

INITIAL STATEMENT OF REASONS

SUMMARY OF THE PROPOSED REGULATIONS

In accordance with the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, the California Department of Public Health (the Department) is required and authorized to administer a residential lead-based paint hazard reduction program and to adopt and amend regulations implementing the accreditation of training providers and the certification of individuals training to perform lead-related construction (LRC) work in the state (Health & Saf. Code, §§ 105250 & 105250, subd. (b)). The Department is further authorized to modify certification requirements for persons engaged in lead construction work based on the needs of the program. (Health & Saf. Code, § 105254, subd. (c).)

The Department's Lead Related Construction Program (LRC Program) certifies approximately 7,000 lead professionals annually and accredits training providers that offer LRC courses in California. Individuals certified by the LRC Program provide lead-related inspections and abatement services in residences and public buildings throughout the state in order to prevent and minimize housing-related lead exposure to California's families. The regulations implementing the LRC Program's certification requirements are contained in the California Code of Regulations, title 17 (hereafter CCR, title 17), sections 35081 through 35097. The purpose of this regulatory proposal is to amend sections 35083 and 35087 of CCR, title 17 in order to clarify the process by which Certified Industrial Hygienists (CIHs) become certified LRC inspector/assessors or project monitors. The proposed regulatory changes are necessary to correct a mistake in the current version of the regulations that has led to unintended restrictions for CIHs seeking certification as LRC professionals.

A 1995 revision of these regulations was intended to amend the LRC certification process in order to allow CIHs to take an expedited 24-credit hour course (CIH course) that would qualify them for LRC certification. This CIH course was intended to replace the requirement that CIHs take the 40-hour credit course(s) mandated for non-CIH individuals. However, due to a drafting error in a 1999 revision of these regulations, language affecting the certification requirements for CIHs was unintentionally altered and the regulation does not effectuate the Department's intent that CIHs be able to qualify for LRC certification via the CIH course. Under the current regulations, a CIH *may* take the CIH course, but because of the 1999 error, this will not qualify them for LRC certification.

By making the CIH course irrelevant to the LRC certification process, the current regulations unintentionally restrict the ability of CIHs to become LRC certified and impose a more time consuming training process on CIHs than was intended by the Department. A delay in the time it takes to certify qualified LRC inspector/assessors and/or project monitors directly affects the Department's ability to comply with its mandate to build the infrastructure necessary to eliminate lead-based paint hazards in

all housing as expeditiously as possible. (42 U.S.C. § 4851 and Health & Saf. Code, § 105250, subd. (a).) The Department has therefore determined that amendments are necessary in order to restore the intent of the 1995 version of the regulations, provide clarity and fairness to the LRC certification process for both CIHs and training providers, ensure that the Department continues to effectively fulfill its mandate to address lead-based paint hazards as expeditiously as possible, and ensure that individuals engaged in LRC activities are properly trained, that training programs are accredited, and that contractors engaged in lead reduction activities are certified. (Health & Saf. Code, § 105250, subd. (a) & (b), 15 U.S.C. § 2682, & 42 U.S.C. § 4851.)

AUTHORITY

In 1994, the Legislature of the State of California established the LRC Program within the Department in order to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992. (Health & Saf. Code, § 105250.) Under Health and Safety Code section 105254, subdivision (c), the Department is authorized to implement, administer, and create regulations for the program, including the ability “to modify certification requirements for persons engaged in lead construction work based on changes to state or federal law, or programmatic need.”

BACKGROUND

The Department’s LRC Program certifies approximately 7,000 lead professionals annually and accredits training providers that offer LRC courses in California. Individuals certified by the LRC Program provide lead-related inspections and abatement services in residences and public buildings throughout the state in order to prevent and minimize housing-related lead exposure to California’s families. The LRC Program is managed by the Childhood Lead Poisoning Prevention Branch and is recognized by the United States Environmental Protection Agency as an authorized state program. (Health & Saf. Code, § 105250, subd. (b) & 15 U.S.C. §§ 2682 & 2684.)

In 1994, the Department adopted regulations governing Accreditation, Certification and Work Practices for Lead-Based Paint and Lead Hazards. (Cal. Code Regs., tit. 17, §§ 35001 et seq.) Section 35083 of CCR, title 17 requires individuals seeking certification as an LRC inspector/assessor to complete an LRC “inspection and assessment course” (I/A course), obtain a course completion form, and pass a lead inspector/assessor certification examination offered by the Department. Section 35087 of CCR, title 17 requires individuals seeking certification as an LRC project monitor to complete an LRC “supervision and project monitoring course” (project monitor course), obtain a course completion form for the course, and pass a project monitor lead certification examination offered by the Department.

Both the I/A course and the project monitor course consist of 40-credit hours each. A 1995 revision of these regulations was intended to amend the regulations to allow CIHs, who already have experience in identifying and eliminating chemical, physical, biological, ergonomic and toxicological stressors such as lead-based paint as part of their CIH training, the ability to take, in lieu of the I/A or project monitor course(s), an

expedited 24-credit hour CIH course that would qualify them for LRC certification. However, the Department has since discovered that, due to a drafting error in the 1999 amendments to these regulations, the certification requirements for CIHs were unintentionally altered and does not effectuate the Department's intention that CIHs be able to qualify for LRC certification by taking the expedited CIH course.

CIHs are highly trained individuals who already possess education and experience in identifying and eliminating chemical, physical, biological, ergonomic, and toxicological health and safety hazards in homes, workplaces, and communities. Section 35012 of CCR, title 17 defines a certified industrial hygienist as "a person who has met the education, experience, and examination requirements of an industrial hygiene certification organization governed by the American Board of Industrial Hygiene" which includes training relevant to LRC practices in its course requirements for certification.¹

Problem Statement:

As currently written in sections 35083 and 35087 of CCR, title 17, CIHs seeking LRC certification as either an inspector/assessor or a project monitor must take an I/A or project monitor course in order to become LRC certified. The regulatory language indicates that a CIH may then take an additional, "LRC CIH course" (CIH course) and obtain a course completion form, but does not indicate why a CIH would need to take this extra course, or convey to a CIH that they may take the CIH course *instead of* the I/A or project monitor course. The current version of the regulation, therefore, is not only unclear, but has the unintended effect of making the CIH course irrelevant for CIHs seeking LRC certification. It also fails to uphold the original intent in amending the regulations, which was to provide CIHs with an expedited means of obtaining LRC certification via completion of the CIH course (see: §§ 35083 and 35087 of Cal. Code Regs., tit.17 as posted in Register 95 No. 14).

By requiring CIHs to take and possess the course completion form for an I/A course or a project monitor course (both 40-credit hour courses), the current regulations unintentionally mandate an additional 40-credit hours of course work for CIHs wishing to complete the LRC certification process. In order to restore needed clarity to the LRC certification process and comply with its mandate to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible (42 U.S.C. § 4851 & Health & Saf. Code, § 105250, subd. (a)), the Department has determined that the current regulations must be amended in order to restore the ability of CIHs to qualify for LRC certification via the expedited training process intended by the 1995 regulatory amendments. The proposed regulatory amendments are further necessary to ensure that the Department is able to continue its mandate to ensure that individuals engaged in LRC activities are properly trained, that training programs are accredited, and that contractors engaged in lead abatement activities are certified. (Health & Saf. Code, § 105250, subd. (b) & 15 U.S.C. § 2682.)

¹ [American Board of Industrial Hygiene Web site <http://abih.org/become-certified/ih-coursework-requirement>](http://abih.org/become-certified/ih-coursework-requirement) (as of September 7, 2016).

Purpose:

Given the unintentional error in the current version of the regulations, the Department recognizes the need to amend sections 35083 and 35087 of CCR, title 17 in order to reduce barriers to training individuals to identify and safely remediate lead-based paint and lead hazards in California's residences and public buildings.

Benefits:

Reducing the threat of childhood lead poisoning and other residential, lead-based hazards in an expedient manner is a goal of the statute. (Health & Saf. Code, § 105250, subd. (a) & 42 U.S.C. § 4851, subd. (a).) The Department anticipates that by removing barriers to LRC training for CIHs the proposed regulations will directly benefit the public health by encouraging a more robust and qualified pool of LRC professionals capable of evaluating and remediating lead-based hazards. The timely and efficient remediation of lead-based hazards and reduction of incidents of toxic lead exposure in residences across the state, will help preserve the health and wellbeing of children and families in California.

A secondary benefit to this amendment is that accredited LRC training providers will once more have a reason to offer the CIH course which, under the current version of the regulations, has no practical application to the LRC certification process. This may result in a financial gain for those course providers who decide to offer the expedited CIH course.

Consistency and Compatibility with Existing State Regulations:

The Department has evaluated whether the proposed regulations are inconsistent or incompatible with existing state regulations and has confirmed that they are both consistent and compatible. The evaluation included a review of the Department's laws and specifically those statutes and regulations related to accreditation, certification, and work practices for lead-based paint and lead hazards. Department staff is familiar with and has reviewed other state agency regulations associated to LRC activities in order to reach its determination.

DOCUMENTS RELIED UPON

[American Board of Industrial Hygiene Web site](http://abih.org/), <<http://abih.org/>> (as of August 30, 2016)

REASONABLE ALTERNATIVES CONSIDERED

The Department has determined that no reasonable alternative considered by the Department or that otherwise identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed (to restore the intent of the regulations as revised in 1995) or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory intent of Health and Safety Code sections 35083 and 35087.

The Department has found no reasonable alternatives to amending sections 35083 and 35087 of CCR, title 17 that would achieve the current needs of the LRC Program or allow the Department to carry out its statutory duties.

ECONOMIC IMPACT ANALYSIS

The Department has made an initial determination that these regulations would not have an economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The information used to determine any costs and impact on businesses is based on current data regarding CIHs and training providers in California, and assumptions and calculations made based on potential changes due to this proposal.

The current fee charged by the Department for an individual to become LRC certified is \$75 per LRC certification. An individual applying to be certified as an I/A and as a project monitor would pay to the Department \$150, which is two times the \$75 fee.

A. Potential Costs to Businesses Resulting from the Proposed Amendment:

The Department anticipates no new costs to CIHs currently doing business in California as a result of the proposed regulatory changes. CIHs can already opt to become LRC certified in California. The Department-accredited training providers that opt to create LRC CIH courses may recoup costs if CIHs opt to take their course. There is no current or proposed requirement for an individual to take an LRC CIH course or for a training provider to offer an LRC CIH course.

B. The creation or elimination of jobs within the State of California:

The Department does not anticipate that the proposed regulatory revision will create or eliminate jobs since this proposal corrects an unintended restriction in regulations made in a previous rulemaking that has not been enforced by the Department.

C. The creation of new businesses or the elimination of existing businesses within the State of California:

The Department does not anticipate that the proposed regulatory revision will create, eliminate, or significantly affect new or existing businesses. It was determined that approximately three existing training providers are expected to offer the LRC CIH course as a result of the proposed regulatory changes, and an estimated total of 50 additional CIH are anticipated to take an LRC CIH course over the lifetime of the regulations. CIHs who were not previously certified in LRC may pay \$75 to the Department to become certified, and pay \$75 annually to renew certification. It is not expected that any new training providers will seek accreditation based on this regulatory amendment or that a CIH would be significantly affected. CIHs are not mandated to take a CIH course and would likely recoup any fees paid for certification after performing one lead inspection or risk assessment for a client.

D. The expansion of businesses currently doing business within the State of California:

The proposed regulatory revision should not significantly expand existing businesses in California. Training providers may receive a total of \$35,000 over the lifetime of the regulations if 50 additional CIH in California take LRC CIH courses anticipated to cost \$700 per student. The majority of accredited training providers' business comes from other courses supporting about 7,000 LRC individuals certified annually.

E. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

It is anticipated that reducing barriers to individual CIHs seeking to become LRC certified will increase the number of individuals certified to evaluate homes for lead-based paint and lead hazards. It is presumed that more availability of certified LRC individuals will lead to more lead being identified, which will lead to fewer exposures of the toxic metal to children, families and workers in California.

EVIDENCE SUPPORTING NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS

The Department has determined that the proposed regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states. The private schools that are considered small businesses will incur some costs due to the proposed regulations; however, these costs will neither impose an undue burden nor have a significant economic impact. Thus, there will be no significant adverse economic impact on California businesses.

DETAILED DISCUSSION OF EACH REGULATION

Section 35083: This section has been amended to include language relocated from subsection 35083(b) regarding the requirement that all individuals seeking LRC certification as an inspector/assessor must pass the Department's lead inspector/assessor certification examination. This is necessary to restore the original intent of the regulation and create clarity of process for CIHs and for Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Subsection 35083(a): This subsection has been relocated from subsection 35083(b)(4) in order to clarify the option for a CIH to take the LRC CIH course rather than being required to take the LRC inspector/assessor course. Language has also been edited to specify that a CIH is only required to take and possess the course completion form for a LRC CIH course in order to become LRC certified as an inspector/assessor. This amendment is reasonably necessary in order to restore the original intent of the regulation and provide clarity for CIHs and Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Subsection 35083(b): This subsection has been revised to clarify that individuals who are not CIHs must continue to take the LRC inspector/assessor course, possess the course completion form for a LRC inspector/assessor course, and meet minimum education and experience requirements. This amendment is reasonably necessary to maintain clarity of process for non-CIH individuals and for Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Section 35087: Has been amended to include language relocated from subsection 35087(b) regarding the requirement that all individuals seeking LRC certification as a project monitor must pass the Department's lead project monitor certification examination. This is necessary to restore the original intent of the regulation and create clarity of process for CIHs and for Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Subsection 35087(a): This subsection has been relocated from subsection 35087(b)(4) in order to clarify the option for a CIH to take the LRC CIH course rather than being required to take the LRC project monitor course. Language has also been edited to specify that a CIH is only required to take and possess the course completion form for a LRC CIH course in order to become LRC certified as a project monitor. This change is reasonably necessary in order to restore the original intent of the regulation and to provide clarity for CIHs, and for Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Subsection 35087(b): This subsection has been revised to clarify that individuals who are not CIHs must continue to take the LRC project monitor course, possess the course completion form for a LRC project monitor course, and meet minimum education and experience requirements. This revision is reasonably necessary in order to provide clarity to non-CIH individuals, and for Department personnel charged with enforcing proper accreditation standards for the LRC Program.