is 10 square feet and the 25 linear feet. Another commenter wrote, “I would suggest that notifications continue to be made to the Department, but that the amount of work that requires a fee be increased to 25 lineal feet or 16 square feet of removal.” Should DHS maintain the present limits for requiring notification, there needs to be a better definition. There is no clear explanation of other limits such as one bag per day or one bag per room. We often have projects were we need to do small removal in several rooms none of which exceeds a single bag. The current requirement implies that once a glove or waste bag is used all subsequent work for the life of the building would require a notification. In conversations with DHS staff they have indicated that the limit is “per project”. The problem is that the proposed definition is vague. **9, 11, 19, 20, 30**	scale short duration activities. The EPA MAP in Appendix C to Subpart E of 40 CFR Part 763, limits small-scale, short-duration removal to “not to exceed amounts greater than those which can be contained in a single glove bag.” The department requires notification for smaller asbestos abatement activities than the DNR does because of the department's statutory duty to protect the public health of all persons who may be affected by the release of fibers during asbestos abatement. The suggestion that notification be required only if the work takes at least an 8-hour shift to complete is not based on a consideration of the hazard asbestos poses to public health. Significant quantities of friable ACM can be released in considerably less than 8 hours. Likewise, the OSHA 10 square feet or 25 linear feet standard is not correlated with the concept of small scale, short duration work or with the determination of when notification is required to protect the public health of those who may be exposed to asbestos. Under OSHA rules, employees performing work that involves less than 10 square feet or 25 linear feet must be trained to the same level as asbestos supervisors and workers. It is not the case that once a disposal bag has been filled during work in a building, all subsequent work for the life of the building, regardless of the amount of asbestos removed, will require notification. A single project is limited by its set-up and clean-up, after which it is considered completed. The next such project would be considered a new project for purposes of determining whether notification is required.
159.20 (1) (b)	How do the notification requirements apply for roofing work? Are you recognizing the "5,580 sq. ft. roof will create 160 sq. ft. of friable ACM" definition from the EPA? And if so, would it be safe to say that if we have a roof under 5,580 sq. ft. we notify DHS and a roof over 5,580 sq. ft. we notify DNR. Also, if we are using no mechanical means and are not creating any friable material, do we have to notify DHS? **29**	The department recognizes that the removal of more than 5,580 square feet of roofing using power cutters or saws is regulated by DNR and requires notification to DNR. Notification to the department will be required when power cutting is not being used or when the total square footage of roofing being removed is less than 5,580 square feet. The department has added this language to 159.20 (2) (b) 2, for clarification. Notification to the department is required even when not creating any friable material.
159.20 (1) (b)	For the removal of floor tile from a commercial building/more than 4 family buildings (DNR covered buildings for RACM), under what circumstances will DHS	If a floor is non-friable before the project starts and non-mechanical methods used are intended to keep the material non-friable, then the project must be

	get notified, under what circumstances will DNR get notified and what if it changes from non-friable to friable mid-project - change in notification - DNR is encouraging notification currently. What about fees? **28**	notified to the department. Any floor tile removal of less than 160 square feet must also be notified to the department. Fees would be the same as for any other notification to the department. The department cannot answer for the WI-DNR regarding what it might require if the material later becomes friable on a floor tile project of more than 160 square feet.
159.20 (1)	Regarding demolitions: If the intent of the proposed rules is for DHS to get notified when DNR is not, what is the protocol under proposed HFS 159 when there is a DNR demolition notification and less that 160/260 of asbestos? What is the protocol under proposed HFS 159 when there are multiple single family homes being demolished and abatement is conducted? **28**	The department will recognize as an exception to its notification requirement, abatement conducted prior to a demolition or fire burn regulated under NR 447, for which notification to DNR is required. The department has revised language under s. HFS 159.20 (3) to incorporate this exception. The department continues to require notification for asbestos abatements prior to demolitions that are not regulated under NR 447.
159.20 (3)	What about annual notification, and how will fees get implemented? **28**	Under s. HFS 159.20 (5), an asbestos company may submit a notification for a planned renovation project that covers a period up to 12 months when the company anticipates conducting multiple sub-projects that include asbestos abatement activities during the notified period. The fee for this notification is $100. The company must submit individual notifications for each sub-project that meets the notification requirements under s. HFS 159.20 (1) and so long as the sub-project notifications are submitted 2 days or more before the sub-project start date, no additional fee is required. When notification for a sub-project is submitted less than 2 days before the start date, a $50 fee will apply.
159.20 (3)	Based on making a planned renovation (annual) notification to the DNR for quantities at or above 260 lineal feet or 160 square feet, it seems that the department would not require a planned notification. The requirement for planned renovation for less than the DNR quantities should include all buildings located at a facility or company address. The requirements for sub-projects to have separate notifications defeat the purpose of an annual planned notification. It does not allow the company to perform work that is needed to be completed quickly to avoid down times, etc. and will increase administrative costs to all concerned. DHFS has indicated that they would not recognize that the DNR had jurisdiction on annual notices and instead would insist on requiring multiple notifications and associated fees with the same work that the	When individual sub-projects under a planned renovation are expected to be less than 160 square feet or 260 linear feet or include removal of any amount of non-friable material using non-mechanical means, notification to the department would be required. The department's concern with the planned renovation notices to DNR is that there is no requirement for the company to actually notify DNR when they begin the small projects (less than 160/260) or removals of any amount of Category I or II non-friable materials that remain non-friable throughout the removal. These are projects that only the department regulates and the department needs to know when these removals are occurring so that inspections may be conducted. All buildings at a facility or address are not automatically included in a planned

	DNR considered a single project with a single fee. The end result would be that there would be two state agencies duplicating oversight, notification requirements and redundant fees paid to each. MPS believes that there is a provision in State law that prevents such duplication. To that end we believe that the DNR single notification system should remain in place and the redundancy of the proposed DHFS notifications and associated fees should be stricken from the rule. **11, 19**	renovation notification. The case for including multiple buildings on one planned renovation notification would have to be made on a case-by-case basis. The purpose of a planned renovation notice to the department is to inform the department that multiple asbestos abatement projects will occur during a defined period of time and to allow the company to pay one fee for that period of time – rather than paying separately for each individual project. However, the department still needs to know when the individual projects will occur when they fall under the 160/260 limit for friable materials or any amount of non-friable materials. The department has provided a short notification deadline to allow companies as much flexibility as possible in scheduling abatement activities with short turn-arounds. The proposed rule eliminates most duplication of notices to the department and DNR, but does not eliminate the authority of either agency to oversee asbestos projects and enforce its regulations.
159.20 (6)	We do not support fees associated with asbestos notification. Increased costs for schools that are associated with this rule change are as follows: Asbestos notification fees of $50-$100 for projects larger than a glove bag. These costs are above and beyond the costs already associated with the DNR and friable removal. MPS opposes the fees associated with the notifications and believes that there are many projects that will simply not be notified as a cost saving measure and the end result is that those that follow the requirements pay more than those that ignore them. A second argument is that the administrative costs to issue numerous small payments increases the costs. MPS proposes that the cost of the program $590,900 be divided to each individual card (except Management Planners and Project Designers for reasons previously stated) which would be 3150 cards at $188.00 each. This would not add any administrative costs to either the regulated body or to DHFS and there are currently payments being made for each of those cards. There should not be a fee for work below the 160/260 threshold. No matter how the fee structure is monitored, our clients will end up paying more; but do not increase that by compiling administrative costs on every little project. It is strongly suggested	The department has revised s. HFS 159.20 (6) (g) to exempt schools subject to AHERA regulations from notification fees when the regulated asbestos activity is conducted solely by school district employees. Since the department regulates projects below 160 sq. ft. and 260 lnr. ft., it is important that the department receive notices for these projects (which can still be very hazardous if not conducted by properly trained and certified persons) so that it has the opportunity to inspect. The department determined that a small notification fee is the most equitable for helping to pay for the costs of project monitoring by the department. Only when a company conducts a project is it required to pay a fee. The department has kept the asbestos company certification fees relatively low compared with most other states in our region by assessing a notification fee. With regard to persons not giving notice of projects if there are fees, using the same line of reasoning, one might conjecture that the department would see a reduction in certifications if it imposed increased certification fees to $188 for every discipline as proposed by the commenter following this proposal would mean increasing certification fees for the

	that this process be put back on the table for review. **11, 22, 30, 33**	exterior worker (roofing worker under existing rule) by over 700% (from $25 to $188), which the department believes is excessive.
159.21	The scope and purpose of the rule is to establish training and certification requirements for person, and this section begins to enter into areas that are regulated by DNR, OSHA, Dept. of Commerce for state employees, and Dept. of Ag Trade & Consumer Protection in terms of occupant protection plan, project log and believe this section should be deleted in its entirety. **6, 20, 30**	Maintaining proper occupant protection controls during abatement activities is a condition a company must satisfy to maintain certification. Other agencies' regulations do not adequately protect all persons who are affected by asbestos activities. OSHA regulations and Department of Commerce regulations protect only employees and workers. They do not apply to occupants who are not workers, such as tenants in apartment buildings, patients in hospitals and nursing homes, homeowners and their families, students in schools and colleges, and visitors to buildings. The DATCP Home Improvement Trade Practice rule regulates the business side of home improvement activities, not the health and safety of occupants. The department has a duty to protect public health and safety and provide protections for those who are not otherwise protected. Requiring a company to provide information about how occupants will be protected during a project that disturbs or removes hazardous asbestos-containing materials and to keep a project log of who is in the regulated area provides this protection without being overly burdensome. During site inspections the department determines whether a company is in compliance with certification requirements, including the responsibility to post an occupant protection plan outside the regulated area and to follow the plan.
159.21 (2)	Who will be responsible for signing in and out on the project log: the individuals or the site supervisor? **11**	The asbestos company is responsible for maintaining the project log and for ensuring that all persons entering containment sign in and out. The site supervisor will handle this responsibility for the company, but the company will be held responsible for maintaining project logs as required in the proposed rule.
159.21 (3)	Several commenters took issue with the requirement for an occupant protection plan, including: 1. One commenter said they already have general work plans and that having to make them site specific would be a burden. 2. One commenter felt the occupant protection plan would place an unnecessary burden on schools and that their projects are adequately documented already. 3. Two commenters thought the proposed	The occupant protection plan provides important information to persons other than workers or employees who may be adversely affected by the work being conducted. The requirement that an occupant protection plan be posted is important because DNR and OSHA regulations do not require that this information be made available to these persons. Companies are well equipped to

	rule was misleading, redundant and in direct conflict with the WDNR and OSHA because "OSHA already explicitly puts this burden on the building owner - where the liability lies - not with a contractor." [see OSHA Construction Standard, 29 CFR 1926.11 (k)]. 4. Two commenters thought that the occupant protection plans should be made more site specific and used by regulators to check work in progress against the written plan. **7, 9, 11, 19, 32, 33**	complete the form as most of the information required in the plan is already provided to the department and DNR on the project notifications submitted to these agencies. OSHA standards apply only to employers and employees, but not to others who may be adversely affected, such as school children, tenants, and homeowners. Many asbestos projects potentially expose persons who are not protected under OSHA, and they may not be aware of the potential hazards or risks associated with asbestos work. The occupant protection plan gives these people basic information about the work being conducted and the controls in place to protect persons outside the regulated work area. There is no inherent conflict between the OSHA requirements and the proposed rule because an owner's responsibility to communicate asbestos hazards to employees is not inconsistent with the proposed rule's requirement that an abatement company post an occupant protection plan in plain view outside the regulated work area. With minimal overlap, the OSHA and department requirements inform different groups of people of the health hazards caused by asbestos release and the precautions that should be taken.
159.22 (2)	Does the proposed rule list how long the department has to review and approve course changes? If not, I would encourage it to be within 30 days. **28**	Under s. HFS 159.27 (4), the department has 60 days to audit the course and provide written results of the review. Thirty days may not be sufficient if the course changes are extensive. However, less extensive changes will likely take significantly less than 60 days or even 30 days to review.
159.22 (5) (a)	As part of the quality control plan, I do not believe "annual" reviews of instructor competency should be required. Instead, the rule should require review of instructor competency only as appropriate. I have many approved principal instructors, some of whom are active in the industry but do not teach for me every year. **28**	An annual review of performance is appropriate for active instructors. Instructors who have not taught a class during a year would not be considered instructors for that year.
159.22 (5) (d)	I strongly disagree that training provider and principal instructor attendance at department-sponsored training and meetings is included in a quality control plan. Many of my instructors are subcontractors, and I cannot require them to attend a meeting. As a training manager, I strive (and am required) to keep my course materials up to date. I can pass along	The department has revised the requirement to clarify that instructor attendance need not be at every training or meeting held by the department, but that instructors need to attend on a regular basis. Training providers should encourage and require instructors to attend department meetings, many of which are designed to provide training on

	current information to my instructors without requiring them to attend specific meetings. **28**	instructional methods and training class requirements that instructors need to know. In-person attendance at a training session is a better learning experience than receiving information second-hand. A training provider can require its instructors, whether they are employees or sub-contractors, to attend training provider meetings as a condition of employment or contract.
159.22 (6) (c)	I understand that the notification is intended to give the department the information it needs to audit classes. Very often our classes are scheduled a month to a year in advance. Periodically, a month before the course date, we will change instructors or locations. I would suggest that phone call notification, in addition to the online changes after revision/cancellation, be required only if the revision/cancellation occurs within a week of the upcoming class. **28**	The department has revised the requirement for notification of course changes or cancellations to permit training providers to make the change directly to the online class schedule database unless the change or cancellation is made less than 10 working days before the scheduled class starting date, in which case, notification must be by telephone.
159.22 (7) (a)	159.22 (7) (a) "Verify student age. Students shall be at least 18 years of age or attain 18 years of age no later than 12 months after completing training." This is a certification requirement. It should not be imposed as a limitation to training availability. Although difficult to imagine, there may be another reason an individual may desire a training course they can take in Wisconsin, and prohibiting the training separate from certification would be inappropriate. **7**	The proposed rule permits persons who will attain the age of 18 within a year to take certification training courses because they will be able to become certified before their training certificate expires. Children younger than 17 years of age would not be able to become certified while their training was still valid, and they are not, and would not be, old enough to legally conduct the work at any time during the year after they completed training.
159.22 (7) (b) & (c)	We should not be required to request six digits of a student's social security number. This is sensitive information. Also, can you please give us examples of non-photo id's that are acceptable? What if the student has none of these & their only photo ID is there DHS certification card? What if they don't have a 2nd form of ID? Are trainers supposed to reject them? This section requires recording the type of identification examined for students. This is particularly burdensome to the training provider and will use a great deal of time to accomplish. I submit that simply verifying on the sign-in sheet with a simple check-off that one form of identification examined was a picture ID and the other form was another acceptable form of ID should be adequate documentation of compliance to this requirement. **7, 28, 34**	The department has removed the requirement that training providers request six digits of a student's social security numbers. The department has a listing of acceptable ID, including permitted second forms of ID that it has shared with training providers in the past and will provide again. The department-issued certification card is not a valid photo ID. In cases of persons without ID the training provider should contact the department and ask for comparable compliance approval. These would be reviewed on a case-by-case basis. The department agrees that the process of examining identification will take some time to complete, but suggest that training providers use time they are required to set aside in each class for student completion of department certification applications to also check student's ID's. This can be done at the

		beginning of class as an extension of class registration.
159.22 (7) (e)	The training provider shall admit only students who demonstrate the ability to successfully complete course requirements in the language of instruction..." This is subjective, and not as easily identified in many cases. Perhaps expressly disallowing the use of interpreters would be more appropriate and then completing course requirements as the actual competency determination. **7**	The department has revised s. HFS 159.22 (7) (e) to require courses to be taught entirely in the language in which it is accredited and prohibits the use of interpreters except for sign language interpreters. The department has samples of questionnaires to assist training providers in determining whether an individual can communicate in the language used to teach the course.
159.22 (7) (f) 3	I'm presuming that as long as they produce a certificate, training providers will not be responsible for verifying the authenticity of out of state training providers. **28**	Training providers are not required to verify the authenticity of the certificates a registrant provides to show that he or she is eligible to attend a refresher course.
159.22 (8)	Procedurally a twice per day sign in does not seem to accomplish any more than a single sign in, but presents more paperwork for the instructor and training provider. **7**	The department believes that twice per day sign-in helps ensure student attendance throughout the class.
159.22 (10) (a) - (e)	Is there a goal or purpose for class agendas? DHS already has the approved curriculum; the sequence of each course is covered by the student manual Table of Contents, and each day the instructor previews the daily topics. **10**	The student manual does not provide the same course information to students that an agenda provides. The agenda provides class times to student, including start and end times, break and lunch times, as well as how long each topic session will last. It is an important tool to help both students and instructors stay on target with topic times and breaks.
159.22 (11)	This section requires the use of up-to-date equipment and materials for courses but is vague, and may allow unreasonable impositions on training providers. Examples of this would be: a) vacuums used during exercises need not be HEPA vacs to allow students to understand and master skills learned during training. The expense of a HEPA vacuum would unnecessarily increase the cost of training to participants. b) On the other hand, a manometer (a device used to measure the pressure differential between the work area containment and the area outside of the containment) would be necessary to demonstrate proper use of this device. **10**	Students need to see and use the same type of equipment they will use on real jobs, including real industrial HEPA vacuums. Using a non-HEPA vacuum in class may lead students to think they, too, can use the same type of vacuum on the job. This applies to all equipment and materials used on the job.
159.22 (16)	The course test requires the presence of a principal instructor at all times during testing. I believe it would be appropriate to allow the principal instructor to allow an appropriately trained and prepared guest instructor to proctor the test in the event that the principal instructor would need to leave the room for a brief term or when a worker would need to complete the test orally, at which point the oral testing would be	Guest instructors are not required to be certified or approved by the department as are principal instructors. The principal instructor is the responsible person for managing the class and must be physically present throughout the course test. For an oral test, another principal instructor may be used, or the oral test may be administered after the other students have completed their tests.

	appropriately moved to another room. **7**	
159.22 (16) (a) 5.	Trainers will have to spend time and money making up a test for each of the refresher courses. Will trainers have to submit the test to DHFS for approval? Will revised refresher course agendas have to be submitted to DHFS? **34**	Training providers will need to create tests for each refresher course. Questions may be taken from the initial course test for use in the refresher course test. Many training providers already use a pre-test or course quiz in their refresher courses and this requirement. Training providers that have courses accredited under the existing rule will need to update their courses to ensure they meet all of the course requirements under the proposed rule.
159.22 (16) (c)	A test retake is not allowed more than once within a 24 hour period. This is burdensome without appropriate discretion because in the case of remote training or when a student travels a great distance to attend class, and fails on the first attempt. A second attempt should be an available option without a 24 hour wait. **7**	The department believes that a student who fails an exam must be given time to study their course materials before retaking the exam. A student who is allowed to retake a test immediately or soon after failing, may pass the second time by a process of elimination, not because they actually learned the material. A student who can not pass a test based on their own merits and knowledge is not a safe person to have working in a hazardous industry.
159.22 (17) (d)	What is the purpose of including the student's residential address on the certificate? The State receives that information on the student application. **10**	The department has revised s. HFS 159.22 (17) (d) to remove the requirement for the student's address on the certificate.
159.22 (17) (e)	This item requires a photo of the attendee on the training diploma. As outlined earlier, this requirement is redundant and unnecessary because of the training provider's submittal of a photo of the person they personally identified using a picture ID at the training course. It also delays the producing and providing of the training course diplomas until the photos can be received by the administrative office, diplomas produced and then mailed to the training course participant. This is an extremely burdensome requirement with very little if any benefit. The rule already requires the training provider to take a photograph of each individual that successfully completes a training class, and submit the photo directly to the Department. The rule also requires the training provider to verify the identity of each course participant with at least one form of picture identification. At that point there is no question who was at class and that the photo the Department receives is the individual with that identity.	Because training certificates may be used as temporary provisional certification until a person receives their certification card from the department, the picture is needed on the certificate. It also makes it harder to copy the certificate and allow another person to use it.

	7	
159.22 (17) (g)	Contact hours in a training day are defined in rule. Training days in each course is also defined in rule. The rule requires completion of the entire training program to be eligible for a diploma. Many states and the Federal government require 8 hours including breaks and lunch. To expressly issue a diploma that states "6 contact hours" rather than 8 hours, even though they mean the same thing, could be confusing to persons from other agencies and/or geographical jurisdictions looking at the diploma. I suggest not requiring the number of classroom contact hours on the diploma. **7**	The department has removed the requirement to include classroom contact hours on the course certificate from the proposed rule under s. HFS 159.22 (17) (g).
159.22 (17) (k)	For course certificates, the proposed rule states that they shall be signed by "...an authorized representative of the asbestos company or the course principal instructor." OSHA requires the instructor's signature. It would seem complimentary to require only the same to enable easy compliance to both agencies' requirements. **7**	The proposed rule does not specify who or what title the authorized representative must have. If a training provider prefers the principal instructor's signature, it may have an in-house policy that only a principal instructor may sign the certificate.
159.22 (18)	Training providers will realize a substantial cost to upgrade their in-house electronic database programs to be compatible with State needs, as well as increased labor costs to conduct activities that DHFS currently handles. **10**	Some costs may be associated with upgrading hardware and/or software to provide for handling of digital photos and to revise databases to include the exterior worker and supervisor courses. Internet access needs to be high-speed to handle large photo files for electronic submittal to the department. Training providers already must keep data on their classes and students. The only new requirement under the proposed rule is that the provider must share the class information with the department. This information is needed for ensuring the integrity of certification applications. The only practical method for obtaining this information is from training providers. This same information has been provided to the department by lead (Pb) training providers for nearly a decade and has not caused significant issues.
159.23 (3)	Requires a training provider to have an accredited initial training course for a discipline to be eligible to present refreshers. It was my original understanding that the theory behind this requirement is to make sure that training is accessible within the state. However certain courses, for example the Management Planner and Project Designer initial courses, may only support a single offering by a single provider in an entire year. Thus, this requirement mandates a training provider to maintain a course and pay the accreditation fee for a	To alleviate possible negative effects on training providers, the department has removed the requirement from the proposed rule.

	course they may not have a call to present for several years. A training provider should not be required to have an accredited initial training program as a prerequisite to offering refresher training. **7**	
159.26	In the preface to the proposed rules there's a statement made that the economic impact on most companies would be between $500 and $600 a year. The economic impact on my company as a training provider would be between $8,000 and $10,000 dollars per year. That's a substantial increase. I feel this is a very substantial increase, economic impact on a small company. **1, 2, 7, 10, 11, 28, 33, 34**	To decrease the burden on small businesses, the department has reduced the proposed annual accreditation fee for initial courses from $900 to $500 and eliminated the course application fees entirely for both initial and refresher courses. The annual accreditation fee for refresher courses remains the same at $250. The department notes that training providers have born no annual fees since the inception of the program (20 years). All other neighboring states that accredit courses charge annual training course fees. All parts of the regulated industry need to bear part of the costs of administering the program. Training providers have raised fees for their courses, as needed, over the past 20 years.
159.26 (3)	There is a section in here that if there are two consecutive audits of a training class and both those audits failed that any subsequent audits, the training provider would have to pay all the labor, travel, per diem, meals, etc. to have another audit conducted. In my opinion, this is very high incentive for the department to fail training providers because if they run a little shy on their budget, let's just go out and do a couple more audits and I can guarantee you it's kind of like OSHA coming on a job. If you want to find something wrong you can. I strenuously object to that, we are paying annual fees where in the past we have not. I certainly don't feel that we should be targeted as the bank for the department. **10, 28**	The department hopes this will actually be incentive for training providers to immediately correct any deficiencies found during a course audit so that only one follow-up audit will be required. The department already has the ability to charge for additional audits in the lead certification and accreditation program and has used this authority only once in the 8 years it has had this authority. Conducting audits is time and resource intensive for the department and there is a need to recover costs, especially when the responsibility for compliance lies with the training provider being audited.
159.29 - 159.36	Will training providers be required to resubmit course curriculum to meet proposed rule? Do current trainers accredited to do asbestos roofing supervisor and worker training have to apply for initial accreditation to train exterior supervisor and workers? Do trainers have to revise manuals, hands-on activities and tests? **10, 34**	Training providers who have courses accredited under the existing rule must ensure that their courses meet the accreditation requirements under the proposed rule before offering them. The proposed rule under s. HFS 159.22 (2) requires that course changes must be submitted to the department for review and approval before implementing the changes. No additional fees are charged to training providers when making course revisions.
159.30	I do not understand how/why historically roofing supervisors and now exterior asbestos supervisors are able to take bulk	Exterior asbestos companies may only conduct exterior asbestos work on asbestos-containing materials that are

	samples. Under OSHA, 1926.1101(k)(4)(ii)(B) it states, "performing tests of the material containing PACM which demonstrate that no ACM is present in the material. Such tests shall include analysis of bulk samples collected in the manner described in 40 CFR 763.86. The tests, evaluation and sample collection shall be conducted by an accredited inspector or by a CIH". Even under HFS159 the definition of asbestos inspection "means any activities undertaken to specifically determine the presence or location or assess the condition of asbestos-containing material…" and to conduct an asbestos inspection you need to be an asbestos inspector. Also, historically roofing supervisors could only sample roofing, now can they sample window glazing, caulking and transite? **28**	non-friable and remain non-friable throughout the project. The OSHA standard at 1926.1101 (k) (4) (ii) (B) refers only to presumed asbestos-containing material (PACM), which is defined as thermal system insulation and surfacing material. Asbestos materials on exteriors are not generally PACM, and when they are, an exterior company is not allowed to perform any work relating to that material. OSHA is silent on bulk sampling of materials normally found to be non-friable, such as built-up roofing and associated mastics, cements and flashings; transite roofing shingles; transite siding shingles; and window glazing and caulk. Therefore, the department, when it added the roofing disciplines in 1993, allowed the roofing supervisor to take bulk samples of the non-friable roofing materials. This has been transferred to the exterior supervisor discipline under the proposed rule.
159.37 (3)	Requires that a principal instructor has at least one year of relevant work experience in the discipline the individual seeks approval to teach. This requirement is biased against a professional training company. The firm I represent employs persons who are seasoned adult educators. I submit that these instructors do not need one year of field experience to train our clients in what they need to know to be certified in a respective discipline. This should be a competency requirement rather than a time requirement. **7**	The department agrees that an excellent teacher can compensate for a certain lack of experience, and that instructional ability is at least as important in teaching as is experience in the field. However, the department also recognizes that a certain level of work experience relevant to the discipline being taught is also important. To that end, the department has revised s. HFS 159.37 (3) to remove the requirement that the instructor's relevant work experience be in the discipline the individual seeks approval to teach.
159.39	I suggest being able to apply to renew an instructor certification at the time of the individual certification application. For instructors that can teach multiple disciplines it would be more streamlined if the instructor application could be filled out at the time of their certification – rather than having to apply for the individual certification, waiting and then having to renew the instructor certification. Also, if an instructor application/fee could be similar to how it is now where it is a lifetime approval, pending current certification. The department could just raise the one time fee. Also, please send out reminder notices if the instructor renewal can't be part of the certification renewal. Also, when principal instructors are not employees of mine, we do not always receive copies of their certification cards or their instructor certifications. I would recommend that whenever instructor certifications are issued, that if requested, a training provider receive a copy of the	Principal instructor approval under proposed s. HFS 159.41 (2), expires on the same date as the instructor's individual certification expires. The department sends out renewal notices. A principal instructor must maintain certification in the appropriate discipline or disciplines to remain a qualified instructor. This is an annual requirement and would preclude a lifetime instructor approval. If a provider needs copies of an instructor's certifications and approvals, the provider should require the instructor to provide copies as part of their employment or contract. The approval fee for instructors is to cover the costs of handling the instructor application, and for costs of oversight and enforcement.

	instructor renewal certification. Why do I as an individual have to pay a $50 fee to be a principal instructor when I already have to be certified in a discipline I teach and have to pay the state a certification fee? This goes for any instructor I utilize. It adds additional burdensome costs to the trainer and the individual. **7, 28, 34**	
159.42	Please remove the requirement that a guest instructor needs to be certified in the discipline in which they are teaching. For example- it would be nice to have the ability to have a laboratory analyst come in and show people how they analyze the samples or other professionals come in and show how to respirator fit test people and numerous other related professionals that would not have a need to be certified. Having this proposed requirement may limit the quality of the course. **28**	Under the proposed rule, certification for guest instructors is not required unless the instructor teaches a regulated asbestos activity. The department has revised s. HFS 159.42 (1) (b) to clarify this point.
Subchapter VI	We note that the rule is largely silent on enforcement. We note the notification fees that will be paid to DHS, but we cannot support a fee for which there is little service provided. Our members want to do things right. We will pay the required fees and use certified and trained workers, but if the net effect of our doing so is to make our members non-competitive with contractors who are not willing to comply with the requirements of HFS 159, OSHA, DNR regulations, etc., then we are doing nothing to improve the overall level of compliance in our industry. We believe that fees paid to DHS should result in greater enforcement - not just of those jobs for which notification fees have been paid (resulting in greater enforcement of those doing things right), but on those jobs where fees should have been paid but were not. And recognizing that DHS has limited staff, it may be appropriate to delegate to other state agencies (and local inspection agencies) the ability to have citation authority to enforce the requirements under HFS 159. **31**	The proposed rule seeks to increase the department's enforcement options and to that end added Subchapter VI to outline enforcement options and authority. The department does not have statutory authority to require local or other government agencies to enforce the ch. HFS 159 asbestos rule. The department does work closely, however, with other agencies and takes enforcement actions based on their observations of ch. HFS 159 violations, including DNR, OSHA and local health departments. The department encourages and responds to all tips and complaints it receives about work being conducted in violation of the rule. Department inspectors also inspect un-notified construction sites that they observe when in the field to determine if asbestos is being disturbed or removed. Individuals and asbestos companies are encouraged to contact the department with information about uncertified persons conducting regulated asbestos activities. Over the past 3 years, over 1 in 5 asbestos enforcement actions taken by the department were against uncertified persons conducting regulated asbestos work.
159.45 (5)	MPS has the same concerns expressed by Clearing House Rule 08-036 and questions under what authority the department proposes to directly assess forfeitures.	The department proposes to directly assess forfeitures under s. HFS 159.45 (5) for violations of asbestos certification and training rules, pursuant to s. 250.04 (2) (a), Stats., under which it "possesses all powers necessary to fulfill the duties

		prescribed in the statutes . . . for the enforcement of public health statutes and rules," and also pursuant its more specific authority under the asbestos abatement certification statute, s. 254.20 (9), Stats., to "promulgate any rule it deems necessary to administer this section." Section 254.20 (11), Stats., provides that "any person who violates this section or any rule promulgated by the department or order issued under this section shall forfeit not less than $25 nor more than $100 for each violation." Although s. 254.20 (11), Stats., does not explicitly authorize the department to directly assess forfeitures, as the statutes do with respect to violations of the WIC and radiation protection regulations, it does not appear that such explicit statutory authorization is necessary for the department to directly assess a forfeiture that a statute authorizes for the violation of a public health rule the department administers. For example, under s. HFS 163.23 (3) (a), the department may directly assess a forfeiture for the violation of the lead certification rules, notwithstanding the absence of explicit statutory authorization to directly assess a forfeiture. Similarly, despite the lack of explicit statutory authority to do so, s. HFS 172.07 (2) (c) and (3) implicitly empowers the department to directly assess a forfeiture for the violation of rules regulating public pools and water attractions by providing a right to an administrative appeal of a forfeiture. It is necessary that the department be able to directly assess the forfeitures authorized by s. 254.20 (11), Stats., in order to effectively and efficiently enforce the asbestos abatement certification and training requirements. The department would not be able to effectively and efficiently use forfeitures as an enforcement tool if had to use the more formal, cumbersome and drawn-out process of asking district attorneys to bring actions in circuit court for the relatively small forfeitures the statute imposes. If the department directly assesses forfeitures, department staff with expertise regarding asbestos abatement issues can communicate directly with violators to resolve compliance issues informally, persons who have been assessed forfeitures can readily defend themselves through the administrative appeals process, and contested cases can be adjudicated by administrative law judges

		who have developed expertise in this narrow regulatory area. Because it makes administrative sense that the department have the authority to determine whether a forfeiture is due for a violation of an order it has issued or a requirement it is responsible for enforcing, and because s. 250.20 (9), Stats., authorizes the department to "promulgate any rule it deems necessary to administer this section," s. 254.20 (11), Stats., "impliedly authorize[s]" the department to directly assess the forfeitures it imposes. *See Oneida County v. Converse*, 180 Wis. 2d 120, 125, 508 N.W.2d 416 (1993).
159.47 (3)	Is there a penalty for LEA's not registering their designated person? Will there be outreach to them? **28**	The department will send reminder notices to all LEA's when the information is due. If the LEA does not submit the information the department will initiate additional contact in an attempt to get the required information. There is no penalty associated with an LEA not notifying the department of its designated asbestos person.