ORDER OF
THE DEPARTMENT OF HEALTH AND FAMILY SERVICES
REPEALING, RENUMBERING, AMENDING,
REPEALING AND RECREATING, AND CREATING RULES

To repeal HFS 163.42 (1) (c) and (2) (e) 3. d.; to renumber HFS 163.42 (1) (d) to (i); to amend HFS 163.14 (1) (g), (5) (c) 8. c. and (9) (g) 1. and 2., 163.15 (title) and (2), 163.42 (1) (b) and, as renumbered, (e) 2. c., and (2) (a) 10.; to repeal and recreate HFS 163.42 (1) (i), as renumbered; and to create HFS 163.14 (9) (g) 3.,163.15 (3), and 163.42 (2) (a) 10. c., relating to certification for the identification, removal and reduction of lead-based paint hazards and the issuance and registration of certificates of lead-free status and lead-safe status.

Analysis Prepared by the Department of Health and Family Services

The presence of lead in paint and soil is believed to contribute to the level of lead found in the blood of persons, particularly children, living in the area. The federal Environmental Protection Agency (EPA) maintains regulations intended to reduce environmental lead hazards principally by:

- Specifying the thresholds for an environment to be considered as presenting a lead-based paint hazard; and
- Requiring training and certification of persons who perform lead hazard reduction activities or lead investigation activities so those persons are best able to prevent exposure of building occupants to hazardous levels of lead.

The federal government may authorize a state to administer its own lead training and certification program if the state has regulations governing certification of persons for the identification, removal and reduction of lead-based paint hazards that are as protective as those specified in the EPA regulations.

In Wisconsin, the Department of Health and Family Services administers the lead training and certification program. The Department has established administrative rules under chapter HFS 163 to guide its administration of the program. In 2000, the Department began work to extensively revise ch. HFS 163 to implement 1999 Wisconsin Act 113, which established a program for registering lead-free and lead-safe properties. The proposed rule was released for public review and comment on December 12, 2000. On January 5, 2001, in volume 66, number 4 of the Federal Register (66 FR 1206-1239), the EPA published regulations that established standards for lead-based paint hazards under 40 CFR Part 745, Subparts D and L, and required states with authorized lead training and certification programs under 40 CFR Part 745, Subpart Q, to implement the regulations by February 5, 2003. Because the proposed rule had already been released for public review and comment, and the EPA standards for lead-based paint hazards would affect the lead-safe property standards under ch. HFS 163, the Department decided to educate the public about the new EPA standards for lead-based paint hazards before revising the rule to reflect the new EPA standards. If Wisconsin is to continue administering its program of training and certification of persons performing lead abatement and lead investigation activities (in lieu of a program operated by the EPA), the Department must revise ch. HFS 163 to comply with those most recent and final federal regulations at 40 CFR Part 745, Subparts D, L and Q.

The most significant proposed modification to the rules pertains to the permissible level of residual lead dust in window troughs. The current lead-safe property standards expressed under s. HFS 163.42 allow a higher level of lead dust in window troughs than is permissible in corresponding EPA regulations and also do not require properties to be free of soil-lead hazards. Making the changes to s. HFS 163.42 the Department proposes will mean that persons removing

lead-based paint hazards may need to clean window troughs more thoroughly to reduce the dust-lead levels and also may need to cover bare soil. Most lead investigation professionals in Wisconsin already perform lead investigation work in conformance with the more stringent lead levels specified in EPA's regulations to ensure a more protective environment for residents, especially when conducting clearance following abatement activities. Conformance with the more stringent EPA regulations is also currently required when lead hazard reduction work is performed using federal funds. Since most lead investigation professionals already use the more protective EPA standards, the proposed rule revisions should have little effect on persons conducting lead investigation or abatement activities.

Among the changes the Department is proposing through this order, the most significant are the following:

1. Currently, section HFS 163.14 (1) (g) only describes the protocol that applies when soil abatement is conducted by removal of soil. To comply with federal regulations, the Department proposes to specify the protocol that must be followed when soil abatement is conducted by covering the soil. Temporary lead hazard reduction of soil-lead, such as covering bare soil with vegetation or landscaping materials, remains an option but is not addressed in regulation.

2. Currently, section HFS 163.14 (5) (c) 8. requires that, following lead abatement, a window well or trough may contain no more than 800 micrograms of lead dust per square foot. The revised EPA regulations specify a maximum level of 400 micrograms per square foot. To comply with federal regulations, the Department proposes to reduce the permissible threshold to 400 micrograms per square foot.

3. Currently, section HFS 163.15 (2) specifies that a lead hazard is present in soil when the arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million. The EPA revised regulations state that a lead hazard is present in soil when bare soil in a play area contains total lead content equal to or exceeding 400 parts per million or when bare soil in the rest of the yard contains an average of 1,200 parts per million of lead. To comply with the federal regulations, the Department proposes to reduce the permissible threshold to that specified by the EPA.

4. The Department proposes adding standards, as section HFS 163.15 (3), for determining when a lead-based paint hazard exists.

5. The Department proposes modifying section HFS 163.42 (1) (b) and (c) to require that all exterior painted components, regardless of their height above the ground, be free of deteriorated paint unless the paint is proved to be lead-free.

6. The Department proposes to revise its standards for lead-safe property under s. HFS 163.42 (1) (f) and (j) to reflect these lower levels for lead in dust and soil.

7. Finally, the Department proposes to revise section HFS 163.42 (1) (j) to require that there be no soil-lead hazard on registered lead-safe property.

The Department's authority to repeal and recreate these rules is found in ss. 254.167, 254.172 and 254.179 (1) (a) and (2), Stats. The rules interpret ss. 254.167, 254.172 and 254.179, Stats.

SECTION 1. HFS 163.14 (1) (g) and (5) (c) 8. c. are amended to read:

HFS 163.14 (1) (g) ~~Requirement~~ *Requirements when soil abatement is ~~removed~~conducted*. 1. If soil is removed, any replacement soil shall have a ~~level of~~ lead concentration of less than 400 parts per million and shall comply with NR 720 as applicable. The soil that is removed shall not be used as topsoil at another dwelling or child–occupied facility.

2. If the soil abatement does not involve removal of soil-lead, the soil shall be permanently covered by a barrier consisting of solid, relatively impermeable materials, such as asphalt or concrete.

(5) (c) 8. c. ~~Eight~~Four hundred micrograms per square foot (~~800~~400 mg/ft2) on window wells or troughs.

SECTION 2. HFS 163.14 (5) (c) 8. c. Note is repealed.

SECTION 3. HFS 163.14 (9) (g) is amended to read:

(9) (g) Soil sampling. Unless assessment of the lead concentration in soil is specifically excluded by a written contract, collect soil samples for analysis of lead concentrations in ~~both~~all of the following locations.

1. ~~Mid–yard~~Exterior play areas where bare soil is present.

2. ~~Dripline and foundation areas~~The rest of the yard where bare soil is present.

SECTION 4. HFS 163.14 (9) (g) 3. is created to read:

HFS 163.14 (9) (g) 3. Dripline and foundation areas where bare soil is present.

SECTION 5. HFS 163.15 (title) and (2) are amended to read:

HFS 163.15 (title) Lead-based paint hazard standards ~~for dust and soil samples~~.

(2) SOIL–LEAD HAZARD. A soil–lead hazard is present when the ~~arithmetic mean for laboratory results for samples of bare soil is equal to or greater than 2,000 parts per million~~ laboratory result for a bare soil sample is equal to or greater than any of the following:

(a) Four hundred parts per million (400 ppm) for the soil-lead concentration from a composite sample of bare soil in a play area.

(b) One thousand two hundred parts per million (1,200 ppm) for the arithmetic mean lead concentration from one or more composite samples of bare soil from the rest of the yard.

SECTION 6. HFS 163.15 (2) Note is repealed.

SECTION 7. HFS 163.15 (3) is created to read:

HFS 163.15 (3) LEAD-BASED PAINT HAZARD. A lead-based paint hazard is present when any of the following applies:

(a) A friction surface is subject to abrasion and the dust-lead levels on the nearest horizontal surface underneath the friction surface are equal to or greater than the dust-lead hazard levels under sub. (1).

(b) A chewable lead-based painted surface bears evidence of teeth marks.

(c) There is any damaged or deteriorated lead-based paint on an impact surface that is caused by impact from a related building component.

(d) There is any other deteriorated lead-based paint in any dwelling or child-occupied facility or on the exterior of any dwelling or child-occupied facility.

SECTION 8. HFS 163.42 (1) (b) is amended to read:

HFS 163.42 (1) (b) *Exterior painted components ~~below 5 feet~~.* Exterior painted components ~~at a height from ground or floor level to 5 feet above ground or floor level~~ shall be free of deteriorated paint unless the paint is proven to be lead-free.

SECTION 9. HFS 163.42 (1) (c) is repealed.

SECTION 10. HFS 163.42 (1) (d) to (j) are renumbered (c) to (i).

SECTION 11. HFS 163.42 (1) (e) 2. c., as renumbered, is amended to read:

HFS 163.42 (1) (e) 2. c. The laboratory result for a dust sample collected from a window trough or well is equal to or greater than ~~800~~400 micrograms per square foot (~~800~~400 mg/ft2).

SECTION 12. HFS 163.42 (1) (i), as renumbered, is repealed and recreated to read:

HFS 163.42 (1) (i) *Soil-lead hazard*. There shall be no soil-lead hazard on registered lead-safe property. A soil-lead hazard is present when bare soil is present and an assessment conducted under s. HFS 163.14 (9) (g) determines that the bare soil is a soil-lead hazard under s. HFS 163.15 (2).

SECTION 13. HFS 163.42 (2) (a) 10. is amended to read:

HFS 163.42 (2) (a) 10. 'Collection of soil samples.' ~~If the property owner requests assessment of the lead concentration in soil, no soil~~Soil analysis is not required ~~if no~~unless bare soil is present. If bare soil is present, collect soil samples for analysis of lead concentrations from the following locations:

a. ~~Mid-yard areas~~Exterior play areas where bare soil is present ~~or the area of bare soil closest to mid-yard~~.

b. ~~Dripline and foundation areas~~The rest of the yard where bare soil is present.

SECTION 14. HFS 163.42 (2) (a) 10. c. is created to read:

HFS 163.42 (2) (a) 10. c. Dripline and foundation areas where bare soil is present.

SECTION 15. HFS 163.42 (2) (e) 3. d. is repealed.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register, as provided in s. 227.22 (2) (intro.), Stats.

Wisconsin Department of Health and Family Services

Dated: June 5, 2003

By:_____
Helene Nelson
Secretary

SEAL: