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Department of Health and Family Services

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August 30, 2001

The Honorable Fred Risser, President
Wisconsin State Senate
119 Martin Luther King, Jr., Blvd., Suite 501
Madison, WI 53702

The Honorable Scott Jensen, Speaker
Wisconsin State Assembly
1 East Main, Suite 402
Madison, WI 53702

Re: Clearinghouse Rule 00-172

HFS 163, relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status.

Gentlemen:

In accordance with the provisions of s. 227.19 (2), Stats., you are hereby notified that the above-mentioned rules are in final draft form. This notice and the report required by s. 227.19 (3), Stats., are submitted herewith in triplicate.

The rules were submitted to the Legislative Council for review under s. 227.15, Stats. A copy of the Council's report is also enclosed.

If you have any questions about the rules, please contact Gail Boushon at 267-2289.

Sincerely,



Larry Hartzke
Administrative Rules Manager

cc Gary Poulson, Deputy Revisor of Statutes
Senator Judy Robson, JCRAR
Representative Glenn Grothman, JCRAR
Gail Boushon, Division of Public Health
Russ Pederson, Secretary's Office

**PROPOSED ADMINISTRATIVE RULES – HFS 163
ANALYSIS FOR LEGISLATIVE STANDING COMMITTEES
PURSUANT TO S. 227.19 (3), STATS.**

Need for Proposed Rules

The Department is authorized under s. 254.176, Stats., to establish by rule certification requirements for persons who perform or supervise lead-based paint activities, including lead hazard reduction or lead management activities. These rules are subject to the limitations under ss. 250.041 and 254.115, Stats. Under s. 254.178, Stats., any training course that is represented as qualifying persons for certification must be accredited by the Department and the instructors approved by the Department. Subject to review by a technical advisory committee under s. 254.174, Stats., the Department is authorized under s. 254.167, Stats., to establish procedures for conducting lead inspections, under s. 254.172, Stats., to promulgate rules governing lead hazard reduction, and under s. 254.179 to promulgate rules to establish a program of issuing, registering, and maintaining certificates of lead-free status and lead-safe status. In addition, the Department is given broad responsibility and authority under s. 254. 15, Stats., to develop and implement a comprehensive statewide lead poisoning prevention and treatment program and under s. 250.04, Stats., to protect the public's health.

On May 22, 2000, 1999 Wisconsin Act 113 was signed into law. Act 113 requires the Department to review local ordinances and promulgate rules using a research-based methodology. Further, the Department was directed to consult with an advisory committee on the proposed rules. These rules must establish all of the following:

- Standards that a premises, dwelling or unit of a dwelling must meet for issuance of a certificate of lead-free status or lead-safe status.
- A process for issuing the certificates and registering the properties for which certificates are issued.
- Procedures for revoking a certificate, and the period of validity for a certificate.
- What interim lead hazard control measures a new owner must take in vacant units when immunity from liability is provided during the first 60 days after acquiring a new dwelling.
- The requirements for a training course of up to 16 hours that property owners, their agents and employees must complete if seeking certification.
- The scope of the lead investigation and lead hazard reduction activities that may be performed following certification.

On December 1, 2000, the Department published an emergency order revising ch. HFS 163 to divide required training into smaller independent modules to allow individuals to complete the least amount of training necessary to safely and accurately perform the lead-based paint activities for which the individual becomes certified. In addition, the Department:

- Divided lead hazard reduction activities into those that are low-risk and high-risk.
- Divided site management activities into project design and supervision of low-risk versus high-risk activities.
- Divided lead investigation activities conducted by lead risk assessors into sampling, inspection, and hazard investigation.
- Revised the definitions, training and certification requirements and accreditation standards to reflect these categories of activities.

In promulgating these revisions to the certification and training accreditation requirements under chapter HFS 163, the Department sought to meet the needs of all the parties effected by training or certification requirements under State, federal or local lead regulations.

Responses to Clearinghouse Recommendations

The Department submitted the proposed rules to the Legislative Council Rules Clearinghouse for review twice; first on December 12, 2000 and subsequently on May 21, 2001. The second submittal followed the Department's belated request for the Department of Administration to prepare a report on the effect of the proposed rules on housing in Wisconsin pursuant to s. 227.115, Stats. Given that, under s. 227.115, Stats., the Department was supposed to receive the report before submitting the proposed rules to the Rules Clearinghouse, the Department submitted the rules to the Rules Clearinghouse a second time. During the intervening period, however, the Department received a substantial number of comments on its proposed rules. Consequently, the rules the Department submitted to the Rules Clearinghouse in May, 2001 were significantly different from those it submitted in December, 2000. To facilitate Rules Clearinghouse understanding and review of the May, 2001 proposed rules, the Department submitted a draft indicating exactly how the May, 2001 rules differed from the December, 2000 submission. The Department accepted all of the comments the Rules Clearinghouse communicated in their second (June, 2001) review of the proposed rules. Moreover, with the following two exceptions, the Department accepted all comments offered by the Rules Clearinghouse with respect to the Clearinghouse's first (December, 2000) review of the proposed rules. Since the two comments also apply to the May, 2001 version of the proposed rules, the Department's responses are as follows:

5.c. Comment: In 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?

Response: Yes, it is the intent of the rule that the definition of "child-occupied facility" would include a grandparent's house that was built before 1978 and is visited regularly by a small child. The house would also be included in the definition of target housing, which includes most pre-1978 residences regardless of occupancy. These definitions and intent are consistent with EPA regulations under which the State lead training and certification program is authorized.

5.w.(4) Comment: 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?

Response: Yes, it is the intent of the rule to remind the instructor that this might be necessary, but to leave the decision to the instructor.

Public Review

The Department held five public hearings on the proposed permanent rules and the emergency rules. The hearings were held in January 2001 in Milwaukee, Green Bay, Wausau, Eau Claire and Madison. One hundred eighteen people attended the hearings. The Department received oral testimony or written comments from 81 people.

In response to comments received during public review of the proposed rules, the Department made numerous changes, as described in this report.

Final Regulatory Flexibility Analysis

The proposed rule will affect small businesses as defined in s. 227.114 (1) (a), Stats. There are 286 certified lead companies in Wisconsin, of which at least 80% have fewer than 25 employees. There are five providers of training courses. Four of the training providers are companies and one is operated by a labor union. In addition, the proposal includes an option for property owners to obtain a certificate of lead-free status or lead-safe status in exchange for immunity from liability when a child is lead poisoned. The standards and certificates of lead-free status and lead-status will affect rental real estate owners who elect to participate. Many of these owners could be classified as small businesses. Therefore, the Department developed the rule only after careful consideration of the cost and administrative burden to affected parties.

In proposing standards that must be met in order for a real estate owner to receive a certificate of his or her building being lead-free or lead-safe, the Department continually weighed the cost to achieve or maintain a standard against the risk of a child being lead poisoned.

Training for certification was established in modules that allow easy movement to higher discipline levels after completing additional training without having to repeat information. This reduces the required initial amount of time and money, before a person may be sure of his or her commitment, and reduces barriers to upward movement within the lead industry.

Minimum reporting requirements will be placed on trainers and lead professionals. The Department considers the information proposed to be required of property owners minimally essential for awarding certificates of lead-free or lead-safe to a structure's owner. Such certifications form the basis for the owner's immunity from liability. Therefore, reporting requirements cannot be reduced for "small businesses."

Compliance and reporting requirements have been simplified and consolidated wherever possible while:

1. Assuring building owners a basis for immunity from liability.
2. Providing the Department adequate monitoring and enforcement information.
3. Providing the public sufficient information about individual buildings.
4. Providing the legislature with progress reports mandated in 1999 Wisconsin Act 113.

Schedules and deadlines are limited to what the Department considers to be essential for program operation. Since the proposed rule offers immunity from legal liability if specified standards necessary for ensuring the physical health of occupants are met, the compliance standards must be uniform for all parties and cannot be lessened simply because a structure's owner meets the statutory definition of a small business.

Fees were established at levels expected to be sufficient to support the program and slowly repay GPR startup funds authorized by the legislation, without providing an excess of funds. Since many certification disciplines and all instructor approvals and course accreditations are issued for 2 years, the Department also had to consider fees that would be sufficient if revenues received in one year of the 2-year cycle were substantially greater than in the other year of the 2-year cycle.

**Summary of Public Hearings on Ch. HFS 163
Emergency and Proposed Permanent Rules
Clearinghouse Rule 00-172**

Public Hearing Locations

Five public hearings were held on the emergency rulemaking order and the proposed permanent rules, as follows:

January 12, 2001, in Milwaukee
January 16, 2001, in Green Bay
January 17, 2001, in Wausau
January 18, 2001, in Eau Claire
January 19, 2001, in Madison

Staff in attendance

Terry Moen, Director, Bureau of Occupational Health (BOH) (January 12 and 19)
Perry Manor, Chief, Asbestos and Lead Section, BOH (January 12 and 19)
Al Guyant, Training Officer, Asbestos and Lead Section, BOH (all)
Gail Boushon, Regulatory Specialist, Asbestos and Lead Section, BOH (all)
Shelley Bruce, Training Officer, Asbestos and Lead Section, BOH (January 19)
Steve Antholt, Training Officer, Asbestos and Lead Section, BOH (January 19)

Participation in the hearings

Participation is summarized below. The indication of support and opposition reflect the positions indicated on the registrations or written statements filed by the hearing participants.

Registered: 114

Support the rules: 3

Oppose the rules: 80

Position not indicated: 40

Oral testimony: 47

Written comments: 34

The hearing record remained open until January 29, 2001, for receipt of written comments. The following is a complete list of the persons who attended a public hearing or submitted written comments during the public review period ending January 29, 2001. With each individual's name and affiliation is an indication of the individual's position on the rule, as indicated on the hearing registration form, and whether or not the individual testified or provided written comments.

Following consideration of the hearing comments, the Department revised the rule and submitted it for review by the Lead Technical Advisory Committee (LTAC). The Department made additional revisions to the rule in response to comments from LTAC members. Comments received from LTAC members after the public comment period are not reflected in this report.

**Public Hearing Attendees and Persons Submitting Written Comments
During Public Comment Period Ending January 29, 2001**

Name and address	Position	Action
1. Richard Staff, Wisconsin Realtors Association Madison, WI	Not indicated	Spoke at hearing and provided written comments
2. Carl Bayerl Milwaukee, WI	Not indicated	Spoke at hearing
3. Richard Sommer Stevens Point, WI	Not indicated	Spoke at hearing
4. Orville Seymer, Apt. Assn. of Southeastern WI Milwaukee, WI	Oppose	Spoke at hearing
5. Jerald Peterson New Berlin, WI	Not indicated	Spoke at hearing
6. Robert Koch, Koch Management Shorewood, WI	Oppose	Spoke at hearing and provided written comments
7. Janet Schlee, 2300 Block Holton St. Milwaukee, WI	Oppose	Spoke at hearing
8. David Bybee, WI Apartment Assn. Racine, WI	Not indicated	Spoke at hearing
9. Steve Falek, Milwaukee Housing Authority Milwaukee, WI	Oppose	Spoke at hearing
10. Rich Gaeta Milwaukee, WI	Oppose	Spoke at hearing
11. Robert Dennik, WI Apartment Assn. Madison, WI	Not indicated	Spoke at hearing
12. Francisco Camacho Milwaukee, WI	Not indicated	Spoke at hearing and provided written comments
13. Sharon Pendleton, Milw. Health Dept. CLLPP Milwaukee, WI	Oppose	Spoke at hearing and provided written comments
14. Gerald Sobczak Milwaukee, WI	Not indicated	Spoke at hearing
15. Martha Hess (Rep. Sykora) Madison, WI	Oppose	Attended
16. Kelly McDowell, Apt. Assn. of Southeastern WI Madison, WI	Not indicated	Attended
17. Eliza Burton Milwaukee, WI	Not indicated	Attended
18. Gary Bottoni Milwaukee, WI	Not indicated	Attended and provided written comments
19. Jeff Chitko Milwaukee, WI	Not indicated	Attended and provided written comments
20. Robert Day, Lakeshore Apt. Assn. Sheboygan, WI	Opposed	Spoke and provided written comments
21. John Grove Shorewood, WI	Not indicated	Attended
22. Myrla Hand Milwaukee, WI	Not indicated	Attended
23. Danielle Wilson Milwaukee, WI	Support	Attended

24.	Lawrence Strauss Milwaukee, WI	Not indicated	Attended
25.	Humdah Salahadyn, Community Lead Org. Milwaukee, WI	Not indicated	Attended
26.	Sara Schubert Milwaukee, WI	Oppose	Attended and provided written comments
27.	Plait Jeis Milwaukee, WI	Not indicated	Attended
28.	Herman (Joe) Seegers Jr. Appleton, WI	Oppose	Spoke at hearing
29.	Susan Anderson, Manitowoc Co. Apt. Assn. Two Rivers, WI	Oppose	Spoke at hearing and provided written comments
30.	Larry Veldre Two Rivers, WI	Oppose	Spoke at hearing
31.	Janet Gollnick, Apartment Assn. Green Bay, WI	Not indicated	Spoke at hearing
32.	Ronald Scheid, Fox Valley & WI Apartment Assn., Shiocton, WI	Oppose	Spoke at hearing and provided written comments
33.	Tom Delsart Green Bay, WI	Oppose	Spoke at hearing and provided written comments
34.	Michelle Litsens Green Bay, WI	Oppose	Spoke at hearing and provided written comments
35.	Kevin Eismann Kaukauna, WI	Oppose	Spoke at hearing
36.	Tom Demerse Green Bay, WI	Not indicated	Spoke at hearing
37.	David Templeton, NEWCAP Oconto, WI	Not indicated	Spoke at hearing
38.	David Kozlowski, FVAA (WAA) member Appleton, WI	Oppose	Spoke at hearing
39.	Kevin King, City of Green Bay Green Bay, WI	Not indicated	Spoke at hearing
40.	Tom Dennee, Integrated Community Svcs Green Bay, WI	Oppose	Attended and provided written comments
41.	Gail Heuser Greenville, WI	Oppose	Attended and provided written comments
42.	Richard Kinison, Fox Valley Apt. Assn. Menasha, WI	Oppose	Attended and provided written comments
43.	Rick Drewa Appleton, WI	Oppose	Attended and provided written comments
44.	Andrew Anderson Two Rivers, WI	Oppose	Attended
45.	Mike Meetz Appleton, WI	Oppose	Attended and provided written comments
46.	Doug Maas Appleton, WI	Oppose	Attended and provided written comments
47.	Steven Halverson Manitowoc, WI	Oppose	Attended and provided written comments
48.	Rob Miller Green Bay, WI	Oppose	Attended and provided written comments

49.	Patrick Faulds, Brown Co. Multifamily Assn. Green Bay, WI	Oppose	Attended
50.	Tom George, Multifamily Assn. Green Bay, WI	Oppose	Attended
51.	Keith Pamperin, Brown Co. Public Housing Auth., Green Bay, WI	Oppose	Attended and provided written comments
52.	Maureen Freeborg, Brook Park Apts & AANW Green Bay, WI	Oppose	Attended and provided written comments
53.	Leo Yelle Green Bay, WI	Oppose	Attended and provided written comments
54.	Joleen Diley, Fox Valley Apt. Assn. Fremont, WI	Oppose	Attended
55.	Ron Diley, Fox Valley Apt. Assn. Fremont, WI	Oppose	Attended
56.	Richard Christensen, Fox Valley Apt. Assn. DePere, WI	Oppose	Attended
57.	Frena Scheid, Fox Valley Apt. Assn. Shiocton, WI	Oppose	Attended
58.	Kevin LaPlante, Fox Valley Apt. Assn. Appleton, WI	Oppose	Attended
59.	Patricia Hendricks, KOS Management Systems Green Bay, WI	Not indicated	Attended
60.	Henry Drechsler Kaukauna, WI	Oppose	Attended and provided written comments
61.	Nancy West Appleton, WI	Oppose	Attended
62.	Raymond West, Fox Valley Apt. Assn. Appleton, WI	Oppose	Attended and provided written comments
63.	Donald Day, City of Neenah Health Dept. Neenah, WI	Not indicated	Attended
64.	Gloria Bigelow Green Bay, WI	Not indicated	Attended and provided written comments
65.	Daryl Kurtenbach Stevens Point, WI	Oppose	Spoke at hearing
66.	Chris Harris, Central WI Apt. Assn. Stevens Point, WI	Oppose	Spoke at hearing
67.	Rich Sommer Stevens Point, WI	Not indicated	Spoke at hearing and provided written comments
68.	Henry Korger Stevens Point, WI	Oppose	Spoke at hearing
69.	Gerald Shidell, Northwoods Housing Assn. Rhineland, WI	Oppose	Spoke at hearing and provided written comments
70.	John Fischer, Wausau Area Apt. Assn. Schofield, WI	Oppose	Spoke at hearing
71.	Jon Radtke Wausau, WI	Oppose	Spoke at hearing
72.	Tom Gerum Wausau, WI	Oppose	Spoke at hearing
73.	Phil Postelnik Wausau, WI	Not indicated	Spoke at hearing

74.	Theresa Burns-Gilbert, Monroe Co. Housing Authority, Sparta, WI	Not indicated	Spoke at hearing
75.	Deborah Burger Wausau, WI	Oppose	Spoke at hearing and provided written comments
76.	Mike Chelf Irma, WI	Oppose	Attended and provided written comments
77.	Jeff Theiler Tomahawk, WI	Oppose	Attended and provided written comments
78.	Vernon "Bud" Meister Marshfield, WI	Oppose	Attended
79.	Leon Burger Wausau, WI	Oppose	Attended
80.	Carroll Ross Stevens Point, WI	Oppose	Attended and provided written comments
81.	James Ross Stevens Point, WI	Oppose	Attended
82.	Persy Ross Stevens Point, WI	Oppose	Attended
83.	Bonita Ross Stevens Point, WI	Oppose	Attended
84.	Gerald Ross Stevens Point, WI	Oppose	Attended
85.	Virginia Clark Stevens Point, WI	Oppose	Attended
86.	Shirley Multhauf Stevens Point, WI	Oppose	Attended
87.	Beverly West Stevens Point, WI	Oppose	Attended and provided written comments
88.	Michelle Schwoch, City Health Dept. Wausau, WI	Support	Attended and provided written comments
89.	Larry Buchburger Wausau, WI	Not indicated	Attended
90.	Steven Ott Ringle, WI	Oppose	Attended and provided written comments
91.	Dennis McGill Rhineland, WI	Oppose	Attended and provided written comments
92.	Don Guillaume Schofield, WI	Oppose	Attended and provided written comments
93.	John Kent Rothschild, WI	Oppose	Attended
94.	Sandrea Radtke Rothschild, WI	Oppose	Attended
95.	Joe Hansen Beloit, WI	Oppose	Spoke at hearing
96.	Willie Petzrick Beloit, WI	Oppose	Spoke at hearing
97.	Paulette Steinke Beloit, WI	Not indicated	Spoke at hearing
98.	Mary Malaney Madison, WI	Oppose	Spoke at hearing

99.	Carol Monson, South Central WI Apt. Assn Poynette, WI	Oppose	Spoke at hearing and provided written comments
100.	Art Luetke, WI Apt. Assn. Madison, WI	Oppose	Spoke at hearing
101.	Tom Sykora Chippewa Falls, WI	Oppose	Spoke at hearing and provided written comments
102.	Lisa Clark, City of Eau Claire Housing Authority Eau Claire, WI	Oppose	Spoke at hearing and written comments
103.	Dale Goshaw, Landlords of the Chippewa Valley, Eau Claire, WI	Not indicated	Spoke at hearing
104.	Charles Virnig Marshfield, WI	Not indicated	Spoke at hearing and provided written comments
105.	Mary Ann Albertson, Chippewa Valley Apt. Assn., Eau Claire, WI	Oppose	Attended
106.	Roger Sawatzky Eau Claire, WI	Not indicated	Attended
107.	Tom Gordon, City of Eau Claire Hosing Division, Eau Claire, WI	Not indicated	Attended and provided written comments
108.	Joan Sosalla, Housing Authority of Trempealeau Co., Whitehall, WI	Not indicated	Attended
109.	Mark Nelson Eau Claire, WI	Oppose	Attended
110.	Noah Fiedler Madison, WI	Oppose	Attended
111.	John Hausbeck, Madison Dept. of Public Health, Madison, WI	Not indicated	Attended
112.	James Bible Madison, WI	Not indicated	Attended
113.	Pam Christenson, Dept. of Commerce Madison, WI	Not indicated	Attended
114.	Debra Peterson Conrad, WI Realtors Assn. Madison, WI	Oppose	Attended
115.	Martha Hess (Representative Tom Sykora) Madison, WI	Oppose	Attended
116.	Vicki Garthwaite, Fond du Lac Apartment Assn., Fond du Lac, WI	Oppose	Attended and provided written comments
117.	Helen Streekstra Wis Rapids, WI	Oppose	Attended and provided written comments
118.	Leo Yelle Green Bay, WI	Oppose	Attended and provided written comments
119.	Thomas Wittkopf, Marathon Co. Health Dept. Wausau, WI	Support	Provided written comments
120.	Gary Schwefel via email – no address indicated	Not indicated	Provided written comments
121.	Dennis Kuennen Marshfield, WI	Not indicated	Provided written comments
122.	Anne Walsh, Lead Industries Association, Inc. Washington, DC	Not indicated	Provided written comments

Audiotapes of the public hearings and written comments are available for review at the Asbestos and Lead Section, Room 139, 1 West Wilson Street, Madison, WI. The majority of the commenters did not recommend specific changes. Some comments related to lead issues that were outside the scope of the rule. Other comments were related to broad concerns about the impact of the rule. Most of the comments on specific provisions of the rule were submitted by one person. Specific comments are addressed in a table following the general comments.

General Comments

General comments were submitted by the following commenters: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 14, 18, 20, 26, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 45, 46, 47, 48, 51, 52, 53, 60, 62, 64, 65, 66, 67, 68, 69, 70, 71, 73, 74, 75, 76, 77, 80, 87, 90, 91, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 116, 117, 119, 120, 121.

General comments that are outside the scope of the rule:

- Funding is needed, such as 0.5% sales tax to pay for lead abatement or matching funds and to subsidize training.
- Tenants should also be responsible for reducing affects of lead-based paint.
- Lead manufacturers should also be held responsible.
- Liability should be different depending on the year the dwelling was built.
- Immunity provision should not sunset.
- Liability insurance needs to be available to landlords and persons doing lead work.
- Lead in water needs to be addressed.

General comments that relate to the rule:

- The Department failed to comply with its statutory duty to consult with the Lead Technical Advisory Committee (LTAC).
- The Department failed to follow the LTAC recommendations.

Response: The Department consulted with the LTAC during the development of the rule, as described in the rule analysis. The Department considered every recommendation of the LTAC, but did not include all recommendations in the rule, particularly recommendations that were not consistent with federal regulations or were not supported by available research. Due to the lengthy public discussion process before the rule was drafted and an early submission deadline in the Act, the Department was unable to submit the draft rules to the LTAC before the proposed rule was submitted to the Legislative Clearinghouse. The proposed rule was sent to LTAC members as soon as it was submitted to the Legislative Clearinghouse. LTAC members were welcome to comment on the rule during the public comment period. The Department also submitted draft revisions to the rule, which resulted from comments received during the public comment period, to the LTAC for comment.

- Unfair to landlords – all dwelling owners should have the same requirements.
- Too much regulation will reduce Section 8 (HUD) housing participation.
- Does not target slumlords who will not do this voluntarily.
- Need stronger incentives to participate.

Response: The rule applies to all dwellings, without regard to the type of occupancy or participation in HUD. Due to concerns over the resources needed if the program was mandatory rather than incentive-based, the drafters of Act 113 rejected making participation

mandatory except when a child has an elevated blood lead level. The Department understands that the Legislature intended the immunity from liability to be the incentive to participate in this program.

- Remember the purpose.
- Reduce the regulations.
- Reduce the paperwork.
- Keep the rule simple.
- Pro - the requirements are less stringent than the East Coast rules.

Response: As pointed out in the public hearing comments, one goal of this initiative is to encourage insurance companies to offer liability protection. Although 1999 Wisconsin Act 113 provides dwelling owners with limited liability protection, it does not and cannot stop a person from filing a lawsuit. If a dwelling owner has liability coverage for lead poisoning, the insurance company becomes involved in fighting the lawsuit. Insurance companies will not provide liability protection if the certificates do not provide sufficient assurance that they will not be parties to lead poisoning lawsuits. The standards for a lead-free certificate (s. HFS 163.41), standards for a lead-safe certificate (s. HFS 163.42), conditions for maintaining a certificate of lead-safe (s. HFS 163.42), requirements for training and certification before disturbing more than 2 square feet of lead-based paint on lead-safe property (s. HFS 163.43), and the lead-safe work practices (s. HFS 163.44) are all key components for providing this assurance.

In drafting the rule, the Department found that research is not currently available to indicate when a property is truly lead-safe or to determine how long a lead hazard reduction activity will last. In addition, recently published research results indicate that children with blood lead levels as low as 10 micrograms of lead per deciliter of blood may already suffer from the effects of lead. On standardized tests, these children had lower test scores and IQ levels. A drop in reading scores of approximately 1% was associated with every additional microgram of lead in a deciliter of blood. For these reasons, the Department feels that requirements of this rule that provide the occupant and the Department with information needed to monitor the condition of the property and compliance with lead-safe work practices is crucial to protecting children from lead exposure.

The Department agrees that rule should be as simple as possible, but found that it was not possible to simplify the rule, protect children from lead poisoning, and also keep the costs down. EPA has requirements that apply when abatement and lead investigation activities are performed. These EPA requirements affect the type and amount of training, certification requirements of individuals and companies, how work is done, and the paper work that must be completed and retained. Due to the EPA requirement, either all work is performed at the highest standard (EPA) or different standards apply according to the activity.

In the rule, the Department established different training, certification, and work practice standards depending on the risk involved and whether or not EPA requirements apply. The primary categories of activities are high-risk lead-based paint activities (activities that are most likely to create a lead hazard) and low-risk lead-based paint activities (activities that are less likely to create a lead-based paint hazard). These risk categories are further divided into abatement activities and activities that do not involve abatement. Since people commenting on the rule seemed to be more concerned with costs than simplicity, the Department retained the differences in requirements instead of compressing them into one set of high-level requirements. In addition to information provided in accredited training courses, the Department will prepare materials to explain the requirements of the rule.

- Do not be more stringent than HUD and EPA.
- Keep the federal government out.
- Landlords will stop participating in Section 8 (HUD).

Response: Neither EPA nor HUD has criteria for determining that a property is lead-safe. Under 40 CFR Part 745, Subpart D, EPA recently published regulations that identify lead-based paint hazards, but clearly state that these regulations are not intended to be used to establish what is lead-safe. The preamble to EPA's regulation at II. Overview, states:

"g. Limitations of the Hazard Standards. The hazard standards apply to conditions observed when the risk assessment was performed. The standards do not address the potential for a hazard to develop. The standards apply to target housing, but may be used as guidance for other residential property. Finally, the standards are intended to identify dangerous levels of lead, not housing that is free from risk associated with exposure to lead."

Under the proposed standards in Chapter HFS 163, property could be issued certificates of lead-safe status although they have identifiable lead-based paint hazards under the new EPA regulations. For example, EPA regulations address bare soil as a potential lead-based paint hazard without regard to the actual source of the lead, whereas the lead-free and lead-safe standards do not require soil to be tested. In addition, the State lead-safe standards allow up to 5 square feet of exterior deteriorated paint above 5'; EPA and HUD do not allow any.

EPA's regulations at 42 CFR Part 745, Subpart L, cover lead training, certification, and work practices for lead abatement and lead investigation activities in target housing and child-occupied facilities. Target housing includes rental property without regard to occupancy by children or by children with elevated blood lead levels. Chapter HFS 163, subchapters 1 to 4, contain the rules under which the Department administers a lead training and certification program in lieu of the EPA program. If the State fails to meet the EPA standards, EPA could also run its own program in Wisconsin.

EPA does not currently regulate work that disturbs lead-based paint other than lead abatement, whereas the Department requires certification to perform most activities that disturb more than 2 square feet on lead-safe property. This is done to ensure that persons performing the work have the information necessary to work in a lead-safe manner and is consistent with LTAC recommendations. EPA, however, has been conducting research on the effects of renovation and remodeling on blood lead levels and is currently drafting regulations that will affect this work.

HUD's regulations under 40 CFR Part 745 require that certain lead-hazard reduction activities take place on specific federally owned or assisted residential properties, including Section 8 properties, and that persons performing these activities complete training on lead-safe work practices. The HUD requirements vary based on the housing category, whether rehabilitation is taking place, and the amount that HUD is financing. Some of these HUD requirements are not requirements of this rule. Chapter HFS 163 does not require landlords with Section 8 housing to do anything beyond what is already required for performing abatement and lead investigations, unless the landlord chooses to obtain a lead-free or lead-safe status for the property or a child residing on the property has an elevated blood lead level.

- Keep the costs down.
- Do not create a big bureaucracy; use a good faith system of enforcement.

Response: Wisconsin has approximately one million owner-occupied units and 500,000 tenant-occupied units that were built before 1978. Under s. 254.173, Stats., the Legislature established that the owner of a dwelling unit is granted limited immunity from liability after the property is issued a lead-safe or lead-free certificate. The Department was appropriated \$215,000 for 5 full time equivalent (FTE) positions and \$520,000 for development and administration of a registry of these certificates. The new positions include one FTE to process new certifications related to the registry, one FTE to process and monitor registration of certificates of lead-free or lead-safe status, and three FTEs to monitor and enforce the standards for issuing and maintaining certificates of lead-free or lead-safe status. After June 30, 2001, program revenues must pay the costs related to these positions. The Department has not requested additional staff or funding. The funds must be repaid once sufficient registry, training accreditation and certification fees are generated. The registry will be an Internet-based database that will provide necessary access to the public and to the certificate issuers, thus eliminating the need for a large number of data entry positions.

The fees for lead-free or lead-safe certificates were set by Statute. As directed by Statute, and as typically done for any fee-based program, the Department will review the revenues versus the actual costs at least every two years and adjust as needed. The greater the participation, the more likely it is that fees will not increase.

In regard to certification fees and the total costs to property owners, the Department considered all comments, then revised and reduced fees where possible. For example, the fee for certification as a lead-safe maintenance worker was reduced to a lifetime fee of \$50.

HFS 163 does not increase the cost of complying with federal regulations that apply to HUD-subsidized housing. The germane EPA regulations that drive HFS 163 are applicable to HUD housing in all states, not just Wisconsin.

- The costs of training and doing the work are a disincentive to participating.
- Who needs to be trained or certified and when is confusing.
- Training and certification requirements make it too difficult for owners to do work.
- 1 day of low-risk worker training is good.
- The rule does not provide the "owner/agent" program created by the legislature.

Response: Several changes have been made to reduce training and certification costs. When no abatement is involved, the rule is revised to state that no certification is required if less than 2 square feet of lead-based paint is disturbed, although work practice standards intended to ensure a lead-safe environment must be followed.

In order to provide a certification that does not have to meet all of the EPA requirements, lead-safe maintenance worker and lead-safe property manager certification for property owners and their employees are added to Subchapter 5 (s. HFS 163.43). People certified in these disciplines may not perform lead abatement. After completing a one-day accredited course, a lead-safe maintenance worker may perform low-risk lead-based paint activities, other than lead abatement. After completing two separate one-day courses, a lead-safe property manager may perform the same work as a lead-safe maintenance worker and as a sampling technician. A lead-safe property manager may take paint chip, soil and dust samples and perform limited clearance.

The rule is also revised to allow a lead low-risk worker to perform low-risk lead-based paint activities other than lead abatement without being supervised and without being part of a certified lead company. If property owners and their employees want to perform lead abatement, they may choose from the lead hazard disciplines that are open to everyone. Requirements for training and certification to perform lead abatement are not new; they have been in place since 1994.

Training costs for accredited courses run \$100-\$150 per day of training. For persons affected by HUD regulations, HUD is providing some free lead-safe maintenance/renovation training and free lead sampling technician training, and is expected to provide some financial assistance in the future.

The Department acknowledges that there are multiple disciplines to select from, but certification is not required in each discipline – only in the highest level of lead hazard reduction or lead investigation discipline that will allow a person do perform the activities they want to perform. The Department will prepare educational materials regarding the disciplines and training providers can assist a person with selecting the appropriate discipline.

The numerous choices are offered because it allows a person to stop at the level of training and certification appropriate to the work the person will be performing. It could be simplified by requiring every person to be trained and certified to perform all lead abatement and lead identification regulated by the State under EPA authorization. This would mean training and certification as a lead contractor supervisor (four days of training) and as a lead risk assessor (five days of training).

Comments on specific provisions:

	Comment	Department's Response
	HFS 163.03 Definitions – Subchapter I	
1.	<p>Abatement</p> <p>Commenter 1: This phrase needs to be restructured to ensure that (a) is not read as not being subject to the conditions set forth in (1), i.e., no design or intent standard if one is removing dust-lead. “1. Removal of lead-based paint or dust-lead. (b) An abatement project includes, but is not limited to, one of the following projects: see (a)”</p>	<p>Revised (a). EPA is reviewing the definition and will be providing additional guidance. Until such time, no additional changes will be made that may conflict with EPA.</p> <p>References: EPA definition at 745.63, published 1/5/2001.</p>
2.	<p>Bare soil</p> <p>Commenter 1: This definition fails to address exposure concerns due to a lack of detail. The definition should be revised to address exposure issues, i.e. does the covering provide a barrier to exposure?</p>	<p>Recommended change is declined. This definition is consistent with HUD regulations. The definition is not intended to define soil-containing lead hazards, only bare soil.</p> <p>References: HUD definition at 35.110, published 9/15/1999.</p>
3.	<p>Chewable Surface</p> <p>Commenter 1: This definition is ambiguous without definition of “interior and exterior surface” and elaboration on what “a young child can mouth or chew.” Also, “Young child” is not a defined term. These definitions should reflect the new federal definition regarding evidence of bite marks.</p>	<p>Deleted term and definition.</p> <p>References: HUD definition at 35.110, published 9/15/1999, and EPA definition at 745.63, published 1/5/2001.</p>
4.	<p>Child-occupied Facility</p> <p>Commenter 1: This definition needs to be revised as it arguably includes every home in which a child under 6 lives. The following language has to be better linked to the “license/school standard: “or 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.”</p>	<p>Recommended change is declined. This definition is consistent with “premises” in WI Statutes and “child-occupied facility” from federal regulations. The rule does not use the term child-occupied facility in a situation where a dwelling occupied or visited by a 6-year-old should be excluded. For purposes of a lead-free or lead-safe certificate, the lead investigator would use the dwelling protocol where people reside and the child-occupied protocol where a child occupies but people do not reside.</p> <p>References: 254.11 (10m), WI Statutes; EPA definition at 754.223, published 8/29/96.</p>
5.	Common Area	Revised.

	Comment	Department's Response
	<p>Commenter 1: What if there is a limited common area available to occupants of one unit? What does "available for use" mean? Isn't a roof used by tenants to place satellite dishes being "used?" The definition should focus on issues related to accessibility in the sense of contact with painted surfaces and access to hazards.</p>	<p>References: EPA definition at 745.223; HUD definition at 35.106.</p>
6.	<p>Component</p> <p>Commenter 1: The rule doesn't provide a meaningful definition of a "component." Simply adding the prior rule's note to the rule does not help. Under this language, everything in any building is a component. Given that the term is an integral part of several protocols, some effort must be made to distinguish components that present a risk of exposure to LBP hazards.</p>	<p>Revised but must remain consistent with federal definitions. When applying protocols, components that do not contain lead-based paint are not included.</p> <p>References: EPA definition at 745.223; HUD definition at 35.110.</p>
7.	<p>Containment</p> <p>Commenter 1: It is problematic, as well as unusual style, to define two terms within another definition. It would be more useful to define demarcation separately (as something other than "partial containment") because no one in the public will understand that "partial containment" is no containment at all.</p>	<p>Revised.</p> <p>References: HUD definition at 35.110.</p>
8.	<p>Deteriorated Paint</p> <p>Commenter 1: There should not be a presumption of LBP. Even the Antwaun court only spoke in terms of foreseeability. Instead, we recommend the rules use the concept that the paint will not be presumed "lead free" unless verified. Presumptions such as those in the rules as drafted, can have significant unintended legal consequences. Moreover, as drafted, the rule is inconsistent with the LTAC report recommendations. The LTAC recommendations should be adopted: Unsound lead-based paint, or deteriorated paint, is any paint that has not been proven to be lead-free and that is present on unkeyed (loose) plaster or is not securely bonded to the substrate or underlying layers of paint, as evidenced by a visual assessment and determination that paint is chalking, bubbling, blistering, scaling, flaking, or peeling or by conducting a patch test to determine whether the bond to the substrate is sound. Small chips, nail holes and hairline cracks typical of reasonable wear</p>	<p>Revised.</p> <p>References: s. 254.18, WI Statutes; HUD regulations: Sec. 35.120.</p>

	Comment	Department's Response
	and tear may be present when the substrate is sound.	
9.	<p>Dripline</p> <p>Commenter 1: It would be more useful to define "perimeter of a building." Something like: perimeter means the "outer boundary." This federal definition should be clarified.</p>	<p>Revised.</p> <p>References: EPA definition at 745.63.</p>
10.	<p>Dust-lead</p> <p>Commenter 1: If "surface dust" is not defined, does this suggest that dust-lead located other than on a surface is not "dust-lead"? Given the role this definition plays in the definition of lead hazards, this may be an important issue to consider.</p>	<p>Revised.</p> <p>References: EPA definition at 745.223; HUD definition at 35.110.</p>
11.	<p>Dwelling/Dwelling Unit</p> <p>Commenter 1: Why are the definitions of "dwelling" and "dwelling unit" so radically different? "Dwelling unit" is a good starting place for "dwelling" which currently includes nearly every construction trailer, every large commercial building which ever included an apartment, every former fire station, etc. that was originally designed for any amount of human habitation, etc. Clarification should be made on this point.</p>	<p>Revised.</p> <p>References: 254.11 (5), Stats.</p>
12.	<p>Encapsulant</p> <p>Commenter 1: It would be useful to improve this definition to clearly distinguish common paint materials which meet the letter of the proposed definition.</p>	<p>Revised. However, neither EPA nor HUD currently provides a standard for encapsulants.</p> <p>References: EPA definition at 745.223, published 8/29/96.</p>
13.	<p>Enclosure</p> <p>Commenter 1: Why are enclosures required to be mechanically fastened to the substrate? Many enclosures are fastened to something else, i.e., newly framed walls, the floor and the joists. Perhaps a clarification is needed.</p>	<p>Revised.</p> <p>References: EPA definition at 745.223, published 8/29/96; HUD definition at 35.110, published 9/15/99.</p>
14.	<p>Friction Surface</p> <p>Commenter 1: Absent any further definitions or clarifications, this definition would apply to essentially everything. It is the federal definition, but at a minimum, it should be clarified</p>	<p>Recommended change is declined. Definition is consistent with HUD and EPA regulations.</p> <p>References: EPA definition at 745.63, published</p>

	Comment	Department's Response
	<p>by note to focus on those surfaces which show signs of wear or which in ordinary operation or use are likely to be subject to friction.</p>	<p>1/5/2001, and HUD definition at 35.110, published 9/15/1999.</p>
15.	<p>High-risk LBP activity</p> <p>Commenter 1: LBP should not be presumed. The proposal requires an agency determination. Some objective standard be stated in the rules. The rule structure be modified to clearly state that the items enumerated below are not "High-risk lead-based paint activity(ies)" unless the above criteria are met.</p> <p>Removing lead-based paint from components, such as by chemical stripping, using a heat gun, hand scraping to bare wood, or using power tools with or without a dust collection system with a HEPA filter or full enclosure of the work area.</p> <p>This is not consistent with the LTAC recommendations – "Manual scraping or sanding and chemical stripping. Using a heat gun." This was not considered high risk. Moreover, what if it is not performed on-site?</p> <p>As drafted this definition is too vague. Removal of a painted drawer from a built-in cabinet is arguably a "high-risk lead-based paint activity" under this definition. Also, enumeration of examples would be better in a note and a definition sufficient to clarify the threshold is necessary.</p>	<p>Revised. However, the definition has to remain consistent with the Department's agreement with EPA, and with research on risks associated with various activities.</p> <p>References: s. 254.18, WI Statutes; HUD regulations: Sec. 35.120, Table in LTAC report.</p>
16.	<p>Imminent lead hazard</p> <p>Commenter 1: DHFS should consider deleting "lead exposure", since it shares the same definition as "lead poisoning" and is surplusage. A bigger concern is that under this definition, the worst lead hazard possible is not imminent if there are no children at risk.</p>	<p>Deleted term and definition.</p> <p>References: s. 254.11 (7g), WI Statutes.</p>
17.	<p>Impact surface</p> <p>Commenter 1: Unfortunately, nearly every surface is subject to damage by repeated sudden force. Perhaps a more useful definition would address the nature of the component design and operation that results in regular surface-to-surface forceful contact. The federal definition should be clarified.</p>	<p>Recommended change is declined. The definition is consistent with HUD and EPA regulations. This term is basic to the lead industry and will be understood by a trained and certified lead professional.</p> <p>References: EPA definition at 745.64, published 1/5/2001, and HUD at 35.110, published 9/15/1999.</p>
18.	<p>Independent" person</p>	<p>Deleted term and definition.</p>

	Comment	Department's Response
	<p>Commenter 1: The use of the term "agent" and "employee" does not capture the intent of defining persons with whom the owner has an ongoing relationship. Any contractor hired by an owner will be an agent or an employee under some law and thus by this definition will no longer be independent.</p>	
19.	<p>LBP Definition</p> <p>Commenter 1: This definition needs to be changed to use the definition recommended by the LTAC. By not following the LTAC definition, DHFS actually allows more lead in paint when measured as wet paint than the federal law allows. The note is incorrect relative to wet paint. The LTAC recommended the following: The definition of lead-based paint at s. HFS 163.03 (39), Wis. Administrative Code will be revised to accurately reflect the definition of lead-bearing paint in Wis. Statutes: "Lead-based paint" or "LBP" means paint or any other surface coating material containing more than 0.06% lead by weight in the dried film of applied paint or more than 0.7 milligrams lead per square centimeter in the dried film of applied paint. The terms lead-bearing paint, lead-based paint, and LBP are synonymous. LTAC members voted to recommend the Department examine the current 0.7 milligrams lead per square centimeter in the dried film of applied paint definition and determine whether there is a health justification for the difference between this standard and the comparable federal standard of 1.0 milligrams lead per square centimeter and whether the Department should recommend the standard be changed to mirror the federal definition.</p>	<p>Recommended change is declined. The rule is consistent with Statutes and does not allow more lead in paint when measured as wet paint than the federal law allows. The "nonvolatile" component of the paint is that part that is left after the "volatile" component evaporates; therefore, the definition correctly refers to the proper amount of lead in dried paint, but also provides a means of measuring it in the liquid coating before application.</p> <p>In their guidance to public health agencies "Preventing Lead Poisoning in Young Children", The Centers for Disease Control states: "There is no uniform standards for safe or allowable amounts of lead in existing painted surfaces. States and the federal government use values ranging from 0.7 – 1.2 mg/cm² of wall when lead is measured using a portable x-ray fluorescence analyzer (XRF) or a standards of 0.5% lead by weight when tests are performed using laboratory analysis. These regulatory limits are based mostly on practical, not health, considerations."</p> <p>The number of lead poisonings in Wisconsin that are related to low levels of lead in varnish are increasing. Wisconsin is currently participating in studies looking at the lead content in varnish and the subsequent health hazards. In this research, 54% of varnish tested would be lead-based paint under the State definition but not under the EPA definition.</p> <p>References: s. 254.11(8), WI Statutes; 254.156 re CDC recommendation and new 254.172.</p>

	Comment	Department's Response
20.	<p>LBP hazard</p> <p>Commenter 1: This section presents a good opportunity to fix the current definition that defines a "lead hazard" rather than a "lead-based paint hazard."</p>	<p>Recommended change is declined. This definition defines a lead-based paint hazard; whereas a lead hazard is defined separately and includes other forms of lead hazards, such as water, hobbies (lead sinkers, shot, stained glass leading, etc).</p> <p>References: HUD definition at 35.110, published 9/15/1999; EPA definition at 745.63, published 1/5/2001.</p>
21.	<p>Lead-free property</p> <p>Commenter 1: The term "Real property" includes improvements, so perhaps the word "land" is more appropriate? Accessibility should not be part of this definition since it is a certificate issue. The certificate should only require investigation of accessible areas but if non-accessible areas are tested and found to be lead-free, shouldn't they be part of the lead-free property? If this is retained, accessibility should be narrowed to address accessibility by occupants of the "lead free property." As written, the definition would require that every building in the largest residential complex would have to be lead-free in order for any part of the property to be certified as lead-free.</p>	<p>Revised. See "registered lead-free property."</p>
22.	<p>Lead hazard</p> <p>Commenter 1: With this definition there is no need to define a "lead-based paint hazard" so broadly.</p>	<p>Recommended change is declined. Definition is consistent with Statutes. Lead-based paint hazard is limited in focus. Lead hazards also include water, lead sinkers, lead shot, etc. This definition applies to elevated-blood-lead-level investigations.</p>
23.	<p>Lead hazard investigator</p> <p>Commenter 1: As drafted, this definition would prohibit lead hazard investigators who have obtained necessary XRF training from using XRF? Assuming this is not the intent, the definition should be clarified to indicate that they are not, by virtue of this certification, trained to use XRF (but they may if they are otherwise qualified).</p>	<p>Recommended change is declined. The intent of the lead hazard investigator certification is to accommodate persons who wish to avoid the cost of using an XRF, so their certification does not allow the use of an XRF.</p> <p>A person may obtain certification as a lead inspector or risk assessor in order to use an XRF.</p>
24.	<p>Lead poisoning and lead exposure</p> <p>Commenters 1 and 122: There are two different terms being given the same definition and thus confusing. If they are the same term,</p>	<p>Revised. To remain consistent with the definitions of "elevated blood lead levels" and "lead poisoning or lead exposure", the term lead poisoning is removed from the rule. Under the revision, the term "lead</p>

	Comment	Department's Response
	<p>we suggest one term should be eliminated. "Lead exposure" should likely be eliminated because the standard does not refer to exposure in anyway. This is a poisoning definition."</p> <p>The proposed regulation raises issues in its definition of the term "lead poisoning" that could produce confusion and unintended negative consequences. The regulations would be more consistent with CDC terminology and approaches if the Department used the term "elevated blood lead level" to indicate blood lead levels greater than 10 µg/dL and eliminated entirely the use of the term "lead poisoning" from the regulations.</p>	<p>exposure" is used when the levels are less than an "elevated blood lead level".</p> <p>References: 254.11 (9), WI Statutes.</p>
25.	<p>Lead-safe property</p> <p>Commenter 1: "Real property" includes improvements; does the Department really mean land? Accessibility should be narrowed to address accessibility by occupants of the "lead safe property." As mentioned earlier, as written, the definition would require that every building in the largest residential complex would have to be lead-safe in order for any part of the property to be certified as lead-safe.</p>	<p>Revised. See "registered lead-safe property".</p>
26.	<p>Living area</p> <p>Commenter 1: This definition is not improved by incorporating the note into the definition. "Use" is not a reasonable standard by which "living areas" are identified. Residents "use" roofs and plumbing, for example. A "living area" under this definition would include an attached garage. This definition should be revised to focus on occupancy uses.</p>	<p>Deleted term and definition.</p>
27.	<p>Low-risk LBP activity</p> <p>Commenter 1: There should be no presumption and the rule structure raises the issue of whether or not the previously stated standards must be applied to the enumerated activities. The LTAC recommended the following: Any of the following when designed or intended to permanently eliminate lead-based paint hazards:</p> <p>Commenter 70: Definition is too broad.</p>	<p>Revised.</p> <p>References: Certificate Table from LTAC report.</p>
28.	<p>Multi-family dwelling</p> <p>Commenter 1: This definition would benefit from some "clean-up" work.</p>	<p>Revised.</p> <p>References: EPA definition at 745.223, published</p>

	Comment	Department's Response
	For example, what does separate mean? This should not be complicated since we have already defined dwelling and dwelling unit.	8/29/96; HUD definition at 35.110, published 9/15/99.
29.	Paint testing Commenter 1: The last phrase is surplusage and should be revised.	Deleted term and definition. References: HUD definition at 35.110, published 9/15/99.
30.	Person Commenter 1: This definition should be rewritten to cover all "persons" existing currently or in the future, (e.g. LLCs).	Revised. References: 990.08 (26), WI Statutes.
31.	Play area Commenter 1: This definition is problematic without some means to distinguish between areas that are clearly not a "play area" but would otherwise qualify under the definition as written, e.g. closets containing toys.	Recommended change is declined. As the definition states, a play area is not a room designated as a play area by an adult, but an area of frequent contact by children, including areas where toys are stored, or where a child actually plays, including closets, under beds, under stairways, under porches. A closet where toys are stored may be a source of dust-lead on toys and also may be a place where the child plays. When collecting dust-lead samples, it is appropriate to collect them from all locations from which a child might be lead poisoned. References: HUD definition at 35.110.
32.	Premises Commenter 1: Why is such a significant term like "premises" restricted to properties impacting children under 6? ACT 113 did not so limit the definition and therefore the common meaning (land and the buildings on it) should apply. The effect of this definition is a dramatic rewrite of the legislative language. Only property owners renting to children will have access to the immunity program under this definition.	Revised. References: S. 254.11 (10m), WI Stats.
33.	Property owners Commenter 1: This definition is overly broad and should be re-worked. As drafted, this definition includes all person's with an	Revised. References: 254.11 (10), WI Statutes.

	Comment	Department's Response
	<p>interest in real estate except certain lenders. For example refinance lenders, land contract vendors, dominant easement holders, etc. Any land contract vendor, easement holder or refinance lender will therefore be subject to DHFS regulations as owners.</p>	
34.	<p>Real property</p> <p>Commenter 1: Does the Department means "land" rather than "real property" or "property"? The application of this definition elsewhere treats 10 contiguous parcels owned by one owner as a single parcel. This probably isn't intended.</p>	<p>Revised, but the definition continues to include contiguous property. The term, as defined, has long applied to the lead program under ch. 254, Stats., and does not just apply to registered lead-free or lead-safe properties. The Department has reviewed the rule and limited the use of the term to provisions where the Department intends contiguous land to be included.</p> <p>References: 66.021(1), WI Statutes; 990.01 (35), WI Statutes.</p>
35.	<p>Residential property</p> <p>Commenter 1: This definition excludes any "residential property" with any level of mixed use. Moreover, it is unclear as to what "surrounding land" is intended to mean? "Available for use" is not an adequate substitute for "accessible." What about outbuildings, fences and play equipment not "affixed to the land"? This section needs to be revisited and further refinements made.</p>	<p>Deleted. This term and its definition were taken from federal regulations and only relate to those regulations.</p> <p>References: HUD definition at 35.110, published 9/15/99.</p>
36.	<p>Target housing</p> <p>Commenter 1: The federal definition by reference, particularly if the difference between the two is unintended. If a different definition was intended, what is the justification for using the same term with a different definition?</p>	<p>Revised.</p> <p>References: EPA definition at 745.223, published 8/29/96; HUD definition at 35.110, published 9/15/99:</p>
37.	<p>Tenant</p> <p>Commenter 1: This definition is unworkable. Under this language, actual tenants are excluded but guests, visitors and occupants are included. For example, a named tenant on a lease who doesn't pay rent is apparently not a tenant while they are not occupying. Ch. 704, Stats. should be the model used in this definition.</p>	<p>Deleted term and replaced with "occupant". (Note: Ch. 704, Stats., which was recommended as a model, does not provide a definition for "tenant".)</p> <p>References: 254.11 (9r), WI Statutes.</p>
38.	<p>Unkeyed plaster</p>	<p>Revised.</p>

	Comment	Department's Response
	<p>Commenter 1: What about plaster installed over something other than wooden lath?</p>	
39.	<p>Window "troughs" and "wells"</p> <p>Commenter 1: It appears this section needs a definition for windows that do not have storms and do not have upper and lower sashes.</p>	<p>Revised.</p> <p>References: EPA definition at 745.63, published 1/5/2001; HUD definition at 35.110, published 9/15/99.</p>
40.	<p>Zero-bedroom dwelling</p> <p>Commenter 1: The "zero bedroom dwelling" exception to the regulation "target housing" actually exempts all houses. This is because the definition of "living area" includes children's bedrooms. Therefore, all properties have living areas which are not separate from sleeping areas and therefore no housing is regulated by these rules. Adding the previous rule's note to the rule only lends further uncertainty to the definition. Dormitory housing with separate bedrooms are now zero-bedroom dwellings apparently. To avoid this confusion, why not adopt the federal definition by reference?</p>	<p>Deleted term and included the definition of O-bedroom in the definition for target housing.</p>
CERTIFICATION – SUBCHAPTER 2		
41.	<p>Certification Requirement – s. HFS 163.10 (1) and s. HFS 163.12</p> <p>Commenter 1: Act 113 did not contemplate owner/agents having to create a company to do any work related to lead-based paint. This reference should be deleted.</p>	<p>Revised to allow certified persons to perform high-risk and low-risk lead-based paint activities other than lead abatement without being part of a certified lead company. However, when lead abatement activities are performed, State rules must comply with federal EPA regulations and company certification is required.</p> <p>References: EPA regulations at 745.220, published 8/29/96.</p>
42.	<p>Conditions for Initial Certification – s. HFS 163.10 (3) (b)</p> <p>Commenter 1: Act 113 did not contemplate owner/agents having to have one year experience as a lead worker. As written, this provisions bars implementation of the program for at least 12 months for many owners. These provisions be deleted.</p> <p>Experience</p>	<p>Revised to add lead-safe maintenance worker and lead-safe property manager certification for property owners and their employees to Subchapter 5 (s. HFS 163.43). There are no experience requirements for these disciplines.</p> <p>However, when lead abatement activities are performed, State rules must comply with federal EPA regulations and a person</p>

	Comment	Department's Response
	<p>Commenter 1: Act 113 did not contemplate owner/agents having to have two years experience. This provisions bars implementation of the program for at least 24 months for many owners. This provision also should be deleted.</p> <p>Commenter 29: Requirement for experience would discourage participation if landlords must be certified to do own work.</p>	<p>must meet one of the experience requirements in order to be a lead low-risk supervisor or lead contractor supervisor. Experience is not limited to "paid" work, but involves all activities a person has been involved with over the course of their life. When applying for certification as a low-risk supervisor or lead contractor supervisor, the applicant lists all of the experience he or she believes is relevant, such as maintenance work performed on an owner-occupied dwelling, rental, or commercial property.</p> <p>References: 254.179, Stats., EPA regulations at 745.220, published 8/29/96.</p>
43.	<p>Certification of Individuals – s. HFS 163.10 (3) (c)</p> <p>Commenter 1: Act 113 required only a certificate of completion of the course of up to 16 hours. This provision for a certification exam should be revised to reflect Act 113.</p> <p>Commenter 39: Eliminate the certification exam and just use the course test.</p>	<p>Revised to add lead-safe maintenance worker and lead-safe property manager certification for property owners and their employees to Subchapter 5 (s. HFS 163.43). There are no exam requirements for these disciplines.</p> <p>However, when lead abatement activities are performed, State rules must comply with federal EPA regulations and a person must meet pass a State-administered certification examination in order to be a lead low-risk supervisor. Interim certification is available so a person may work for up to 6 months while attempting to pass the exam. The exam is offered monthly in Milwaukee and Madison and other times may be scheduled for small groups. The lead supervisor certification exam had a passing rate of 86% for 2000.</p> <p>References: 254.179, Stats.,; EPA regulations at 745.220, published 8/29/96.</p>
44.	<p>XRF Training – s. HFS 163.10 (3) (d)</p> <p>s. HFS 163.10 (3) (a) 3. An individual applying for certification as a lead inspector or risk assessor shall have completed XRF manufacturer's training under par. (d).</p> <p>Commenters 7, 8 and 119:</p>	<p>Recommended change is declined. A person who does not use an XRF cannot reasonably complete a lead inspection. If a person does not intend to perform lead inspections, the person may be certified as a lead hazard investigator or sampling technician, for which XRF training is not required.</p>

	Comment	Department's Response
	Do not require use of an XRF. Suggest adding to end of sentence: "if using an XRF".	
45.	<p>Risk Assessor Qualifications – s. HFS 163.10</p> <p>s. HFS 163.10 (3) (b) 3. e. Be a registered nurse or registered sanitarian and be employed by a health department that provides oversight of the individual's activities</p> <p>Commenter 119: Suggest replacing with: Be a registered nurse or registered sanitarian that is employed in a health field that provides oversight.</p>	<p>Recommended change is declined. This qualification is intended solely for persons performing EBL investigations for health departments where oversight of the EBL investigation process occurs. A registered nurse or registered sanitarian who obtains certification for other purposes must meet the education and experience requirements consistent with federal regulations.</p> <p>References: EPA regulations at 745.226 (b).</p>
46.	<p>Refresher Training – s. HFS 163.11 (3)</p> <p>Commenter 29: Requirement for refresher training is excessive.</p>	<p>No revision. When lead abatement or investigation activities are performed, State rules must comply with federal EPA regulations and a person must meet complete refresher training. The Department negotiated with EPA to obtain approval of shorter refresher courses for the lead low-risk worker and lead low-risk supervisor disciplines.</p> <p>References: 254.179, Stats., EPA regulations at 745.220, published 8/29/96.</p>
47.	<p>Spanish-Language Training. – s. HFS 163.11</p> <p>Commenter 12: Spanish-language supervisor training should be allowed.</p>	<p>No revision. When lead abatement activities are performed, State rules must comply with federal EPA regulations. At this time EPA allows workers to complete training in a Spanish-language course but does not allow it for supervisors. Supervisors must be able to read regulations and complete paperwork in English.</p> <p>References: 254.179, Stats., EPA regulations at 745.220, published 8/29/96.</p>
	Immunity Provisions – Subchapter 5	
48.	<p>Immunity Provisions – s. HFS 163.41</p> <p>Commenter 6: Be more specific in the information about immunity.</p>	<p>Revised to delete immunity provisions proposed under s. HFS 163.41 (1).</p> <p>References: s. 254.173 (2), Stats., 1999 Wisconsin Act</p>

	Comment	Department's Response
		113, Section 35.
49.	<p>Granting Immunity – s. HFS 163.41 (1)</p> <p>Commenter 1: This section requires substantial revision. The DHFS has no authority under the statutes to grant or interpret the statutory right to immunity. DHFS's role (relative to immunity) is restricted to the lead-safe and lead-free certificate program and rules outlining required interim controls during vacancy. Because of this, all references to the effective date and sunset provisions of the immunity law and the application of these dates to the certificate programs should be eliminated. The immunity program should not be tied to the certificate program.</p>	<p>Revised to delete immunity provisions proposed under s. HFS 163.41 (1).</p> <p>References: s. 254.173 (2), Stats., 1999 Wisconsin Act 113, Section 35.</p>
50.	<p>Effect of Valid Certificates – s. HFS 163.41 (1)</p> <p>Commenter 1: Once again, DHFS cannot grant immunity. This section should be deleted.</p>	<p>Revised to delete immunity provisions proposed under s. HFS 163.41 (1).</p> <p>References: s. 254.173 (2), Stats.</p>
51.	<p>Immunity – s HFS 163.41 (1)</p> <p>Commenter 1: For reasons stated above, delete the reference to paragraph (b) after deletion of paragraph (b).</p>	<p>Revised to delete immunity provisions proposed under s. HFS 163.41 (1).</p> <p>References: s. 254.173 (2), Stats.</p>
52.	<p>Temporary Immunity- s. HFS 163.41 (2)</p> <p>Commenter 1: Temporary immunity also cannot be granted by DHFS. The only issue for DHFS related to temporary immunity are the rules for interim controls during vacancies. This section should be deleted.</p>	<p>Revised and moved to 163.40 (4).</p> <p>References: 254.173, Wis. Stats.; 1999 Wisconsin Act 113, SECTION 35.</p>
53.	<p>Lead-free and Lead-safe Certificates – s. HFS 163.41 (2)</p> <p>Commenter 1: DHFS should delete this section. This problematic because it is a departure from the statutory scheme created by DHFS's new requirement to obtain a certificate within 60 days or obtain a DHFS extension for the certificate. As written, this provision would deprive an owner of their statutory rights.</p>	<p>Revised and moved to s. HFS 163.40 (4).</p> <p>References: 254.179, Stats., 1999 Wisconsin Act 113, SECTION 35.</p>
	<p>Documentation of Interim Controls – s. HFS 163.41 (2) (c)</p> <p>Commenter 1:</p>	<p>Revised and moved to s. HFS 163.40 (4). However, due to the evolving nature of lead-based paint work, the rule will not require one specific method of removing</p>

	Comment	Department's Response
	<p>Why was the LTAC recommendation was not considered for this provision? Their recommendation was much more specific and practical. This approach would require every new owner to research current "documented methodologies." The LTAC recommendation should be adopted.</p> <p>LTAC Recommendations: D. The owner ensures that the following activities are conducted in any vacant dwelling or unit: 1. Dust-lead is removed using the following protocol. (a) For carpeted surfaces, use a HEPA filter-equipped vacuum cleaner to vacuum the carpet in a side-to-side direction, the vacuum again in a side-to-side direction opposite the first direction. Steam clean the carpet using a solution containing detergent specifically made to reduce static between the carpet and dust-lead. (b) For the painted or varnished surface of floors, internal and external stairways, window wells, internal surfaces of window trim, sills, and sashes, vacuum the surface with a HEPA filter-equipped vacuum cleaner. Wet clean the same surfaces with a solution of water and an all-purpose cleaner or a cleaner made specifically for removing dust-lead. Use one bucket for the cleaning solution and one bucket for rinsing. Change the rinse water frequently, or at least once for each room being cleaned. After cleaning, rinse the surface with clean water and a new sponge, cloth, mop-head, or paper towels.</p>	<p>dust-lead. Research on cleaning methods is being conducted with federal funding. The LTAC-recommended method to remove dust-lead would more appropriately be published in educational literature.</p> <p>References: s. 254.173, WI Stats., s. 254.179, WI Status., 1999 Wisconsin Act 113, SECTION 35.</p>
55.	<p>Interim Controls in Vacant Units – s. HFS 163.41 (2)</p> <p>Commenter 1: Act 113 authorized DHFS to establish interim control requirements for vacant units. Because this reference incorporates abatement activity, it is inappropriate and should be deleted. These issues are adequately addressed by point 2 above.</p>	<p>Moved to s HFS 163.40 (4). Recommended change is declined. No lead abatement activity is anticipated in this requirement. Stabilization of deteriorated paint is a temporary measure commonly used to reduce a lead-based paint hazard. It involves the repair and repainting of painted surfaces that normally takes place when a unit turns over. Stabilization of deteriorated paint is best done when a unit is vacant and before it is reoccupied. For property that is granted temporary immunity and is not yet covered by a certificate of lead-safe, stabilization of deteriorated paint may be performed by untrained and uncertified persons, although training is recommended.</p> <p>References: s. 254.173, WI Stats., s. 254.179, WI Status., 1999 Wisconsin Act 113,</p>

	Comment	Department's Response
		SECTION 35; HUD requirement under Subpart M, Tenant-Based Rental Assistance: s35.1215 (b).
	Lead-Free And Lead-Safe Property Certification – Subchapter 2	Moved to Subchapter 5
56.	<p>Requirements and Restrictions – s. HFS 163.40 (1) (c)</p> <p>Commenter 1: There should be no assumption of lead-based paint. The proper statement is that the paint will not be presumed lead-free unless proven lead-free. The advisory committee was very clear on this point because presumptions in the law can have severe and presumably unintended liability consequences for property owners (including those that do not participate in the immunity program, including homeowners, day care providers, etc.) The following LTAC language be used: For purposes of the lead-safe investigation protocol, painted, varnished and other coated surfaces are not presumed to be lead-free unless proven to be lead-free. However, if DHFS can determine that factory-finished paint is always lead-free, paint that is determined to be factory-finished paint should be considered lead-free without testing.</p>	<p>Revised and renumbered s. HFS 163.40 (2) (c).</p> <p>References: s. 254.18, WI Stats.; HUD regulations: Sec. 35.120.</p>
57.	<p>Transfer of Certificate of Ownership – s. HFS 163.40 (3).</p> <p>Commenter 1: The property ownership issues require clarification. What is a transfer; what is a change of ownership (is it different than a change of property ownership)? Moreover, the definition of property owner is inadequate. Finally, the timing of the notice ties to the committee's report but not the notice requirement and thus creates confusion. Do all owners need to agree to comply or only the owner submitting the form? These issues need to be addressed.</p>	<p>Revised.</p> <p>References: LTAC recommendation #20 and #55.</p>
58.	<p>Lead-safe Property Standards – s. HFS 163.43</p> <p>Commenter 1: There should be no assumption of lead-based paint. Instead, the proper statement is that the paint will not be presumed lead-free unless proven lead-free. The LTAC was very clear on this point because presumptions in the law can have severe and presumably unintended liability consequences for property owners (including those that do not participate in the immunity program, including homeowners, day care providers, etc.) The LTAC language again is preferable:</p>	<p>Revised and renumbered s. HFS 163.42.</p>

	Comment	Department's Response
	<p>For purposes of the lead-safe investigation protocol, painted, varnished and other coated surfaces are not presumed to be lead-free unless proven to be lead-free. However, if DHFS can determine that factory-finished paint is always lead-free, paint that is determined to be factory-finished paint should be considered lead-free without testing.</p>	
59.	<p>Interior Painting – s. HFS 163.43 (1) (a)</p> <p>Commenter 1: By eliminating the LTAC's specific criteria in favor of global statements, DHFS has failed to consider the necessity for detail. As a result, this section would bar a property with deteriorated LBP in areas completely inaccessible to occupants from obtaining a certificate (e.g. inaccessible attic). This section needs to reflect the more specific criteria that allows such properties to remain eligible for obtaining a certificate.</p>	<p>Revised and renumbered s. HFS 163.42 (1) (a).</p> <p>References: LTAC recommendation #30: HUD regulations: Subpart M, 35.1215.</p>
60.	<p>Substrate and Floors – s. HFS 163.43 (1) (e)</p> <p>Commenter 1: As drafted, this provision prohibits a wear pattern in a LBP-free topcoat without consideration to the question of whether the wear pattern indicates any risk of a LBP hazard. This standard be rewritten so that there is some correlation to a potential LBP hazard.</p>	<p>Revised and renumbered s. HFS 163.42 (1) (h).</p> <p>References: HUD regulations: Sec. 35.1330 (c) (4); LTAC recommendation #9.</p>
61.	<p>Stairs – s. HFS 163.43 (1) (h)</p> <p>Commenter 1: This language is inconsistent with the LTAC recommendations. (i.e.: no requirements for stairs not between occupied floors.) There is no correlation between this standard and potential LBP hazards or accessibility. As drafted, this standard would require attic stairs to be treated even if there was no access to the stairs. Given that resources wasted on needless treatments take away treatments that are protective of children's health, this provision be eliminated.</p>	<p>Revised and renumbered s. HFS 163.42 (1) (h).</p> <p>References: HUD regulations: Sec. 35.1330 (c) (4) ; LTAC recommendation #8.</p>
62.	<p>Windows – s. HFS 163.43 (2)</p> <p>Commenter 1: All references to the effective date and sunset provisions related to the immunity law and the application of these dates to the certificate programs be eliminated. The immunity program's timelines should not be tied to the certificate program.</p>	<p>Revised and renumbered s. HFS 163.42 (2).</p> <p>References: s. 254.11 (4h), Stats.</p>

	Comment	Department's Response
63.	<p>Evidence – s. HFS 163.43 (2) (d) 2.a.</p> <p>Commenter 1: This language needs clarification, including the standard of clear and convincing evidence.</p>	<p>Revised and renumbered s. HFS 163.42 (2) (d).</p> <p>References: s. 254.11 (4h), Stats., s. 254.179.</p>
64.	<p>Lead-safe Certificates – s. HFS 163.43</p> <p>Commenter 1: All references to the effective date and sunset provisions related to the immunity law and the application of these dates to the certificate programs should be eliminated. The immunity program's timelines should not be tied to the certificate program.</p>	<p>Revised and renumbered s. HFS 163.42.</p> <p>References: 254.179, Stats.</p>
65.	<p>Nine-Month Certificates – s. HFS 163.43 (2) (e)</p> <p>Commenter 1: This language deviates from the LTAC recommendations by reducing the certificate terms and in so doing, creates an unreasonably burdensome and inefficient process. Nine-month terms require relocating tenants during a one-year tenancy. Other reductions will increase the frequency of investigations, increase costs, discourage participation and ultimately cause the program to be substantially less protective of children's health. The LTAC language should be restored.</p>	<p>Renumbered s. HFS 163.42 (2) (e). Recommended change is declined. In drafting Act 113, the Legislature anticipated certificates of less than 12 months. Data from HUD projects indicates that levels of lead in dust rebound after windows have been treated with interim control measures. Based on this data, the Department is already being generous in allowing a 9-month certificate rather than a 6-month certificate. A 9-month certificate was allowed due to potential weather-related difficulties in replacing windows during much of the year.</p> <p>A short-term certificate is not considered the norm since the emphasis is on moving to a long-term certificate.</p> <p>It is not necessary to match certificates to leases. When an entire building is under one certificate, it is unlikely that all tenants will have leases that expire on the same date.</p> <p>References: S. 254.179, Stats.</p>
66.	<p>One-year Certificates – s. HFS 163.43 (2) (e)</p> <p>Commenter 1: This section requires changes so that all standards relate to potential LBP hazards. For example, as drafted, "f." could disqualify a property with concrete foundation walls if there is evidence of prior moisture, even if it was another part of that wall that was painted. These types of</p>	<p>Revised and renumbered s. HFS 163.42 (2) (e).</p> <p>References: LTAC report: Length of a Certificate of Lead-Safe Status.</p>

	Comment	Department's Response
	exclusionary provisions should be deleted.	
67.	<p>Lead-Safe Property Standards – s. HFS 163.43 (1)</p> <p>Commenter 120: “I agree with the requirement of a lead free friction surface in a window for a long term certificate (vinyl window), but to have no lead based on interior and exterior surfaces to get a long term certificate has little benefit for the cost involved. Drop the requirements for no lead on nonfriction surfaces if they are in good condition.”</p>	<p>Standards moved to s. HFS 163.42 (1). There is no requirement that all lead be removed. For a 20-year certificate, all lead-based paint must be removed, enclosed, or encapsulated.</p>
68.	<p>Maintaining Certificates – s. HFS 163.43 (3)</p> <p>Commenter 1: This section appears to confuse the intent of s. 254.179 (c) (2), Stats., which addresses standards limiting the length of validity of a certificate. Most of the items here be deleted as they are not consistent with the statute and are not based on research-based methodology. Act 113 includes the following: Act 113 s. 254.179 (c) 2. The standards limiting the length of validity of a certificate of lead–safe status, including the condition of a premises, dwelling or unit of a dwelling, the type of lead hazard reduction activity that was performed, if any, and any other requirements that must be met to maintain certification, unless the certificate is earlier revoked because of erroneous issuance or because the premises, dwelling or unit of the dwelling is not safe from lead–bearing paint hazards. The rules shall specify that the face of the certificate shall indicate the certificate’s length of validity. The rules shall further specify that applications for certificates of lead–safe status for identical premises may be made only as follows:</p>	<p>Revised, but the remaining requirements for maintaining a certificate are necessary to ensure the property remains lead-safe. Rule is consistent with LTAC recommendations.</p> <p>Since this is a unique program, research is not available that specifically address this issue. However, research is available to support that children have higher blood lead levels following work that disturbs lead-based paint and that any measure to reduce a lead-based paint hazard, over than abatement, will fail over time. The most significant research on lead hazard reduction methods is being conducted on HUD-funded projects, but published reports are only available on the first 3 years.</p> <p>References: S. 254.179, Stats.; LTAC recommendations #47-55; HUD regulations: Sec. 35.1355.</p>
69.	<p>Proof of Knowledge – s. HFS 163.43 (3) (a)</p> <p>Commenter 1: Delete or move to conditions to obtain a certificate. “Authorized representative” must be defined. This requirement is unreasonably burdensome. Many property owners will use certified independent contractors to fulfill all conditions of the certificate. For owners who will not be personally performing any LBP work (or related paperwork), the obligation to complete a course has no practical function. This provision will substantially damage the health of children because many property owners will be unwilling or unable to complete a course</p>	<p>Revised to delete requirement for knowledge about the rule.</p> <p>References: s. HFS 163.43 (3).</p>

	Comment	Department's Response
	that has no practical purpose. This requirement should be deleted.	
70.	<p>Posting Signs – s. HFS 163.43 (3) (b)</p> <p>Commenter 1: Delete the section. The LTAC recommended no signs because signs will be misleading and duplicative of other notices.</p>	<p>Revised to delete the requirement for a poster in dwellings. A poster is required in child-occupied facilities and is allowed as an option for dwellings instead of handing out informational materials whenever a visual inspection is conducted.</p>
71.	<p>Providing Materials Before Occupancy – s. HFS 163.43 (3) (c)</p> <p>Commenter 1: This standard is ambiguous and inconsistent with federal law. If “occupancy” of an individual is to be the standard, this disclosure process will be unrelated to the initiation of a lease and in theory, landlords will have a duty to provide notices every time someone has a guest occupy for a time. Conversely, parties who do not occupy immediately, but who spend substantial time remodeling, will have no right to a disclosure. A better alternative is to incorporate, by reference, the federal disclosure procedures.</p>	<p>Revised and moved to s. HFS 163.42 (3) (b).</p> <p>References: s. 254.11 (9r), Stats.</p>
72.	<p>Notice and Forms – s. HFS 163.43 (3) (c)</p> <p>Commenter 1: This language is far too ambiguous. Disclosure materials must be defined.</p> <p>Commenter 1: This language is too ambiguous and is inconsistent with Act 113 (s. 254.173, Stats.). One example – the property owner is being asked to date a form to show the date of receipt when it is submitted by tenant. If the landlord receives the form after submission it is impossible to date it prior to receipt. It would make more sense to date for receipt when the form is received. Second example – Act 113 addresses notices of LBP hazards, not deteriorated paint. It is also important to have internal consistency throughout the rules. Note that par. (e) below refers to notices of LBP hazards. Assuming there is no intent to create a second standard inconsistent with Act 113 the same terminology should be used in the rules.</p>	<p>Revised and renumbered s. HFS 163.42 (3) (b). However, the Department is not defining the pamphlet by rule as it has not been sufficiently developed at this time.</p> <p>References: s. 254.11 (9r), Stats.; s. 254.173 (2) Stats.</p>
73.	<p>Removing LBP Hazards – s. HFS 163.43 (3) (e)</p> <p>Commenter 1: Act 113 requires owner response to notices by “tenants”. However, this provision uses the word occupants.</p>	<p>Revised to reflect concern of commenter 29, but recommended change from commenter 1 is declined. Provisions for requesting an extension are added and the provision moved to s. HFS 163.42 (3) (d).</p>

	Comment	Department's Response
	<p>Occupants are not the same as tenants. Assuming there is no intent to create a second standard inconsistent with Act 113, the same terminology should be used in the rules.</p> <p>Commenter 29: 5 days to repair is too quick.</p>	<p>Also revised so that 5 days to repair only applies to interior repairs to reduce an immediate threat when a child under 6 years old occupies the property.</p> <p>The reference to "tenant" cited by commenter 29 is in the immunity portion of Act 113, which only applies to dwellings. Immunity is not granted to owners of property that is not a dwelling.</p> <p>Occupant, not tenant, is the proper term here since certificates may be issued to premises other than dwellings and registered lead-safe properties may be occupied by someone other than a tenant. For example, if a parent reports to the day care that deteriorated paint is present, the parent is not a tenant, but the day care must respond to the notice since the parent is reporting on behalf of the child, who is the occupant of the day care.</p> <p>References: s. 254.11 (9r), Stats.</p>
74.	<p>Verifying Certificates – s. HFS 163.43 (3) (f)</p> <p>Commenter 1: It is important that lead-based construction activity must be adequately defined. The current definition regulates activities that may or may not have any relationship to the creation of LBP hazards. Under this language, any activity that disturbs potential LBP is a lead-based construction activity (even hanging a picture). As drafted, any activity involving paint (filling nail holes?) must be done by certified persons. Assuming this is not the intent, this language should be refined.</p>	<p>Revised to delete term "lead-based paint construction activity" and to move certification requirements to s. HFS 163.43. Also revised to clarify when certification is required.</p>
75.	<p>Notification of Occupants – s. HFS 163.43 (3) (g)</p> <p>Commenter 1: As stated above, lead-based construction activity must be adequately defined. Moreover, a reasonable de minimis standard should be developed.</p>	<p>Revised to move the requirement that notice be given to occupants before performing work that disturbs lead-based paint. This occupant notice is moved from the conditions for maintaining a certificate under s. HFS 163.42 (3) to the work practice standards under s. HFS 163.44 (3).</p>
76.	<p>Occupant Protection Plan – s. HFS 163.43 (3) (g)</p> <p>Commenter 1: This is an unreasonable standard which raises many</p>	<p>Revised and moved to s. HFS 163.43 (3).</p>

	Comment	Department's Response
	<p>substantive questions. What if occupants are not present? Also, a better word is "affected" not "effected." Once again, this section should have a reasonable de minimis standard.</p>	
77.	<p>Notifying the Department – s. HFS 163.43 (3) (h)</p> <p>Commenter 1: It is important that lead-based construction activity must be adequately defined. The current definition regulates activities that may or may not have any relationship to the creation of LBP hazards. Any activity that disturbs potential LBP is a lead-based construction activity (even hanging a picture) is included. Therefore, any activity involving paint (filling nail holes?) must be preceded by notice to DHFS. Assuming this is not the intent, a more complete definition is needed.</p>	<p>Revised to move notification requirements to s. HFS 163.44 (5). Term "lead-based paint construction activity" has been removed from the rule and rule clarified. Hanging a picture does not require notice to the Department.</p> <p>References: Under EPA regulations published 8/29/96; EPA proposed regulations published 1/22/01.</p>
78.	<p>Work Practice Standards – s. HFS 163.43 (3) (i)</p> <p>Commenter 1: Absent adequate definitions of key terms, this standard [for following work practices] is inappropriate. DHFS should better define and refine the terms of this section.</p>	<p>Revised to move to s. HFS 163.44 work practice standards for activities that are not abatement but that disturb lead-based paint. Term "lead-based paint construction activity" has been removed from the rule.</p>
79.	<p>Disposing of Debris – s. HFS 163.43 (3)</p> <p>Commenter 1: In this section as well as earlier sections, lead-based construction activity must be adequately defined. Again, the current definition regulates activities that may or may not have any relationship to the creation of LBP hazards. To reiterate, a de minimis standard is necessary.</p>	<p>Revised to move to HFS 163.44 (4) (j) work practice standards for handling waste for nonabatement work.</p> <p>Addition of a de minimis standard for debris is declined because this requirement simply cites DNR regulations, which do not have a de minimis standard.</p> <p>Term "lead-based paint construction activity" has been removed from the rule.</p>
80.	<p>Maintaining Documentation – s. HFS 163.43 (3) (L)</p> <p>Commenter 1: Again, lead-based construction activity must be adequately defined because the definition applied here regulates activities that may or may not have any relationship to the creation of LBP hazards. Any activity that disturbs potential LBP is a lead-based construction activity, no matter how small, must be documented and recorded for five years.</p>	<p>Revised to renumber record keeping requirement s. HFS 163.42 (3) (h) and to narrow the requirement.</p> <p>Term "lead-based paint construction activity" has been removed from the rule.</p>
81.	<p>Less than 12-Month Certificate – s. HFS 163.43 (4)</p> <p>Commenter 1: Since this section mostly repeats the statute, it should be</p>	<p>Revised to renumber s. HFS 163.42 (4). Recommended change is declined because the Department believes it is more user-friendly to include in the rule</p>

	Comment	Department's Response
	deleted to avoid conflicts with any subsequent trailer bills (which are likely). Once again, the deadlines here remained linked to immunity.	information from the Statute in the rule so a reader does not have to refer back to the Statute. The rule can be revised if the Statute changes.
82.	<p>Revocation – s. HFS 163.43 (5)</p> <p>Commenter 1: Act 113 provides an opportunity to remove hazards in a timely manner upon notice. Why the DHFS is attempting to take away certificates automatically?</p> <p>Commenter 1: This language is excessively broad. There must be some linkage to the subject property and LBP hazards. Is a broker with 200 agents in danger of losing a certificate if one of the agents fails to sign a LBP disclosure addendum to an offer on a property in another state? This expansive language was not intended and thus should be refined.</p>	Revised revocation provisions and renumbered s. HFS 163.42 (5).
83.	<p>Scope of Investigations – s. HFS 163.14 (8)</p> <p>Commenter 1: The lead safe investigation protocol was never even discussed with LTAC. As drafted the rule proposal lacks detail and fails to address issues such as accessibility. Exterior common areas may include roofs, for example. The rule arguably does not require investigation of limited common areas (use by one unit only) which may contain LBP hazards. This section should be revised.</p> <p>Commenter 1: The lead safe investigation protocol was never even discussed with LTAC. The rule proposal lacks detail and fails to address issues such as accessibility. By only excluding rooms used solely for storage, the rules would require testing of a window in every non-accessible room in a building including attics, utility rooms, locked storage areas, etc.</p>	<p>Revised the scope of the lead-safe investigation and renumbered to s. HFS 163.42 (2).</p> <p>The lead-safe protocol involves conducting either a lead hazard screen (composite sampling method) or a risk assessment (single-surface sampling method). These are protocols established by EPA and followed by HUD as two acceptable methods for determining whether a lead-based paint hazard is present. LTAC recommended following EPA protocols.</p>
84.	<p>Lead-safe Investigations – s. HFS 163.14 (8)</p> <p>Commenter 1: This language reverses the LTAC report's standard. This should be rewritten to state that soil sampling will only be done if requested by contract. The LTAC language includes the following: Except that visible paint chips may not be present in soil, bare soil is not considered when determining whether a property qualifies for a certificate of lead-safe status.</p>	<p>Revised and moved to s. HFS 163.42 (2).</p> <p>References: LTAC Recommendation #36; EPA final regulations published 1/5/2001 at 40 CFR 745, Subpart D – Lead-Based Paint Hazards.; HUD regulations at 24 CFR 35, Subpart R, published 9/15/99.</p>

	Comment	Department's Response
	Therefore, a property with a certificate of lead-safe status may have a soil-lead hazard and the immunity provisions do not apply to soil-lead hazards.	



WI Rental Housing Legislative Council

*7 North Pickney Street - Suite 320
Madison, WI 53702*

August 30, 2001

Sen. Fred Risser
WI State Senate President
P.O. Box 7882
Madison, WI 53707-7882

Dear Senator Risser,

In a very short time the rules for Act 113, "The Lead Paint Bill" will be coming to your office for committee assignment. I would like to request at this time that the assignment for these rules are sent to Senator Meyer's committee on Universities, Housing and Government Operations.

This bill was drafted and initially sent through the Housing Committee when this bill was introduced and passed in 1999-2000 session. We believe that this committee for changes and discussion would best serve these rules.

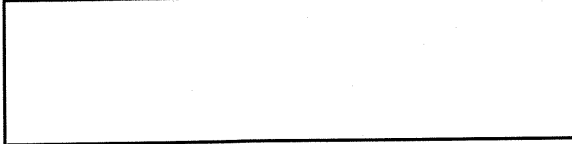
Thank you for your time.

Sincerely,

Robert R. Dennik
Director of Governmental Affairs
WI Rental Housing Legislative Council

Cc: Senator Mark Mayer

Wisconsin Supreme Court In the summer of 1999 . .





WI Supreme Court Rulings, July 1999

- **Antwaun A.**
landlords of pre-1978 buildings have a common law duty
to test for lead when they know of deteriorating paint.



WI Supreme Court Rulings, July 1999

- **Kevin**
lead paint dust and chips are pollution and the insurance company was under no obligation
because of the pollution exclusion clause.

Court action led to enactment of WI Act 113

Lead-Free or Lead-Safe Property under Chapter 254, WI Statutes



Purpose of Act 113

- To reduce the exposure of children and others to lead-based paint hazards, thereby, reducing lead poisoning or lead exposure.
- While improving quality of WI housing.

Act 113- Legal Impacts

- When an owner addresses LBP problems,
- brings property into compliance and obtains a certificate of
Lead-Free status or
Lead-Safe status
- THEN

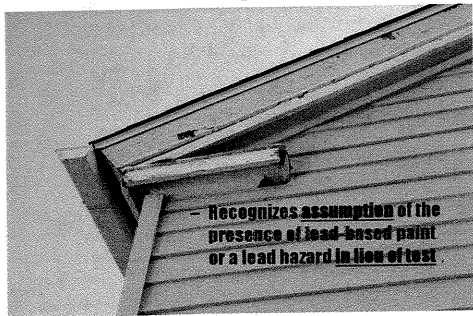


Act 113 - Legal Impacts



- Liability for lead poisoning or exposure is limited.

Act 113 - Legal Impacts




- Recognizes assumption of the presence of lead-based paint or a lead hazard in lieu of test.

Act 113 Mandates Two Actions If a Child under 6 has an EBL of 15-20 x 2 or greater than 20:




- A lead investigation must be conducted.
- In addition to ordered work, the owner must obtain a certificate of lead-free or lead-safe within 12 months of notice from DHFS.
- Certificate must be valid for at least 1 year.

Act 113 - Legal Impacts



For legal proceedings, recognizes only the results of a test for the presence of lead in dust conducted by state certified lead consultant.

Proposed Subchapter V of Chapter NFS 163 Provides Rules for the Registry



Provide the standards and procedures for issuing, maintaining, and revoking certificates for a property with:

- Lead-free status
- Lead-safe status

Proposed Issuance Of Certificate



- To obtain a certificate, contact a certified lead company and request a:
 - Lead-free inspection for a lead-free certificate.
 - Lead-safe investigation for a lead-safe certificate.

**Proposed Issuance Of
*Lead-Free Certificate***



- A lead-free inspection consists of:
 - (1) A complete lead inspection *and*
 - (2) Clearance of any work performed in past 12 months, if not already cleared,to determine that lead-free standards are met.

**Proposed Issuance Of
*Lead-Safe Certificate***



- A lead-safe investigation consists of:
 - (1) A lead hazard screen *or*
 - (2) A lead risk assessmentto determine that lead-safe standards are met.

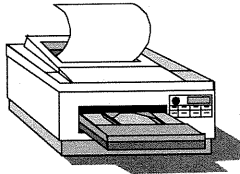
Proposed Issuance Of Certificate



- Lead company must complete and submit the Internet form to the DHFS within 10 work days of completing the inspection or investigation, or within 10 work days of receiving any laboratory results, whichever is later.

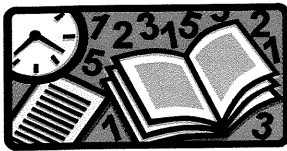
Proposed Issuance Of Certificate

- Lead company must issue the certificate to the property owner within 10 days after receiving verification from the DHFS that standards are met.



Proposed Effective Date

- Effective on date the on-site sampling was completed, unless submitted late.
- When submitted late, effective the earliest date that documentation indicates the property met the standards.



Lead-Free Expiration Date

- A certificate of lead-free status is valid until revoked.

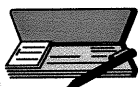


Proposed Lead-Safe Expiration Date



- 9-month or 1, 3, 5, 10 or 20-year lead-safe certificate.
- A certificate of lead-safe status is given an expiration date based on the component that is most likely to cause or become a lead-based paint hazard before any other component. For a 20-year certificate, all lead-based paint must be fully enclosed.
- 9-month lead-safe certificates are limited to 2 & allow coverage while lead-based paint is enclosed or removed from the window channel, sash, and trough.

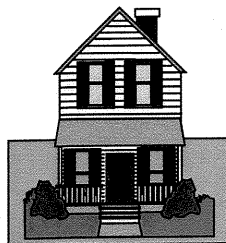
Certificate Fees



- \$50 per lead-free certificate.
- \$25 per lead-safe certificate.
- Payable by the property owner to the lead company.
- The lead company forwards payment to DHFS by 10th day of month following issuance.
- \$25 handling fee payable by the lead company if it submits data using an acceptable alternative to the proposed Internet form.

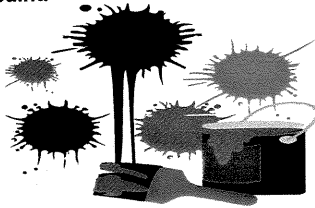


Wisconsin Proposed Property Standards



**Wisconsin Proposed
Lead-Free Property Standards**

- **Painted components** - must be free of lead-based paint.



**Wisconsin Proposed
Lead-Free Property Standards**

- **Dust-lead from previous removal of paint or painted components must have been removed permanently by thorough cleaning.**



**Wisconsin Proposed
Lead-Free Property Standards**

- **Exclusions from standards:**
- Soil.
- Water.
- Lead that does not involve building components.
- Lead involving building components when not lead-based paint.

**Proposed Wisconsin
Lead-Safe Property Standards**



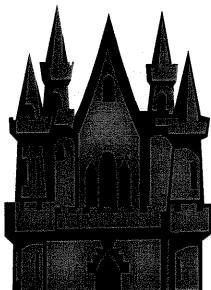
- Under the lead-safe property standards, all paint that has not been sampled, analyzed by a recognized laboratory and determined not to contain lead-based paint must be treated as lead-based paint.

**Proposed Wisconsin
Lead-Safe Property Standards**

- *Interior painted building components* shall be free of deteriorated lead-based paint.



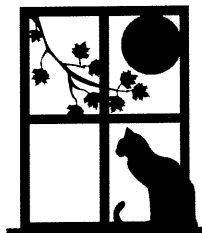
**Proposed Wisconsin
Lead-Safe Property Standards**



- *Exterior components:*
A maximum of 5 ft.² of deteriorated paint for all exterior surfaces combined may be present above 5' from ground or floor level, but the certificate would be limited to 1 year.
- Note: Under new EPA standards for LBP hazards, no deteriorated paint is allowed.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Paint chips**
Floors, windowsills, window wells or troughs and soil shall be free of visible lead-based paint chips.



**Proposed Wisconsin
Lead-Safe Property Standards**

- **Substrate** shall be solid and in good condition, and free of visible defect, damage, decay and deterioration.

Unkeyed plaster may not be present.



**Proposed Wisconsin
Lead-Safe Property Standards**

- **Dust-lead hazards**

Using the composite dust sampling protocol (lead hazard screen methodology), dust-lead result shall not be:

- Floor - arithmetic mean $\geq 25 \mu\text{g}/\text{ft.}^2$
- Interior windowsill - arithmetic mean $\geq 125 \mu\text{g}/\text{ft.}^2$
- Window trough - any result $\geq 800 \mu\text{g}/\text{ft.}^2$



- Note: New EPA standards for LBP hazards does not include a level for dust-lead on window troughs.

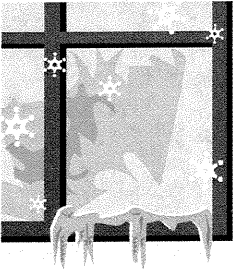
**Proposed Wisconsin
Lead-Safe Property Standards**

- **Dust-lead hazards**
Using the single-surface dust sampling protocol (risk assessment methodology), the dust-lead result shall not be:
 - Floor - arithmetic mean $\geq 40 \mu\text{g}/\text{ft.}^2$
 - Interior windowsill - arithmetic mean $\geq 250 \mu\text{g}/\text{ft.}^2$
 - Window trough - any result $\geq 800 \mu\text{g}/\text{ft.}^2$

Note: New EPA standards for LBP hazards does not include a level for dust-lead on window troughs. For clearance, troughs are reduced from 800 to 400 $\mu\text{g}/\text{ft.}^2$.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Moisture or water damage**
 - No active leak may be present.
 - Evidence of mold, mildew, moisture or water damage where lead-based paint is present limits a certificate to no more than 1 year.



**Proposed Wisconsin
Lead-Safe Property Standards**

- **Friction floors & stair treads**
 - Painted interior and exterior floors and stair treads must have an intact protective covering or topcoat that is free of lead-based paint (no visible wear pattern or excessive scuffing).



**Proposed Wisconsin
Lead-Safe Property Standards**

- **Friction surfaces - certificate is limited to:**
 - 1 year for an *unprotected interior* lead-based painted friction surface (floor, tread, drawer, malfunctioning door, etc.).
 - 3 years for an *exterior* lead-based painted horizontal surface, including a friction surface, that is not enclosed.
 - 10 years for a *protected interior* lead-based painted friction surface that is not enclosed.
 - 20 years for *enclosed* lead-based painted surfaces.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Impact surfaces - Certificate is limited to:**
 - 3 years for an *unprotected interior or exterior* lead-based painted impact surface.
 - 5 years for a *protected exterior* lead-based painted impact surface that is not enclosed.
 - 10 years for a *protected interior* lead-based painted impact surface that is not enclosed.
 - 20 years for *enclosed* lead-based painted surfaces.

**Proposed Wisconsin
Lead-Safe Property Standards**



Window systems

- Weep holes must be present and open to drain water unless not typical of window type.
- Window well or trough must be smooth and cleanable.
- Glazing may not have gaps.
- Operable storm windows must be presented & installed seasonally unless windows are not designed to use storms.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Window systems - Certificate is limited to:**
 - 9 months for lead-based painted window friction and impact surfaces.
 - 3 years for other lead-based painted exterior window component, frame, or window sash component not enclosed.
 - 10 years for interior window trim when interior windowsill/stool is encapsulated.
 - 20 years for a window system with fully enclosed lead-based painted surfaces.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Soil option:**
 - Investigating for soil-lead hazards is not required.
 - When property owner wants soil-lead hazards investigated:
 - If soil is not bare and no paint chips visible, no soil-lead hazard is present. Grass, shrubs, wood chips, and other ground covers may cover soil.
 - If bare soil is present, the arithmetic mean for all soil samples shall not be $\geq 2,000$ parts per million.



Note: New EPA standards for LBP hazards state that a soil-lead hazard is present when bare soil contains total lead:
 ≥ 400 parts per million for bare soil in a play area, or
 $\geq 1,200$ parts per million average for bare soil in rest of yard.

**Proposed Wisconsin
Lead-Safe Property Standards**

- **Exclusions from standards:**
 - Water.
 - Lead that does not involve building components.
 - Lead involving building components when not lead-based paint.

Conditions For Maintaining A Certificate Of Lead-Safe Status.

- Provide information to occupants:
 - Pamphlet explaining occupant & owner responsibilities and possible sources of lead that remain
 - Form for occupant to notify owner of potential LBP hazards).
- Conduct annual visual assessment.
- Remove lead-based paint hazards within 20 working days except:
 - Within 5 working days when child under age 6 is exposed to LBP hazard.
 - By June 1 for exterior work identified between 10/1 and 5/1.

Conditions For Maintaining A Certificate Of Lead-Safe Status.

- Use properly trained and certified persons.
- Conduct clearance.
 - 3rd party required for abatement and activities subject to restricted practices.
- Maintain reports, such as clearance report.
- Notify DHFS.
 - 2 working days notice required for abatement and activities subject to restricted practices.
- Dispose of debris according to DNR regulations.
