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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 19-110

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 1. Statutory Authority

- a. The rule summary’s listing of statutory authority cites “254.72”, but should instead cite s. 254.172, Stats.
- b. Should the department add a cite to s. 254.167, Stats., as statutory authority? That section provides that the department may promulgate rules establishing procedures for conducting lead investigations of dwellings and premises. It appears the rule modifies provisions within ch. DHS 163 promulgated pursuant to that authority.
- c. Should the department add a cite to s. 254.168, Stats., as statutory authority? That section provides that the department may promulgate rules that require certain child-occupied facilities to have periodic lead investigations at intervals determined by the department or to otherwise demonstrate that the facility does not contain a lead hazard. It appears the rule modifies provisions within ch. DHS 163 promulgated pursuant to that authority.

#### 2. Form, Style and Placement in Administrative Code

- a. In the rule caption’s listing of affected provisions, it is not necessary to repeat the source designation “DHS” after the first listing in each category of treatment. For example, the amended provisions could be listed as “DHS 163.02 (2) (Note), 163.03 (18) (Note)...”. [s. 1.02 (1) (Example), Manual.]
- b. In the rule caption’s listing of amended provisions, the word “abd” should be revised to “and”.

c. The proposed rule should be reviewed in its entirety for proper placement, retention, striking, and underscoring of periods. For example, among others:

- (1) In s. DHS 163.02 (2) (Note), the final period should be shown without a strike-through.
- (2) In s. DHS 163.10 (5) (a), the final period should be shown with a strike-through.
- (3) In s. DHS 163.10 (5) (g) 3., the period after “\$25” should be removed and the final period should be shown without a strike-through.
- (4) In s. DHS 163.10 (5) (g) 4. (Note 2), the final period should be shown without underscoring.
- (5) In s. DHS 163.13 (6) (b) 2. c., a final period should be inserted.

d. In s. DHS 163.03 (18) (Note), the underscoring and striking of the quotation marks around the title of the HUD guidelines should be revised to reflect the current text. Also, the final period should not be underscored.

e. SECTION 17 of the proposed rule should be separated into two SECTIONS: first, to amend s. DHS 163.10 (2) (b) 3. and 4. and (c); and second, to renumber and amend s. DHS 163.10 (3) (c) 1. (intro.) to subd. 1.

f. The repeal of s. DHS 163.10 (3) (c) 2. a. and b. in SECTION 20 of the proposed rule should be removed, as SECTION 19 repeals and recreates s. DHS 163.10 (3) (c) 2. in its entirety. The same issue arises in SECTIONS 22 and 27 of the proposed rule.

g. In s. DHS 163.10 (5) (a) (Note), the citation format should be revised to “ss. 250.041 and 254.115, Stats.”.

h. In s. DHS 163.10 (6) (b), the final strike-through, underscoring, and strike-through of the last cross-reference and final sentence should be revised to strike-through the contiguous material in its entirety and insert the new cross-reference at the end of all the stricken material. [s. 1.06 (1) (a), Manual.]

i. SECTIONS 32 and 33 of the proposed rule should be revised to apply the following two treatments: first, to amend s. DHS 163.10 (6) (b) and (c) 1. and 2.; and second, to repeal and recreate s. DHS 163.10 (7) (b) (in its entirety).

j. In the treatment clause for SECTION 42 of the proposed rule, a bracketed phrase should be inserted to indicate whether the created subdivisions should precede or follow the current note. For example, “DHS 163.11 (3) (a) 2. c. to e. [precedes b. (Note)] are created to read:”.

k. SECTIONS 45 and 46 of the proposed rule should be revised to apply the following three treatments:

- (1) To amend s. DHS 163.12 (2) (intro.) and b.
- (2) To repeal and recreate s. DHS 163.12 (2) (d) (in its entirety).
- (3) To repeal s. DHS 163.12 (3) (a) 1. am.

1. The following comments apply to SECTION 47 of the proposed rule:

- (1) The SECTION should be separated into two SECTIONS: first, to amend the affected provisions under s. DHS 163.12; and second, to amend the affected provisions under s. DHS 163.13. Subunits of one rule provision may be treated together in one SECTION, but may not be combined with subunits from a different rule provision. [s. 1.04 (2) (a) 4., Manual.]
- (2) In the treatment clause, the listings of s. DHS 163.13 (3) (c) 7., (6) (a), and (8) (b) and (c) should each be revised to include the designation “(intro.)”.
- (3) The SECTION amends s. DHS 163.13 (9), but the rule caption’s listing of amended provisions does not include that provision. This provision should be added to the rule caption.

m. In SECTIONS 52 to 54 of the proposed rule, it appears that the numbering designations should be reviewed and revised to meet the department’s intent and to be shown in proper sequential order. For example, the numbering for s. DHS 163.14 (1) (e) 2. and its subunits appears twice and is interrupted in the sequential treatment. Also, the content in recreated subd. 3. does not contain an introductory statement for its subdivision paragraphs.

n. In the treatment clause for SECTION 60 of the proposed rule, the listings of s. DHS 163.14 (2) (b) 1. and (c) 1. should each be revised to include the designation “(intro.)”.

o. SECTION 75 should be separated into two SECTIONS: first, to amend the affected provisions under s. DHS 163.15; and second, to amend the affected provision under s. DHS 163.16. Also, in the treatment clause, the dashes should each be revised to the word “to”.

p. In the treatment clause for SECTION 81 of the proposed rule, the listing of s. DHS 163.20 (8) (a) 2. should be revised to include the designation “(intro.)”.

q. SECTION 85 of the proposed rule should be divided into four SECTIONS to separately treat the amended provisions under ss. DHS 163.20, 163.21, 163.22, and 163.23.

r. SECTION 87 of the proposed rule should be divided into two SECTIONS to separately treat the amended provisions of ss. DHS 163.23 and 163.24.

s. The following comments apply to SECTION 92 of the proposed rule:

- (1) The SECTION should be divided into two SECTIONS to separately treat the amended provisions under ss. DHS 163.24 and 163.25.
- (2) In the treatment clause, the listing of s. DHS 163.25 (3) (b) should be revised to include the designation “(title)”. In the text of the provision, only the title should be shown and the introductory statement should be removed.
- (3) In s. DHS 163.25 (3), the text of the titles for pars. (a), (c), and (d) should be shown in italics.

t. SECTION 94 of the proposed rule amends s. DHS 163.25 (6) (7) (title) and (intro.), and (d), but the rule caption’s listing of affected provisions places those citations under the list of items repealed. The category of treatment in the rule caption should be corrected.

u. The treatment of s. DHS 163.25 (9) should be revised to include the designation “(intro.)”.

v. SECTIONS 96 and 97 of the proposed rule should be revised to apply the following three treatments:

(1) To amend s. DHS 163.25 (9) (intro.) and (e) and (10) (a) and (b) 2., 3., and 5.

(2) To repeal and recreate s. DHS 163.25 (10) (b) 7. (in its entirety).

(3) To repeal s. DHS 163.25 (10) (b) 8.

w. SECTION 98 of the proposed rule should be divided into two SECTIONS to separately treat the amended provisions under ss. DHS 163.25 and 163.31. Also, the dash in the treatment clause should be revised to the word “to”.

x. In the treatment clause for SECTION 99 of the proposed rule, the dash should be revised to the word “to”.

y. SECTION 104 of the proposed rule should be divided into five SECTIONS to separately treat the amended provisions under ss. DHS 163.31, 163.32, 163.40, 163.41, and 163.42.

z. The rule caption’s listing of affected provisions should be updated as needed to reflect any treatment revisions made in accordance with these comments.

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

a. The cross-references used in s. DHS 163.10 (6) (b), relating to grant interim certification, are confusing. Consider, for example, revising the second sentence to say that “sub. (3) (d) 2. also applies to lead inspector and risk assessor applicants”, since it is otherwise unclear what provisions within s. DHS 163.10 (3) (d) 2. a person could be “subject to”. Additionally, sub. (3) (c) 2., as repealed and recreated in the proposed rule, relates to timing of certification examination and not to department issuance of an interim certification card. It is unclear how the department could issue a card under sub. (3) (c) 2.

b. In s. DHS 163.11 (3) (a) 2. b., should the cross-reference for applying for certification be simplified from s. DHS 163.10 (3) to (5) to only sub. (5) of that section? This would be consistent with how the department treated s. DHS 163.11 (3) (a) 2. e.

c. Section DHS 163.14 (1) (k) (Note) instructs individuals to refer to Department of Natural Resources guidance but does not indicate where such guidance can be accessed. A specific reference should be added.

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

a. In s. DHS 163.10 (8) (c) 1., the word “personally” could be added before “signed”, and the second sentence could be deleted.

b. In s. DHS 163.13 (8) (c) 4., the new material should be modified for consistency with s. DHS 163.13 (8) (c) and not written in the second person. For example, the material could be revised to “If the type of lead investigation activity conducted is a clearance, whether the clearance was for an abatement project”.

c. In s. DHS 163.13 (1), the phrase “a certified lead company under s. DHS 163.12” should be revised to “a lead company certified under s. DHS 163.12”.

d. In s. DHS 163.14 (2) (a) 2., there is an errant “e” after the word “notice”, which should be removed.

e. In s. DHS 163.31 (4) (Lm), the comma after the phrase “department access to” should be deleted.

f. In s. DHS 163.31 (4) (u), the first instance of the word “or” should be deleted.

g. In s. DHS 163.31 (6) (b), it is unclear what actions or created conditions threaten the “health, safety or welfare” of the environment. Consider using other words to describe the characteristics of the environment that a person may not threaten.