



WISCONSIN APARTMENT ASSOCIATION

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February 5, 1999

Senator Judy Robson
Chair, Joint Committee on Administrative Rules
Wisconsin State Senate
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Robson,

I am writing to you today to present to you a concern that I have recently discovered with Emergency Clearinghouse Rule 97-091 the HSS Chapter 163 relating to certification to perform lead abatement that is in front of your Administrative Rules Committee. I understand the need to certify inspectors, risk assessors and those involved in the procedure of lead paint removal are needed. However, the concern I have is and correct me if I am wrong is that nowhere in the rule is mentioned the words "bonded or insured" in the verbiage.

Not having people mandated to be bonded or insured exposes the property owner to a huge liability not to mention the public at large. It has also come to my attention that people and businesses that are already certified to perform lead paint removal cannot be insured or when it is made available to them the cost of insurance is prohibitive to perform this work. This will create non-certified people and companies performing this work in the state.

I would like to inquire at this time if the Department of Family Services is aware of this existing problem and what remedy may be available to this industry.

Thank you for your interest in this matter.

Sincerely,

Robert R. Dennik
Director of Government Affairs

Wisconsin Lead Certification Program Description

Bureau of Occupational Health
Asbestos & Lead Section
1414 East Washington Avenue, Room 117
Madison, WI 53703-3043
(608) 261-6876

When Lead Certification is Required

HFS 163, Wis. Adm. Code, applies to lead abatement, HUD lead-based paint grant-funded interim control activities, clearance, lead inspections, lead hazard screens and lead risk assessments conducted in pre-1978 dwellings or child-occupied facilities. *Under HFS 163, Wis. Adm. Code, only a properly certified person may do any of the following:*

- Perform, supervise or offer to perform or supervise an abatement, lead inspection, lead hazard screen, risk assessment, clearance or project design involving one of the following:
 1. A child occupied facility or the real property on which the child-occupied facility stands.
 2. Target housing or the real property on which the target housing stands when the target housing or real property is not owned by the individual performing the work.
 3. Target housing or the real property on which the target housing stands when the target housing or real property is rented or occupied by an individual other than the target housing's owner or the owner's immediate family.
 4. Target housing or the real property on which the target housing stands when a child residing in the target housing has been identified as having a confirmed concentration of 20 or more micrograms of lead per deciliter ($\mu\text{g}/\text{dl}$) of whole blood for a single venous test or a concentration of 15-19 $\mu\text{g}/\text{dl}$ in 2 consecutive tests taken 3 to 4 months apart.
- Perform interim controls when funded by a HUD lead-based paint grant.
- Perform a lead hazard reduction when certification is required under an order issued by a court, the department, another state agency or a local agency.

Lead Company Certification

Effective August 30, 1999 companies, including governmental agencies, must be certified in order to perform, supervise or offer to perform or supervise a lead-based paint activity. Companies may apply for certification after August 30, 1998. Although the proposed annual fee for company certification is \$50, no fee is required until new rules take effect in 1999. Recertification is required annually on November 1st. *Conditions of company certification include:*

- Must agree to employ or contract with only certified persons to perform or supervise regulated lead-based paint activities
- Must agree to follow work practice standards
- Must have an owner or employee authorized to act on company's behalf certified as a lead supervisor before offering lead hazard reduction activities
- Must have an owner or employee authorized to act on company's behalf certified as a lead risk assessor before offering lead management activities

- Individual Certification

An individual applying for initial certification in any discipline identified must be 18 years of age or older, must meet applicable education and experience qualifications, must successfully complete certification training requirements and, to be certified as a lead (Pb) inspector, risk assessor or supervisor, must pass a certification examination.

Lead (Pb) Discipline	Required Training	Required Education and Experience	Annual Fee (Proposed for 1999)	Certification Examination Required	Required Refresher Training (within 3 years)
Worker-Homeowner	•Worker-homeowner or Worker	None	None (\$25/3 yrs.)	No	Worker-homeowner or worker, 1 day
Worker	•Worker-Safety •Worker	None	\$50 (\$50)	No	Worker, 1 day
Supervisor	•Worker-Safety •Worker •Supervisor	One of the following: · 1 year experience as a certified lead worker or supervisor · 2 years experience in a related field	\$100 (\$125)	Yes	Supervisor, 1 day
Project Designer	•Worker-Safety •Worker •Supervisor •Project Designer	One of the following: · BA/BS degree & 1 year experience in building construction & design or related field · 4 years experience in building construction & design or related field	\$250 (\$175)	No	Project Designer, ½ day
Inspector	•Worker-Safety •Inspector	None	\$150 (\$150)	Yes	Inspector, 1 day
Risk Assessor	•Worker-Safety •Inspector •Risk Assessor	One of the following: · BA/BS degree & 1 year experience in related field · AA/AS degree & 2 years experience in related field · High School diploma & 3 years experience in a related field · Professional certification as an IH, Professional engineer, registered architect, or related field	\$250 (\$175)	Yes	Inspector, 1 day and Risk Assessor, 1 day

Lead Training

To meet certification requirements, training must be taken from a course accredited by DHFS or accredited by another EPA-authorized program and approved by DHFS.

- **Worker Safety** – This non-accredited training is a prerequisite to all accredited lead courses, except worker-homeowner. The worker safety training must cover OSHA lead in construction worker safety requirements on personal protection equipment, hygiene practices, basic lead engineering controls, general worker safety issues, and must include hands-on practice.
- **Worker-Homeowner** – 16-hours
- **Worker** – 16-hours (prerequisite to Supervisor)
- **Supervisor** – 16-hours (prerequisite to Project Designer)
- **Project Designer** – 8-hours
- **Inspector** – 24-hours (prerequisite to Risk Assessor)
- **Risk Assessor** – 16-hours

Wisconsin Lead Certification and Training Accreditation Program History

The Bureau of Occupational Health (BOH), Asbestos and Lead Section, of the Wisconsin Department of Health and Family Services (DHFS) administers a lead certification and training accreditation program under the provisions of Chapter 254, Wis. Statutes. Related lead services authorized under ch. 254, Wis. Stats., including exposure screening, medical case management and reporting requirements, are administered by the Wisconsin Childhood Lead Poisoning Prevention Program of the Bureau of Environmental Health. The lead certification and training accreditation and program is administered with program revenues and funds from U.S. Environmental Protection Agency (EPA) lead program development grants.

Under ch. 254, Wis. Stats., program rules must meet but not exceed regulations promulgated by EPA under s. 402 of the Toxic Substances Control Act (TSCA), as created under section 1021 of P.L. 102-550. TSCA also requires the State certification program be approved by EPA in accordance with regulations promulgated under sec. 404 in order for State certification to be recognized after August 30, 1998.

The first lead rules under ch. HSS 163, Wisconsin Administrative Code, took effect in July 1993. These first rules were published by emergency order to enable the Wisconsin Childhood Lead Poisoning Prevention Program and the Department of Administration's Division of Housing to implement a grant from the U.S. Department of Housing and Urban Development. Funds for lead hazard reduction projects under this grant could be used only when the work was conducted by properly trained and certified lead workers and supervisors. Therefore, the original rules covered training and certification of lead workers and supervisors and the accreditation of initial and refresher lead worker and supervisor training courses.

In February 1997, the lead rules were amended by emergency order of DHFS in response to EPA's issuance of real estate disclosure regulations. Under these regulations, a lead inspection or risk assessment could be requested before a contract to purchase became binding. Certification requirements for lead inspectors, risk assessors and project designers and accreditation of the related training courses were added in accordance with final EPA regulations for lead training and certification at 40 CFR Part 745, Subparts L and Q, published August 1996. In addition, an optional certification examination process was established to allow individuals to take the exam before it became mandatory. Permanent rules replaced the emergency rules on November 1, 1997.

The rules were again amended by emergency order of DHFS in August 1998. These emergency rules made the final changes necessary for the state lead training and certification program to qualify for EPA authorization under 40 CFR Part 745 Subpart Q. Major changes included the addition of work practice standards, a mandatory state certification examination, certification of companies offering or performing lead-based paint activities, and a wider variety of enforcement options.

On August 31, 1998, DHFS submitted an application to EPA for authorization to administer and enforce a state lead training and certification program. The Wisconsin lead training and certification program administered by BOH received full authorization effective January 27, 1999.

Hearings were held on proposed final rules, repealing and recreating ch. HFS 163, Wis. Adm. Code, at Madison, Eau Claire, Waukesha and Green Bay in November and December 1998. These proposed final rules revised and added fees, revised principal instructor qualifications, established a common November 1 expiration date for company certification and guest instructor approval, revised course accreditation to allow for either a 2-year or a 4-year term, and limited approval of a principal instructor to 12 months or the date the instructor's qualifying certification expires, whichever is earlier. The final draft form was submitted to the legislature on February 8, 1999, as Clearinghouse Rule 98-155.

BOH currently certifies the following: 33 lead companies, 72 lead workers, 630 lead supervisors, 38 lead inspectors, and 208 lead risk assessors.