



KAREN L. SMITH, MD, MPH  
Director and State Public Health Officer

State of California—Health and Human Services Agency  
California Department of Public Health



EDMUND G. BROWN JR.  
Governor

**NOTICE OF PROPOSED RULEMAKING**  
**Title 17, California Code of Regulations**  
**DPH-16-009 Lead-Related Construction, Certified Industrial Hygienist Correction**  
**Notice Published: May 4, 2018**

Notice is hereby given that the California Department of Public Health (Department) is proposing the regulation described below. This notice of proposed rulemaking commences a rulemaking to make the regulations permanent after considering all comments, objections, and recommendations regarding the regulation.

**PUBLIC PROCEEDINGS**

The Department is conducting a 45-day written public proceeding during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions (all of which are hereinafter referred to as comments) relevant to the action described in the Informative Digest/Policy Statement Overview section of this notice.

To request copies of the regulatory proposal in an alternate format, please write or call: Laurel Prior, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814, at (916) 558-1710, email to [LaurelPrior@cdph.ca.gov](mailto:LaurelPrior@cdph.ca.gov) or use the California Relay Service by dialing 711.

**WRITTEN COMMENT PERIOD**

Any written comments pertaining to this proposal, regardless of the method of transmittal, must be received by Office of Regulations by 5:00 p.m. on June 18, 2018, which is hereby designated as the close of the written comment period. Comments received after this date will not be considered timely. Persons wishing to use the California Relay Service may do so at no cost by dialing 711.

Written comments may be submitted as follows:

1. By email to: [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov). It is requested that email transmission of comments, particularly those with attachments, contain the regulation package identifier "DPH-16-009 LRC and CIH Correction" in the subject line to facilitate timely identification and review of the comment;
2. By fax transmission to: (916) 636-6220;
3. By postal service or hand delivered to: California Department of Public Health, Office of Regulations, 1415 L Street, Suite 500, Sacramento, CA 95814.

All comments should include the regulation package identifier, "DPH-16-009 LRC and CIH Correction", with the comment author's name and email or mailing address.



## **PUBLIC HEARING**

A public hearing has not been scheduled for this rulemaking. However, the Department will conduct a hearing if a written request for a public hearing is received from any interested person, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period, pursuant to Government Code Section 11346.8.

## **Authority and Reference**

The Department is authorized to make and enforce regulations pertaining to lead-related construction pursuant to sections 105250 and 105254 of the Health and Safety Code (HSC). This proposal implements, interprets, or makes specific the lead-related construction HSC statutes by amending sections 35083 and 35087 of the California Code of Regulations, title 17 (17 CCR).

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

In accordance with the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, 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 17 CCR, sections 35081 through 35097.

## ***Problem Statement:***

The purpose of this regulatory proposal is 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.

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, such as lead-based paint, in homes, workplaces, and communities. By requiring CIHs to take an additional 40-credit hours of course work, the current regulations impose a more time consuming training process on CIHs than was ever intended by the Department. Furthermore, 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 under the Residential Lead-Based Paint Hazard Reduction Act of 1992, namely: 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, and ensure that the Department continues to effectively fulfill its federal mandate to address lead-based paint hazards as expeditiously as possible. The proposed regulatory amendments are further necessary in order for CDPH to fulfill its statutory duty to ensure that individuals engaged in LRC activities are properly trained, 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.)

### ***Broad Objectives of the Regulation***

The broad objectives of this proposed regulatory action are:

- To effectuate the Department's statutory mandate to effectively comply with the Residential Lead-Based Paint Hazard Reduction Act of 1992.
- To provide clarity of process for CIHs seeking LRC certification.
- To remove a burdensome time commitment that may discourage CIHs from seeking LRC certification.
- To encourage increased numbers of LRC certified individuals within the state and more opportunities for the expedient identification and remediation of toxic lead hazards affecting California's children, families, and workers.

### ***Anticipated Benefits (including non-monetary benefits such as the protection of public health and safety to California residents)***

The Department anticipates 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 greater identification of lead hazards and to a reduction in incidents of lead-exposure affecting children, families and workers in California.

## **EVALUATION AS TO WHETHER THE REGULATIONS ARE CONSISTENT AND COMPATIBILITY WITH EXISTING STATE REGULATIONS**

The Department has determined that this proposed regulatory action is consistent and compatible with existing regulations. After conducting a review for any regulations that would relate to or affect LRC, the Department has concluded that no known statute or regulation conflicts with this proposed regulatory action.

## **MANDATED BY FEDERAL LAW OR REGULATIONS**

The Department's LRC Program meets the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. § 4851 and following) and title X of the Housing and Community Development Act of 1992 (Public Law 102-550). The Department's LRC Program has powers and authority consistent with the intent of, and has adopted regulations which establish the program as an authorized state program pursuant to title IV, sections 402 to 404, inclusive, of the Toxic Substances Control Act (15 U.S.C. § 2601 and following).

## **LOCAL MANDATE**

The Department has determined that this regulatory action would not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by part 7 (commencing with § 17500) of division 4 of the Government Code.

## **FISCAL IMPACT ESTIMATES**

### **A. Fiscal Effect on Local Government:**

None.

### **B. Fiscal Effect on State Government/Costs or Savings to Any State Agency:**

Any fiscal effect will be negligible. Any additional costs for overseeing new LRC CIH classes will be absorbed within the LRC Program's existing budget and resources.

### **C. Other Nondiscretionary Cost or Savings Imposed on Local Agencies:**

None.

### **D. Fiscal Effect on Federal Funding of State Programs:**

No fiscal impact exists for federal funds. Any fiscal effect to the LRC program will be negligible and will be absorbed through the LRC special fund.

## **HOUSING COSTS**

The Department has determined that the regulations will not have an impact on housing costs.

## **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE**

The Department has made an initial determination that the regulations would not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

## **STATEMENT OF THE RESULTS OF THE ECONOMIC IMPACT ANALYSIS**

Based on the economic impact analysis, the Department has determined that it is likely the regulations would not significantly affect the following:

1. The creation or elimination of jobs within the State of California.
2. The creation of new businesses or the elimination of existing businesses within the State of California.
3. The expansion of businesses currently doing business within the State of California.
4. The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment. The Department anticipates that the benefit of 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 greater identification of lead hazards and to a reduction in incidents of lead-exposure affecting children, families and workers in California.

## **COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS**

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

The Department has determined that there will be no new costs to CIHs currently doing business in California. A CIH can already opt to become LRC certified in California. Department-accredited training providers who opt to teach the CIH course enabling expedited CIH training may recoup costs if CIHs opt to take the course. There is no current or proposed requirement for an individual to take a CIH course, or for a training provider to offer it.

## **BUSINESS REPORTING REQUIREMENT**

The proposed regulatory amendments do not change current business reporting requirements. Accredited LRC training providers will still be required to issue a course completion form (CDPH Form 8493) to an individual and to CDPH as proof of successful completion of CDPH approved training.

## **SMALL BUSINESS DETERMINATION**

The proposed action does not affect small businesses. The Department has determined that approximately three training providers are expected to offer the CIH course enabling an expedited training process for CIHs. The Department has estimated that perhaps 50 additional CIH will take the CIH course over the lifetime of the regulation. The Department estimates that 80% of all LRC training providers and CIHs represent small businesses. The proposed regulatory amendments do not add any new requirements for training providers or CIHs, but do allow these individuals the option to either teach or take the CIH course that enables expedited training for CIHs.

## **ALTERNATIVES CONSIDERED**

The Department must determine 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.

## **ADVISORY GROUP OR OTHER AGENCY COMMENT, CONSULTATION AND/OR APPROVAL, INCLUDING CALIFORNIA CONFERENCE OF LOCAL HEALTH OFFICERS**

The California Industrial Hygiene Council, which represents all CIHs in the State, has been supportive of the Department in its efforts to restore the intent of the 1995 version of these regulations to provide an expedited training process for CIHs seeking LRC certification. Public comment is also being solicited from Department-accredited LRC training providers.

## **CONTACT PERSON**

Inquiries regarding the substance of the proposed regulations described in this notice may be directed to Will Hale with the Lead-Related Construction Program, at 1-800-597-LEAD (1-800-597-5323) (outside California: 510-620-5694).

All other inquiries concerning the action described in this notice may be directed to, Laurel Prior, Office of Regulations, at (916) 440-7673, or to the designated backup contact, Linda M. Cortez, Office of Regulations, at (916) 440-7807.

## **AVAILABILITY STATEMENTS**

The Department has prepared and has available for public review an initial statement of reasons for the proposed regulations, all the information upon which the proposed regulations are based, and the text of the proposed regulations. The Office of Regulations, at the address previously noted, will be the location of public records, including reports, documentation, and other material related to the proposed regulations (rulemaking file).

In order to request that a copy of this public notice, the regulation text, and the initial statement of reasons or alternate formats for these documents be mailed to you, please call (916) 440-7673 (or the California Relay Service at 711), or send an email to [regulations@cdph.ca.gov](mailto:regulations@cdph.ca.gov), or write to the Office of Regulations at the address previously noted. Upon specific request, these documents will be made available in Braille, large print, audiocassette, or computer disk.

The full text of any regulation which is changed or modified from the express terms of the proposed action will be made available by the Department's Office of Regulations at least 15 days prior to the date on which the Department adopts, amends, or repeals the resulting regulation.

A copy of the final statement of reasons (when prepared) will be available upon request from the Office of Regulations.

## **INTERNET ACCESS**

Materials regarding the action described in this notice (including this public notice, the text of the proposed regulations, and the initial statement of reasons) that are available via the Internet may be accessed at [Department's Website](#) and by clicking on the following: Programs, Office of Regulations, and the Proposed Regulations link.