

Rules for Lead-Free and Lead-Safe Properties Become Effective March 1, 2002

This paper summarizes key components of the administrative rule that implements regulations for a statewide registry of lead-free and lead-safe properties. The rule goes into effect March 1, 2002. For detailed information, refer to Subchapter V of HFS 163, Wisconsin Administrative Code.

The Department of Health and Family Services (DHFS) provides this summary to assist you in answering questions about the regulations and Lead-Free/Lead-Safe Registry. If you need additional information, please contact the DHFS Asbestos and Lead Section.

Asbestos and Lead Section Contact Information

The DHFS Asbestos and Section has posted information about its programs on the DHFS website at www.dhfs.state.wi.us. Detailed certification information is available under the Licensing and Permitting Section at www.wisconsin.gov. (Key word: lead)

Contact the Asbestos and Lead Section by email at plicasbestoslead@dhfs.state.wi.us, by telephone at (608) 261-6876, by fax at (608) 266-9711, by mail at Asbestos and Lead Section, Room 137, PO Box 2659, Madison, WI 53701-2659, or in person at 1 West Wilson Street, Room 137, Madison, WI.

Supreme Court Ruling Prompted Legislation

In July 1999, the Wisconsin Supreme Court ruled that property owners could be liable for lead-poisonings resulting from deteriorated paint in their properties. The court also ruled in a separate decision that deteriorated lead-based paint is an environmental pollutant, which is excluded from coverage under most general insurance policies.

Legislation Required Registry and Regulation

Legislation passed in March 2000 created incentives for property owners to eliminate hazards from lead-based paint (1999 Wisconsin Act 113). The legislation revised chapter 254 of the State Statutes to give certain legal immunities to owners of registered lead-free or lead-safe properties (s. 254.173). The legislation directed DHFS to write rules that implement the new statute.

The immunities would apply if a person visiting or living at a registered property became lead poisoned. However, immunities apply only if the property owners obtain a lead-free or lead-safe certificate for the property. In addition to the owners, the limited immunities also protect the owner's agents and employees.

Part of State's Comprehensive Lead-Hazard Reduction Plan

The Lead-Free/Lead-Safe Registry is part of the state's comprehensive plan to reduce childhood lead poisoning. The plan includes childhood lead-exposure screening, medical case management, medical reporting requirements, training requirements, worker certification, and lead-hazard reduction activities.

The Lead-Safe/Lead-Free Registry will help eliminate lead hazards in the state's housing stock. By eliminating lead hazards, fewer children will be lead poisoned. Lead-poisoned children can suffer severe health problems, developmental impairments, such as attention deficit, and even death in extreme cases.

The legislative directives for the Lead-Free/Lead-Safe Registry are in subch. II of Chapter 254, Wis. Statutes. The rules implementing the directives are in subch. V of Chapter HFS 163 of the Wisconsin

Administrative Code. DHFS issued the original HFS 163 in 1993 to regulate individuals performing lead abatement and the courses that train individuals for this hazardous work. This rule has been revised over time to meet new requirements of the U.S. Environmental Protection Agency (EPA), including the regulation of lead inspections and risk assessments.

Anyone can obtain a copy of the Statute (Chapter 254) and the Administrative Code (Chapter HFS 163) by going to www.legis.state.wi.us or www.dhfs.state.wi.us or by contacting the DHFS Asbestos and Lead Section.

Registered Lead-Free Property

Lead-free means **no** lead-based paint has been found at the property.

Hire Lead Inspector or Risk Assessor. The property owner must hire a state-certified lead inspector or risk assessor from a certified lead company to examine the property (lead-free inspection).

Specific Procedures. The inspector/risk assessor must follow specific procedures set by DHFS. The person conducting these activities may not have a personal or business conflict-of-interest with the property.

Certificate Issued. If the inspector/risk assessor does not find lead-based paint, the lead company will register the property in the Lead-Free/Lead-Safe Registry and issue a certificate to document the property is lead-free. The certificate will describe the property registered under the certificate. A lead-free certificate may be issued to an entire property or to a single dwelling unit, but will always include common areas of the property.

Fees. In addition to the company's charges for the lead-free inspection, the property owner must pay the lead company \$50 for each lead-free certificate issued. The certified lead company must pay this fee to DHFS when the property is registered.

Registered Lead-Safe Property

Lead-safe means **no hazard** from lead-based paint was found at the property at the time the lead-safe investigation was completed. To be lead-safe, painted surfaces, such as windows, walls, stairs, and floors must be in good condition and no paint chips or hazardous levels of dust-lead may be present.

Hire Lead Hazard Investigator or Risk Assessor. The property owner must hire a state-certified lead hazard investigator or risk assessor from a certified lead company to examine the property (lead-safe investigation). The person conducting these activities may not have a personal or business conflict-of-interest with the property.

Specific Procedures. The hazard investigator/risk assessor must follow specific procedures and must compare the property with lead-safe standards set by DHFS. All paint is assumed to contain lead unless proven otherwise.

Eliminate Any Lead-Based Paint Hazards. If the investigation reveals a lead-based paint hazard, the risk assessor or hazard investigator will advise owners on how the hazards can be eliminated. For permanent elimination of lead hazards, owners will be required to use certified lead abatement professionals.

Certificate Issued. If the hazard investigator/risk assessor does not find a lead-based paint hazard and the property meets the standards, the certified lead company will register the property in the Lead-Free/Lead-Safe Registry. The certified lead company will then issue a lead-safe certificate. The

certificate will describe the property registered under the certificate. A lead-safe certificate may be issued to an entire property or to a single dwelling unit, but will always include common areas of the property.

Fees. In addition to the company's charges for the lead-safe investigation, the property owner must pay the lead company \$25 for each lead-safe certificate issued. The certified lead company must pay this fee to DHFS when the property is registered.

Lead-Safe Certificates Range From 9 months to 20 Years

When a lead company registers a lead-safe property with DHFS, a computer analyzes the information about the property to determine the length of the certificate. The actual expiration date reflects how long the property is expected to remain lead-safe if properly maintained. This depends on the condition of the property and the location of lead-based paint.

Vulnerable Surfaces. Friction, impact, moisture damage, and weathering all work to create lead-based paint hazards. Lead-based paint deteriorates most quickly on windows and other friction surfaces, such as floors and stairs. The next categories for concern are doors, exterior horizontal surfaces, impact surfaces, and paint subject to moisture damage.

This is followed by all other exterior surfaces. Interior components that are not subject to friction or impact (such as walls and ceilings) are likely to remain in good condition for a longer time if not affected by water damage.

Certificate Terms. The longer the certificate's term, the more stringent the property standards. A lead-safe certificate may be issued for 9 months, 1 year, 3 years, 5 years, 10 years or 20 years after the date the property was found to be lead-safe.

A lead-safe certificate expires on the date stated on the certificate. The table at the end of this summary gives additional information on the certificates and their standards.

Procedures for Mandatory Certification of a Property

Enrollment in the Lead-Free/Lead-Safe Registry is mandatory for a property when the property owner is notified by a local or state public health department that a child under 6 years of age residing there has an elevated blood-lead level.

Notice From DHFS. The notice would say that a child under 6 had an elevated blood-lead level while residing at the property specified in the notice. The notice would also tell the property owner what must be done and may be issued in the form of an order.

DHFS identifies children with elevated blood-lead levels from reports it receives from laboratories that test children's blood samples. DHFS works with local health departments to locate the owners of the properties where children have been lead poisoned. The property must be enrolled in the lead-free/lead-safe registry within one year after the property owner receives the notice. The property must meet the minimum standards necessary to remain registered for at least one year.

Comply With Other Orders. In addition to registering the property, the property owner must comply with any other lead-related orders issued on the property. The local public health department may require the property owner to make the property lead-safe as quickly as possible. The public health agency also may allow the property owner to take some temporary measures to immediately protect the child. However, such temporary measures might not by themselves meet the state standards for a lead-safe property that is eligible for a minimum of a one-year certificate.

Extension Possible. A property owner may obtain an extension on the time requirement to obtain a certificate. However, any delay must not present a serious threat to a child under 6 years of age. Moreover, the property owner must show he or she made a good faith effort to obtain a certificate within the one-year time frame. A delay in obtaining a registry certificate does not cancel any deadline specified by health department orders.

Conditions For Maintaining a Lead-Safe Certificate

Once a property has received a lead-safe certificate, there are requirements that must be met in order to maintain the certificate as valid.

Use Only Certified Persons. Owners must use only state-approved, certified professionals to conduct lead abatement and lead investigation activities. This includes clearance conducted to verify that a lead-based paint hazard has not been created and left behind by any activity that disturbs lead-based paint. Lists of lead professionals may be obtained at www.dhfs.state.wi.us or by contacting the DHFS Asbestos and Lead Section.

Most people performing non-abatement activities that disturb lead-based paint (non-abatement lead-based paint activities) on lead-safe property must either be a certified lead abatement professional or must complete an 8-hour lead-safe work course accredited by DHFS and be certified as a lead-safe worker.

A certified lead-safe worker who disturbs lead-based paint on lead-safe property by abrasive blasting or by, machine chipping, grinding, planing or sanding must also complete an 8-hour lead abatement course that is accredited by DHFS.

Exceptions to Certification. Although lead-safe work practices must always be used on registered lead-safe property, certification under HFS 163 is not required to perform non-abatement lead-based paint activities under the following circumstances:

- All activities are within the scope of a license, certification or registration issued by the Department of Commerce under s. 101.178, 101.78 or ch. 145 of the WI Statutes.
- Work is performed by the property owner and:
 - The property owner was required to obtain the certificate because a child had been lead poisoned, and
 - Only the property owner's immediate family occupy the property, and
 - The property owner was given instruction in lead-safe work practices by a public health agency, government housing agency or an approved training provider.
- Work is performed by a person other than the property owner or the property owner's employee or agent and:
 - The only activities performed involved installation, maintenance or repair of wiring, cables or components of the dwelling's security, electrical, heating, plumbing or cooling systems; or
 - The total amount of paint to be disturbed during any one project is 2 square feet or less and abrasive blasting, pressure water blasting, or machine sanding, grinding or planing are not performed; or
 - An occupant disturbs a total of 2 square feet or less of paint while repairing nail holes at the end of tenancy and the occupant is not compensated for performing the repair.

Even when certification under HFS 163 is not required, lead-safe work practices must be used. The rule provides some information to assist a person in working lead-safe. However, DHFS recommends completion of a DHFS-accredited, one-day, lead-safe-work course. Untrained or improperly trained people disturbing lead-based paint may cause lead hazards that can harm children and also jeopardize the owners' lead-safe certificate.

Follow Lead-Safe Work Practices When Disturbing Paint. Because a very small amount of lead-dust (enough to just cover a person's fingertip) can cause an elevated blood-lead level in a child, there are stringent work requirements that must be followed during routine maintenance while a property is registered as lead-safe. Owners must ensure that everyone living or working at the property knows it is a registered lead-safe property and that lead-based paint is present.

The rule provides detailed information about **required, restricted and prohibited** work practices. Lead-safe work practices will help owners protect themselves, employees and occupants from possible lead-based paint hazards that could be created during maintenance, repairs or remodeling.

Use Containment. If more than 2 square feet will be disturbed, all dust and debris must be contained with plastic and other means so that the dust and debris do not escape from the work area. Workers must make sure furnishings are removed from the work area, or must use plastic to cover those that can't be removed. These techniques are taught in detail at state-approved, lead-safe work courses.

Restrict Access. Only persons appropriately trained in lead-safe practices may be allowed in the work area until the location has been cleaned and visually cleared.

Prohibited and Restricted Practices. All of the following activities have restrictions on how, when and whether they may be performed at lead-safe properties.

- Abrasive blasting or sandblasting.
- Machine sanding, grinding, or planing.
- Manual dry scraping or dry sanding.
- Chemical paint stripping.
- High-pressure water blasting and hydroblasting.
- Open-flame burning or torching (or charring).
- "Dry" sweeping of dust or debris.
- Using heat-guns to remove paint.

Conduct clearance. If any non-abatement work involves a restricted work practice or disturbs more than 2 square feet of paint that wasn't proven lead-free, owners must have a state-certified person conduct "clearance" to make sure no lead hazards remain after the work. Clearance for non-abatement work may be conducted by lead sampling technicians, lead inspectors, lead risk assessors, and lead hazard investigators.

Clearance is always required after lead abatement. When abatement or a restricted work practice has been performed, the person conducting the clearance may not have a personal or business conflict of interest. When abatement is conducted, only lead hazard investigators, lead risk assessors or lead inspectors may conduct the clearance.

Conduct Annual Visual Inspections. For certificates of 3 years or more, the property owner must conduct an annual visual inspection to look for potential lead-based paint hazards, such as deteriorated paint.

Remove Lead-Based Paint Hazards. If an owner of a registered lead-safe property learns that a potential lead-based paint hazard is present, the owner must have it repaired within 20 working days.

Interior Hazards When A Child Is Present. If the owner knows or should know that a child under 6 occupies a registered property, they must reduce the hazard within five working days, even if only temporarily while more permanent steps are being planned and implemented.

Exterior Hazards. If an exterior lead hazard is found between Oct. 1 and May 1, owners have until June 1 to eliminate it.

Contact DHFS for Exceptions. If owners face extraordinary circumstances that will prevent them from meeting these requirements, they should contact the DHFS Asbestos and Lead Section immediately to discuss solutions and possible extensions of deadlines.

Notification to Occupants. Occupants must be given information that allows them to make informed choices to protect themselves and their families from potential lead-based paint hazards.

Notice Before Disturbing Paint. The property owner or other person who will do the work must inform the occupants of the property that lead-based paint might be disturbed. This is required by the federal Environmental Protection Agency to heighten everyone's caution and thereby help ensure safety.

Inform Current Tenants. An owner must make sure the current tenants receive a copy of the pamphlet called "Lead-Safe Information for Tenants." The pamphlet can be mailed or delivered personally to a tenant at least 16 years or older. This must be done within 60 days of receiving the lead-safe certificate for the property. A copy of the pamphlet will be available on the DHFS website at www.dhfs.state.wi.us or by contacting the DHFS Asbestos and Lead Section.

Inform New Tenants. Property owners must also provide the pamphlet to new tenants before they move in.

Reporting Form. Property owners must give current and future tenants a form that they can use to inform owners of any possible lead-based paint hazards tenants may notice. A sample form will be provided to the owner upon entering a property into the Lead-Safe Registry. Owners must give tenants of a lead-safe property the reporting form at the same time owners give them the "Lead-Safe Information for Tenants" pamphlet.

Comply With Federal Lead-Based Paint Regulations. The property owner must also comply with federal lead-based paint regulations, including the following:

EPA Disclosure Form. Because there is still lead-based paint in lead-safe property, owners are required by the U.S. Environmental Protection Agency to disclose to *new tenants* that there is lead-based paint present. Owners must have the new tenants sign a form that confirms the owners fulfilled this duty.

Additionally, federal regulations require property owners to give tenants a copy of the booklet called "Protect Your Family From Lead." Copies can be obtained by calling the National Lead Information ClearingHouse at 1-800-424-5323 or may be downloaded from www.epa.gov/lead.

It may be convenient for owners to give tenants all required state forms at the same time as they fulfill federal requirements to warn tenants about possible lead-based paint.

HUD Requirements. If tenants receive rental assistance or the owner receives other federal funding for the property, U.S. Department of Housing and Urban Development (HUD) requirements regarding notification and treatment of lead-based paint might apply. HUD's information can be obtained on the web at www.hud.gov/offices/lead or by calling the appropriate regional HUD office.

Maintain Documentation. Owners are required to keep the following important documentation for at least one year after the certificate for a property expires:

- Abatement reports.
- Lead-safe investigation reports.
- Abatement notices.
- Clearance reports.
- Annual visual inspection reports.
- Occupants' reports about possible lead hazards.
- Any notices from DHFS or a local health department regarding lead-based paint at the property.

It is to the owners' advantage to keep every record they make or receive regarding lead-based paint at the property.

Temporary Immunity for 60 Days.

The state statute that authorizes the lead-free/lead-safe registry also provides temporary immunities for new property owners who take various actions to temporarily reduce lead hazards within the first 60 days after purchasing properties. Those actions include temporary measures such as thoroughly washing floors and window systems, repairing damaged paint, and removing dust and chips with HEPA-equipped vacuum cleaners (HEPA means High Efficiency Particulate Air).

Summary of Standards for Lead-Safe and Lead-Free Properties in Wisconsin

This table *summarizes* what must be achieved to qualify for various lead-safe certificates or a lead-free certificate. A property must meet all of the standards found in the entire column to qualify for the length of certificate shown at the top of the column. The paint standards apply to all paint that has not been proven to be lead-free. **LBP** means lead-based paint. Copies of the actual standards are found in Subchapter V of HFS 163, Wis. Admin. Code, which can be obtained from the Department of Health and Family Services' website at www.dhfs.state.wi.us or by contacting the DHFS Asbestos & Lead Section via email at plicasbestoslead@dhfs.state.wi.us, by FAX at 608-266-9711 or by telephone at 608-261-876.

<u>Minimum Standards</u> ⇒ To qualify for any certificate, the dwelling unit and common areas must be free of dust-lead hazards , lead-paint chips , and ongoing water damage to lead-painted surfaces.							
	9-Month Must Meet All In Column ↓	For 1-Year Must Meet All ↓	3-Year Must Meet All ↓	5-Year Must Meet All ↓	10-Year Must Meet All ↓	20-Year Must Meet All ↓	Lead Free ↓
Window systems ⇒	No deteriorated LBP (lead-based paint). Smooth and cleanable window trough. No gaps in glazing. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.	Any remaining LBP on <u>impact or friction</u> surfaces covered with durable material. Impact and friction surfaces include window channels, and window sashes, and window troughs (wells).		<u>Any</u> remaining LBP on <u>any</u> window system component enclosed with durable material.			No LBP on any surface.
Floors – interior* ⇒	No deteriorated LBP. No evidence of abrasion. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.		Floor covered by an <u>intact, lead-free</u> topcoat.	Floor covered by a durable material or carpeting. Mold, mildew, moisture & water damage removed.		<u>Any</u> remaining LBP enclosed with durable material (not carpeting)	No LBP on any surface.
Floors – exterior* ⇒	No deteriorated LBP. No evidence of abrasion. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.		Floor covered by an <u>intact, lead-free</u> topcoat.	Floor covered by a durable material or carpeting. Mold, mildew, moisture & water damage removed.	<u>Any</u> remaining LBP enclosed with durable material (not carpeting)		No LBP on any surface.
Stairs – interior* ⇒	No deteriorated LBP. No evidence of abrasion. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.	Traffic area of LBP tread covered by an <u>intact lead-free</u> topcoat.	Traffic area of LBP tread covered by a <u>durable</u> material or carpeting. Mold, mildew, moisture & water damage removed.			<u>Any</u> remaining LBP enclosed with durable material (not carpeting).	No LBP on any surface.

* Paint on floors and stair treads in areas secured against access by persons other than the property owner and property owner's family, agent and employees may receive a maximum of a 3-year certification before painting or other protection is required.

Minimum Standards ⇒ To qualify for **any** certificate, the dwelling unit and common areas must be free of dust-lead **hazards**, lead-paint **chips**, and ongoing **water damage** to lead-painted surfaces.

	9-Month Must Meet All In Column ↓	For 1-Year Must Meet All ↓	3-Year Must Meet All ↓	5-Year Must Meet All ↓	10-Year Must Meet All ↓	20-Year Must Meet All ↓	Lead Free ↓
Stairs – exterior *⇒	No deteriorated LBP. No evidence of abrasion. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.	Traffic area of LBP tread covered by an <i>intact</i> , lead-free topcoat.	Any remaining LBP on traffic area covered by carpeting, runners or similar material. Mold, mildew, moisture & water damage removed.	<u>Any</u> remaining LBP of stair system covered by <u>durable</u> material or carpeting.	<u>Any</u> remaining LBP enclosed with <u>durable</u> material (not carpeting).		No LBP on any surface.
Walls, ceilings –interior ⇒	No deteriorated LBP. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.			Any remaining LBP on impact surfaces enclosed or protected from damage. Mold, mildew, moisture & water damage removed.	<u>Any</u> remaining LBP enclosed with durable material.		No LBP on any surface.
Exterior surfaces: siding, soffit, fascia, etc. ⇒	No deteriorated LBP lower than 5 feet above the ground or exterior floors, and does not total more than 5 square feet. No visible defect, damage, decay or deterioration in the substrate that might cause LBP to deteriorate.		No deteriorated LBP.	Any remaining LBP on impact surfaces enclosed or protected from damage. Mold, mildew, moisture & water damage removed	<u>Any</u> remaining LBP enclosed with durable material.		No LBP on any surface.
Doors ⇒	No deteriorated LBP. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.		LBP on friction surfaces removed, enclosed or otherwise protected.	Any remaining LBP on <i>impact</i> surfaces enclosed or otherwise protected from damage. Any remaining LBP on door enclosed with durable material. Mold, mildew, moisture & water damage removed.	<u>Any</u> remaining LBP enclosed with durable material.		No LBP on any surface.
Interior, built-in cabinets ⇒	No deteriorated LBP. No visible defect, damage, decay or deterioration in the substrate (surface under paint) that might cause LBP to deteriorate.		LBP on friction surface removed, enclosed or otherwise protected.	Any remaining LBP on <i>impact</i> surfaces enclosed or otherwise protected. Mold, mildew, moisture & water damage removed.	<u>Any</u> remaining LBP enclosed with durable material.		No LBP on any surface.

* Paint on floors and stair treads in areas secured against access by persons other than the property owner and property owner’s family, agent and employees may receive a maximum of a 3-year certification before painting or other protection is required.