

**WISCONSIN DEPARTMENT OF HEALTH SERVICES
PROPOSED ORDER TO ADOPT EMERGENCY RULES**

The Wisconsin Department of Health Services (“the Department”) proposes an order to **amend** DHS 163.03 (67), 181.03 (10), and 182.03 (10), relating to the definition of “lead poisoning or exposure” in ch. DHS 163 and “lead poisoning or exposure” in chs. DHS 181 and 182.

FINDING OF EMERGENCY

An emergency rule is necessary to protect the public peace, safety, and welfare. These rules require that specific actions be taken to abate or prevent further exposure to lead hazards when a certain amount of lead is detected in a child’s blood, and the current definitions of “lead poisoning or exposure” provided in rule and statute—the lowest of which is 5 micrograms per 100 milliliters of blood—are higher than the new blood lead reference value of 3.5 micrograms per 100 milliliters of blood established by the U.S. Centers for Disease Control and Prevention. Between November 2021 and February 2024, approximately 3,272 children had blood lead levels between 3.5 and 4.9 micrograms per 100 milliliters of blood, but they did not qualify to receive environmental intervention services under ch. 254, subch. II, Stats., because they did not meet the definitions of “lead poisoning or exposure” provided in statute. Notwithstanding the statutory definition of “lead poisoning or exposure,” the department is required to promulgate a definition of “lead poisoning or exposure” in rule, based on CDC levels, which supersedes the statute. The Department estimates that about 1,400 children are expected to have a blood level between 3.5 and 4.9 micrograms of lead per 100 milliliters of blood in 2025, and the proposed emergency rule would allow those children to be eligible for environmental intervention services under ch. 254, Stats.

RULE SUMMARY

Statutes interpreted

Section 254.156, Stats.

Statutory authority

The Department is authorized to promulgate the rule based upon explicit statutory language in Section 254.156, Stats.

Explanation of agency authority

Section 254.156, Stats., requires that whenever the U.S. Centers for Disease Control and Prevention (CDC) of the U.S. Department of Health and Human Services specifies a standard for the definition of lead poisoning or lead exposure that differs from the standard set in section 254.11 (9), Stats., the department shall promulgate a rule defining “lead poisoning or lead exposure” to correspond to the specification of the CDC. Rules promulgated under this section supersede s. 254.11(9) with respect to the requirements of this subchapter. Chapters DHS 163, 181, and 182 all contain definitions of lead poisoning or lead exposure that must be updated in accordance with the new standards set by the CDC.

The Department’s authority for each rule chapter identified above is as follows:

— Chapter DHS 163 relates to certification for the identification, removal, and reduction of lead-based paint hazards. The rule chapter was promulgated in accordance with ss. 250.04 (7), 254.167, 254.172, 254.176 (1) and (3), 254.178, and 254.179, Stats. Section 250.04 (7), Stats., authorizes the Department to promulgate and enforce rules relating to any public health subject matter under the department’s supervision that is necessary to provide efficient administration and to protect health. Section 254.167, Stats., authorizes the Department to promulgate rules establishing procedures for conducting lead investigations and dwellings. Section 254.172, Stats., authorizes the Department to promulgate rules governing lead hazard reduction activities that are “consistent with federal law.”

Section 254.176, Stats., authorizes the Department to establish rules for certifying individuals who perform lead hazard reduction or lead management activity. Section 254.178, Stats., requires that the Department create rules establishing requirements for accrediting lead training courses. Section 254.179, Stats., requires that the Department establish rules containing standards for certifying premises, dwellings, or units as “lead free” or “lead safe.”

— Chapter DHS 181 relates to reporting of blood lead test results. This rule chapter was promulgated under the authority of ss. 250.04 (7) and 254.13 (2), Stats. Section 250.04 (7), Stats., is summarized above, and s. 254.13 (2), Stats., directs the Department to promulgate rules specifying requirements for persons reporting the results of lead screenings for children under 6 years of age.

— Chapter DHS 182 relates to lead poisoning or lead exposure prevention grants. This rule chapter was promulgated in accordance with s. 254.151, which directs the Department to establish rules for awarding lead poisoning or lead exposure grants appropriated under s. 20.435 (1) (ef), Stats.

Related statute or rule

Sections 250.04 (7), 254.13 (2), 254.151, 254.156, 254.167, 254.172, 254.176 (1) and (3), 254.178, and 254.179, Stats.

Plain language analysis

In 2021, the CDC lowered the blood lead level at which it recommends intervention in cases of lead poisoning. The CDC now recommends public health interventions at 3.5 µg/dL, rather than 5 µg/dL, the current value provided in s. 254.11 (9), stats. The Department is therefore obligated, by s. 254.156, Stats., to promulgate a rule defining lead poisoning or lead exposure in s. DHS 181.03 (10) to correspond to the blood lead level specification set by the CDC.

Sections DHS 163.03 (67) and 182.03 (10) also contain definitions of lead poisoning or lead exposure that are inconsistent with the blood lead level specification set by the CDC. Therefore, the Department will modify these definitions to correspond to the CDC blood lead reference value.

Based on the mandate to promulgate rules under s. 254.156, Stats., there are no reasonable alternatives to the proposed rulemaking.

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

The CDC uses a blood lead reference value of 3.5 µg/dL to identify children with blood lead levels that are much higher than most children’s levels. When a child has a blood lead test result at 3.5 µg/dL or greater, CDC recommends taking certain actions, including identifying source(s) of lead exposure through an environmental investigation of the child’s home, as well as other nursing and medical follow-up actions.

Comparison with rules in adjacent states

Illinois:

"Elevated Blood Lead Level" or "EBL" means a blood lead level greater than or equal to 5 micrograms per deciliter (µg/dL) of whole blood. “Lead poisoning” means the condition of having an EBL. [77 IL Admin Code Section 845.20](#). Illinois Administrative Code requires case management in all cases of confirmed EBLs, and an environmental investigation for all cases of children or pregnant persons with a confirmed EBL.

Iowa:

“Elevated blood lead (EBL) child” means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter. No definition for lead poisoning in rule. [Iowa Admin. Code 641.68.2](#).

The local board shall appoint a certified elevated blood lead (EBL) inspector/risk assessor to conduct elevated blood lead (EBL) inspections in residential dwellings and child-occupied facilities where an elevated blood lead (EBL) child lives, visits, or has recently lived. [Iowa Admin. Code 641—68.3\(135\)](#)

Michigan:

“Elevated blood level” or “EBL” means, for purposes of lead abatement, a confirmed concentration of lead in whole blood of 20 ug/dl, micrograms of lead per deciliter of whole blood, for a single venous test or of 15-19 ug/dl in 2 consecutive tests taken 3 to 4 months apart. For purposes of case management of children 6 years of age or less, elevated blood level means a confirmed concentration of lead in whole blood of 10 ug/dl. [MCLS 368-1978-5-54A, Section 333.5456](#). The Michigan Department of Health and Human Services recently revised its elevated blood level definition to 3.5 micrograms per deciliter in policy, specifically [HPE-531-101](#).

Minnesota:

"Elevated blood lead level" is defined in statute and was recently amended to read: “Elevated blood lead level” means a diagnostic blood lead test with a result that is equal to or greater than ~~ten~~ 3.5 micrograms of lead per deciliter of whole blood in any person, unless the commissioner finds that a lower concentration is necessary to protect public health.” The law amending the definition was signed by Governor Walz on May 24, 2023. [Minn. Stat. s. 144.9501, subd. 9.](#); see also [Laws of Minnesota 2023, Chapter 70, Article 4, s. 45](#). The statute permits the Commissioner of the Minnesota Department of Health to set a lower concentration if necessary to protect public health.

Summary of factual data and analytical methodologies

The proposed rule is based on the CDC’s blood lead reference value, which was based on the 97.5th percentile of blood lead distribution in children in U.S. children ages 1–5 years, as determined in the National Health and Nutrition Examination Survey data from 2015–2016 and 2017–2018. Children with blood lead levels at or above the reference value are among the top 2.5% of U.S. children with the highest blood lead levels. CDC updated their blood lead reference value to 3.5 µg/dL to acknowledge the importance of and allow states to provide prompt public health services to children to help mitigate health effects and remove or control lead exposure sources.

Analysis and supporting documents used to determine effect on small business

Entities that may be affected include, any physician, nurse, hospital administrator, director of a blood drawing site or local health officer who obtains blood samples or orders blood samples to be taken from persons to determine the concentration of lead in the blood, and directors of clinical laboratories that analyze human blood samples to determine the concentration of lead in blood.

Based on an analysis of current lab reporting times for blood lead test results, the proposed rule is anticipated to have little or no economic impact to labs and clinics if promulgated. Laboratories and other blood lead testing sites will need to submit test results of 3.5 – 4.9 µg/dL to the Department within 48 hours, where currently only results of 5 µg/dL or higher must be reported within 48 hours. Due to the increased efficiency of electronic reporting, in 2023 over 85% of test results between 3.5-4.9 µg/dL (“tests”) were already reported to the state within 48 hours. Moreover, 88% of labs (97 out of 110 total) reported more than half of their tests within 48 hours, regardless of the rule. Only four labs did not report any tests within 48 hours, and they each only had one test result between 3.5-4.9 µg/dL to report. Meaning, if the proposed rule had been in place for 2023, it would have resulted in only a 17% increase in the total number of tests that needed to be reported within 48 hours compared to what was reported.

Effect on small business

The proposed rule is expected to have minimal or no overall long-term economic effect on small businesses.

Agency contact person

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Statement on quality of agency data

The data used by the Department to prepare these proposed rules and analysis comply with s. 227.14 (2m), Stats.

Place where comments are to be submitted and deadline for submission

Comments may be submitted to the agency contact person that is listed above until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and to the department's website, at <https://www.dhs.wisconsin.gov/rules/active-rulemaking-projects.htm>. Comments may also be submitted through the Wisconsin Administrative Rules Website, at: <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. DHS 163.03 (67) is amended to read:

DHS 163.03 (67) "Lead exposure" means a level of lead in the blood of ~~10~~ 3.5 or more micrograms per 100 milliliters of blood.

SECTION 2. DHS 181.03 (10) is amended to read:

DHS 181.03 (10) "Lead poisoning or lead exposure" ~~has the meaning given in s. 254.11 (9), Stats.~~ means a level of lead in the blood of 3.5 or more micrograms per 100 milliliters of blood.

SECTION 3. DHS 182.03 (10) is amended to read:

DHS 182.03 (10) "Lead poisoning or lead exposure" ~~has the meaning given in s. 254.11 (9), Stats.~~ means a level of lead in the blood of 3.5 or more micrograms per 100 milliliters of blood.

SECTION 4. EFFECTIVE DATE. This rule shall take effect upon publication in the state newspaper and shall remain in effect as provided in s. 227.24 (1) (c) and (2), Stats.