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Details: Emergency Rule extension requests by Department of Health Services.
(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules ...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

2-5-2010



State of Wisconsin
Department of Health Services

Jim Doyle, Governor
Karen E. Timberlake, Secretary

The Honorable Jim Holperin, Co-Chairperson
JCRAR
Room 409 South, State Capitol
Madison, Wisconsin 53707

The Honorable Josh Zepnick, Co-Chairperson
JCRAR
Room 219 North, State Capitol
Madison, Wisconsin 53708

REQUEST TO EXTEND EMERGENCY RULE:

DHS 163, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

Date Rules Became Effective:	October 19, 2009
Date Rules Will Expire:	March 17, 2010
Requested Extension Period:	30 days, to April 16, 2010

Evidence that there is a threat to the public peace, health, safety or welfare that can be avoided only by extension of the emergency rule or part of the emergency rule:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre-1978 housing (target housing) and child-occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

Under EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child-occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. States that promulgate rules that conform to the new EPA standards may be certified by the EPA to regulate renovation, repair and painting activities in their own states in lieu of the EPA.

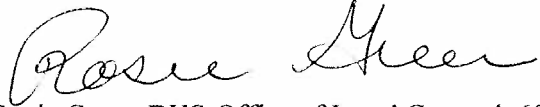
The department promulgated the emergency rules on October 19, 2009, and was subsequently EPA certified to regulate renovation, repair and painting activities in Wisconsin.

If the emergency rules promulgated by the department would be allowed to expire, the department may lose its EPA certification, and the regulated community and property owners would be required to follow the EPA rules for renovation, repair, painting activities, in addition to existing permanent rules, ch. DHS 163 and state law on lead hazard reduction and management. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department's ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements.

As did the emergency rule promulgation, continuation of the emergency rule will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead-based paint hazards in target housing and child-occupied facilities.

Evidence that it is impossible for the agency to promulgate a permanent rule prior to the expiration date of the emergency rule:

The emergency rule will expire on March 17, 2010. The department's final proposed permanent rules are currently under the review of the Assembly Committee on Housing and the Senate Committee on Children and Families and Workforce Development. The department estimates that it will be 45 days, minimum, before all of the statutory rulemaking requirements are met, including publication of the rule in the Wisconsin Administrative Register.

Authorized Signature and Telephone No.	Date
 Rosie Greer, DHS-Office of Legal Counsel, 608-266-1279	2/5/10

Attachments

cc Senator Fred Risser
Speaker Michael Sheridan

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**ADMINISTRATIVE RULES
ORDER OF THE
DEPARTMENT OF HEALTH SERVICES
ADOPTING EMERGENCY RULES**

The Wisconsin Department of Health Services hereby adopts emergency rules to **repeal** DHS 163.03 (48), (62), 163.10 (2) (c) 2., (7) (b) 2. a. and b., 163.11 (1) (c) and (d), 163.12 (3) (a) 1. h. and (5) (a) and (b), 163.13 (5) (c), 163.14 (1) (c) 2., 163.25 (7) (f) and (11) (b) 8., 163.40 (2) (a) and (c) 1. and 4. and (4), and 163.42 (3) (f) 2.; 163.43, and 163.44 to **renumber** DHS 163.21 (1); to **renumber and amend** DHS 163.10 (1) (c) 3., 163.13 (3), (4) and (7), and 163.14 (1) (c) 1.; to **amend** DHS 163.01 (2) and (3), 163.02 (1) (a) and (c) and (2) and (title), 163.03 (1) (a) 3. and (b) 5., (5), (10), (13) (intro.) and (a) to (c), (14), (15), (26), (27), (36), (46), (52), (56), (64), (65), (71), (76), (80), (88), (100), (114) (a), Subchapter II (title), 163.10 (1) (intro.), (b) and (c) (intro.) and 1., (2) (intro.), (a) 1. and 2. and (b) 1., (3) (a) 1. and (c) 2. a., (5) (f) 2., (7) (b) 2. (intro.) and (8) (b) 3., (c) 4., and (e) 1. and 2., 163.11 (intro.), (2) (a) 1., (3) (a) 1. (intro.), a. and b. and 2. b. and (b) (title) and 2. a., 163.12 (title), (1) (b) (2) (intro.), (c) and (d) (intro.), 1. and 2., (3) (a) (title), 1. (intro.) and a. to d., f. and g., (b) (intro.), (4) (b) and (c), (5) (title) and (intro.), and (6) (a) 1., (b) 1. to 3. and (c), 163.13 (title), (1), (2), (5) (intro.), (a) and (b), (6) (b) 1. and 2. a. to c., (7) (title), and (9), 163.14 (5) (a) 1. to 3., (b) 1. and 2., and (c) 3. a., 4. a., 8. (intro.), and 10. (title), (intro.) and c. to e., 163.20 (1), (2), (5), (8) (a) (intro.) and 1. (title) and (intro.), 2. (title) and (intro.), (b) 1. j., k., o. and p., (c) 7. and (h) 3., and (9) (a), (b), and (c) 3. and 4., 163.21 (intro.), (3) (c), and (5), 163.22 (4) (b), 163.23 (3) (a) and (d), 163.24 (2) (a) (intro.), (3) (a) 2. (intro.), a. to c. and 3. a. to c., and (b) 5. and 7. a. to c., 163.25 (3) (a), (b) 2. to 4., (c) 2., and (d), (5), (7) (intro.) and (e), (10) (b) 1., and (11) (b) 4., 6. and 9., 163.30 (1) and (2), 163.31 (1), (2) (d) and (h), (4) (intro.), (L) and (n), (5) (b), and (6) (a) 3., 163.32 (intro.) and (3) (intro.), 163.40 (1) and (2) (c) 2., 3. b. and 5. a., 163.41 (2) (a) 2. d., 163.42 (2) (a) 2. d. and (3) (e) 1. to 3., (f) 1. and 3. a. to c. and (g) 1., Appendix A, Appendix B (title), Appendix C (title), Appendix H (title), Appendix I (title); to **repeal and recreate** DHS 163.03 (53), (82) and (83), 163.10 (1) (c) 2., 163.12 (6) (a) (intro.), 163.14 (5) (b) 3., and 163.20 (8) (a) 1. a. to z. f. and (b) 1. n. and t.; and to **create** DHS 163.03 (13g) and (13r), (22m), (31m), (40m), (58m), (85m), (88m), (96m), (100m), (114) (am), (114g) and (114r), 163.10 (1) (bm), (d) (intro.) and 2. to 5., (2) (c), (5) (g) 1. gm., (8) (c) 4. gm., 163.11 (2) (c) and (3) (b) 3., 163.12 (1) (am), (1m), (2) (cm) and (3) (a) 1. am., 163.13 (3) (a) 1. to 3., (b) and (c), (4) (b), (7) (b) and (c) and (10) to (12), 163.14 (5) (b) 4. to 6., (10) and (11), 163.16, 163.20 (4) (d), (8) (a) 1. zg. to zu., (b) 1. Lm., w., x. and y., (c) 8., (9) (a) 1. to 4., (am), (c) 8m., 163.21 (1) (b), and 163.31 (2) (L) and (3) (c), relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

FINDING OF EMERGENCY

The Department of Health Services (department) finds that an emergency exists and that the adoption of an emergency rule is necessary for the continuity of regulations relating to lead hazard exposure in Wisconsin. The facts constituting the emergency are as follows:

Under ch. DHS 163, the department, as Wisconsin's public health agency, regulates lead hazard reduction and lead management activities in pre-1978 housing (target housing) and child-occupied facilities. The rules include standards for certification of individuals and companies conducting these activities, accreditation of lead training courses and approval of instructors, and work practices. In addition to the department's authority under chs. 250 and 254, Stats., to regulate lead hazards, the

department has authorization from the Environmental Protection Agency (EPA) to regulate lead hazard reduction and management activities in lieu of the EPA administering federal regulations in Wisconsin.

On April 22, 2008, the EPA issued rules under 40 CFR 745 to establish requirements for training renovators, other renovation workers, and dust sampling technicians; for certifying renovators, dust sampling technicians, and renovation firms; for accrediting providers of renovation and dust sampling technician training; and for renovation work practices (and associated recordkeeping requirements) that disturb paint in target housing and child-occupied facilities. Under the EPA regulations, beginning on April 22, 2010, persons who perform renovation activities for compensation, including repair and painting activities, that disturb paint in target housing and child-occupied facilities must be certified, properly trained, and follow specific work practices to prevent lead contamination. The EPA will begin accepting applications for certification from individuals and companies on October 22, 2009.

States that promulgate rules that conform to the EPA standards on or before October 22, 2009, may accept applications for certification in lieu of the EPA. Otherwise, on October 22, 2009, the EPA will begin accepting these applications and the associated fees from Wisconsin companies and individuals. Such an occurrence may cause confusion among the regulated community and property owners, and would impede the department's ability to continue to administer a viable lead hazard reduction program if covered persons begin complying with the EPA certification requirements before state requirements are implemented. Promulgating rules before October 22, 2009, will help to avoid any unnecessary complexity for covered persons that may be caused by overlapping state and federal regulations that address lead-based paint hazards in target housing and child-occupied facilities.

SUMMARY OF RULES

Analysis Prepared by the Department of Health Services

Statutes interpreted: Wis. Stat. § 254.172 (1) Stats.

Statutory authority: Wis. Stat. §§ 250.04 (7), 250.041, 254.115, 254.15, 254.167, 254.172, 254.176 (1) and (3), 254.178 (2) and 254.179, Stats.

Explanation of agency authority:

1. Wis. Stat. § 227.11 (2) (a) provides state agencies with general rulemaking authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.
2. Wis. Stat. § 250.04 (7) authorizes fines of \$10 to \$100 for violations of rules promulgated by department related to any matter under its supervision that are necessary to provide efficient administration and to protect health. This includes lead hazard reduction.
3. Wis. Stat. § 250.041 authorizes the department to issue, deny or suspend certifications under Wis. Stat. § 254.176 for a person who performs lead hazard reduction or a lead management activity, or who supervises these activities.
4. Wis. Stat. § 254.172 authorizes the department to promulgate rules governing lead hazard reduction that it determines are consistent with federal law.

5. Wis. Stat. § 254.176 (1) and (2) authorizes the department to establish certification requirements by rule, with the exception of individuals who are licensed, certified or registered by the Department of Commerce (Comm) under Wis. Stat. ch. 145, for certain plumbing and fire protection system activities, within the scope of their Comm credential; and companies that are registered with the Comm under Wis. Stat. § 101.178, to perform heating, ventilating or air conditioning installation or servicing activities, within the scope of their Comm registration. In my opinion these limited certification exceptions do not affect application and enforcement of the lead renovation training and safe practice requirements for these individuals and companies. The DHS certification process requires applications and fees that are separate and distinct from any training required.
6. Wis. Stat. § 254.15 directs the department to develop and implement a comprehensive statewide lead poisoning or lead exposure and treatment program that includes rules for lead hazard reduction requirements, and related certification, accreditation and approval requirements. Wis. Stat. § 254.115 authorizes the denial, nonrenewal and revocation of a certification in specified circumstances.
7. Wis. Stat. § 254.167 authorizes the department to promulgate rules to specify procedures for investigating, testing or sampling painted, varnished or other finished surfaces that may contain lead.
8. Wis. Stat. § 254.178 directs the department to promulgate rules establishing requirements for accreditation of lead training courses and approval of lead instructors.
9. Wis. Stat. § 254.179 directs the department to promulgate rules to establish the standards for a premises, dwelling or dwelling unit to be issued a certificate of lead-free status.

Related statute or rule: Chs. NR 404, 415, 429, 445, 500 to 538, and 660 to 679; Wis. Stat. ch. 145; and Wis. Stat. § 101.178, Stats.

Plain language analysis:

The rules under this order require individuals, companies, and government agencies who perform or offer to perform renovation activities to be certified by the department, be trained and have appropriately trained staff, to distribute renovation information, keep records, and to follow the appropriate work practices when conducting renovation activities in dwellings constructed prior to 1978 (target housing) and child-occupied facilities, including common areas, constructed before 1978 that provide child care services, preschools, or public or private schools. The rules also require that training providers implement training course curriculum for renovation training and receive renovation training course accreditation from the department before offering renovation training courses and that course instructors meet the qualifications and receive approval before teaching renovation training courses.

The rules promulgated under this order are similar to the requirements under 40 §§ CFR 745.80 to 745.91 and 745.225, the EPA requirements for training, certification, work practices and recordkeeping to perform renovation activities, except that unlike current EPA regulation, 40 CFR § 745.82 (c), the rules under this order do not permit a property owner to exempt a contractor from following work practice requirements by signing an acknowledgement that no pregnant woman or child under age 6 resides in the dwelling. The department determined not to include a similar provision in this order in

anticipation of EPA's agreement under an August 2009 negotiated settlement to issue a notice of proposed removal of this provision by October 20, 2009, and promulgate final rules by April 22, 2010.

The rules apply to an estimated 756,000 pre-1978 Wisconsin facilities, 754,000 of which are dwelling units, either rental housing, owner-occupied housing, or housing that meets the definition of child-occupied facility. Approximately 2,000 facilities are child-occupied facilities in pre-1978 public or commercial buildings. Based on EPA and census data, the department estimates that annually there will be approximately 35,000 children under age 6 affected by the rule. These children are projected to receive considerable benefits due to this regulation. Since 1996, more than 44,000 Wisconsin children have been identified as lead poisoned. Nearly one in every 20 children who entered the Wisconsin school system in the fall of 2006 was known to have been lead poisoned. The rules promulgated under this order are intended to minimize exposure to lead-based paint hazards created during renovation, repair, and painting activities in target housing and child-occupied facilities.

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

40 CFR §§ 745.80 to 745.91, Subpart E, relating to residential property renovation establishes requirements for performing renovation activities in residential dwellings and child-occupied facilities, including training of renovators and dust sampling technicians, certification of renovators, dust sampling technicians and renovation firms, provision of pre-renovation information to owners and occupants, renovation work practices, and recordkeeping.

40 CFR § 745.225, Subpart L, relating to accreditation of training programs establishes accreditation requirements for training courses that renovators and dust sampling technicians must complete for certification, including curriculum contents and the application and approval process for courses.

The department's rules under ch. DHS 163 are consistent with the EPA requirements under 40 CFR §§ 745.80 to 745.91 and 745.225, and meet the requirements for EPA authorization under 40 CFR §§ 745.320 to 329 to implement and enforce the renovation, repair and painting requirements in Wisconsin in lieu of the EPA enforcing federal regulations in Wisconsin.

Comparison with rules in adjacent states:

Illinois: Illinois does not have a lead renovator rule but is in the early study phase for regulatory development, including reviewing statutory authority and rulemaking options. A final renovation rule is expected sometime in late 2011.

Iowa: Iowa has a rule that requires pre-renovation education (lead renovation information distribution to owners/occupants), which is one subsection of the EPA renovation rule under 40 CFR 745 Subpart E. Iowa is in the final stages of full renovation rule development and plans to have an emergency renovation rule published by November 18, 2009.

Michigan: Michigan does not have a lead renovator rule but is in the early stages of developing a renovator rule.

Minnesota: Minnesota recently received legislative approval through a statutory change to develop a renovator rule that is consistent with the federal renovator rule and is just starting the rule-making process as of August 2009 with the goal to publish a final rule before the end of 2010.

Summary of factual data and analytical methodologies:

The department referred to all of the following to draft the rules in this order and the small business fiscal impact analysis:

- EPA regulations, 40 CFR §§ 745.80 to 745.91 and 745.225 relating to renovations and relating to training providers, and 745.320 to 339, relating to requirements that qualify states and tribes to implement these requirements in lieu of the EPA. 40 CFR §745 is commonly known as the renovation, repair and painting rule.
- The EPA's Final Regulatory Flexibility Analysis for the Lead: Renovation Repair, and Painting Program, March 1, 2008 (Document ID EPA-HQ-OPPT-2005).
- The EPA's "Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities", March 2008.
- Letter dated May 5, 2008, from the U.S. Government Accountability Office, Associate General Counsel Robert J. Cramer, to the U.S. Senate Committee on Environment and Public Works and the U.S. House of Representatives Committee on Energy and Commerce reporting on "a major rule promulgated by the [EPA]".
- Criteria adopted by the department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the department's proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to the department's criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year's consumer price index or revenues are reduced by more than the prior year's consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2008 is 3.8 percent.
- The 2002 Economic Census –Geographic Series (Wisconsin), which is compiled by the U.S. Census Bureau every 5 years for each year ending in "2" and "7" and contains the latest available economic data compiled on businesses located in Wisconsin. (The U.S. Census Bureau's data release schedule for the 2007 Economic Census –Geographic Series is November 2009-July 2010.)
- Section 227.114 (1) (a), Stats., which defines "small business" as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- Under ss. 227.13 and 254.174, Stats., the department established and met with a lead technical advisory committee (LTAC) to review and advise the department on the rule revisions. The LTAC includes representatives of the renovation industry, rental housing industry, school districts, local health departments, local housing and community development agencies, non-profits that assist homeowners, tribal programs, daycares and other state agencies.

Represented groups included:

1. Renovators: WI Builders Association (WBA) and National Assn. of the Remodeling Industry (NARI)
2. Weatherization: Project Home
3. Property owners: WI Apartment Association, SE Wisconsin Apartment Association, WI Realtors Assn.
4. WI Building Inspectors Association
5. Lead training providers
6. Environmental consultants
7. HeadStart
8. Non-profit: Dominican Center for Women (neighborhood development & housing rehab in Milwaukee)
9. Department of Administration, Division of Energy Services (weatherization funding)
10. School Districts: Milwaukee and Racine
11. Local Health Departments: Milwaukee and Madison/Dane County
12. Local Housing Agencies: Chippewa County Housing Authority, Waukesha Community Development and City of Sheboygan Building Inspection
13. Department of Commerce, Division of Housing and Division of Safety & Buildings
14. Department of Children and Families, Division of Early Care and Education
15. Department of Health Services, Childhood Lead Poisoning Prevention Program and Medical Officer

LTAC members reviewed the EPA regulations and the department's conceptual language for revisions to ch. DHS 163, including definitions, certification requirements, work practice and recordkeeping responsibilities, and training course requirements. The department fully considered comments and advice from the LTAC when developing the rule revisions.

Analysis and supporting documents used to determine effect on small business:

Small businesses affected by the rule

A business is considered a small business if it is a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employs 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000. As indicated by the revenue and employee information provided by the 2002 U.S. Economic Census for Wisconsin, stated below, it is likely that a majority of the businesses affected by the rule are small businesses as defined under Wis. Stat. § 227.114 (1) (a).

The department conservatively estimates that at least 15,000 businesses will be affected by this rule, including contractors and trades (such as painters, electricians, plumbers, HVAC, siders and roofers); private schools, child care and preschool providers; and rental property owners and property management companies. This information is based on approximately 10,000 dwelling contractors certified by the department of commerce in Wisconsin, approximately 2,000 other trades, an estimated 3,000 rental property owners and managers of pre-1978 housing units and estimated 1,200 daycares and preschools in pre-1978 facilities.

CONSTRUCTION INDUSTRY

NAICS	Subsector	Business Description: Primary Responsibility	Number of Establish- ments	Dollar Value Of Work Done	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
236118	Residential Remodelers: remodeling general contractors, operative remodelers, remodeling design-build firms, and remodeling project construction management firms	Remodeling construction (including additions, alterations, reconstruction, maintenance, and repair work) of houses and other residential buildings (single-family and multifamily).	1,508	\$704,991,000	6,151	Yes
23611	Residential Building Construction	Construction or remodeling and renovation of single-family and multifamily residential buildings. Included in this industry are residential housing general contractors (i.e., new construction, remodeling or renovating existing residential structures), operative builders and remodelers of residential structures, residential project construction management firms, and residential design-build firms.	4,003	\$4,146,381,000	19,073	Yes
23813	Framing Contractors	Structural framing and sheathing using materials other than structural steel or concrete new work, additions, alterations, maintenance, and repairs.	430	\$196,482,000	2,464	Yes
23816	Roofing Contractors	Roofing. This industry also includes establishments treating roofs (i.e., spraying, painting, or coating) and installing skylights. The work performed may include new work, additions, alterations, maintenance, and repairs.	709	\$501,773,000	4,958	Yes
23817	Siding Contractors	Installing siding of wood, aluminum, vinyl or other exterior finish material (except brick, stone, stucco, or curtain wall). This industry also includes establishments installing gutters and downspouts. The work performed may include new work, additions, alterations, maintenance, and repairs.	395	\$148,778,000	1,877	Yes
238150	Glass and Glazing Contractors	Installing glass panes in prepared openings (i.e.,	47	\$114,996,000	808	Yes

		glazing work) and other glass work for buildings. The work performed may include new work, additions, alterations, maintenance, and repairs.				
23821	Electrical Contractors	Installing and servicing electrical wiring and equipment. Electrical contractors included in this industry may include both the parts and labor when performing work. Electrical contractors may perform new work, additions, alterations, maintenance, and repairs.	1,174	\$1,599,245,000	14,335	Yes
23822	Plumbing, Heating, and Air-Conditioning Contractors	Installing and servicing plumbing, heating, and air-conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.	1,839	\$2,643,604,000	20,425	Yes
23831	Drywall and Insulation Contractors	Drywall, plaster work, and building insulation work. Plaster work includes applying plain or ornamental plaster, and installation of lath to receive plaster. The work performed may include new work, additions, alterations, maintenance, and repairs.	533	\$471,329,000	5,461	Yes
23832	Painting and Wall Covering Contractors	Interior or exterior painting or interior wall covering. The work performed may include new work, additions, alterations, maintenance, and repairs.	841	\$276,551,000	4,023	Yes
23833	Flooring Contractors	Installation of resilient floor tile, carpeting, linoleum, and hard wood flooring. The work performed may include new work, additions, alterations, maintenance, and repairs.	323	\$183,469,000	1,618	Yes
23839	Other Building Finishing Contractors	Building finishing trade work (except drywall, plaster and insulation work; painting and wall covering work; flooring work; tile and terrazzo work; and finish carpentry work). The work performed may include new work, additions, alterations, or maintenance and repairs.	144	\$65,831,000	835	Yes
23835	Finish Carpentry Contractors	Finish carpentry work. The work performed may include new work, additions, alterations, maintenance, and repairs.	1,088	\$468,750,000	4,689	Yes

REAL ESTATE INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish- ments	Revenue	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
53111	Lessors of Residential Buildings and Dwellings	Lessors of buildings used as residences or dwellings, such as single-family homes, apartment buildings, and town homes. Included in this industry are owner-lessors and establishments renting real estate and then acting as lessors in subleasing it to others. The establishments in this industry may manage the property themselves or have another establishment manage it for them.	1,019	\$737,415,000	5,270	Yes
53131	Real Estate Property Managers	Managing real property for others. Management includes ensuring that various activities associated with the overall operation of the property are performed, such as collecting rents, and overseeing other services (e.g., maintenance, security, trash removal).	510	\$323,257,000	4,871	Yes
531311	Residential Property Managers	Managing residential real estate for others.	398	\$235,558,000	4,034	Yes

SOCIAL ASSISTANCE (CHILD CARE) INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish- ments	Receipts	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
6244	Child Day Care Services	Providing day care of infants or children. These establishments generally care for preschool children, but may care for older children when they are not in school and may also offer prekindergarten educational programs	1,666	\$478,195,000	17,357	Yes

WASTE MANAGEMENT AND REMEDIATION INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establish- ments	Sales	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
5629102	Asbestos Abatement and Lead Paint Removal	Asbestos abatement or lead paint removal	25	\$24,152,000	296	Yes

Other persons or entities affected by the rule

Other persons and entities that will be affected by the rule are children and families, public school districts, and state and local governments.

Costs to small businesses

Under the provisions of ch. DHS 163 relating to pre-renovation education and lead-based paint renovation, small businesses will have increased expenses, including certification fees, recordkeeping and other administrative costs, information distribution expenses and work practice (equipment and supplies) costs.

The department reviewed the regulatory requirements for EPA authorization under 40 CFR 745 and identified the costs to businesses under the EPA regulations and the department rules under this order. The department also used the 2002 U.S. Economic Census to help determine the effect on small businesses. In addition, the department reviewed and used relevant portions of EPA's economic analysis to determine the costs and benefits to Wisconsin.

In its analysis, the EPA analyzed the economic impact of compliance on small entities by evaluating the number of companies that would experience the impact and the size of the impact. Average annual compliance costs as a percentage of average annual revenues were used to assess the potential average cost of the rule on small businesses and small governments. EPA estimated that the average compliance costs for small businesses would be 0.7% of annual revenues. For small non-profits such as private schools and pre-schools, the costs would be 0.1% of annual expenditures. EPA based these estimates on an average compliance cost of approximately \$35 per renovation. Even if the actual average cost per renovation is double EPA's estimate, or \$70 per job, this would translate to only 1.4% of annual revenue for contractors and 0.2% for nonprofits, and would be below the 2008 CPI of 3.8%.

Upon review of the information, the department has determined, however, that the actual costs to renovators are indeterminate because of the number of variables involved, including:

- The size of the project/amount charged to customer to conduct the renovation – the larger the project/more charged to conduct the project, the lower the cost of compliance as a percent of the overall cost of the job.
- Number of jobs conducted by the renovator – the more jobs a renovator conducts in a month or year the lower the overall cost of compliance per job.
- Cost of equipment and supplies – whether more expensive equipment such as a HEPA vacuum is already owned or must be purchased and whether supplies are purchased in bulk or in smaller amounts.

- Generally larger, more active renovators will be affected less by the costs of compliance than smaller, less active renovators.

The costs to businesses under this rule would be similar to the costs to businesses under the EPA regulations if the EPA implemented its regulations in Wisconsin. The cost elements in the EPA regulations and this order are the same. A discussion of the cost elements follows:

Certification fees: Under the current rule, companies conducting lead-hazard reduction and lead-investigation activities are required to be certified by the department and to pay a certification fee of \$75 every 2 years (\$37.50 per year). Certification of companies performing only renovation activities is currently optional unless the work will be conducted in a state-registered lead-safe home. Under the revised rule, company certification will be required for companies that conduct renovations for compensation in pre-1978 housing or child-occupied facilities. Renovation companies will pay the current fee of \$75 for a 2-year certification.

Licensed plumbers and HVAC workers are not required to pay the fee and become certified under the rule, but are required to comply with all other provisions relating to regulated work under the chapter, including training, recordkeeping and work practices.

Accreditation of training courses: Under the rule, the current 1-day lead-safe work course is being converted to the 1-day lead-safe renovator course. Training providers that are already accredited to provide the lead-safe work course will be allowed to convert their course to the lead-safe renovator course with no additional fee. The department will require only a minimal paper submittal to accomplish the transition from the lead-safe work to lead-safe renovator course. The lead-safe renovator refresher course is new and training providers wishing to offer it submit an application to the department with a \$125 application and a \$100 accreditation fee. The application fee is a one-time fee and the accreditation fee is payable every 2 years.

Other costs to training providers are not expected to change, including existing fees for renewing accreditation (\$200 for 2 years for the lead-safe renovator course), and administrative costs to notify the department of scheduled classes, verify student identities, take student pictures, submit student information and pictures to the department, and keep required course and student records. These requirements are not revised under the rule except to reduce the requirement to view 2 forms of student ID to view only 1 form of photo ID per student.

The EPA provides complete curriculum materials for both the initial and refresher renovator courses, including instructor and student manuals, free for download from its website, thus minimizing course preparation costs for training providers. This curriculum is acceptable for use in Wisconsin. The EPA fees for training course accreditation are \$560 for accreditation of the initial renovator course and \$400 for the refresher course. Re-accreditation is required every 4 years at a cost of \$340 for the initial and \$310 for the refresher. Compared over 8 years, Wisconsin fees are \$85 less than EPA's fees for a company offering both the initial and the refresher renovator courses.

Recordkeeping: The rule requires renovators to create and maintain certain records, including the written contract for services; any lead paint inspection reports received from a certified lead inspector or risk assessor; written or printed evidence of distributing the required information pamphlet (such as a

signed acknowledgement statement or a certificate of mailing); a written record of compliance with the rule requirements for each renovation activity conducted, including on-the-job training for uncertified workers, posting of warning signs, containment of work areas, waste handling, cleaning and post-renovation cleaning verification; documentation of training for each uncertified worker; documentation of emergency renovations that are not required to meet all of the renovation requirements under the rule; documentation of use of a recognized chemical paint test kit, if used; written clearance report if dust-wipe clearance is performed, and the company's certificate of approval from the department. The administrative costs for creating and maintaining these records will require some adjustment by many renovators, but not all records are required for all jobs. An estimate for the time needed to create and maintain these records would be less than 1 additional hour, and for less complex jobs, less than 1/2 additional hour per job. At \$15 per hour for administrative office help, this translates to less than \$7.50 to \$15 per job. These expenses would also be incurred under the EPA regulation.

Other persons certified under the rule, such as lead abatement contractors and lead investigators, already are required to keep many records. These requirements were found in many locations in the rule and these were consolidated in the revised rule into the new recordkeeping section under DHS 163.13 (3). No new costs are associated with recordkeeping for these regulated groups.

Information distribution: Renovators under the revised rule are required to distribute the pamphlet, *Renovate Right*, to property owners, occupants, child-occupied facility owners, operators and to parents of children attending the child-occupied facility. The costs include the time to prepare and ensure that the pamphlet is received by obtaining a signed acknowledgement of receipt or certificate of mailing, and by posting in common areas of multi-family housing or in child-occupied facilities where parents would be likely to see the information.

The pamphlet, *Renovate Right*, may be downloaded free from the EPA website and printed in-house for minimal expense or sent out for professional printing at the renovator's discretion. Costs associated with distribution are expected to be minimal as most renovators work directly with the owner/occupant and have ample opportunity to provide the required material. Copy and distribution expenses would also be incurred under the EPA regulation.

Work practices: For renovators, there will be certain work practice expenses associated with this new rule, including possible purchase of certain equipment and supplies. These might include a HEPA vacuum, HEPA-attachments for high-speed machines such as sanders and grinders, disposable plastic sheeting, disposable dry and wet cleaning cloths and mops. Many renovators already use HEPA vacuums, but many others would need to purchase one or more.

Cost-Benefits

Since 1996, more than 44,000 Wisconsin children have been identified as lead poisoned. Nearly one in every 20 children who entered the Wisconsin school system in the fall of 2006 was known to have been lead poisoned.

Lead interferes with the normal development of a child's brain and can result in significant learning disabilities and other behavior and health problems. Lead poisoning is associated with a greater chance that a child will experience problems in school due to learning difficulties and failure. Children who are lead poisoned show a 15% decrease in reading scores and 14% decrease in mathematical scores on

performance tests in 3rd grade. These learning problems can lead to higher rates of high school dropout, teen pregnancy and juvenile delinquency. The reduction in impaired cognitive function and other serious illnesses in children and adults a health effects from lead exposure are expected to result in quantifiable benefits nationwide.

According to the EPA, in its March 2008, economic analysis, its regulations under 40 CFR 745 would result in quantified benefits of approximately \$700 million to \$1,700 million in the first year nationwide, including other avoided health effects in children and adults that are not included in the net benefits estimates. Using EPA's conclusions, the department has determined that the estimated net benefits to Wisconsin would be \$1 million to \$20 million in the first year based on children's IQ benefits alone.

These health effects include impaired cognitive function in children and several serious illnesses in children and adults. EPA estimated the benefits of avoided incidence of IQ loss due to reduced lead exposure to children under the age of 6. There are not sufficient data to develop dose-response functions for other health effects in children or for pregnant women.

Effect on small business:

At least 10% of the businesses affected by this order are small businesses; however, the rules will not have a significant economic impact on those businesses.

Agency contact person:

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DHS Division of Public Health-
Bureau of Environmental & Occupational Health
Asbestos & Lead Section
1 W Wilson St, Room 137
Madison WI 53703
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Email: Shelley.Bruce@wisconsin.gov

Place where comments are to be submitted and deadline for submission:

A public hearing will be held on November 18, 2009, 1:00 - 3:00 p.m. at 1 West Wilson Street, Room B139. Comments may be submitted to the agency contact person listed above or to the Wisconsin Administrative Rules Website at www.adminrules.wisconsin.gov until November 19, 2009, 4:30 p.m.

TEXT OF PROPOSED RULE

SECTION 1. DHS 163.01 (2) and (3) are amended to read:

DHS 163.01 (2) **ACTIVITIES INVOLVING TARGET HOUSING AND CHILD-OCCUPIED FACILITIES.** This chapter is intended to ensure that persons who perform renovation, lead hazard reduction ~~activities~~ or lead investigation activities do so safely to prevent exposure of building occupants to hazardous levels of lead. This is accomplished by requiring an individual to be trained and certified under s. DHS 163.10 before the individual performs, supervises or offers to perform or supervise renovation, specified lead hazard reduction or lead investigation activities involving target housing or a child-occupied facility or the real property on which the target housing or child-occupied facility stands. In addition, the certified individual is required to be associated with a ~~lead~~ company certified by the department under s. DHS 163.12. ~~Subchapter II also~~ Subchapter III requires that a training course that is represented as qualifying any person for certification to perform renovation, lead ~~abatement~~ hazard reduction or lead investigation activities be accredited by the department before the training course is offered, advertised or conducted and that training managers and principal instructors be separately approved by the department. ~~Subchapter II further provides for the accreditation of lead-safe work courses.~~

(3) **ACTIVITIES INVOLVING REGISTERED LEAD-FREE PROPERTY AND REGISTERED LEAD-SAFE PROPERTY.** ~~In addition to requirements under sub. (2), and subject to exceptions under s. DHS 163.43, a person who disturbs lead-based paint on registered lead-safe property shall successfully meet the requirements of this chapter and have documentation of certification issued by the department before performing, supervising or offering to perform or supervise a non-abatement lead-based paint activity on registered lead-safe property. In addition, this~~ This chapter establishes standards for registered lead-free and registered lead-safe property that encourage long-term lead hazard reduction, procedures for determining whether a property meets the standards, and procedures for issuing and maintaining certificates of lead-free status and lead-safe status.

SECTION 2. DHS 163.02 (1) (a) and (c) and (2) and (title) are amended to read:

DHS 163.02 (1) (a) This subchapter, subchs. II and IV apply to a person performing, supervising or offering to perform or supervise a renovation, lead hazard reduction activity or lead investigation activity involving target housing or a child-occupied facility or the real property on which the target housing or child-occupied facility stands, ~~when certification is required under s. DHS 163.10 (1), and to a person performing an activity involving lead-based paint or a lead hazard when certification is required under a grant, contract or under an order issued by a court, the department, another state agency or a local agency.~~ Persons certified conducting work regulated under this chapter are also required to conduct activities in a manner that does not increase the hazards from lead-based paint to building occupants.

(c) ~~In addition to provisions under subchs. I to IV that apply to target housing and child-occupied facilities, subch. Subchapter V applies to real property for which a certificate of lead-free status or lead-safe status is sought or has been issued. Subject to the certification exceptions under s. DHS 163.43,~~

~~subchs. IV and V also apply to a person performing, supervising or offering to perform or supervise a non-abatement lead-based paint activity on registered lead-safe property.~~

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

SECTION 3. DHS 163.03 (1) (a) 3. and (b) 5., (5), (10), and (13) (intro.) and (a) to (c) are amended to read:

DHS 163.03 (1) (a) 3. Removal of lead-based painted surfaces, components or fixtures.

(b) 5. A project conducted in response to a request for an abatement activity or which the contractor claims to be an abatement activity.

(5) "Agent" means a person who is under a contract, or otherwise authorized by the owner, to manage or maintain real property.

(10) "Certification" means an approval status granted by the department to ~~an individual or lead company~~ a person meeting the conditions for certification under this chapter.

(13) "Child-occupied facility" means a building or portion of a building constructed prior to 1978, and including common areas, that meets any of the following:

(a) A facility licensed by ~~the department~~ certified to provide day care services.

(b) A public or private school or preschool attended by ~~children~~ a registered child younger than 6 years of age, including a state-operated residential treatment center.

(c) A building or portion of a building ~~constructed prior to 1978~~, visited by the same child under 6 years of age, on at least 2 different days within any week, Sunday through Saturday, provided that each day's visit lasts at least 3 hours and the combined annual visits last at least 60 hours, ~~except that for purposes of subchapter V, a dwelling is not a child-occupied facility unless educational or day care services are provided to a child who is under 6 years of age and not an immediate family member.~~

SECTION 4. DHS 163.03 (13g) and (13r) are created to read:

DHS 163.03 (13g) "Cleaning verification" means a protocol for use by certified lead-safe renovators after completion of renovation activities, and in lieu of clearance dust-wipe sampling, that ensures post-renovation cleaning has been successfully completed to the standard set under s. DHS 163.14 (11) (L).

(13r) "Cleaning verification card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been successfully completed.

SECTION 5. DHS 163.03 (14) and (15) are amended to read:

DHS 163.03 (14) "Clearance" means the actions taken after ~~a lead-based paint~~ an abatement, interim control or renovation activity to make a final determination that the work was completed, final cleaning was conducted and dust-lead levels are below the clearance levels.

(15) "Clearance level" means the value under s. DHS 163.14 (5) (c) 8. that indicates the maximum amount of lead permitted in dust on a surface following completion of ~~a lead-based paint~~ an abatement, interim control or renovation activity.

SECTION 6. DHS 163.03 (22m) is created to read:

DHS 163.03 (22m) "Demolition" means the removal of any load-supporting structural component of target housing or a child-occupied facility together with any related handling operations.

SECTION 7. DHS 163.03 (26) and (27) are amended to read:

DHS 163.03 (26) "Disturb" means to break up, burn, crush, cut into, dissolve, sand, scrape, abrade remove, demolish or otherwise manipulate a painted surface in a manner that generates ~~dust-lead dust, paint chips~~ or debris.

(27) "Discipline" means one of the specific job categories in s. DHS 163.10 (2) ~~or 163.43~~ for which individuals are trained and become certified by the department.

SECTION 8. DHS 163.03 (31m) is created to read:

DHS 163.03 (31m) "Dry disposable cleaning cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

SECTION 9. DHS 163.03 (36) is amended to read:

DHS 163.03 (36) "Dust wipe sample" means a sample of dust collected using documented protocols by wiping a representative surface of a known area with an acceptable wipe material, such as a moist towelette.

SECTION 10. DHS 163.03 (40m) is created to read:

DHS 163.03 (40m) "Emergency renovation" means renovation activities that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment or property with significant damage.

SECTION 11. DHS 163.03 (46) is amended to read:

DHS 163.03 (46) "Friction surface" means an interior or exterior surface that is subject to repeated abrasion or friction during use, including certain surfaces of windows, doors, floors and stairs.

SECTION 12. DHS 163.03 (48) is repealed.

SECTION 13. DHS 163.03 (52) is amended to read:

DHS 163.03 (52) "HEPA filter" means a high efficiency particulate air filter that ~~removes~~ captures particles of 0.3 microns or larger ~~from the air~~ at 99.97 percent or greater efficiency.

SECTION 14. DHS 163.03 (53) is repealed and recreated to read:

DHS 163.03 (53) "HEPA vacuum" means a vacuum cleaner designed by the manufacturer to have a high-efficiency particulate air (HEPA) filter as the last filtration stage. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it.

SECTION 15. DHS 163.03 (56) is amended to read:

DHS 163.03 (56) "Impact surface" means an interior or exterior surface that is subject to damage by repeated force ~~during use~~, such as ~~doors to certain parts of doorframes, cabinet frames and walls~~ subject to door actions, and baseboards and stair risers.

SECTION 16. DHS 163.03 (58m) is created to read:

DHS 163.03 (58m) "Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management programs.

SECTION 17. DHS 163.03 (62) is repealed.

SECTION 18. DHS 163.03 (64), (65), (71), (76), and (80) are amended to read:

DHS 163.03 (64) "Lead abatement supervisor" means an individual who supervises or performs lead abatement or other lead hazard reduction activities.

(65) "Lead abatement worker" means an individual who performs lead abatement or other lead hazard reduction activities.

(71) "Lead hazard reduction activity" means any action intended to permanently or temporarily reduce or eliminate human exposure to lead-based paint hazards, including abatement, interim controls, and paint stabilization.

(76) "Lead investigation activity" means any activity that determines whether lead-based paint or lead hazards are present. Lead investigation activities include clearance, dust-wipe sampling, elevated blood lead investigation, lead-free inspection, lead inspection, lead hazard screen, lead-safe investigation, paint chip ~~testingsampling~~, risk assessment and soil sampling activities.

(80) "Lead sampling technician" means an individual who independently performs limited clearance activities, ~~collects paint chip, dust-wipe or soil samples~~, or assists a lead hazard investigator, inspector or risk assessor in conducting other lead investigation activities, including collecting paint-chip, dust-wipe or soil samples.

SECTION 19. DHS 163.03 (82) and (83) are repealed and recreated to read:

DHS 163.03 (82) "Lead-safe company" means a company, partnership, corporation, sole proprietorship, association, governmental agency or other entity that performs, advertises, claims to provide or offers to perform renovation activities in target housing or child-occupied facilities.

(83) "Lead-safe renovator" means an individual who performs or directs workers who perform renovation activities in target housing or child-occupied facilities.

SECTION 20. DHS 163.03 (85m) is created to read:

DHS 163.03 (85m) "Minor repair and maintenance activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt 6 square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by s. DHS 163.14 (11) (h) are used, and where the work does not involve window replacement or demolition. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within 30 consecutive days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

SECTION 21. DHS 163.03 (88) is amended to read:

DHS 163.03 (88) "Occupant protection plan" means a written plan developed prior to ~~ana~~ lead hazard reduction activity that describes the measures that will be taken to protect the building occupants from exposure to lead-based paint hazards.

SECTION 22. DHS 163.03 (88m) is created to read:

DHS 163.03 (88m) "Pamphlet" means the EPA pamphlet titled *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* or any other pamphlet approved by the department and EPA pursuant to 40 CFR 745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition of local sources of information).

SECTION 23. DHS 163.03 (96m) is created to read:

DHS 163.03 (96m) "Recognized test kit" means a commercially available kit recognized by the department as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 0.7 milligrams per square centimeter, or more than 0.06% lead by weight as defined under s. DHS 163.03 (61), in a paint chip, paint powder, or painted surface.

SECTION 24. DHS 163.03 (100) is amended to read:

DHS 163.03 (100) "Regulated activity" means an activity to which work practice standards apply or for which accreditation, approval ~~or~~, training ~~and/or~~ certification is required under this chapter.

SECTION 25. DHS 163.03 (100m) is created to read:

DHS 163.03 (100m) "Renovation" means a work activity that disturbs paint in or on target housing or a child-occupied facility. Renovation activities include cutting, drilling, planing, sanding, sawing, scraping, stripping or removing painted surfaces or components during demolition, interim controls, maintenance, modification, painting, rehabilitation, remodeling, repair, residing, roofing or restoration activities. The term renovation does not include abatement activities as defined under s. DHS 163.03 (1), minor repair and maintenance activities as defined under s. DHS 163.03 (85m), or the razing of an entire building.

SECTION 26. DHS 163.03 (114) (a) is amended to read:

DHS 163.03 (114) "Visual inspection" means:

(a) For clearance, visual examination following an activity that disturbs ~~lead~~lead-based paint to determine whether or not the cleanup has been successfully completed, as indicated by the absence of visible residue, dust and debris, and that scheduled work has been completed.

SECTION 27. DHS 163.03 (114) (am) is created to read:

DHS 163.03 (114) (am) For cleaning verification, visual examination following a renovation activity to determine whether scheduled work and clean up has been successfully completed, as indicated by the absence of visible residue, dust and debris.

SECTION 28. DHS 163.03 (114g) and (114r) are created to read:

DHS 163.03 (114g) "Wet disposable cleaning cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

(114r) "Wet mopping system" means a device with the following characteristics: a long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor; or a method of equivalent efficacy.

SECTION 29. DHS 163 Subchapter II (title) is amended to read:

(title) Subchapter II - Certification of Persons to Perform Lead-Safe Renovation, Lead Hazard Reduction Activities, or Lead Identification-Investigation Activities

SECTION 30. DHS 163.10 (1) (intro.) and (b) are amended to read:

DHS 163.10 (1) REQUIREMENT. Except as provided under par. (c) and s. DHS 163.12 (1) (b)(d), an individual shall follow work practice requirements and meet all other responsibilities under this chapter and, except as provided under pars. (c) and (d), shall also be certified by the department under this subchapter and shall be associated with a certified lead company or lead-safe company through ownership, employment or contract before the individual may do to do any of the following:

(b) Perform or supervise ~~an~~ a lead hazard reduction activity when certification is required under an order issued by a court, the department, another state agency or a local agency, under a contract, or as a condition for payment of services.

SECTION 31. DHS 163.10 (1) (bm) is created to read:

DHS 163.10 (1) (bm) Perform, supervise or offer to perform or supervise a renovation activity for compensation in target housing or a child-occupied facility on or after April 22, 2010.

SECTION 32. DHS 163.10 (1) (c) (intro.) and 1. are amended to read:

DHS 163.10 (1) (c) ~~An individual~~ A person is not required to be certified by the department under this subchapter par. (bm), but is subject to all work practice requirements and other responsibilities under this chapter when any one of the following applies:

1. All regulated activities are within the scope of a license, certification or registration issued to ~~the individual~~ by the department of commerce under s. 101.178, ~~101.87~~, Stats., or ch. 145, Stats., and the individual performing the regulated activities has completed lead-safe renovation training under s. DHS 163.11 (2) (c) as evidenced by possession of a current and valid course completion certificate at the worksite whenever performing regulated work.

SECTION 33. DHS 163.10 (1) (c) 2. is repealed and recreated to read:

DHS 163.10 (1) (c) 2. The individual conducting the renovation activity has been trained by a certified lead-safe renovator under s. DHS 163.13 (7) on the lead-safe work practices to be used to perform assigned tasks and is under the supervision of a certified lead-safe renovator during the renovation activity as required under s. DHS 163.14 (11) (c).

SECTION 34. DHS 163.10 (1) (d) (intro.) is created to read:

DHS 163.10 (1) (d) (intro.) A person is not required to be certified under par. (bm), and is not subject to other provisions under this chapter, when any one of the following applies:

SECTION 35. DHS 163.10 (1) (c) 3. is renumbered DHS 163.10 (1) (d) 1. and as renumbered is amended to read:

DHS 163.10 (1) (d) 1. ~~All~~ The paint involved in the renovation activity has been tested by a person certified in an appropriate lead investigation discipline as a lead inspector, hazard investigator or risk assessor, who has determined that the paint does not meet the definition of lead-based paint under s. DHS 163.03 (60) s. DHS 163.03 (61).

SECTION 36. DHS 163.10 (1) (d) 2., 3., 4., and 5. are created to read:

DHS 163.10 (1) (d) 2. The paint to be involved in the renovation activity has been tested by a certified lead-safe renovator using a department recognized test kit, as defined under s. DHS 163.03 (96m), and following the kit manufacturer's instructions, who has determined that the paint does not meet the definition of lead-based paint under s. DHS 163.03 (61).

3. The work is a minor repair and maintenance activity as defined under s. DHS 163.03 (85m).

4. The work is a renovation activity that is not performed for compensation and no other conditions requiring certification exist.

5. The work is a renovation activity performed by the homeowner in the homeowner's owner-occupied unit and no other dwelling unit or common area is affected.

SECTION 37. DHS 163.10 (2) (intro.) and (a) 1. are amended to read:

DHS 163.10 (2) DISCIPLINES. Certification of individuals shall be specific to one of the following lead hazard reduction ~~or~~, lead investigation, or renovation disciplines:

(a) 1. 'Lead abatement worker.' A certified lead abatement worker may perform any abatement ~~or non-abatement lead-based paint~~ activity, but must be supervised under s. DHS 163.14 (1) (c) when performing abatement. A lead abatement worker may not prepare an occupant protection plan for abatement, prepare an abatement report, conduct sampling for abatement or supervise abatement activities. A certified lead abatement worker who completes a lead-safe renovation initial or refresher course, or a lead abatement worker refresher course after October 19, 2009, is also qualified to conduct renovation activities.

SECTION 38. DHS 163.10 (2) (a) 2. and (b) 1. are amended to read:

DHS 163.10 (2) (a) 2. 'Lead abatement supervisor.' A certified lead abatement supervisor may develop occupant protection plans, write abatement reports, and supervise or perform lead abatement activities. A certified lead abatement supervisor may take dust wipe samples before clearance is conducted to determine if cleanup is complete, but this activity does not meet the criteria for sampling under s. 901.055, Stats., or for clearance. A certified lead abatement supervisor who completes a lead-safe renovation initial or refresher course, or a lead abatement supervisor refresher course on or after October 19, 2009, is also qualified to conduct renovation activities.

(b) *Lead investigation disciplines.* 1. 'Lead sampling technician.' When no abatement activity was performed, a certified lead sampling technician may conduct clearance following a ~~lead-based paint renovation activity involving a single-family dwelling, multifamily housing with fewer than 5 units, or an individual dwelling unit in multifamily target housing or a child-occupied facility.~~ A certified lead sampling technician may take dust wipe samples, and may take paint chip and soil samples and may assist when directly assisting a certified lead investigator, inspector or risk assessor to conduct other lead investigation activities. A certified lead sampling technician may not use an XRF, conduct clearance after an abatement activity or provide recommendations for reducing a lead hazard.

SECTION 39. DHS 163.10 (2) (c) is created to read:

DHS 163.10 (2) (c) *Renovation discipline.* 1. 'Lead-safe renovator.' A certified lead-safe renovator may supervise or perform renovation activities, provide training on lead-safe work practices to uncertified workers, provide pre-renovation education materials to occupants and owners, conduct pre-renovation component testing using a department-recognized test kit, and conduct post-renovation cleaning verification.

SECTION 40. DHS 163.10 (3) (a) 1. and (c) 2. a. are amended to read:

DHS 163.10 (3) (a) 1. An applicant shall use this subsection and subs. (4) to (7) to apply for certification in a lead hazard reduction ~~or~~ lead investigation, or renovation discipline for the first time or after certification in the discipline has lapsed for 12 months or more.

(c) 2. 'Timing of certification examination.' a. Applicant with interim certification. An applicant for initial certification to whom the department granted interim certification under sub. (6) (b) shall take the next available certification examination offered at a reasonably accessible location, as determined by the department. The applicant with interim certification may take the certification examination a maximum of 3 times within 6 months after completing an approved training course for the discipline under s. DHS 163.11. If an applicant does not pass the certification examination and become certified by the department after up to 3 attempts within this 6-month period, the department shall ~~revoke the interim card~~ deny initial certification. The individual shall retake the initial training course before reapplying for initial certification in the same discipline.

SECTION 41. DHS 163.10 (5) (f) 2. is amended to read:

DHS 163.10 (5) (f) 2. A completed regulatory worksheet that has been personally completed and signed by the applicant.

SECTION 42. DHS 163.10 (5) (g) 1. gm. is created to read:

DHS 163.10 (5) (g) 1. gm. For certification as a lead-safe renovator, a fee of \$50.

SECTION 43. DHS 163.10 (7) (b) 2. (intro.) is amended to read:

DHS 163.10 (7) (b) 2. For lead abatement worker, lead-safe renovator, or sampling technician, initial certification shall remain valid ~~as follows:~~ for 2 years after the completion date of the most recent training required under s. DHS 163.11.

SECTION 44. DHS 163.10 (7) (b) 2. a. and b. are repealed.

SECTION 45. DHS 163.10 (8) (b) 3. is amended to read:

DHS 163.10 (8) (b) 3. Submit an application for recertification to the department under par. (c). ~~The department shall refund the recertification fee if recertification is denied and the payer does not owe the department other fees.~~

SECTION 46. DHS 163.10 (8) (c) 4. (intro.) is amended to read:

DHS 163.10 (8) (c) 4. 'Recertification fee.' A written request for a government certification fee exemption under subd. 4. ~~h.~~ 4. gm. or a nonrefundable recertification fee as follows:

SECTION 47. DHS 163.10 (8) (c) 4. gm. is created to read:

DHS 163.10 (8) (c) 4. gm. For recertification as a lead-safe renovator, a 2-year fee of \$50.

SECTION 48. DHS 163.10 (8) (e) 1. and 2. are amended to read:

163.10 (8) (e) *Length of recertification.* 1. When the department recertifies a lead abatement supervisor, hazard investigator, inspector, project designer or risk assessor, the department shall extend the certification of the individual for 1 or 2 years from the expiration date, depending on whether a 1-year or 2-year fee is paid and the date by which refresher training must be completed.

2. When the department recertifies a lead abatement worker, lead-safe renovator, or sampling technician, the department shall extend the certification of the individual for 2 years from the expiration date.

SECTION 49. DHS 163.11 (intro.) is amended to read:

DHS 163.11 Certification training requirements. To be certified under this chapter as a lead abatement supervisor, abatement worker, hazard investigator, inspector, project designer, risk assessor ~~or sampling technician, or lead-safe renovator~~, an individual shall meet all of the following minimum training requirements:

SECTION 50. DHS 163.11 (1) (c) and (d) are repealed.

SECTION 51. DHS 163.11 (2) (a) 1. is amended to read:

DHS 163.11 (2) REQUIREMENT FOR INITIAL TRAINING. (a) 1. 'Lead abatement worker.' For certification as a lead abatement worker, an initial 1-day lead-safe ~~work~~ renovation course ~~accredited under this chapter~~ followed by an initial 1-day lead abatement work course.

SECTION 52. DHS 163.11 (2) (c) is created to read:

DHS 163.11 (2) (c) *Lead-safe renovator training.* 1. For certification as a lead-safe renovator, an individual shall successfully complete a department-approved initial 1-day lead-safe renovation course.

2. A person who completes training in Wisconsin after October 19, 2009, and is certified as a lead abatement worker or lead abatement supervisor may conduct renovator activities.

SECTION 53. DHS 163.11 (3) (a) 1. (intro.), a. and b. and 2. b. and (b) (title) and 2. a. are amended to read:

DHS 163.11 (3) (a) *Requirement for refresher training.* 1. As a condition for recertification, an individual who is certified shall complete department-approved refresher training as follows:

a. An individual issued initial certification or recertification as a lead abatement supervisor, lead abatement worker, sampling technician, hazard investigator, inspector, project designer or risk assessor shall complete a refresher training course under par. (b) every 2 years, as indicated by the training due date on the certification card.

b. An individual issued initial certification or recertification as a ~~lead abatement worker or sampling technician~~ lead-safe renovator shall complete a refresher training course under par. (b) ~~during that certification period~~ every 4 years, as indicated by the training due date on the certification card.

2. b. An individual whose certification has been expired for 12 months or longer shall complete initial training under sub. (2) (a) ~~or~~, (b) or (c) if the last training was completed more than 3 years ago, or a refresher training course under par. (b) if the last training was completed within the past 3 years.

(b) *Required refresher training course.* 2. a. For certification as a lead sampling technician, a ~~24~~ -hour lead sampling technician refresher training course.

SECTION 54. DHS 163.11 (3) (b) 3. is created to read:

DHS 163.11 (3) (b) 3. 'Refresher training for lead-safe renovator discipline.' For the lead-safe renovator discipline, an individual shall successfully complete a 4-hour lead-safe renovator refresher course approved by the department.

SECTION 55. DHS 163.12 (title) is amended to read:

DHS 163.12 (title) **Certification of a lead-company.**

SECTION 56. DHS 163.12 (1) (am) is created to read:

DHS 163.12 (1) (am) On or after April 22, 2010, except as provided under par. (b), a person shall be certified by the department as a company under this chapter and shall have appropriately

certified staff or shall contract with an appropriately certified individual before it may perform, supervise, advertise, claim to provide or offer to perform or supervise a renovation activity for which certification is required under s. DHS 163.10 (1).

SECTION 57. DHS 163.12 (1) (b) is amended to read:

DHS 163.12 (1) (b) A person is not required to be certified as a ~~lead~~ company when the person is a ~~property owner~~ homeowner who personally performs regulated activities only on the ~~property owner's~~ owner-occupied dwelling unit and the owner-occupied dwelling unit is not occupied by an individual ~~who is not the property owner or the~~ other than the property owner's immediate family.

SECTION 58. DHS 163.12 (1m) is created to read:

DHS 163.12 (1m) COMPANY TYPES. Certification of companies shall be specific to one of the following:

(a) *Lead company.* A lead company as defined under s. DHS 163.03 (66).

(b) *Lead-safe company.* A lead-safe company as defined under s. DHS 163.03 (82).

SECTION 59. DHS 163.12 (2) (intro.), (c), and (d) (intro.), 1. and 2. and (3) (a) (title) and 1. (intro.) are amended to read:

DHS 163.12 (2) CONDITIONS FOR CERTIFICATION. To be certified as a lead company or lead-safe company, an applicant shall do all of the following:

(c) *Follow work practice standards.* Agree that all ~~lead~~ company employees or subcontractors will follow the applicable work practice standards under s. DHS 163.14 ~~or 163.44~~ when performing activities covered by the standards.

(d) *Demonstrate knowledge of applicable regulations.* An owner, officer or employee of the ~~lead~~ company who is authorized by the ~~lead~~ company to act on the ~~lead~~ company's behalf shall demonstrate knowledge of applicable lead-based paint regulations and protocols by doing one of the following:

1. Being appropriately certified as a lead abatement supervisor, lead-safe renovator, lead sampling technician, lead hazard investigator, lead inspector, lead project designer or lead risk assessor.

2. When certification is impracticable, correctly completing and submitting to the department a ~~lead~~ company regulatory work sheet.

(3) (a) *Application for a nongovernmental ~~lead~~ company.* 1. 'Application form.' The ~~lead~~ company that is not a governmental agency shall submit a fully and accurately completed application on a form obtained from the department. The application shall include all of the following information:

SECTION 60. DHS 163.12 (2) (cm) and (3) (a) 1. am. are created to read:

DHS 163.12 (2) (cm) *Maintain records*. Agree to maintain records as required under s. DHS 163.13 (3).

(3) (a) 1. am. Whether the application is for a lead company or lead-safe renovation company.

SECTION 61. DHS 163.12 (3) (a) 1. a. to d., f. and g. are amended to read:

DHS 163.12 (3) (a) 1. a. The ~~lead~~ company's name, mailing address, physical address and telephone number and the physical address of records required under s. DHS 163.13 (3) if different from the physical address.

b. The federal employer identification number ~~for the lead company~~ or a statement why the lead company does not have one.

c. Names and social security numbers of the ~~lead~~ company's owners.

d. Names of corporate officers ~~of the lead company~~ if the ~~lead~~ company is incorporated.

f. A statement signed by an owner or officer of the ~~lead~~ company attesting that the ~~lead~~ company will employ or contract with only appropriately certified persons when certification is required under this chapter.

g. A statement signed by an owner or officer of the ~~lead~~ company attesting that the ~~lead~~ company, its employees and subcontractors will follow the work practice standards in s. DHS 163.14 or 163.44 when conducting activities covered by the work practice standards.

SECTION 62. DHS 163.12 (3) (a) 1. h. is repealed.

SECTION 63. DHS 163.12 (3) (b) (intro.) is amended to read:

DHS 163.12 (3) (b) *Application for a governmental agency*. A ~~lead~~ company that is a governmental agency shall submit a fully and accurately completed application on a form obtained from the department. The application shall include all of the following information:

SECTION 64. DHS 163.12 (4) (b) and (c) and (5) (title) and (intro.) are amended to read:

DHS 163.12 (4) (b) *Grant certification*. If the department grants ~~lead~~ company certification, the department shall issue a certificate of approval.

(c) *Deny certification*. If the department denies ~~lead~~ company certification, the department shall give the ~~lead~~ company a written explanation for the denial and shall notify the ~~lead~~ company of the right to appeal that decision under s. DHS 163.33.

(5) (title) EXPIRATION OF ~~LEAD~~ COMPANY CERTIFICATION. A ~~lead~~ company's ~~lead~~ certification shall expire as follows: 2 years after the certification issue date.

SECTION 65. DHS 163.12 (5) (a) and (b) are repealed.

SECTION 66. DHS 163.12 (6) (a) (intro.) is repealed and recreated to read:

DHS 163.12 (6) RENEWAL OF CERTIFICATION. (a) *Requirement.* No person may perform, supervise, advertise, claim to provide or offer to perform or supervise an activity for which company certification is required under this subchapter after the expiration date of that company's certification. A company shall submit the following to the department to apply for recertification before certification expires or within 12 months after certification expires:

SECTION 67. DHS 163.12 (6) (a) 1. and (b) 1. to 3. and (c) are amended to read:

DHS 163.12 (6) (a) 1. A completed ~~renewal of certification~~ application for renewal of company certification indicating changes to ~~lead-company~~ information since the previous application.

(b) *Action by the department.* 1. 'Time limit.' Within 10 working days after receipt of a fully and accurately completed application, the department shall grant or deny a ~~lead-company's~~ request for renewal of certification.

2. 'Grant renewal of certification.' If the department grants a ~~lead-company~~ renewal of certification, the department shall issue a certificate of approval.

3. 'Deny renewal of certification.' If the department denies a ~~lead-company~~ renewal of certification, the department shall give the ~~lead-company~~ a written explanation for the denial and shall notify the ~~lead-company~~ of the right to appeal that decision under s. DHS 163.33.

(c) *Length of ~~lead-company~~ renewal of certification.* When the department renews ~~the a company~~ certification of a ~~lead-company~~, the department shall extend a ~~lead~~ the company's certification 2 years; ~~except that lead-company certifications with an expiration date of November 1, 2001, shall be renewed to expire at midnight on August 1, 2003 from the date of expiration.~~

SECTION 68. DHS 163.13 (title), (1), and (2) are amended to read:

DHS 163.13 (title) **Responsibilities of certified persons when conducting regulated activity.**

(1) MAY NOT REFUSE ENTRY. No person at a site where a lead company or lead-safe company conducts business or at the site of a current or previously conducted ~~regulated-activity~~ regulated under this chapter may refuse entry to any representative of the department acting under the authority of s. DHS 163.30 (3).

(2) REQUIREMENT FOR VALID CARD ON SITE. Only a Wisconsin lead certification card is valid in this state for performing a ~~regulated an~~ activity regulated under this chapter. Each individual performing or supervising a ~~regulated an~~ activity that requires certification under this chapter shall have be in possession of a valid unexpired certification card when at the jobsite whenever performing or supervising that activity. ~~Only the most recent certification card is valid for any given discipline.~~

SECTION 69. DHS 163.13 (3) is renumbered DHS 163.13 (3) (a) (intro.) and as renumbered is amended read:

DHS 163.13 (3) REQUIREMENT FOR RECORDKEEPING. ~~The certified lead~~ (a) Lead hazard reduction. A company shall retain all documentation, reports or ~~plans~~ contracts required under this subchapter for a minimum of ~~53~~ 3 years following completion of an activity regulated under this chapter. ~~If the lead company goes out of business, the department shall be contacted and offered the opportunity to become the repository for these records~~ The company shall maintain the records at the address provided on the company application or as later changed under sub. (12). Records shall be made available for department inspection on site, by mail, or by other means as requested by the department. The company shall retain all of the following records as appropriate to the type of activities the company performs:

SECTION 70. DHS 163.13 (3) (a) 1. to 3., (b), and (c) are created to read:

DHS 163.13 (3) (a) 1. Any written contract for lead hazard reduction activities conducted by the company.

2. Copy of the final lead abatement report required under s. DHS 163.14 (1) (m) for each lead abatement activity conducted by the company, which shall include a copy of the written project notice, occupant protection plan, description of work activities conducted and final clearance report for the activity.

3. Lead company certificate of approval from the department.

(b) Lead investigation activities. A company shall retain all documentation, reports or contracts required under this subchapter for a minimum of 3 years following completion of an activity regulated under this chapter. The company shall maintain the records at the address provided on the company application or as later changed under sub. (12). Records shall be made available for department inspection on site, by mail, or by other means as requested by the department. The company shall retain all of the following records as appropriate to the type of activities the company performs:

1. Any written contract for lead investigation activities conducted by the company.

2. Report prepared under s. DHS 163.14 (5) for each clearance activity conducted by the company, including visual inspection results and dust sampling laboratory results.

3. Report prepared under s. DHS 163.14 (7) for each lead hazard screen conducted by the company, including any XRF testing results and any dust, paint and soil sampling results.

4. Report prepared under s. DHS 163.14 (8) for each lead inspection or partial inspection conducted by the company, including any XRF testing results and any paint or soil sampling laboratory results.

5. Report prepared under s. DHS 163.14 (9) for each lead risk assessment conducted by the company, including any XRF testing results and any dust, paint or soil sampling laboratory results.

6. Lead company certificate of approval from the department.

(c) *Renovation activities.* A company shall retain all documentation, reports or contracts required under this subchapter for a minimum of 3 years following completion of a renovation activity regulated under this chapter. Within 10 working days post-renovation, the company performing the renovation shall provide a copy of each document created for the renovation under this subsection to the persons contracting for, and to any occupants affected by, the renovation. The company shall maintain the records at the address provided on the company application or as later changed under sub. (12). Records shall be made available for department inspection on site, by mail, or by other means as requested by the department. The company shall retain all the following records:

1. Any written contract for renovation activities conducted by the company.
2. Any report from a certified lead inspector, hazard investigator or risk assessor certifying that lead-based paint is not present on components affected by the renovation activity.
3. Signed and dated acknowledgement of receipt of pre-renovation education pamphlet under s. DHS 163.14 (10).
4. Written certification of delivery of pre-renovation education pamphlet when the company has been unsuccessful in obtaining written acknowledgement from an adult occupant under s. DHS 163.14 (10).
5. Certificate of mailing when pre-renovation education pamphlet is sent by U.S. mail under s. DHS 163.14 (10).
6. Signed and dated statement recording steps taken to notify occupants of upcoming paint disturbing activities in common areas under s. DHS 163.14 (10).
7. For each renovation activity conducted by the company, documentation of compliance with the requirements of DHS 163.14, including documentation that a certified lead-safe renovator was assigned to the project, that the certified renovator provided on-the-job training for uncertified workers used on the project, that the certified renovator performed or directed workers who performed the renovation work and that the certified lead-safe renovator either performed the visual inspection and cleaning verification after all paint disturbing work was completed or dust clearance sampling was performed as required under s. DHS 163.14 (5) by an appropriately certified individual. This documentation shall include a copy of the certified renovator's training certificate and a certification signed by the certified renovator assigned to the project that:
 - a. Training was provided to workers, including topics covered for each worker.
 - b. Warning signs were posted at entrances to the work area.
 - c. Any interior work area was contained by removing or covering all objects, closing and covering all HVAC ducts, closing all windows, closing and sealing all doors or covering doors that were

used for passage to prevent the spread of dust, covering floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material to 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain dust, whichever is greater, and installing vertical containment, where necessary, to prevent migration of dust and debris to adjacent areas.

d. Any exterior work area was contained by removing or covering all objects, closing all windows in and within 20 feet of the work area and all windows below the work area, closing and sealing all doors in and within 20 feet of the work area including all doors below the work area, covering the ground with plastic sheeting, other disposable impermeable material or landscape fabric capable of collecting dust and debris anchored to the building extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground covering, weighted down by heavy objects, and installing vertical containment if necessary to prevent migration of dust and debris to adjacent property.

e. Waste was contained onsite and while being transported offsite.

f. The work area was properly cleaned after the renovation by picking up all visible chips and debris, misting protective sheeting, folding it dirty side inward and taping all seams for removal and for interiors, cleaning all work area surfaces and objects using a HEPA vacuum and damp cloths or mops.

g. A certified renovator performed post-renovation cleaning verification, including a brief description of the results and number of wet and dry cloths used.

8. For each employed or contracted worker who is not a certified lead-safe renovator, the company shall maintain documentation of the training provided, including the worker's name, specific topics taught to the worker, the name and department certification number of the instructor for each topic, and the training date for each topic.

9. For each emergency renovation activity conducted by the company for which the company was unable to comply with all of the requirements of this chapter due to emergency conditions as defined in DHS 163.03 (40g), documentation of the nature of the emergency and the provisions of the rule that were not followed.

10. If a recognized test kit is used, the company shall maintain records of, and, within 10 working days of completing renovation activities, provide identifying information to, the person who contracted for the work as to the manufacturer and model of each test kit used, verification that the test kit is recognized by the department, a description of the components tested, including their specific locations, and the result for each location and test kit used.

11. For any renovation for which dust wipe clearance was conducted, the company shall maintain the written clearance report with laboratory results.

12. Company certificate of approval from the department.

SECTION 71. DHS 163.13 (4) is renumbered DHS 163.13 (4) (a) and as renumbered is amended to read:

DHS 163.13 (4) REQUIREMENT FOR SUPERVISION OF A WORKER. (a) Lead hazard reduction activities. Under s. DHS 163.14 (1) (c), a lead abatement worker shall be directly supervised by a certified lead abatement supervisor when performing abatement. ~~According to recordkeeping requirements under sub. (3), the lead company shall maintain documentation of all jobs where a lead abatement worker was directly supervised and shall maintain documentation that a lead abatement worker successfully demonstrated understanding and compliance with pertinent abatement regulations and protocols before being allowed to conduct abatement under general supervision. Documentation of competence shall be on a form obtained from or approved by the department.~~

SECTION 72. DHS 163.13 (4) (b) is created to read:

DHS 163.13 (4) (b) *Renovation activities.* Under s. DHS 163.14 (11), a certified lead-safe renovator shall be assigned to each renovation and shall be physically present at the work site while warning signs are being posted, work area containment is being established, and work area cleaning is being performed. The certified lead-safe renovator is responsible for ensuring continuous maintenance of containment areas and use of lead-safe work practices by workers during renovation. When not on site, the certified lead-safe renovator is responsible for being readily available by telephone and able to return to the worksite within a reasonable time, approximately 30 minutes.

SECTION 73. DHS 163.13 (5) (intro.) and (a) and (b), (6) (b) 1. and 2. a. to c., and (7) (title) are amended to read:

DHS 163.13 (5) REQUIREMENT FOR WRITTEN CONTRACT. A ~~certified lead~~ company shall have a written contract for all regulated activities performed for ~~remuneration~~ compensation on property not owned or controlled by the company conducting the work. The contract shall specify the activities to be performed, comply with s. ATCP 110.05 and include the following:

(a) Information regarding the presence or absence of bonding or insurance coverage, including workers compensation insurance. Where a representation is made that bonding or insurance will be in effect while regulated activities are conducted, the ~~lead~~ company shall provide proof before work begins.

(b) ~~For an abatement or on-abatement lead-based paint~~ a lead hazard reduction activity performed on registered lead-safe property, or when clearance sampling will be conducted after a renovation activity, a statement regarding who is responsible for paying additional cleanup and clearance costs if clearance ~~levels are~~ is not met.

(6) (b). 1. 'Prohibited actions.' The employer or ~~lead~~ company may not confiscate an individual's original training certificate or certification card. The employer or ~~lead~~ company may not photocopy an individual's training certificate or certification card unless the photocopy is clearly labeled "copy" across the face of it in order to discourage fraudulent or misleading use of the photocopy.

2. 'Responsibility for certificate of approval.' a. Each certified ~~lead~~ company performing, supervising or offering to perform or supervise a ~~regulated~~ an activity regulated under this chapter shall

retain the certificate of approval for the duration of certification and shall make it available for inspection upon request by the department or the public.

b. A ~~lead~~-company shall not allow another person to photocopy the certificate of approval unless the photocopy is clearly labeled "copy" across the face of it in order to discourage fraudulent or misleading use of the photocopy and shall not allow another person to use the certificate of approval.

c. When requested by the department, the ~~lead~~-company shall return a suspended, revoked or otherwise invalid certificate of approval to the department within 10 working days of the department's request.

(7) (title) RESPONSIBILITY FOR VERIFICATION OF TRAINING AND CERTIFICATION.

SECTION 74. DHS 163.13 (5) (c) is repealed.

SECTION 75. DHS 163.13 (7) is renumbered DHS 163.13 (7) (a) and as renumbered is amended to read:

DHS 163.13 (7) (a) Certification for regulated lead hazard reduction and lead investigation activities. The ~~lead~~ company ~~employing or contracting with persons~~ conducting a regulated lead hazard reduction or lead investigation activity shall be a certified lead company and shall verify the certification status of all individuals who will performingperform or supervising supervise those activities before the start of the activity and may not use individuals who lack the required certification.

SECTION 76. DHS 163.13 (7) (b) and (c) are created to read:

DHS 163.13 (7) (b) Training and certification for regulated renovation activities. The company conducting a regulated renovation activity shall be a certified lead-safe company or certified lead company and shall verify that individuals who will perform renovation activities are either certified lead-safe renovators or have been properly trained by a certified lead-safe renovator in accordance with DHS 163.14 (11) on the work practices they will use to perform their assigned tasks. A certified lead abatement worker or lead abatement supervisor who completed department-approved lead-safe renovator, lead abatement worker or lead abatement supervisor refresher training after October 19, 2009 is also qualified to perform the duties of a certified lead-safe renovator.

(c) Certified lead-safe renovator assigned. The company conducting a regulated renovation activity shall assign a certified lead-safe renovator to each regulated activity who shall discharge all certified lead-safe renovator responsibilities identified in this chapter. A certified lead abatement worker or lead abatement supervisor who completed department-approved lead-safe renovator, lead abatement worker or lead abatement supervisor refresher training after October 19, 2009 is also qualified to perform the duties of a certified lead-safe renovator.

SECTION 77. DHS 163.13 (9) is amended to read:

DHS 163.13 (9) WORK CONDUCT. ~~Upon receiving certification, individuals~~ Individuals and lead companies conducting activities regulated under this chapter, and all persons working under their