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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 00-172

Comments

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

1. Statutory Authority

a. It is unclear under what statutory authority the department prohibits issuance of certificates of lead-safe and lead-free status after August 31, 2008, in ss. HFS 163.40 (2) (a) and (b), 163.42 (2) (d) 1. and 2. (intro.) and 163.43 (2) (d) 1. and 2. and (e) (intro.). 1999 Wisconsin Act 113, the legislation requiring promulgation of this rule, requires the department to promulgate rules relating to the issuance and periods of validity for certificates of lead-safe and lead-free status. Regarding the period of validity for lead-safe certificates, s. 254.179 (1) (c) 2., Stats., as created in Act 113, requires that the rules set forth standards limiting the length of validity of a certificate, including the condition of a premises, the type of lead hazard reduction activity performed, if any, and any other requirements that must be met to maintain the certificate. The rules must specify that: (a) the face of the lead-safe certificate indicates the certificate’s length of validity; and (b) no more than two successive certificates of lead-safe status of less than one year in duration may be issued, with certain exceptions. Regarding the period of validity of certificates of lead-free status, s. 254.179 (1) (c) 1., Stats., as created in Act 113, requires that the rules include authorization for certificates of lead-free status to remain in effect unless revoked because of erroneous issuance or because the premises are not free of lead-bearing paint. This provision also requires that the rules specify that the face of the lead-free certificate shall indicate that the certificate is valid unless revoked.

Nowhere in the Act 113 provisions is there a prohibition on issuance of certificates after August 31, 2008. The department may have believed that because Act 113 limits the time period within which immunity from liability is provided to property owners, it also restricted issuance

of certificates to that time period. However, an examination of Act 113 reflects only the repeal, in SECTION 35, of the immunity provisions on August 31, 2008. If Act 113 had intended to restrict issuance of certificates to that same time period, it would have explicitly stated that certificates could not be issued once immunity from liability is no longer available. Even after immunity from liability ends, a property owner may wish to continue to have a valid certificate, as a defense in a lawsuit.

b. Section HFS 163.42 (2) (e), Stats., correctly provides that a certificate of lead-free status is valid until revoked. It should also specify that the face of the lead-free certificate must indicate that the certificate is valid unless revoked.

2. Form, Style and Placement in Administrative Code

a. In s. HFS 163.03 (1) (a) 5. to 7., it is inappropriate to use a term in the definition of that term. Can “the activities in subds. 1. to 4.” be substituted for “an abatement” in those three subdivisions?

b. Throughout the rule, subdivision titles should be enclosed in single quotation marks. For example, see s. HFS 163.10 (3) (b) 1. to 4. [See s. 1.05 (2) (e), Manual.]

c. In s. HFS 163.20 (8) (a) 2. s., the phrase “HEPA-planing” should be defined.

d. In s. HFS 163.20 (8) (a) 3., and elsewhere in the rule, material after subd. z. should be numbered za., zb., zc., etc.

e. In s. HFS 163.41 (1) (a) note, the word “Section” on line 1 should be rewritten “SECTION.” The entire rule should be checked for other occurrences.

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

a. In s. HFS 163.10 (3) (c) 3. b., it appears that the cite to sub. (4) is incorrect. That subsection discusses submitting copies versus originals of required documents.

b. In s. HFS 163.10 (5) (e), “par.” should precede “(f).”

c. In s. HFS 163.10 (8) (b) 4. b., the cite to s. 163.11 (3) (a) 2. b. is incorrect. Is the correct citation s. 163.11 (3) (c) 2. b.?

d. In s. HFS 163.13 (4) it appears that the cite to s. 163.14 (3) (a), (3) (b), (5) (a) or (5) (b), should be to s. 163.14 (3) (c) or (5) (c). If the citation is correct, however, it should be written as “s. 163.14 (3) (a) or (b) or (5) (a) or (b).”

e. In s. HFS 163.14 (4) (d) (intro.), “par.” should be inserted before “(c) 1. or 2.”

f. In s. HFS 163.14 (7) (c) 3., “subd. 1 or 2 above” should be replaced with “subd. 1. or 2.”

- g. In s. HFS 163.14 (7) (e) 7., “subd.” should be inserted before “6.”
- h. In s. HFS 163.14 (8) (b), “(n)” should be replaced with “(k).”
- i. In s. HFS 163.14 (9) (j), the reference to ch. NR 147 is incorrect. There is no ch. NR 147. Also, “105-106” should be written as “105, 106” and “200-299” should be written as “200 to 299.”
- j. In s. HFS 163.20 (8) (a) 3. g., it appears that the reference to s. HFS 163.14 (5) and (6) should instead be to s. HFS 163.14 (3) and (5), as those are the two subsections in which notification is discussed. The same comment applies to the material in subd. 4. k. of this provision.
- k. In s. HFS 163.20 (8) (b) 1. s. and v., the cited provision, s. HFS 163.14 (1) (b) 6., pertains to visual inspections after exterior activity. Is this the intended provision?
- l. In s. HFS 163.20 (8) (b) 3. f., “statutes, ordinances, rules and” should precede “regulations.”
- m. In s. HFS 163.41 (1) (c) 4., “HFS” should be inserted after the “s.” on line 2.
- n. In s. HFS 163.41 (2) (c) 4., the reference to sub. (2) (a) should be changed to “par. (b).”
- o. In s. HFS 163.43 (5) (f), should “statute, ordinance, rule or regulation” replace “regulation or ordinance”?

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

- a. In s. HFS 163.03 (1) (intro.), it appears that “or intended” could be deleted.
- b. In s. HFS 163.03 (1) (b) 3., “represent, advertise or hold themselves” should be replaced with “represents, advertises or holds himself or herself.”
- c. In s. HFS 163.03 (13), it appears that the definition of “child-occupied facility” would include, for example, a grandparent’s house that is visited regularly by a small child. While, ideally, such a home would be lead safe, is it the intent of the rule to define “child-occupied facility” so broadly?
- d. In the note to s. HFS 163.03 (16), a boundary fence does not seem to fall under the category of “common area.”
- e. In s. HFS 163.03 (25), the hyphens in “wear-and-tear” should be deleted. Also, quotation marks should be placed around “Deteriorated point” in the second sentence.
- f. In s. HFS 163.03 (35), “a” should be inserted before “known area.”

- g. In s. HFS 163.03 (69), the “I” following “high-risk” should be deleted.
- h. In s. HFS 163.03 (93), “dwelling yard” should be replaced with “dwelling’s yard.”
- i. In s. HFS 163.03 (99), “covering” should be replaced with “coverings.”
- j. In s. HFS 163.03 (100), it appears that “any body politic” could be deleted.
- k. In s. HFS 163.10 (1) (intro.), “doing” should be replaced with “the individual may do.”
- l. In s. HFS 163.10 (2) (a) 3., the hyphens in “dust-wipes” and “clean-up” should be deleted.
- m. In s. HFS 163.10 (3) (b) 2. a., “as a” should be inserted before the first “low-risk.”
- n. In s. HFS 163.11 (1) (d), “is comparable to” should be replaced with a phrase such as, “meets requirements that are comparable to” or “meets.”
- o. In s. HFS 163.12 (3) (intro.), the sentence should end with a colon.
- p. In s. HFS 163.12 (3) (a) 2. (intro.), a sentence such as: “The application shall include all of the following fees:” should be inserted.
- q. In s. HFS 163.13 (6) (a) 1., the comma should be replaced with “and.”
- r. In s. HFS 163.14 (1) (b) 4. a., “areasin” should be written as two words.
- s. In s. HFS 163.14 (5) (e) 2., “shall” in the first sentence should be replaced with “may.”
- t. In s. HFS 163.14 (5) (g) 1. a., the comma after “covered” should be deleted.
- u. In s. HFS 163.14 (6) (d) note, “to” should be inserted after “Refer.”
- v. In s. HFS 163.14 (7) (f) 3., “of the building” should be inserted at the end of the sentence.
- w. The following comments pertain to s. HFS 163.20:
 - (1) In sub. (3), the phrase “, but is not required to,” is not necessary, as the word “may” means that something is not required.
 - (2) In sub. (4) (b) and (c), it does not make sense to say that an initial training *course* shall be for a specific *course*. Could these phrases be rewritten to clarify their meaning?

- (3) In sub. (5), the semicolon on line 3 should be replaced by a period and the word “instructional” should start a new sentence. On line 6, a new sentence should begin after the first occurrence of “department.”
 - (4) In sub. (7) (c) 2. and (8) (i), is it at the instructor’s discretion whether the student-to-student ratio “may need to be less” than 8:1 when necessary to ensure adequate instruction and observation of student performance?
 - (5) In sub. (8) (a) 1. j., it is suggested that the word “activity” be inserted after the word “construction” and instead of the word “project” for consistency with the definition in s. HFS 163.09 (66).
 - (6) In sub. (8) (b) 2. (intro.), the word “lead” should be inserted before the second “hazard” on line 1. The same comment applies to the language in subd. 2. s.
 - (7) In the note following sub. (9), the word “make” should be changed to “require.”
- x. The following comments pertain to s. HFS 163.24:
- (1) In sub. (2) (a) 1., it is suggested that the word “other” be inserted before “adults.”
 - (2) In sub. (3) (a) 2. a., a comma should be inserted after the word “assessor” on line 1. The same comment applies to the word “supervisor” in subd. 2. b. and to the word “designer” in subd. 2. c.
 - (3) In sub. (3) (a) 3. c., for consistency with the language at the beginning of subd. 3. a. and b., it is suggested that this provision begin with the phrase “For approval to . . .” so that it is clear to what this requirement applies. Also, subd. 3. c. repeats much of what is in subd. 3. (intro.).
 - (4) In sub. (4) (a), the word “guest” should be inserted before “instructor” on line 5.
 - (5) In sub. (4) (c), the capital “A” in the title should be lowercase.
 - (6) In sub. (5), the word “them” should be replaced by the phrase “the qualifications.”
- y. The following comment pertains to s. HFS 163.25: In sub. (1), the word “it” should be inserted after the “as” on line 3.
- z. The following comments pertain to s. HFS 163.31:

- (1) In sub. (2) (intro.), the two sentences appear to be inconsistent, as the first sentence provides that the department may act regarding a violation of *any* provision of this chapter, while the reasons for accreditation enforcement actions may include *one* of several listed violations. These provisions should be reviewed and reconciled. On a related note, use of the word “one” on line 4 of subs. (3) (intro.) and (4) (intro.) should be reviewed. Could “any” be substituted?
- (2) In sub. (4) (q), it appears that the phrase “certified as an inspector, risk assessor or supervisor” should not be in this provision.
- (3) In sub. (5) (b), it is suggested that the first sentence be rewritten to read: “A person whom the department determines is not fit and qualified.”
- (4) In sub. (6), perhaps the term “summary suspension” should be defined, or at least s. HFS 163.32 (5), which explains summary suspension, should be cited. Also, in sub. (6) (intro.), commas should be inserted around the phrase “but is not limited to” on line 2.

aa. The following comments pertain to s. HFS 163.32:

- (1) In s. HFS 163.32 (intro.), the phrase “for any reason stated under s. HFS 163.31” on line 5 should be moved to follow the word “actions” on line 3.
- (2) It is suggested that the language in sub. (2) be rewritten so that the provision begins with the language currently on lines 3 to 5, beginning with the phrase “The department may deny” The same comment pertains to the language in subs. (3) and (4).
- (3) In sub. (5), note, “Stats.” should be inserted after the statutory citation on line 1.

ab. The following comments pertain to s. HFS 163.40:

- (1) In sub. (1) (a) (intro.), the second occurrence of the phrase “owner-occupied” on lines 4 and 5 could be deleted.
- (2) In sub. (3) (a), the word “shall” should be inserted after “owner” on line 3 and the phrase “on which” should be inserted after the “date” on line 4.

ac. In s. HFS 163.41 (1) (a), note, the word “beginning” on line 4 is misspelled.

ad. The following comments pertain to s. HFS 163.43:

- (1) In sub. (2) (title), the word “STATUS” should be inserted at the end of the title.

- (2) In sub. (2) (d) 4. a., the period following the word “support” on line 3 should be changed to a comma and the word “and” on line 3 should be changed to “or.”
- (3) In sub. (2) (d) 4. b., the word “and” on line 3 should be changed to “or.”
- (4) In sub. (3) (d) 1., for consistency with previous terminology, the word “examination” should be changed to “assessment.”