

## Health Services – Revises Ch. DHS 163 – EmR0928

**Publication Date:** October 16, 2009  
**Effective Dates:** October 19, 2009 through March 17, 2010

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

The Wisconsin Department of Health Services hereby adopts emergency rules to revise Chapter DHS 163, relating to requirements for conducting lead-safe renovation activities in pre-1978 housing and child-occupied facilities, and affecting small businesses.

#### FINDING OF EMERGENCY

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

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

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

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

#### SUMMARY OF RULES

##### **Analysis Prepared by the Department of Health Services**

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

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

##### **Explanation of agency authority:**

1. Wis. Stat. § 227.11 (2) (a) provides state agencies with general rulemaking authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency if the agency considers it necessary to effectuate the purpose of the statute.

2. Wis. Stat. § 250.04 (7) authorizes fines of \$10 to \$100 for violations of rules promulgated by department related to any matter under its supervision that are necessary to provide efficient administration and to protect health. This includes lead hazard reduction.
3. Wis. Stat. § 250.041 authorizes the department to issue, deny or suspend certifications under Wis. Stat. § 254.176 for a person who performs lead hazard reduction or a lead management activity, or who supervises these activities.
4. Wis. Stat. § 254.172 authorizes the department to promulgate rules governing lead hazard reduction that it determines are consistent with federal law.
5. Wis. Stat. § 254.176 (1) and (2) authorizes the department to establish certification requirements by rule, with the exception of individuals who are licensed, certified or registered by the Department of Commerce (Comm) under Wis. Stat. ch. 145, for certain plumbing and fire protection system activities, within the scope of their Comm credential; and companies that are registered with the Comm under Wis. Stat. § 101.178, to perform heating, ventilating or air conditioning installation or servicing activities, within the scope of their Comm registration. In my opinion these limited certification exceptions do not affect application and enforcement of the lead renovation training and safe practice requirements for these individuals and companies. The DHS certification process requires applications and fees that are separate and distinct from any training required.
6. Wis. Stat. § 254.15 directs the department to develop and implement a comprehensive statewide lead poisoning or lead exposure and treatment program that includes rules for lead hazard reduction requirements, and related certification, accreditation and approval requirements. Wis. Stat. § 254.115 authorizes the denial, nonrenewal and revocation of a certification in specified circumstances.
7. Wis. Stat. § 254.167 authorizes the department to promulgate rules to specify procedures for investigating, testing or sampling painted, varnished or other finished surfaces that may contain lead.
8. Wis. Stat. § 254.178 directs the department to promulgate rules establishing requirements for accreditation of lead training courses and approval of lead instructors.
9. Wis. Stat. § 254.179 directs the department to promulgate rules to establish the standards for a premises, dwelling or dwelling unit to be issued a certificate of lead-free status.

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

**Plain language analysis:**

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

The rules promulgated under this order are similar to the requirements under 40 §§ CFR 745.80 to 745.91 and 745.225, the EPA requirements for training, certification, work practices and recordkeeping to perform renovation activities, except that unlike current EPA regulation, 40 CFR § 745.82 (c), the rules under this order do not permit a property owner to exempt a contractor from following work practice requirements by signing an acknowledgement that no pregnant woman or child under age 6 resides in the dwelling. The department determined not to include a similar provision in this order in anticipation of EPA's agreement under an August 2009 negotiated settlement to issue a notice of proposed removal of this provision by October 20, 2009, and promulgate final rules by April 22, 2010.

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

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

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

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

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

**Comparison with rules in adjacent states:**

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

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

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

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

**Summary of factual data and analytical methodologies:**

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

- EPA regulations, 40 CFR §§ 745.80 to 745.91 and 745.225 relating to renovations and relating to training providers, and 745.320 to 339, relating to requirements that qualify states and tribes to implement these requirements in lieu of the EPA. 40 CFR §745 is commonly known as the renovation, repair and painting rule.
- The EPA's Final Regulatory Flexibility Analysis for the Lead: Renovation Repair, and Painting Program, March 1, 2008 (Document ID EPA-HQ-OPPT-2005).
- The EPA's "Economic Analysis for the TSCA Lead Renovation, Repair and Painting Program Final Rule for Target Housing and Child-Occupied Facilities", March 2008.
- Letter dated May 5, 2008, from the U.S. Government Accountability Office, Associate General Counsel Robert J.

Cramer, to the U.S. Senate Committee on Environment and Public Works and the U.S. House of Representatives Committee on Energy and Commerce reporting on “a major rule promulgated by the [EPA]”.

- Criteria adopted by the department and approved by the Wisconsin Small Business Regulatory Review Board to determine whether the department’s proposed rules would have a significant economic impact on a substantial number of small businesses. Pursuant to the department’s criteria, a proposed rule would have a significant economic impact on a substantial number of small businesses if at least 10% of the businesses affected by the proposed rules are small businesses and if operating expenditures, including annualized capital expenditures, increase by more than the prior year’s consumer price index or revenues are reduced by more than the prior year’s consumer price index. For the purposes of this rulemaking, 2008 is the index year. The consumer price index is compiled by the U.S. Department of Labor, Bureau of Labor Statistics and for 2008 is 3.8 percent.
- The 2002 Economic Census –Geographic Series (Wisconsin), which is compiled by the U.S. Census Bureau every 5 years for each year ending in “2” and “7” and contains the latest available economic data compiled on businesses located in Wisconsin. (The U.S. Census Bureau’s data release schedule for the 2007 Economic Census –Geographic Series is November 2009-July 2010.)
- Section 227.114 (1) (a), Stats., which defines “small business” as a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has gross annual sales of less than \$5,000,000.
- Under ss. 227.13 and 254.174, Stats., the department established and met with a lead technical advisory committee (LTAC) to review and advise the department on the rule revisions. The LTAC includes representatives of the renovation industry, rental housing industry, school districts, local health departments, local housing and community development agencies, non-profits that assist homeowners, tribal programs, daycares and other state agencies.

Represented groups included:

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

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

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

**Small businesses affected by the rule**

A business is considered a small business if it is a business entity, including its affiliates, which is independently owned and operated and not dominant in its field, and which employees 25 or fewer full-time employees or which has

gross annual sales of less than \$5,000,000. As indicated by the revenue and employee information provided by the 2002 U.S. Economic Census for Wisconsin, stated below, it is likely that a majority of the businesses affected by the rule are small businesses as defined under Wis. Stat. § 227.114 (1) (a).

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

#### CONSTRUCTION INDUSTRY

NAICS	Subsector	Business Description: Primary Responsibility	Number of Establis h-ments	Dollar Value Of Work Done	Number of Emplo ees	Includes Businesses that Meet the WI Definition of Small Business
236118	Residential Remodelers: remodeling general contractors, operative remodelers, remodeling design-build firms, and remodeling project construction management firms	Remodeling construction (including additions, alterations, reconstruction, maintenance, and repair work) of houses and other residential buildings (single-family and multifamily).	1,508	\$704,991,000	6,151	Yes
23611	<b>Residential Building Construction</b>	Construction or remodeling and renovation of single-family and multifamily residential buildings. Included in this industry are residential housing general contractors (i.e., new construction, remodeling or renovating existing residential structures), operative builders and remodelers of residential structures, residential project construction management firms, and residential design-build firms.	4,003	\$4,146,381,000	19,073	Yes

23813	<b>Framing Contractors</b>	Structural framing and sheathing using materials other than structural steel or concrete new work, additions, alterations, maintenance, and repairs.	430	\$196,482,000	2,464	Yes
23816	<b>Roofing Contractors</b>	Roofing. This industry also includes establishments treating roofs (i.e., spraying, painting, or coating) and installing skylights. The work performed may include new work, additions, alterations, maintenance, and repairs.	709	\$501,773,000	4,958	Yes
23817	<b>Siding Contractors</b>	Installing siding of wood, aluminum, vinyl or other exterior finish material (except brick, stone, stucco, or curtain wall). This industry also includes establishments installing gutters and downspouts. The work performed may include new work, additions, alterations, maintenance, and repairs.	395	\$148,778,000	1,877	Yes
238150	<b>Glass and Glazing Contractors</b>	Installing glass panes in prepared openings (i.e., glazing work) and other glass work for buildings. The work performed may include new work, additions, alterations, maintenance, and repairs.	47	\$114,996,000	808	Yes
23821	<b>Electrical Contractors</b>	Installing and servicing electrical wiring and equipment. Electrical contractors included in this industry may include both the parts and labor when performing work. Electrical contractors may perform new work, additions, alterations, maintenance, and repairs.	1,174	\$1,599,245,000	14,335	Yes
23822	<b>Plumbing, Heating, and</b>	Installing and servicing plumbing, heating, and	1,839	\$2,643,604,000	20,425	Yes

	<b>Air-Conditioning Contractors</b>	air-conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.				
23831	<b>Drywall and Insulation Contractors</b>	Drywall, plaster work, and building insulation work. Plaster work includes applying plain or ornamental plaster, and installation of lath to receive plaster. The work performed may include new work, additions, alterations, maintenance, and repairs.	533	\$471,329,000	5,461	Yes
23832	<b>Painting and Wall Covering Contractors</b>	Interior or exterior painting or interior wall covering. The work performed may include new work, additions, alterations, maintenance, and repairs.	841	\$276,551,000	4,023	Yes
23833	<b>Flooring Contractors</b>	Installation of resilient floor tile, carpeting, linoleum, and hard wood flooring. The work performed may include new work, additions, alterations, maintenance, and repairs.	323	\$183,469,000	1,618	Yes
23839	<b>Other Building Finishing Contractors</b>	Building finishing trade work (except drywall, plaster and insulation work; painting and wall covering work; flooring work; tile and terrazzo work; and finish carpentry work). The work performed may include new work, additions, alterations, or maintenance and repairs.	144	\$65,831,000	835	Yes
23835	<b>Finish Carpentry Contractors</b>	Finish carpentry work. The work performed may include new work, additions, alterations, maintenance, and repairs.	1,088	\$468,750,000	4,689	Yes



REAL ESTATE INDUSTRY

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

SOCIAL ASSISTANCE (CHILD CARE) INDUSTRY

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

WASTE MANAGEMENT AND REMEDIATION INDUSTRY

NAICS	Subsection	Business Description: Primary Responsibility	Number of Establishments	Sales	Number of Employees	Includes Businesses that Meet the WI Definition of Small Business
562910 2	Asbestos Abatement and Lead Paint Removal	Asbestos abatement or lead paint removal	25	\$24,152,000	296	Yes

**Other persons or entities affected by the rule**

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

**Costs to small businesses**

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

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

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

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

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

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

*Certification fees:* Under the current rule, companies conducting lead-hazard reduction and lead-investigation activities are required to be certified by the department and to pay a certification fee of \$75 every 2 years (\$37.50 per year). Certification of companies performing only renovation activities is currently optional unless the work will be conducted in

a state-registered lead-safe home. Under the revised rule, company certification will be required for companies that conduct renovations for compensation in pre-1978 housing or child-occupied facilities. Renovation companies will pay the current fee of \$75 for a 2-year certification.

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

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

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

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

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

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

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

The pamphlet, *Renovate Right*, may be downloaded free from the EPA website and printed in-house for minimal expense or sent out for professional printing at the renovator's discretion. Costs associated with distribution are expected to be

minimal as most renovators work directly with the owner/occupant and have ample opportunity to provide the required material. Copy and distribution expenses would also be incurred under the EPA regulation.

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

**Cost-Benefits**

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

Lead interferes with the normal development of a child’s brain and can result in significant learning disabilities and other behavior and health problems. Lead poisoning is associated with a greater chance that a child will experience problems in school due to learning difficulties and failure. Children who are lead poisoned show a 15% decrease in reading scores and 14% decrease in mathematical scores on performance tests in 3<sup>rd</sup> grade. These learning problems can lead to higher rates of high school dropout, teen pregnancy and juvenile delinquency. The reduction in impaired cognitive function and other serious illnesses in children and adults a health effects from lead exposure are expected to result in quantifiable benefits nationwide.

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

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

**Effect on small business:**

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

**Agency contact person:**

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Asbestos & Lead Section  
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**Place where comments are to be submitted and deadline for submission:**

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

**TEXT OF PROPOSED RULE**

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

DHS 163.01 (2) ACTIVITIES INVOLVING TARGET HOUSING AND CHILD-OCCUPIED FACILITIES.

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

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

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

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

(c) ~~In addition to provisions under subchs. I to IV that apply to target housing and child-occupied facilities, subch. Subchapter V applies to real property for which a certificate of lead-free status or lead-safe status is sought or has been issued. Subject to the certification exceptions under s. DHS 163.43, subchs. IV and V also apply to a person performing, supervising or offering to perform or supervise a non-abatement lead based paint activity on registered lead safe property.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**SECTION 12.** DHS 163.03 (48) is repealed.

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

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

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

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

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

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

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

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

**SECTION 17.** DHS 163.03 (62) is repealed.

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

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

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

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

(76) "Lead investigation activity" means any activity that determines whether lead-based paint or lead hazards are present. Lead investigation activities include clearance, dust-wipe sampling, elevated blood lead investigation, lead-free

inspection, lead inspection, lead hazard screen, lead-safe investigation, paint chip ~~testing~~sampling, risk assessment and soil sampling activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DHS 163.03 (114) "Visual inspection" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. All regulated activities are within the scope of a license, certification or registration issued ~~to the individual~~ by the department of commerce under s. 101.178, ~~401.87~~, Stats., or ch. 145, Stats., and the individual performing the regulated activities has completed lead-safe renovation training under s. DHS 163.11 (2) (c) as evidenced by possession of a current and valid course completion certificate at the worksite whenever performing regulated work.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DHS 163.12 (1) (am) On or after April 22, 2010, except as provided under par. (b), a person shall be certified by the department as a company under this chapter and shall have appropriately certified staff or shall contract with an appropriately certified individual before it may perform, supervise, advertise, claim to provide or offer to perform or supervise a renovation activity for which certification is required under s. DHS 163.10 (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DHS 163.13 (title) **Responsibilities of certified persons when conducting regulated activity.** (1) MAY NOT REFUSE ENTRY. No person at a site where a lead company or lead-safe company conducts business or at the site of a current or previously conducted ~~regulated activity~~ regulated under this chapter may refuse entry to any representative of the department acting under the authority of s. DHS 163.30 (3).

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

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

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

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

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

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

3. Lead company certificate of approval from the department.

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

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

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

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

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

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

6. Lead company certificate of approval from the department.

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

1. Any written contract for renovation activities conducted by the company.

2. Any report from a certified lead inspector, hazard investigator or risk assessor certifying that lead-based paint is not present on components affected by the renovation activity.

3. Signed and dated acknowledgement of receipt of pre-renovation education pamphlet under s. DHS 163.14 (10).

4. Written certification of delivery of pre-renovation education pamphlet when the company has been unsuccessful in obtaining written acknowledgement from an adult occupant under s. DHS 163.14 (10).

5. Certificate of mailing when pre-renovation education pamphlet is sent by U.S. mail under s. DHS 163.14 (10).

6. Signed and dated statement recording steps taken to notify occupants of upcoming paint disturbing activities in common areas under s. DHS 163.14 (10).

7. For each renovation activity conducted by the company, documentation of compliance with the requirements of DHS 163.14, including documentation that a certified lead-safe renovator was assigned to the project, that the certified renovator provided on-the-job training for uncertified workers used on the project, that the certified renovator performed or directed workers who performed the renovation work and that the certified lead-safe renovator either performed the visual inspection and cleaning verification after all paint disturbing work was completed or dust clearance sampling was performed as required under s. DHS 163.14 (5) by an appropriately certified individual. This documentation shall include a copy of the certified renovator's training certificate and a certification signed by the certified renovator assigned to the project that:

a. Training was provided to workers, including topics covered for each worker.

b. Warning signs were posted at entrances to the work area.

c. Any interior work area was contained by removing or covering all objects, closing and covering all HVAC ducts, closing all windows, closing and sealing all doors or covering doors that were used for passage to prevent the spread of dust, covering floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material to 6 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to contain dust, whichever is greater, and installing vertical containment, where necessary, to prevent migration of dust and debris to adjacent areas.

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

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

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

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

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

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

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

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

12. Company certificate of approval from the department.

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

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

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

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

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

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

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

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

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

2. 'Responsibility for certificate of approval.' a. Each certified ~~lead~~ company performing, supervising or offering to perform or supervise a ~~regulated~~ an activity regulated under this chapter shall retain the certificate of approval for the duration of certification and shall make it available for inspection upon request by the department or the public.

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

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

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

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

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

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

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

DHS 163.13 (7) (b) *Training and certification for regulated renovation activities.* The company conducting a regulated renovation activity shall be a certified lead-safe company or certified lead company and shall verify that

individuals who will perform renovation activities are either certified lead-safe renovators or have been properly trained by a certified lead-safe renovator in accordance with DHS 163.14 (11) on the work practices they will use to perform their assigned tasks. A certified lead abatement worker or lead abatement supervisor who completed department-approved lead-safe renovator, lead abatement worker or lead abatement supervisor refresher training after October 19, 2009 is also qualified to perform the duties of a certified lead-safe renovator.

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

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

DHS 163.13 (9) WORK CONDUCT. ~~Upon receiving certification, individuals~~Individuals and lead-companies ~~conducting activities regulated under this chapter, and all persons working under their supervision,~~ shall conduct activities in a manner that does not increase the hazards from lead-based paint to ~~building occupants~~ and shall comply with the work practice standards under s. DHS 163.14 ~~or 163.44, as applicable.~~

**SECTION 78.** DHS 163.13 (10) to (12) are created to read:

DHS 163.13 (10) ASSOCIATION WITH A CERTIFIED COMPANY. (a) An individual shall be associated with a certified lead company under s. DHS 163.12 by ownership, contract or employment before the individual may perform, supervise or offer to perform or supervise a lead hazard reduction or lead investigation activity regulated under this chapter.

(b) An individual shall be associated with a certified lead-safe company or lead company under s. DHS 163.12 by ownership, contract or employment before the individual may perform, supervise or offer to perform or supervise a renovation activity regulated under this chapter.

(11) PRE-RENOVATION EDUCATION. A company shall ensure that the pre-renovation education requirements under s. DHS 163.14 (10) are met before each renovation activity to be performed, except that the pre-renovation information distribution requirements do not apply to emergency renovations.

(12) NOTIFICATION OF COMPANY CHANGE. The company shall notify the department in writing at least 10 working days before any of the following:

- (a) The company name or address changes.
- (b) The company ownership changes.

**SECTION 79.** DHS 163.14 (1) (c) 1. is renumbered DHS 163.14 (1) (c) and as renumbered is amended to read:

DHS 163.14 (1) (c) *Requirement for supervision.* When a lead abatement worker performs an abatement activity, a lead abatement supervisor shall provide direct onsite supervision ~~unless general supervision is allowed under subd. 2.~~

**SECTION 80.** DHS 163.14 (1) (c) 2. is repealed.

**SECTION 81.** DHS 163.14 (5) (a) 1. to 3. are amended to read:

DHS 163.14 (5) CLEARANCE. (a) *Who may conduct.* 1. A certified lead hazard investigator, inspector or risk assessor may conduct clearance for any lead hazard reduction ~~and non-abatement lead-based paint activity or renovation activity.~~

2. A lead sampling technician may conduct clearance for ~~a non-abatement lead-based paint activity when the clearance involves either a dwelling with fewer than 5 units or an individual dwelling unit in a multi-family dwelling with more than four units~~ renovation or interim control activities.

3. ~~Except when clearance is conducted by a sampling technician who is the property owner or the property owner's employee or agent, the~~The certified individual conducting clearance shall be associated with a certified lead company.

**SECTION 82.** DHS 163.14 (5) (b) 1. and 2. are amended to read:

DHS 163.14 (5) (b) *Prohibitions on who may conduct.* ~~1. The person conducting clearance may not participate in conducting or pre-clearing the activity being cleared.~~ 1. Be the company or associated by employment, contract or other agreement with the company that performs or pre-cleans the lead hazard reduction or renovation activity being cleared.

~~2. The person conducting clearance may not communicate~~Communicate to others the location where clearance dust wipes will be collected.

**SECTION 83.** DHS 163.14 (5) (b) 3. is repealed and recreated to read:

DHS 163.14 (5) (b) 3. Be the property owner, an immediate family member, agent or employee of the property owner.

**SECTION 84.** DHS 163.14 (5) (b) 4. to 6. are created to read:

DHS 163.14 (5) (b) 4. Be a company or associated with a company that is directly or beneficially owned, controlled or managed by the property owner, or by an immediate family member, agent or employee of the property owner.

5. Be a person hired by or under contract with, or authorized by, the property owner to manage or maintain the property owner's real property as directed by the property owner.

6. Be a person who has a financial interest in the laboratory results of the sampling.

**SECTION 85.** DHS 163.14 (5) (c) 3. a. , 4. a., 8. (intro.), and 10. (title), (intro.) and c. to e. are amended to read:

DHS 163.14 (5) (c) 3. a. In at least 4 rooms, hallways, stairwells or other living areas within the containment area, collect one dust sample from one interior windowsill or one window trough, if available, and one dust sample from the ~~floors~~floor. If there are fewer than 4 rooms, hallways, stairwells or other living areas within the containment area, collect samples from one interior windowsill or one window trough, if available, and one dust sample from the floors of all rooms, hallways, stairwells or other living areas within containment.

4. a. In at least 4 rooms, hallways, stairwells or other living areas in or near the work area, collect one dust sample from one interior windowsill or one window trough, if available, and one dust sample from the ~~floors~~floor. If there are fewer than 4 rooms, hallways, stairwells or other living areas within the residential dwelling or child-occupied facility, collect samples from one interior windowsill or one window trough, if available, and one dust sample from the floors of all rooms, hallways, stairwells or other living areas.

8. 'Interpretation of laboratory results.' Compare the residual lead level from each dust sample, as determined by laboratory analysis, with the applicable clearance level for lead in dust on floors, interior windowsills and window troughs. If the residual lead level in a dust sample equals or exceeds the applicable clearance level, all of the components represented by the failed sample shall be recleaned or sealed by the person who conducted the activity being cleared and retested by the person conducting clearance until clearance levels are met. For dust wipe samples taken during clearance, clearance is achieved when the laboratory result for a sample is less than the following:

10. 'Preparation of report following clearance of interim controls or renovation activities ~~that do not involve abatement.~~' Within 10 working days after clearance of interim controls or renovation activities ~~that do not involve~~

~~abatement~~ or within 10 working days after receipt of any required laboratory results, whichever is later, prepare a written clearance report for submission to the person who conducted the activities being cleared and to the property owner or the person who contracted for the clearance. The report shall include all of the following information:

c. The name and address of each ~~lead company, firm or organization~~ conducting the interim controls or renovation activities ~~non-abatement lead-based paint activity~~.

d. The name and department certification number of the person in charge of the work.

e. A description of the ~~non-abatement lead-based paint activity~~ interim controls or renovation activities.

**SECTION 86.** DHS 163.14 (10) and (11) are created to read:

DHS 163.14 (10) INFORMATION DISTRIBUTION REQUIREMENTS FOR RENOVATION ACTIVITIES. Except for emergency renovations, for which the pre-renovation information distribution requirements do not apply, the requirements of this subsection shall be met as follows:

(a) *Renovation activities in owner-occupied dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the company performing the renovation activities shall provide the owner of the unit with the pamphlet, and comply with one of the following:

1. Obtain from the owner a written acknowledgment that the owner has received the pamphlet.
2. Obtain a certificate of mailing at least 7 days prior to the start of the renovation activities.

(b) *Renovation activities in non-owner-occupied dwelling units.* No more than 60 days before beginning renovation activities in any residential dwelling unit of target housing, the company performing the renovation activities shall provide an adult occupant of the unit with the pamphlet, and comply with one of the following:

1. Obtain from the adult occupant a written acknowledgment that the occupant has received the pamphlet; or certify in writing that a pamphlet has been delivered to the dwelling unit and that the company performing the renovation activity has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification must include the address of the unit undergoing renovation, the date and method of delivery of the pamphlet, names of the person delivering the pamphlet, reason for lack of acknowledgement, the signature of an authorized company representative of the company performing the work, and the date of signature.

2. Obtain a certificate of mailing at least 7 days prior to the renovation.

(c) *Renovation activities in common areas of multi-family dwellings.* 1. No more than 60 days before beginning renovation activities in common areas of multi-family target housing, the company performing the renovation activities shall provide the owner with the pamphlet, and comply with one of the following:

- a. Obtain from the owner a written acknowledgment that the owner has received the pamphlet.
- b. Obtain a certificate of mailing at least 7 days prior to the start of the renovation activities.

2. Provide information to each affected unit by complying with one of the following:

a. Notify in writing, or ensure written notification of, each affected unit and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the company performing the renovation activities, or,

b. While the renovation is ongoing, post informational signs describing the general nature and locations of the renovation activities and the anticipated completion date. These signs shall be posted in areas where they are likely to be

seen by the occupants of all the affected units. The signs shall be accompanied by a posted copy of the pamphlet or information on how interested occupants can review a copy of the pamphlet or obtain a copy from the company performing the renovation activities at no cost to occupants.

3. Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

4. If the scope, locations or expected starting and ending dates of the renovation activities change after the initial notification to occupants, and the company provided written initial notification to each affected unit, the company performing the renovation activities shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification shall be provided before the company performing the renovation activities initiates work beyond that which was described in the initial notice.

(d) *Renovation activities in child-occupied facilities.* No more than 60 days before beginning renovation activities the company performing the renovation activities shall:

1. In any child-occupied facility, provide the owner of the building with the pamphlet, and comply with one of the following:

- a. Obtain from the owner a written acknowledgment that the owner has received the pamphlet.
- b. Obtain a certificate of mailing at least 7 days prior to the start of the renovation activities.

2. If the child-occupied facility is not the owner of the building, provide an adult representative of the child-occupied facility with the pamphlet, and comply with one of the following:

a. Obtain, from the adult representative a written acknowledgment that the adult representative had received the pamphlet; or certify in writing that a pamphlet has been delivered to the facility and that the company performing the renovation activities has been unsuccessful in obtaining a written acknowledgment from an adult representative. Such certification shall include the address of the child-occupied facility undergoing renovation, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgement (e.g., representative refuses to sign), the signature of a representative of the company performing the renovation activities, and the date of signature.

b. Obtain a certificate of mailing at least 7 days prior to the start of renovation activities.

3. In any child-occupied facility, provide the parents and guardians of children using the child-occupied facility with the pamphlet and information describing the general nature and locations of the renovation activities and the anticipated completion date by complying with one of the following:

a. Mail or hand-deliver the pamphlet and the renovation activities information to each parent or guardian of a child using the child-occupied facility.

b. While the renovation activities are ongoing, post informational signs describing the general nature and locations of the renovation activities and the anticipated completion date. These signs shall be posted in areas where they can be seen by the parents and guardians of the children frequenting the child-occupied facility. The signs shall be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the company performing the renovation activities at no cost to the parents or guardians.

4. Prepare, sign and date a statement describing the steps taken to notify all parents and guardians about the intended renovation activities and provide the pamphlet.

(e) *Written acknowledgment.* The written acknowledgments required under pars. (a) 1., (b) 1., (c) 1. a., (d) 1. a. and (d) 2. a. of this subsection shall:

1. Include a statement recording the owner's, occupant's or representative's name and acknowledging receipt of the pamphlet prior to the start of the renovation activities, the address of the unit undergoing renovation, the signature of the owner, occupant or representative, as applicable, and the date of signature.

2. Be either a separate sheet or part of a written contract or service agreement for the renovation.

3. Be written in the same language as the text of the contract or service agreement for the renovation activities, or, in the case of non-owner-occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

(11) RENOVATION ACTIVITIES. (a) *Who may conduct.* Only the following persons may conduct renovation activities involving target housing or child-occupied facilities:

1. Certified lead-safe renovators who work for a certified lead-safe company or lead company.

2. Persons trained by and under the supervision of a certified lead-safe renovator who works for a certified lead-safe company or lead company.

3. Certified lead abatement supervisors or lead abatement workers who meet the training requirements under s. DHS 163.11 (2) (c) and work for a certified lead-safe company or lead company.

4. Persons licensed, certified or registered by the department of commerce under s. 101.178 or ch. 145, Stats., who meet all the requirements under s. DHS 163.10 (1) (d) 2.

(b) *Lead-safe work protocol.* When supervising or performing renovation activities, documented methodologies shall be used to conduct work in a lead-safe manner that does not create lead-based paint hazards, including work practices and engineering controls that limit the creation of dust and prevent the spread of dust, debris and paint chips outside the work area, and shall comply with all requirements under pars. (c) to (L).

(c) *Requirement for supervision.* The assigned certified lead-safe renovator, or another person who meets the conditions of par. (a) 3. or 4., shall provide direct on-site supervision at all times during worksite setup, including while posting warning signs and establishing work area containments, and shall be onsite regularly during renovation activities to direct work performed by other individuals and to ensure that lead-safe work practices are being followed, that containment barriers are maintained and that dust and debris do not spread beyond the work area. The certified lead-safe renovator shall be readily available, either on site or by telephone, at all times while paint disturbing activities are being conducted and, when off site, shall be able to return to the worksite within a reasonable time, about 30 minutes, as needed.

(d) *Requirement for ensuring compliance.* The company shall ensure that all renovation activities are conducted according to the requirements of this section and all applicable federal, state and local government requirements are followed.

(e) *Occupant protection.* Documented methodologies and the following work practice requirements shall be used to protect occupants when renovation activities are performed:

1. 'Post signs.' Signs clearly defining the work area and warning occupants and other persons not involved in the renovation activities to remain outside the work area. To the extent practicable, these signs shall be in the primary language of the occupants. Signs shall be posted before beginning the work and shall remain in place and readable until the renovation activities and post-work cleaning verification have been completed.

2. 'Contain work areas.' Before starting renovation activities, the work area shall be isolated so that no dust or debris leaves the work area during the activity. Workers shall maintain the integrity of the containment throughout the renovation activities by ensuring that any plastic or other appropriate containment materials are not torn or displaced, and taking steps necessary to ensure that no dust or debris leaves the containment work area during the renovation. When the building is occupied, containment shall be installed in a manner that provides safe access to restrooms and exits for occupants. Containment may not be constructed in a manner that would interfere with worker egress in an emergency.

(f) *Interior lead-safe work practices.* The company shall ensure that documented methodologies are used for all interior renovation activities and that all personal property in the work area is protected from contamination by dust and debris, including all of the following:

1. Remove all objects from the work area, including furniture, rugs, and window coverings. Objects that can not be removed shall be covered with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

2. Close and seal all duct openings in the work area with taped down plastic sheeting or other impermeable material.

3. Close windows and doors in the work area. Doors shall be covered with plastic sheeting or other impermeable material. Doorways used as the entrance to the work area shall be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

4. Cover floor surfaces in the work area, including installed carpet, with taped down plastic sheeting or other impermeable material at least 6 feet beyond the perimeter of surfaces undergoing renovation, or a sufficient distance to contain all dust, whichever is greater.

5. Use precautions to ensure that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving the work area.

(g) *Exterior lead-safe work practices.* The company shall ensure that documented methodologies are used for all exterior renovation activities and that all personal property in the work area is protected from contamination by dust and debris, including all of the following:

1. Remove all objects from the work area, including furniture and play equipment. Objects that can not be removed shall be covered with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

2. Close all doors and windows within 20 feet of the renovation work area. On multi-story buildings, close all doors and windows within 20 feet of the renovation work on the same floor as the renovation and all doors and windows on all floors below that are the same horizontal distance from the renovation work.

3. Ensure that doors within the work area that will be used while the job is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

4. Cover the ground with plastic sheeting, other impermeable disposable material, or landscape fabric capable of collecting dust and debris extending 10 feet beyond the perimeter of surfaces undergoing paint disturbance or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line or neighboring structures prevent 10 feet of ground cover.

5. As a situation requires, the company shall take extra precautions to contain the work area to ensure that dust and debris from renovation activities do not contaminate other buildings or areas of the property or migrate to adjacent properties.

(h) *Prohibited practices.* The following work practices shall be prohibited or restricted during a renovation activity:

1. Open-flame burning, torching or charring of paint is prohibited.

2. Operating a heat gun on paint at or above 1100 degrees Fahrenheit is prohibited.

3. Using a chemical paint stripper containing methylene chloride is prohibited.

4. Using machines to remove paint through high speed operation such as abrasive blasting, sandblasting, needle gunning, or machine sanding, grinding or planing painted surfaces, is prohibited unless the machine is operated with a properly fitted HEPA-filtered exhaust control in a fully contained work area.

5. High-pressure water blasting or hydroblasting is prohibited unless it is conducted in a fully contained work area with HEPA-filtered exhaust control and water collection system.

6. Using an improperly operating HEPA vacuum to clean up worksite dust, debris and paint chips is prohibited.

7. Dry sweeping dust, debris or paint chips in a renovation work area is prohibited.

(i) *Waste handling.* Wastewater, air emissions and solid waste from renovation activities shall be handled as follows:

1. Contained in the work area to prevent the release of dust and debris before removal for storage and disposal. If a chute is used to remove waste from the work area it must be covered.

2. Stored in a container or enclosure at the conclusion of each work day that prevents access to and release of dust and debris.

3. Contained to prevent release of dust and debris for final transport at the conclusion of renovation activities.

4. Discharge of wastewater shall be managed according to chs. NR 105, 106 and 200 to 299.

5. Air emissions shall be managed according to chs. NR 404, 415, 429, and 445.

6. Paint debris and waste shall be managed according to chs. NR 500 to 538 and 660 to 679.

(j) *Cleaning the work area.* Documented methodologies shall be followed to clean all work areas at the end of each work day and when all renovation activities have been completed. After the paint disturbing work has been completed, the work area shall be cleaned until no dust, debris or residue remains.

1. For all interior and exterior work areas:

a. Collect all paint chips and debris and, without dispersing any of it, seal the waste in a heavy-duty waste bag.

b. Dispose of all sheeting as waste by first misting, then folding inward until as small as possible, taping seams shut or placing in heavy-duty waste bags. Sheeting used to isolate contaminated areas from non-contaminated areas must remain in place until after final cleaning and removal of all other sheeting.

2. For exterior work areas, remove all visible debris, paint chips and residue in and below the work area, including from the ground, window sills and other horizontal surfaces.

3. For interior work areas:

a. Clean all objects and horizontal surfaces in the work area and within 2 feet outside the work area starting at the top and working down to the floor.

b. Clean walls starting at the ceiling and working down to the floor by either HEPA vacuuming or wiping with damp disposable cleaning cloths.

c. For other interior surfaces, thoroughly HEPA vacuum all remaining surfaces and objects in the work area, including horizontal surfaces, furniture and fixtures. After vacuuming, wipe the same surfaces, objects and fixtures with damp disposable cleaning cloths.

d. For carpets, use a HEPA vacuum with a beater bar to thoroughly and meticulously vacuum carpets and rugs.

e. For uncarpeted floors, thoroughly mop the floor using a 2- or 3-bucket mopping system or a wet mopping system using disposable cloths.

(k) *Post-activity visual inspection.* A visual inspection of the work area or areas shall be conducted by a person allowed under par. (a) after renovation activities and cleaning have been completed.

1. For interior renovation activities, a visual inspection shall be performed to determine whether dust, debris or residue is still present in or around the work areas. If dust, debris or residue is present, these conditions shall be removed by re-cleaning and another visual inspection shall be performed.

2. For exterior renovation activities, a visual inspection shall be performed to determine whether dust, debris or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris or residue is present, these conditions shall be eliminated and another visual inspection shall be performed. After the work area or areas pass visual inspection, the activity is considered complete and warning signs may be removed.

(L) *Post renovation cleaning verification for interior work areas.* Except as allowed under par. (m), after a successful visual inspection, a person allowed under par. (a) shall verify cleaning of all interior work areas by using the following procedures:

1. Verify that each windowsill in the work area has been adequately cleaned by wiping the windowsill with an unused wet disposable cleaning cloth that is damp to the touch and comparing the cleaning cloth to the cleaning verification card.

a. If the cleaning cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

b. If the cleaning cloth is darker than the cleaning verification card, the windowsill has not been adequately cleaned and re-cleaning following the procedures in par. (j) 3. is required. After re-cleaning, either use a new cleaning cloth or fold the used cloth in such a way that an unused surface is exposed and wipe the surface again. If the cleaning cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

c. If the cleaning cloth is still darker than the cleaning verification card, wait one hour or until the surface has dried completely, whichever is longer.

d. After waiting for the windowsill to dry, wipe the sill with a dry disposable cleaning cloth. After this wipe, the windowsill has been adequately cleaned.

2. Verify that uncarpeted floors and countertops within the work area have been adequately cleaned by wiping the floors and countertops with an unused wet disposable cleaning cloth. Floors shall be wiped using a long-handled mop designed with a head attachment for wet disposable cleaning cloths. The cleaning cloth must remain damp at all times while it is being used to wipe the surface for post-activity cleaning verification. If the surface within the work area is larger than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet. Wipe each section separately with a new wet disposable cleaning cloth.

a. If the cloth used to wipe that section within the work area matches the cleaning verification card, that section has been adequately cleaned.

b. If the cleaning cloth used to wipe a particular section is darker than the cleaning verification card, that section has not been adequately cleaned and re-cleaning following the procedures in par. (j) 3. is required. After re-cleaning, use a new cleaning cloth and wipe that section again. If the cleaning cloth matches or is lighter than the cleaning verification card, that section of the surface has been adequately cleaned.

c. If the cleaning cloth used to wipe a particular surface section is still darker than the cleaning verification card after the surface has been re-cleaned, wait for one hour or until the entire section surface has dried completely, whichever is longer.

d. After waiting for the entire section surface to dry, wipe the surface with a dry disposable cleaning cloth. After this wipe, that section of the surface has been adequately cleaned.

3. When the work area passes the post-renovation cleaning verification, warning signs may be removed.

(m) *Optional dust clearance testing.* Cleaning verification is not required if the contract between the company and the person contracting for the renovation activities or another federal, state, or local law or regulation requires dust clearance sampling at the conclusion of a renovation activity covered by this chapter.

1. Dust clearance samples for renovation activities shall be collected by a certified lead inspector, lead hazard investigator, lead risk assessor or lead sampling technician following clearance protocol under s. DHS 163.14 (5) (c).

2. The company performing the renovation shall re-clean or seal work areas and component types that fail dust clearance until the dust clearance sample results are below the clearance standards in s. DHS 163.14 (5) (c) 8.

(n) *Activities conducted after successful cleaning verification or clearance testing.* Activities that do not disturb paint, such as re-painting walls that have been properly prepared, are not regulated under this subchapter if they are conducted after cleaning verification has been performed or clearance testing results show dust lead levels below the clearances standards in s. DHS 163.14 (5) (c) 8.

(o) *Emergency renovations.* 1. Emergency renovations are exempt from the warning sign, containment, waste handling, training and certification requirements of this chapter to the extent necessary to respond to the emergency.

2. Emergency renovations are not exempt from the cleaning requirements of this subsection, which shall be performed by certified lead-safe renovators or individuals trained by a certified renovator, the cleaning verification requirements of this subsection, which shall be performed by certified renovators, or the recordkeeping requirements under s. DHS 163.13 (3) (c).

(p) *Use of paint test kits.* When requested by the party contracting for renovation services, the certified renovator may use only a department-recognized paint test kit to determine whether components and surfaces to be affected by the renovation activities contain lead-based paint. The certified renovator shall test each distinct component and surface to be affected, follow the manufacturer's instructions for use of the paint test kit, and document and maintain the records required under s. DHS 163.13 (3) (c) 11.

(q) The company shall prepare, maintain and distribute records as required under s. DHS 163.13 (3) (c).

**SECTION 87.** DHS 163.16 is created to read

**DHS 163.16 Recognized paint test kits for renovation.** (1) EPA VERIFICATION PROGRAM. The department recognizes paint test kits that have been tested and determined by the EPA Environmental Technology Verification Program, or other equivalent EPA approved testing program, to meet the response criteria described in this section.

(2) RESPONSE CRITERIA. A recognized test kit shall meet or exceed both the negative response criteria and the positive response criteria, as follows:

(a) *Negative response criteria.* For paint containing lead at or above the regulated level, 0.7 milligrams per square centimeter or .06% by weight, a demonstrated probability, with 95% confidence, of a negative response less than or equal to 5% of the time.

(b) *Positive response criteria.* For paint containing lead below the regulated level, 0.7 milligrams per square centimeter or .06% by weight, a demonstrated probability, with 95% confidence, of a positive response less than or equal to 10% of the time.

(3) If a test kit meets the response criteria under subs. (2) the department will issue a notice of recognition to the kit manufacturer and post the information on the department's website.

**SECTION 88.** DHS 163.20 (1) and (2) are amended to read:

DHS 163.20 (1) REQUIREMENT FOR ACCREDITATION. No person may offer, advertise, claim to provide or conduct a lead training course that is represented as qualifying any person for certification to perform a regulated ~~abatement~~ renovation, lead hazard reduction, or lead investigation activity in this state unless that training course has received accreditation from the department, has an approved principal instructor, uses only approved instructors and the training provider is owned by or employs an approved training manager.

(2) ONLY TRAINING COURSES. Department accreditation is provided only for a specific training course designed for individuals seeking certification or recertification in a discipline under s. DHS 163.10 (2) ~~or s. HFS 163.43,~~ ~~not for a training institution or a training program.~~

**SECTION 89.** DHS 163.20 (4) (d) is created to read:

DHS 163.20 (4)(d) *Course disciplines.* A person may seek accreditation from the department to offer lead training courses in the following disciplines:

1. Lead-safe renovation initial and lead-safe renovator refresher.
2. Lead-safe renovation initial and lead-safe renovator refresher conducted in a language other than English.
3. Lead abatement work initial and lead abatement worker refresher.
4. Lead abatement work initial and lead abatement worker refresher conducted in a language other than English.
5. Lead abatement supervision initial and lead abatement supervisor refresher.
6. Lead project design initial and lead project designer refresher.
7. Lead sampling initial and lead sampling technician refresher.
8. Lead inspection initial and lead inspector refresher.
9. Lead hazard investigation initial and lead hazard investigator refresher.
10. Lead risk assessor refresher.

**SECTION 90.** DHS 163.20 (5) and (8) (a) (intro.) and 1. (title) and (intro.) are amended to read:

DHS 163.20 (5) TRAINING RESOURCES. An accredited training course shall be conducted using facilities, equipment and instructional materials that promote the learning objectives for which the course is offered. Facilities shall have appropriate space for classroom, hands-on and field training. Instructional material shall be based upon EPA and department-approved curricula, shall include all materials approved for accreditation, and shall be kept up-to-date with new information provided by the department. Equipment shall reflect department-approved work practices, shall be maintained in proper working condition and shall be licensed and stored in compliance with any applicable requirements and regulations. Students shall be given course material based on EPA and department-approved curricula that supports the learning goals and objectives of the course and that the student may use as reference material to enhance compliance with lead-based paint regulations and standards. Students shall also be given a paper copy of this chapter.

(8) (a) (title) *Required learning objectives for courses leading to certification in lead-safe renovation and lead hazard reduction disciplines.* An accredited training course that meets a training requirement under s. DHS 163.11 for certification as a lead-safe renovator, lead abatement worker, lead abatement supervisor or lead project designer shall teach work practice standards that are consistent with s. DHS 163.14 for renovation activities and abatement activities ~~and consistent with s. DHS 163.44 for non-abatement lead-based paint activities.~~ A training course shall be based on EPA and department-approved curricula and shall meet or exceed the applicable minimum curriculum requirements, including both the minimum number of course training hours and the minimum number of hands-on training hours, as follows:

1. 'Lead-safe ~~work~~ renovation course.' A lead-safe ~~work~~ renovation course shall provide a minimum of 8 training hours. The course shall include lectures, demonstrations, a minimum of 2 hours of hands-on practice, hands-on skills assessment, a course review and a written course test. The course shall provide instruction and materials that address all of the following student learning goals and objectives:

**SECTION 91.** DHS 163.20 (8) (a) 1. a. to zf. are repealed and recreated to read:

- DHS 163.20 (8) (a) 1. a. Compare the federal definition of lead-based paint to the Wisconsin definition of lead-based paint.
- b. Describe the symptoms of lead poisoning and health risks to children and adults exposed to lead.
  - c. Explain why lead, dust and debris are a special concern in housing and child-occupied facilities.
  - d. Identify the clearance standards for floors, interior window sills and window troughs.
  - e. Discuss the EPA, HUD and OSHA lead regulations and their relation to renovation activities.
  - f. Define target housing and child-occupied facility.
  - g. Discuss requirements for training and certification under this chapter.
  - h. Describe the exclusions to the renovation requirements under this chapter.
  - i. Discuss company responsibilities under this chapter.
  - j. Discuss the certified renovator roles and responsibilities under this chapter.
  - k. Identify the major work practice standards for renovation activities under this chapter.
  - L. Identify the possible enforcement actions that may be taken for violations of this chapter.
  - m. Discuss the HUD lead safe housing rule requirements for training, lead-safe work practices and clearance in federally owned or assisted housing.
  - n. Compare the requirements of this chapter with the EPA renovation, repair and painting rule under 40 CFR 745 Subparts E and L and the HUD lead safe housing rule under 24 CFR Part 35, Subparts B to M and R.
  - o. Explain pre-renovation education requirements under this chapter.
  - p. Discuss how housing age is related to the presence of lead-based paint.
  - q. Describe and compare methods for determining if lead-based paint is present.
  - r. Explain how to determine if a test kit is recognized for use in Wisconsin.
  - s. Correctly use a recognized test kit to determine if lead-based paint is present on components and surfaces affected by renovation work.
  - t. Correctly use an EPA flow chart to determine what regulatory requirements apply to a specific renovation project.
  - u. Describe the three major steps to lead safe renovation: proper setup, lead safe work practices and proper cleanup.

- v. Describe the purpose and benefits of establishing work area containment during renovation activities.
- w. Demonstrate interior work area setup and containment, including posting signs and limiting access, removing or covering furnishings and belongings, covering floors, closing doors and windows, and sealing vents.
- x. Construct a work area entry doorway and dust barrier using plastic sheeting.
- y. Demonstrate exterior work area setup and containment, including posting signs and limiting access, removing or covering furnishings and belongings; covering the ground; and closing doors and windows.
- z. Describe the differences between traditional renovation work practices and lead-safe renovation work practices.
  - za. List and describe the work practices prohibited under DHS 163, the EPA renovation, repair and painting rule under 40 CFR 745 Subparts E and L, and the HUD lead safe housing rule under 24 CFR Part 35, Subparts B to M and R.
  - zb. Discuss considerations for use of specialized power tools with HEPA-filtered capture attachments.
  - zc. Discuss proper use of personal protection equipment and hygiene practices to protect workers and control the spread of dust.
  - zd. Explain the role regular and daily cleaning plays in preventing the spread of lead hazards.
  - ze. Demonstrate proper interior and exterior work area cleaning techniques.
  - zf. Describe proper carpet cleaning procedures.

**SECTION 92.** DHS 163.20 (8) (a) 1. zg. to zu. are created to read:

- DHS 163.20 (8) (a) 1. zg. Describe the purpose of cleaning verification after final cleanup.
- zh. Demonstrate visual inspection for dust and debris after final cleaning.
- zi. Demonstrate the full cleaning verification procedure.
- zj. Describe dust clearance inspections and how they differ from cleaning verification.
- zk. Describe exterior cleanup requirements, including final visual inspection.
- zL. Demonstrate proper waste handling.
- zm. Discuss federal and state waste disposal regulations.
- zn. Describe how long required records must be maintained.
- zo. List the records that must be kept on the job site during a renovation activity.
- zp. List the records required for pre-renovation education activities.
- zq. Describe how to document non-certified worker training.
- zr. Describe the records that must be generated and maintained if using a paint test kit.
- zs. Describe the post-renovation reporting requirements.
- zt. Describe the role of non-certified, on-the-job trained renovation workers.

zu. List and discuss the use of the 7 steps to lead-safe renovation, repair and painting for training uncertified workers.

**SECTION 93.** DHS 163.20 (8) (a) 2. (title) and (intro.) and (b) 1. j. and k. are amended to read:

DHS 163.20 (8) (a) 2. (title) ‘Lead abatement work course.’ A lead abatement work course shall provide a minimum of 8 training hours only to persons who successfully completed a department-approved lead-safe work or lead-safe renovation course. The course shall include lectures, demonstrations, a minimum of 6 hours of hands-on practice and hands-on skills assessment, a course review and a written course test. The course shall provide instruction and materials that address all of the following student learning goals and objectives:

(b) 1. ‘Lead sampling course.’ j. ~~List 3~~ Describe surfaces appropriate for dust wipe sampling.

k. Collect a dust wipe ~~sample~~ samples from 3 different surfaces using correct methods.

**SECTION 94.** DHS 163.20 (8) (b) 1. Lm. is created to read:

DHS 163.20 (8) (b) 1. Lm. Describe requirements when conducting clearance for a renovation project.

**SECTION 95.** DHS 163.20 (8) (b) 1. n. is repealed and recreated to read:

DHS 163.20 (8) (b) 1. ‘Lead sampling course.’ n. Describe requirements when conducting clearance for a HUD-assisted renovation project.

**SECTION 96.** DHS 163.20 (8) (b) 1. o and p. are amended to read:

DHS 163.20 (8) (b) 1. ‘Lead sampling course.’ o. Collect a paint chip sample using correct methods.

p. Collect a soil sample using correct methods.

**SECTION 97.** DHS 163.20 (8) (b) 1. t. is repealed and recreated to read:

DHS 163.20 (8) (b) 1. ‘Lead sampling course.’ t. Describe the required contents of a clearance report.

**SECTION 98.** DHS 163.20 (8) (b) 1. w., x. and y. are created to read:

DHS 163.20 (8) (b) 1. w. Discuss the HUD lead safe housing rule requirements for clearance in federally owned or assisted housing.

x. Compare the requirements of this chapter with the EPA renovation, repair and painting rule under 40 CFR 745 Subparts E and L and the HUD lead safe housing rule under 24 CFR Part 35, Subparts B to M and R.

y. Explain training and certification requirements for lead investigation activities under this chapter.

**SECTION 99.** DHS 163.20 (8) (c) 7. is amended to read:

DHS 163.20 (8) (c) 7. ‘Lead sampling technician refresher course.’ A total of ~~24~~ training hours to include a review of the curriculum covered in the course required for lead sampling technician certification, as appropriate, an overview of current safety practices relating to regulated activities, current federal, state and local statutes, ordinances, rules and regulations relating to lead-based paint and current technologies relating to ~~lead-based paint hazard identification~~ dust, paint and soil sampling in general and clearance in particular.

**SECTION 100.** DHS 163.20 (8) (c) 8. is created to read:

DHS 163.20 (8) (c) 8. ‘Lead-safe renovator refresher course.’ A total of 4 training hours to include a review of the curriculum and work practices covered in the course required for lead-safe renovator certification, an overview of current

lead safety practices relating to renovation activities, current federal, state and local statutes, regulations, rules and ordinances relating to lead-based paint and renovation, and current technologies relating to lead-safe work practices for renovation.

**SECTION 101.** DHS 163.20 (8) (h) 3. and (9) (a) are amended to read:

DHS 163.20 (8) (h) 'Course test.' 3. A course test shall be developed in accordance with the course test blueprint, ~~shall reflect~~ reflecting the learning goals and objectives of the training course, and shall consist of a minimum of 25 multiple choice questions for every 8 training hours, ~~except that a course test shall include questions for learning goals of any prerequisite course that does not require a course test of the course.~~

(9) (a) *Requirement to verify identification.* ~~The~~ Before admitting a student into a class, the training manager is responsible for verifying the identity of athe student by viewing ~~2 forms~~ 1 form of official photo identification, ~~of which one shall include a clearly identifiable picture of the student.~~ The training provider shall verify that the individual who presents the identification bears a reasonable likeness to the photograph and is at least 18 years of age or will attain 18 years of age no later than 12 months after completing the training. The training manager may delegate verification of identity to an employee of the training program. The following forms of photo identification may be accepted:

**SECTION 102.** DHS 163.20 (9) (a) 1. to 4. and (9) (am) are created to read:

- DHS 163.20 (9) (a) 1. Driver's license.
2. Identification card issued by the U.S. military, or a federal, state, local or tribal agency.
3. U.S. or foreign issued passport.
4. Permanent resident alien card.

(am) *Document student identification.* Record the type of identification examined, the name of the issuing agency, the identification number, the student's full name as it appears on the identification, and the student's date of birth.

**SECTION 103.** DHS 163.20 (9) (b) and (c) 3. and 4. are amended to read:

DHS 163.20 (9) (b) *Requirement to issue training certificate.* ~~After verification of a student's identity under par. (a), the~~ The training manager shall issue a training certificate to a student when the student completes all course requirements.

(c) *Content of training certificate.* 3. The name of the course, as specified under sub. (8) (a) to (c), ~~and~~ which shall clearly indicate if the course is an initial course or a refresher course, and the language in which the course was conducted if other than English.

4. The student's full name ~~and address~~ as it appears on the student's official identification under par. (a).

**SECTION 104.** DHS 163.20 (9) (c) 8m. is created to read:

DHS 163.20 (9) (c) 8m. The training expiration date, which shall be 2 years from the date of course completion for the lead abatement work initial, abatement worker refresher, abatement supervision initial, abatement supervisor refresher, project design initial, project designer refresher, lead sampling initial, sampling technician refresher, inspection initial, inspector refresher, hazard investigation initial, hazard investigator refresher, and risk assessor refresher courses, and shall be 4 years from the date of course completion for the lead-safe renovation initial and lead-safe renovator refresher courses.

**SECTION 105.** DHS 163.21 (intro.) is amended to read:

**DHS 163.21 Application for accreditation.** To request accreditation of a lead training course described under s. DHS 163.20, the training manager, on behalf of the training provider, shall submit all of the following to the department:

**SECTION 106.** DHS 163.21 (1) is renumbered DHS 163.21 (1) (a) and (am).

(1) COMPLETED APPLICATION FORM. (a) A fully and accurately completed application on a form obtained from the department.

(am) The application shall include the federal employer identification number or social security number for the training provider, social security numbers for all owners of the course and a statement signed by the training manager which certifies that the training course meets the requirements of this subchapter.

**SECTION 107.** DHS 163.21 (1) (b) is created to read:

DHS 163.21 (1) (b) A course taught in a language other than English is considered a separate course for purposes of applying for accreditation. Only a lead-safe renovation initial, lead-safe renovator refresher, lead abatement work initial and lead abatement worker refresher may be accredited in a language other than English. When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they compared all course materials to the English language version and found the translation to be accurate shall be submitted to the department with the application.

**SECTION 108.** DHS 163.21 (3) (c) and (5) are amended to read:

DHS 163.21 (3) (c) *Audiovisual and materials for hands-on activities.* Training audiovisual materials such as videos, slides, overheads, photographs and displays, and materials for hands-on activities, such as personal protective clothing, respirators and cartridges, duct tape, polyethylene sheeting, high efficiency particulate air vacuums with beater bar, glove bags and hand tools, including the location where they are stored.

(5) COURSE REGISTRATION PLAN. A written course registration plan consisting of a plan for advising potential students of education and experience qualifications under s. DHS 163.10 (3) (b) and a written plan for admitting only students who meet the age requirement and produce a valid form of official photo identification under s. DHS 163.20 (9) (a), and have completed any prerequisite lead training courses under s. DHS 163.11 (2).

**SECTION 109.** DHS 163.22 (4) (b) is amended to read:

**DHS 163.22 (4) (b) Renew contingent accreditation.** The department may renew contingent accreditation for an additional 2 years, may require changes to the course in order to obtain full accreditation and may conduct additional on-site audits. If the department continues contingent accreditation, the department shall notify the training manager in writing. The notice shall include the reason for continuing contingent accreditation, ~~recommendations~~ requirements for achieving full accreditation and the right to appeal the action under s. DHS 163.33.

**SECTION 110.** DHS 163.23 (3) (a) and (d) are amended to read:

**DHS 163.23 (3) (a) Application form.** A fully and accurately completed application form. The application shall include a statement signed by the training manager certifying that the training course complies ~~at all times~~ with the requirements of this chapter.

(d) *Accreditation fee.* Each application for renewal of course accreditation shall be accompanied by a 2-year non-refundable accreditation fee of \$25 per course hour or a 4-year accreditation fee of \$50 per course hour. ~~The department shall refund the accreditation fee if renewal of accreditation is denied, the training provider does not owe the department other fees and the denial is not appealed or the denial is appealed and upheld.~~

**SECTION 111.** DHS 163.24 (2) (a) (intro.) is amended to read:

DHS 163.24 (2) (a) *Qualifications.* A training manager shall have demonstrated experience, education or training in the construction industry, which may include lead or asbestos abatement, painting, carpentry, property maintenance,

renovation, remodeling, engineering, environmental consultation, occupational safety and health or industrial hygiene and shall have one of the following:

**SECTION 112.** DHS 163.24 (3) (a) 2. (intro.) and a. to c. and 3. a. to c. and (b) 5. and 7. a. to c. are amended to read:

DHS 163.24 (3) (a) 2. ‘Certification.’ A principal instructor shall be currently certified ~~based on payment of a 2-year certification fee.~~ Certification shall be held as follows:

a. As a lead risk assessor; for ~~lead investigation instructor~~ approval to teach initial lead sampling, lead inspection and lead hazard investigation courses and refresher lead sampling technician, lead inspector, lead hazard investigator, inspector, and lead risk assessor and sampling technician courses.

b. As a lead abatement supervisor; for ~~lead hazard reduction instructor~~ approval to teach initial ~~lead-safe work renovation,~~ lead abatement work and lead abatement supervision courses and refresher lead-safe renovator, lead abatement worker and lead abatement supervisor courses.

c. As a lead project designer; for ~~project design instructor~~ approval to teach initial lead project designer design and refresher project design designer courses.

3. a. For approval to teach courses for lead hazard reduction ~~disciplines,~~ lead-safe renovation or project ~~designers design disciplines,~~ direct responsibility for activities involving lead hazard reduction, lead health effects, lead regulations, industrial hygiene activities involving lead, construction or renovation of homes or other buildings, painting, weatherization, rehabilitation or home improvement, lead worker protection or abatement relating to other hazardous materials.

b. For approval to teach courses for lead identification ~~discipline~~ disciplines, direct responsibility for activities involving lead sampling, lead inspections or risk assessments, lead health effects, public or occupational health care, lead regulations, enforcement of environmental regulations, environmental investigations, building inspections, industrial hygiene activities involving lead, weatherization, rehabilitation, renovation or home improvement ~~and lead management or identification~~ activities relating to other hazardous materials.

c. For approval to teach any type of course, direct responsibility for instructing adults in ~~lead-related topics as part of a course or curriculum recognized by a federal or state governmental agency in the 5 years preceding the date the initial application for approval is received by the department~~ work-related courses. The department shall evaluate qualifications in relation to the topic or topics that the applicant will teach.

(b) 5. ‘Teaching methods certificate.’ A teaching methods course certificate or transcript and a course description or agenda ~~which that documents that how~~ the course meets the requirements under par. (a) 1. a. or documentation of equivalent education.

7. ‘Fee.’ a. \$100 for a lead investigation instructor application, which includes approval to teach lead sampling, inspection, hazard investigation and risk assessment courses.

b. \$100 for a lead hazard reduction instructor application, which includes approval to teach lead abatement and lead-safe renovation courses.

c. \$50 for a lead project design instructor application, which includes approval to teach only lead project design courses.

**SECTION 113.** DHS 163.25 (3) (a), (b) 2. to 4., (c) 2., and (d), (5) and (7) (intro.) and (e) are amended to read:

DHS 163.25 (3) COURSE SCHEDULE NOTIFICATION. (a) *Requirement for notification.* A training manager shall notify the department ~~in writing on the department’s internet form or on a form obtained from the department whenever an accredited training course has been scheduled~~ by entering class schedule information for the accredited course directly into the department’s online lead database or by other method approved by the department.

(b) *Notification content.* 2. The course discipline and whether it is an initial or refresher course.

3. The ~~date~~ start and end dates, start and end times and location of the course.

4. The name of the designated principal instructor for ~~a lead hazard reduction or lead investigation~~ the course.

(c) 2. In an emergency, the training manager shall ~~notify the~~ make a request by telephone for department of a scheduled approval to schedule a training course by telephone or fax with less than 10 working days notice. The request shall be made a minimum of one working day prior to the requested start of the course date and shall be followed by entry of the course notification directly into the department's online lead database or by other method approved by the department.

(d) *Revised notification.* The training manager shall ~~complete a revised internet form a minimum of 10 working days prior to the course start date or shall notify the department~~ notify the department about course cancellations or course schedule, instructor or location changes by means of the department's online lead database when known 10 working days or more before the notified start date, and also by telephone or fax a minimum of one when the change or cancellation occurs less than 10 working day prior to days before the scheduled start date of a course when the course is cancelled or when the date or location of the course has changed. The department may restrict the use of advance notification submitted in the form of lists of intended courses and may require individual course by course notification when a training manager fails to notify the department of revisions in a timely manner.

(5) DESIGNATION OF PRINCIPAL INSTRUCTORS. The training manager shall designate a principal instructor for each accredited course offering. The principal instructor shall be approved under s. DHS 163.24 (3).

(7) NOTIFICATION OF CHANGES. The training manager shall notify the department in writing a minimum of 510 working days before making the following changes:

(e) *Change of training manager.* ~~A change in training manager, a minimum of 5 working days before the change takes effect for an approved training manager and a minimum of 15 working days for a new training manager for whom approval is being sought under s. DHS 163.24 (2).~~ When a training course does not have an approved training manager, the course may not be offered.

**SECTION 114.** DHS 163.25 (7) (f) is repealed.

**SECTION 115.** DHS 163.25 (10) (b) 1. and (11) (b) 4., 6., and 9. are amended to read:

DHS 163.25 (10) (b) *Records to be retained.* 1. A copy of each department-approved instructor and student manual, course test, course test blueprint, all printed materials used in the course, other training material and any document reflecting changes made to any material.

(11) (b) 4. The student's full legal name and address. If a training certificate was issued, the name ~~and address submitted~~ shall be the same as it is appears on the training certificate.

6. The student's course test score, ~~when a test is required.~~

9. The student's date of birth as it appears on the student's official photo identification.

**SECTION 116.** DHS 163.25 (11) (b) 8. is repealed.

**SECTION 117.** DHS 163.30 (1) and (2) are amended to read:

DHS 163.30 General provisions. (1) DEPARTMENTAL ACTION. The department may initiate an action in the name of this state against any person to require compliance with this chapter or for failure or refusal to comply with any provision of this chapter.

(2) OTHER AGENCY ACTION. Any other state agency in the course of the performance of its duties may determine that an individual, ~~lead~~ company or training provider has violated or is violating one or more requirements of this chapter. If that agency determines that there is a potential violation of this chapter, the agency may notify the department of that potential violation. The department may delegate all or part of its enforcement authority to any other state or federal agency through a memorandum of understanding.

**SECTION 118.** DHS 163.31 (1) and (2) (d) and (h) are amended to read:

DHS 163.31 (1) EXECUTION OF A CONSENT AGREEMENT. In addition to an administrative or judicial finding of violation, execution of a consent agreement in settlement of an enforcement action ~~constitutes~~ may constitute, for purposes of this section, conclusive evidence of a failure to comply with relevant statutes or rules.

DHS 163.31 (2) (d) The person made false or misleading statements to the department in its application for accreditation or reaccreditation, ~~and the department relied upon those statements in approving the application.~~

(h) The person falsified records or failed or refused to establish, maintain, provide, copy or permit access by an authorized representative of the department to records or reports.

**SECTION 119.** DHS 163.31 (2) (L) and (3) (c) are created to read:

DHS 163.31 (2) (L) The person used an instructor to teach a course accredited under this chapter who was not qualified to teach at the time the course was offered.

(3) (c) The principal instructor failed to maintain the instructor approval or certification upon which the approval was granted, before teaching a course accredited under Subchapter III.

**SECTION 120.** DHS 163.31 (4) (intro.), (L) and (n), (5) (b), and (6) (a) 3. are amended to read:

DHS 163.31 (4) REASONS FOR CERTIFICATION ENFORCEMENT ACTIONS. The department may take an action under s. DHS 163.32 against a person required to be certified under this chapter, whether an individual or a ~~lead~~ company, if the person has violated any provision of this chapter. Reasons for certification enforcement actions may include any of the following violations:

(L) The person falsified records or failed or refused to establish, maintain, provide, copy or permit access to records or reports by an authorized representative of the department.

(n) The person failed or refused to comply with, or to ensure that employed or contracted staff persons comply with, the work practice standards and protocols under this chapter.

(5) (b) A person whom the department determines is not fit ~~and~~ or qualified. In determining whether a person is fit ~~and~~ or qualified, the department shall consider the person's qualifications and any history of civil or criminal violation of statutes, regulations or ordinances of the United States, this state, any other state or any tribal or local government substantially related to regulated activities or other environmental remediation.

(6) (a) 3. Failure or refusal to comply with the work practice standards under s. DHS 163.14, or to ensure that employed or contracted staff persons comply with those work practice standards.

**SECTION 121.** DHS 163.32 (intro.) and (3) (intro.) are amended to read:

**DHS 163.32 Enforcement actions.** In addition to issuing letters of inquiry, warning letters and noncompliance statements, which are not appealable, the department may take one or more of the following appealable actions for any reason stated under s. DHS 163.31 against a ~~certified individual or lead company, an approved training manager or instructor, a person offering an accredited training course or a person required to comply with a provision of this chapter~~ person performing or offering to perform activities regulated under this chapter:

(3) CIVIL FORFEITURE. The department may impose a daily forfeiture of not less than \$100 nor more than \$1,000 for each violation against any person who violates a provision under this chapter, fails to respond to a letter of inquiry by the time specified in the order, continues to violate or resumes violation of a provision for which notice was previously issued or fails to comply with an order issued under sub. (1) by the time specified in the order if the department provides written notice of the grounds for a forfeiture and an explanation of the process under s. DHS 163.33 for appealing a forfeiture. Each day of continued violation constitutes a separate offense. All of the following apply to a civil forfeiture:

**SECTION 122.** DHS 163.40 (1) is amended to read:

**DHS 163.40 General provisions.** (1) APPLICABILITY. This subchapter applies to ~~property for which a certificate of lead-free or lead-safe status is required based on notice that a child under 6 years of age has an elevated blood lead level. This subchapter also applies to~~ registered lead-free property and registered lead-safe property, the property owners and the employees and agents of property owners of registered lead-free property or registered lead-safe property, and persons performing lead-based paint activities on registered lead-safe property.

**SECTION 123.** DHS 163.40 (2) (a) and (c) 1. and 4. are repealed.

**SECTION 124.** DHS 163.40 (2) (c) 2. , 3. b., and 5. a. are amended to read:

DHS 163.40 (2) (c) 2. ‘Treating paint as lead-based paint for registered lead-free or lead-safe properties.’ For purposes of obtaining a certificate of lead-free status or a certificate of lead-safe status and for performing lead abatement or non-abatement lead-based paint activities on registered lead-safe property, paint shall be treated as lead-based paint unless the paint is proven to be lead-free. Provisions under this subchapter that apply to paint or lead-based paint apply to all paint unless the paint is proven to be lead-free.

3. b. Not a ~~lead~~ company or associated with a ~~certified lead~~ company that is directly or beneficially owned, controlled or managed by the property owner, or by an immediate family member, agent or employee of the property owner.

5. a. Using the procedures under s. DHS 163.14 ~~(5)(8)~~, test the paint with an XRF and, if the XRF reading is equal to or greater than 0.7 milligrams lead per square centimeter, determine that lead-based paint is present. If the reading is less than 0.7 milligrams lead per square centimeter, determine that the paint is lead-free. When a reading is in the inconclusive range for the XRF used, treat the paint as lead-based paint unless a paint chip sample taken under subd. 5. b. results in a determination that the paint is lead-free.

**SECTION 125.** DHS 163.40 (4) is repealed.

**SECTION 126.** DHS 163.41 (2) (a) 2. d. is amended to read:

DHS 163.41 (2) (a) 2. d. When a certificate of lead-free status is being sought for a premises that is not a dwelling, such as a child-occupied facility, the locations inspected shall include all interior and exterior common areas for the real property associated with the premises where an occupant of the child-occupied facility might be exposed to a lead-based paint hazard.

**SECTION 127.** DHS 163.42 (2) (a) 2. d. and (3) (e) 1. to 3., and (f) 1. are amended to read:

(2) (a) *Lead-safe investigation protocol.* 2. d. When a certificate of lead-safe status is being sought for a premises that is not a dwelling, such as a child-occupied facility, the locations investigated shall include all interior and exterior common areas for the real property associated with the premises where an occupant of the child-occupied facility might be exposed to a lead-based paint hazard.

(3) (e) *Ensure appropriate certification.* 1. When a property owner requests or allows an abatement or lead investigation activity to be conducted, the property owner shall ensure that persons conducting the abatement or lead investigation activity are appropriately certified ~~when certification is required~~ under sss. DHS 163.10 and are affiliated with a certified company under s. DHS 163.12.

2. When a property owner requests or allows ~~a non-abatement lead-based paint~~ an interim control or renovation activity to be conducted, the property owner shall inform persons conducting the activity that the activity involves registered lead-safe property and shall ensure that persons conducting the ~~non-abatement lead-based paint~~ activity are appropriately certified ~~when certification is required under s. DHS 163.43~~ under s. DHS 163.10 and are affiliated with a certified company under s. DHS 163.12.

3. When a lead investigation, abatement, interim control or ~~non-abatement lead-based paint~~ renovation activity is conducted by a property owner or the property owner's agent or employee, the property owner shall ensure compliance with certification and work practice requirements under this chapter.

(f) *Follow work practice standards.* 1. When a property owner requests or allows an interim a non-abatement lead-based paint control or renovation activity to be conducted, the property owner shall inform persons conducting the activity that they are required to comply with lead-safe work practices under s. DHS ~~163.44~~ because the property is covered by a certificate of lead-safe status 163.14 (11).

**SECTION 128.** DHS 163.42 (3) (f) 2. is repealed.

**SECTION 129.** DHS 163.42 (3) (f) 3. a. to c. and (g) 1. are amended to read:

DHS 163.42 (3) (f) 3. a. When the property owner can demonstrate that the occupant received a written rental agreement that prohibits the occupant from disturbing paint ~~and performing lead-based paint activities~~ on the property without certification.

b. When the property owner can demonstrate that the occupant received the property owner's written rules prohibiting the occupant from disturbing paint ~~and performing lead-based paint activities~~ on the property without certification.

c. The property owner's written rules for the property were posted where the occupant should reasonably have been expected to see the prohibition and the rules prohibit the occupant from disturbing paint ~~and performing lead-based paint activities~~ on the property without certification.

(g) *Conduct clearance.* 1. When a property owner requests or allows ~~a non-abatement lead-based paint~~ an interim control or renovation activity to be conducted, the property owner shall ensure that clearance under DHS 163.14 (5) is conducted ~~as required under s. DHS 163.44 (3) (b)~~.

**SECTION 129m.** DHS 163.43 and DHS 163.44 are repealed.

**SECTION 130.** Chapter DHS 163 Appendix A is amended to read:

## Chapter DHS 163

### APPENDIX A

#### Obtaining Applicable Federal, State and Local Government Requirements

1. ~~EPA~~ The U.S. Environmental Protection Agency (EPA) regulations under 40 CFR Part 745 Subpart D ~~establishes~~ establish standards for identifying lead-based paint hazards. EPA regulations under 40 CFR Part 745 Subpart F (HUD regulation 24 CFR Part 35) require disclosure of known lead-based paint or lead-based paint hazards in housing at the time of sale or lease. EPA regulations under 40 CFR Part 745 Subpart E require ~~a contractor to provide~~ renovator training and certification, lead safe work practices during renovations, and pre-renovation education material distribution to owners and occupants of target housing and child-occupied facilities prior to most lead-based paint activities ~~renovations, other than abatement, that disturb more than 2 square feet of lead-based paint~~ minor repair and maintenance activities. EPA regulations under 40 CFR Part 745 Subpart L establish training course accreditation requirements, individual and company certification requirements, and work practice standards for persons performing

~~lead-based paint activities. Information on EPA lead regulations is~~ available on the EPA website at "www.epa.gov/lead" ~~or may be obtained from the department.~~

2. The U.S. Housing and Urban Development Department (HUD) regulations under 24 CFR Part 35 provide requirements for controlling lead-based paint hazards in federally-assisted or federally-owned housing including training, lead-safe work practices and information distribution to occupants. ~~Such housing might be subject to additional requirements. For example, for some properties receiving federal assistance, these regulations require that notice be given to occupants following lead hazard reduction activities. Information on HUD lead regulations is~~ available on the HUD website at "www.hud.gov/lead" ~~or may be obtained from the department.~~

3. The U.S. Occupational Safety and Health Administration (OSHA), under 29 CFR Part 1926, provides requirements for employers involved with lead in construction, such as persons performing renovation activities in pre-1978 dwellings/buildings. The regulations address issues such as safety training, personal protection and medical monitoring of employees. ~~Selected portions of this regulation follow. The full regulation and information on OSHA regulations is available on the OSHA website at www.osha.gov or may be obtained from the department. Electronic training on the OSHA regulation is available at www.osha-slc.gov/dts/osta/oshasoft/LeadxWb.html.~~

**SECTION 131.** Chapter DHS 163 Appendix B (title) is amended to read:

**Chapter DHS 163**

**APPENDIX B**

**Interim Controls**

**Chapter 11, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing**

**[www.hud.gov/offices/lead/lbp/hudguidelines/Ch11.pdf](http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch11.pdf)**

**SECTION 132.** Chapter DHS 163 Appendix C (title) is amended to read:

**Chapter DHS 163**

**APPENDIX C**

**Cleaning When Lead-Based Paint Has Been Disturbed**  
**Chapter 14, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing**

**[www.hud.gov/offices/lead/lbp/hudguidelines/Ch14.pdf](http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch14.pdf)**

**SECTION 133.** Chapter DHS 163 Appendix H (title) is amended to read:

**Chapter DHS 163**

**APPENDIX H**

**Protecting Occupants**

**Chapter 8, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing**

**[www.hud.gov/offices/lead/lbp/hudguidelines/Ch08.pdf](http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch08.pdf)**

**SECTION 134.** Chapter DHS 163 Appendix I (title) is amended to read:

## APPENDIX I

### Working Lead-Safe

#### Chapters 4 and 17, HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing

[www.hud.gov/offices/lead/lbp/hudguidelines/Ch04.pdf](http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch04.pdf)

[www.hud.gov/offices/lead/lbp/hudguidelines/Ch17.pdf](http://www.hud.gov/offices/lead/lbp/hudguidelines/Ch17.pdf)

**SECTION 135.** The following Notes are repealed.

DHS 163.03 (1) (c), (42), and (82) **Notes**

DHS 163.10 (1) (c) 3., (2) (a), (5) (c) 2. and (g) 1. g., and (8) (b) 4. **Notes**

DHS 163.12 (3) (a) 1. e. and 2. b. **Notes**

DHS 163.13 (4) **Note**

DHS 163.20 (8) (c) 7. and (e) **Notes**

DHS 163.24 (3) (a) 1. a. and (4) (b) **Notes**

DHS 163.40 (4) (b) **Note**

**SECTION 136.** The following Notes are amended to read:

**DHS 163.03 (16) Note:** Examples of common areas are a hallway, stairway, restroom, dining room, laundry room, recreation room, playground, community center, garage and boundary fence.

**DHS 163.03 (18) Note:** Containment is more than simply laying plastic on the floor. For interior work ~~involving an abatement or non-abatement lead-based paint activity~~ that creates large amounts of dust, appropriate containment would include hanging vertical plastic sheeting to create a temporary wall barrier between the work area and the rest of the house, with an airlock entryway. For additional information on appropriate containment, refer to Appendix H of this chapter, Chapter 8, Resident Protection and Worksite Preparation, of HUD's Guidelines for the Evaluation and Control for Lead-Based Paint Hazards in Housing.

**DHS 163.03 (26) Note:** Washing or vacuuming painted surfaces does not, by itself, disturb paint unless the method used dislodges paint, such as by power washing. Although removal of a carpet does not disturb paint, the removal of a carpet contaminated with dust-lead or paint chips can create a ~~high dust lead-based paint~~ lead hazard.

**DHS 163.03 (29) Note:** Examples of documented methodologies include the following: The U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control for Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint Hazards in Housing; the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); Wisconsin Childhood Lead Poisoning Prevention and Control Handbook; regulations, guidance, methods or protocols issued by States and Indian Tribes that have been authorized by EPA; and other equivalent methods and guidelines. For non-abatement lead-based paint activities, additional documented methodologies include: HUD's Lead Paint Safety, A Field Guide for Painting, Home Maintenance, and Renovation Work ~~and~~; EPA's ~~Lead In Your Home: A Parent's Reference Guide~~ Renovate Right pamphlet and Small Entity Compliance Guide to Renovate Right: EPA's Lead-Based Paint Renovation, Repair and Painting Program. ~~To request federal~~ Federal documents, ~~contact HUD-USER by telephone at 800-245-2691 or the~~

~~National Lead Information Clearinghouse by telephone at 800-424-5323 or by fax at (202) 659-1192 may be downloaded from the HUD website at [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead) or from the EPA website at [www.epa.gov/lead](http://www.epa.gov/lead).~~

**DHS 163.03 (103) Note:** The Wisconsin Department of Natural Resources (DNR) standard for nonindustrial lead in soil under NR 720.11, Table 2, is 50 parts per million. ~~For additional information, contact the DNR at 608-266-5425.~~

**DHS 163.10 (3) (a) 4. Note:** Use this subsection and subs. (4) to (7) to apply for certification in a discipline for the first time or after certification in the discipline has lapsed for 12 months or more. Use sub. (8) to apply for recertification before certification expires or within 12 months after certification expires. ~~For certification of lead safe workers, use s. DHS 163.43.~~

**DHS 163.11 (3) (a) 2. b. Note:** Under s. DHS 163.10 (3) (a), an individual whose certification has been expired for 12 months or longer must apply for initial certification under s. DHS 163.10 (3) to (5), rather than recertification under s. DHS 163.10 (8).

**DHS 163.25 (3) (d) Note:** ~~Go to “[www.dhfs.state.wi.us](http://www.dhfs.state.wi.us)” to complete a revised internet form. To notify the Department about a course scheduled on an provide emergency basis course notification less than 10 working days before the start date or to revise or cancel a notification less than 2 working days in advance, phone 608-261-6876 or fax 608-266-9711.~~

**DHS 163.32 (6) Note:** Pursuant to s. 254.30 (2) (b), Stats., any person who knowingly violates any provision of this chapter or an order issued under sub. (3) shall be subject to criminal penalty and shall be fined not less than \$100 or more than \$5,000 per day for each violation. The court may also place the person on probation under s. 973.09, Stats., for a period not to exceed 2 years.

**SECTION 137.**The following Notes are repealed and recreated to read:

**DHS 163.02 (2) Note:** Submit your request for approval of an alternative to a requirement to the Asbestos and Lead Section, Room 137, 1 W. Wilson St., P.O. Box 2659, Madison, WI 53701-2659; e-mail [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); or fax 608-266-9711.

**DHS 163.03 (96) Note:** A list of recognized laboratories is available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead), or write Asbestos and Lead Section, Room 137, P.O. Box 2659, Madison, WI 53701-2659; e-mail [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or fax 608-266-9711.

**DHS 163.10 (3) (c) 1. b. Note:** To obtain a copy of the regulatory worksheet and regulations, write or phone the Asbestos and Lead Section, 1 W. Wilson St., Room 137, P.O. Box 2659, Madison, WI 53701-2659; e-mail [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or fax 608-266-9711. Return the completed worksheet, application and certification fee to the same office.

**DHS 163.10 (3) (c) 3. b. Note:** Application forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); or by email to [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or at the Asbestos and Lead Section, 1 W. Wilson St., Room 137, P.O. Box 2659, Madison, WI 53701-2659. Return the completed application and fees to the same office.

**DHS 163.10 (5) (g) 4. Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, 1 W. Wilson Street, Room 137, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.10 (8) (c) 6. Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.12 (3) (a) 3. b. Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.12 (6) 2. Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.13 (8) (c) 5. Note:** Summary forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead), email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W Wilson St, P.O. Box 2659, Madison WI 53701-2659. Return completed summary forms to the same office.

**DHS 163.14 (2) (b) 4. Note:** Department notification forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.14 (5) (c) 1. e. Note:** A list of recognized laboratories is available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead). Request a copy of the clearance form or submit a completed form to Asbestos and Lead Section, Room 137, 1 W Wilson St, P.O. Box 2659, Madison WI 53701-2659; email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876 or fax 608-266-9711.

**DHS 163.21 (1) Note:** Course application forms, instructions for submitting course applications and credit card payment forms are available at Asbestos and Lead Section, Room 137, 1 W Wilson St, P.O. Box 2659, Madison WI 53701-2659; email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or fax 608-266-9711. Submit completed course applications with all required materials and payment to the same office.

**DHS 163.21 (7) (b) Note:** Instructor application and credit card payment forms are available at Asbestos and Lead Section, Room 137, 1 W Wilson St, P.O. Box 2659, Madison WI 53701-2659; email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or fax 608-266-9711. Submit completed applications with payment to the same office.

**DHS 163.23 (3) (d) Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.24 (2) (b) 2. Note:** Training manager application forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.24 (3) (b) 7. d. Note:** Application and credit card payment forms are available on the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.25 (3) (a) Note:** Contact the department for instructions for completing online course notifications at email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.25 (7) (e) Note:** To notify the Department of changes, contact the Asbestos and Lead Section, Room 137, 1 W. Wilson St., P.O. Box 2659, Madison, WI 53701-2659; e-mail [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; or fax 608-266-9711.

**DHS 163.42 (3) (b) 5. Note:** The lead-safe information pamphlet, registered lead-safe property poster and the form for reporting deteriorated paint and potential lead-based paint hazards may be obtained from the department website at [www.dhs.wisconsin.gov/lead](http://www.dhs.wisconsin.gov/lead); email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711; or Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.41 (2) (f) 3. Note:** The department will provide training to lead company staff on the process for registering and issuing a lead-free or lead-safe certificate. For information about this training, contact the Asbestos and Lead Section, Room 137, 1 West Wilson Street, P.O. Box 2659, Madison, WI 53701-2659; e-mail [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov); ph. 608-261-6876; fax 608-266-9711.

**DHS 163.42 (3) (d) 4. f. Note:** Submit any extension request to the Asbestos and Lead Section, Room 137, 1 West Wilson Street, P.O. Box 2659, Madison, WI 53701-2659; e-mail; [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov) or fax 608-266-9711.

**SECTION 138.**The following Notes are created to read:

**DHS 163.03 (22g) Note:** Razing an entire building is not considered renovation for purposes of this chapter.

**DHS 163.03 (85m) Note:** See definitions of ‘demolition’ and ‘renovation.’

**DHS 163.10 (1) (c) 1. Note:** Section 101.178, Stats., relates to department of commerce certification of heating, ventilating and air conditioning installers and servicers. Chapter 145, Stats., relates to department of commerce licensure of master plumbers and journeyman plumbers, registration of apprentice plumbers, licensure of automatic fire sprinkler system installers, registration of automatic fire sprinkler system apprentices, and registration of automatic fire sprinkler fitters for maintaining an existing automatic fire sprinkler system.

**DHS 163.10 (1) (d) 3. Note:** Replacing broken panes of glass in windows could be considered minor repair and maintenance unless painted surfaces are disturbed.

**DHS 163.10 (1) (d) 5. Note:** For the requirement that a company be certified to perform, supervise or offer to perform or supervise a lead abatement investigation, or renovation activity, see s. DHS 163.12.

**DHS 163.10 (2) (c). Note:** The lead-safe worker discipline is replaced by the lead-safe renovator discipline beginning October 19, 2009. An individual certified or trained as a lead-safe worker before October 19, 2009 may continue to work as a lead-safe worker until April 22, 2010. An individual certified or trained as a lead-safe worker may convert to the lead-safe renovator certification after October 19, 2009 by completing training under s. DHS 163.11 (3) (b) 3. before, or within 12 months after April 22, 2010, and submitting the lead-safe renovator certification application and fee to the department. After April 22, 2011 an individual certified or trained as a lead-safe worker who has not completed lead-safe renovator refresher training must complete the 1-day initial lead-safe renovation course and submit certification application and fee to the department in order to become a certified lead-safe renovator.

**DHS 163.10 (5) (h) 4. Note:** Submit application and fee to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**DHS 163.10 (8) (c) 6. Note:** Submit application and fee to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**DHS 163.12 (3) (b) 3. Note:** Submit application and fee, if applicable, to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**DHS 163.12 (6) 2. Note:** Submit application and fee to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**DHS 163.14 (2) (b) 4. Note:** Submit notifications to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, fax 608-266-9711 or email [dhsasbestoslead@wisconsin.gov](mailto:dhsasbestoslead@wisconsin.gov).

**DHS 163.14 (10) (b) 1. Note:** Possible reasons for failing to get written acknowledgement of receipt of the pamphlet include that the occupant refused to sign or that no adult occupant was available to sign the acknowledgement statement.

**DHS 163.14 (11) (i) Note:** Refer to Appendix D for guidance from the department of natural resources on its regulations for managing lead-based paint.

**DHS 163.14 (11) (j) Note:** Refer to Appendix C for one documented methodology, Chapter 14 of the HUD “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards.”

**DHS 163.23 (3) (d) Note:** Submit application and fee to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**DHS 163.24 (2) (b) 2. Note:** Submit application to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659.

**DHS 163.24 (3) (b) 7. d. Note:** Submit application and fee to the Asbestos and Lead Section, Room 137, 1 W. Wilson Street, P.O. Box 2659, Madison, WI 53701-2659, or fax to 608-266-9711. For application submitted by fax, payment may be made only by credit or debit charge to a VISA or MasterCard.

**SECTION 139. EFFECTIVE DATE:** The rules contained in this order shall take effect as emergency rules October 19, 2009.

Wisconsin Department of Health Services

Dated: October 13, 2009

\_\_\_\_\_  
Karen E. Timberlake, Department Secretary

SEAL:

**DEPARTMENT OF HEALTH SERVICES**  
Office of Legal Counsel  
F-83282 (01/09)

**STATE OF WISCONSIN**

**ADMINISTRATIVE RULES – FISCAL ESTIMATE**

**1. Fiscal Estimate Version**

Original     Updated     Corrected

**2. Administrative Rule Chapter Title and Number**

DHS 163, Certification for the Identification, Removal and Reduction of Lead-Based Paint Hazards

**3. Subject**

To revise ch. DHS 163 relating to training, certification and work practice requirements for lead-safe renovation activities in pre-1978 housing and child-occupied facilities.

**4. State Fiscal Effect:**

No Fiscal Effect

Indeterminate

Increase Existing Revenues

Decrease Existing Revenues

Increase Costs

Yes     No  
May be possible to absorb within agency's budget.

Decrease Costs

5. Fund Sources Affected: <input type="checkbox"/> GPR <input checked="" type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Affected Ch. 20, Stats. Appropriations: s. 20.435 (1) (gm), s. 20.435 (1) (n)
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<b>7. Local Government Fiscal Effect:</b>		
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Revenues <input type="checkbox"/> Decrease Revenues	<input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs

8. Local Government Units Affected:

Towns    Villages    Cities    Counties    School Districts    WTCS Districts  
 Others:

<b>9. Private Sector Fiscal Effect (small businesses only):</b>		
<input type="checkbox"/> No Fiscal Effect <input checked="" type="checkbox"/> Indeterminate	<input type="checkbox"/> Increase Revenues <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Yes <input type="checkbox"/> No May have significant economic impact on a substantial number of small businesses	<input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No May have significant economic impact on a substantial number of small businesses <input type="checkbox"/> Decrease Costs

10. Types of Small Businesses Affected:

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Renovation contractors and trades (general construction, painters, plumbers, electricians, HVAC, etc.), rental property owners and management companies, childcare operators and owners of child-occupied facilities

**11. Fiscal Analysis Summary**

The proposed revision of DHS 163 implements changes to bring the Department’s lead program into compliance with new federal regulations regarding lead renovation activities. Effective April 22, 2010, persons conducting renovation activities for compensation in pre-1978 target housing and child-occupied facilities must be certified by the Environmental Protection Agency (EPA) or by an EPA-authorized state program. If EPA administers the certification program, companies are subject to federal fees and enforcement. Once a state submits its self-certification application to EPA the state may immediately begin administering its renovation program and enforcing its regulations in lieu of EPA. Companies are subject to state fees only and will not be double charged. By becoming self-certified, Wisconsin will be able to provide lead-safe company certification at a lower cost than would be the case if the EPA administered the program in the state.

The Department intends to self-certify its renovation program with the EPA. The Department already regulates and certifies persons to conduct lead-safe work in registered lead-safe housing and federally-assisted rehabilitation projects and to do lead abatement and lead investigation activities. The Department has the infrastructure in place to effectively administer and enforce the renovation program. The Department plans to expand its current lead certification program to cover the estimated 15,000 additional businesses that will be required to comply with the new EPA renovation regulations.

State Government

DHS will require 2.0 FTE (1.0 License/Permit Program Associate and 1.0 Environmental Health Specialist-Sr.) for the increased work load of administering the lead-safe renovation program, at an estimated cost of \$119,600. The positions will be funded by program revenue, from fees charged for lead-safe renovator and company certification, and will not require GPR. Positions will be filled as revenue generated by the program becomes available. The positions will review

and process certification applications, provide outreach and technical assistance to individuals and businesses, conduct inspections and complaint investigations, and engage in enforcement activities when necessary.

There are other potential costs to state agencies and the University of Wisconsin system if these agencies do their own renovation work in target housing or a child-occupied facility, including any state-operated residential or day-treatment facility with children under age six. Costs to the state would not include certification costs, from which government is exempt, but could include training, equipment and supplies needed to comply with the containment and cleaning requirements under the regulation. It is not possible to estimate these potential costs but they are not expected to be significant.

Revenue: The Department estimates that, with full compliance, an estimated 15,000 companies will become certified for renovation work at a cost of \$75 per company for a 2-year certification. Department rules require any individual who performs renovation work to be a Department-certified company. Companies that conduct regulated renovation activities are required to have at least one lead-safe renovator on their staff. As a result, an estimated 15,000 individual lead-safe renovators will have to become certified at a cost of \$50 each for a 2-year certification. If all regulated companies and renovators are compliant, the state will receive an additional \$900,000 PR annually.

However, full compliance will not be immediate and will require adequate agency staffing to provide compliance assistance and enforcement actions, when warranted, to increase the overall compliance rate over time. The Department assumes that there will be 8-10% compliance in the first year, with annual revenue at \$75,000. Compliance will increase by 10% to 15% (\$100,000 to \$150,000) per year in subsequent years. At 50% compliance, the program's revenues will be approximately \$475,000 annually and, at 70% compliance, approximately \$650,000 annually. The Department's goal is to achieve 50% compliance by the fifth year of implementation and increase it to at least 70% compliance statewide over the next five years.

### Local Government

The renovation rule may have an effect on some local governments, including public school districts and day cares operated by local governments or school districts. Governmental entities are exempt from certification fees. If the government entity does its own regulated renovation work, however, there would be additional costs as a result of this rule. The costs would include training and such work practice costs as equipment and supplies. There may also be higher costs to government facilities for work performed by a paid contractor as a result of this rule. These costs are not expected to be significant. The EPA has concluded that the federal regulations do not significantly, uniquely, or primarily affect small governments, nor do the federal regulations impose a different burden on small governments than on other entities.

### Small Business

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

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

Licensed plumbers and HVAC workers are not required to pay the fee and become certified under the rule but are required to comply with all other provisions relating to regulated work under the chapter, including training, recordkeeping and work practices. For others, the individual certification fee of \$50 every 2 years remains without revision and will apply to certified lead-safe renovators. Businesses are not required to pay these fees for their employees.

Accreditation of training courses: Under the rule, the current 1-day lead-safe work course is being converted to the 1-day lead-safe renovator course. Training providers that are already accredited to provide the lead-safe work course will be

allowed to convert their course to the lead-safe renovator course with no additional fee. The department will require only a minimal paper submittal to accomplish the transition from the lead-safe work to lead-safe renovator course. The lead-safe renovator refresher course is new and training providers wishing to offer it submit an application to the department with a \$125 application and a \$100 accreditation fee. The application fee is a one-time fee and the accreditation fee is payable every 2 years.

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

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

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

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

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

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

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

Actual costs to renovators is indeterminate because of the number of variables involved, including:

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

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

The fees that Wisconsin will charge for lead-safe company certification will be lower than those charged by EPA. Current state fees for company certification are lower than federal EPA fees and no fee revisions are being requested with this rule revision. Company certification fees will remain at \$75 for 2-years (\$37.50 per year). Comparable federal fees are \$300 for a company certification for 5 years (\$60 per year). State penalties for non-compliance are also considerably lower than federal penalties. The highest federal penalty fee is \$37,500 per violation; the highest state penalty fee is \$1,000 per violation.

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## 12. Long-Range Fiscal Implications

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None known.

13. Name - Prepared by Shelley Bruce	Telephone Number 608-267-0928	Date 8/14/2009
14. Name – OSF Analyst Reviewer Ellen Hadidian	Telephone Number 608-244-7349	Date 9/23/09
Signature – DHS Secretary or Designee	Telephone Number	Date

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