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**APPENDIX #1:**  
**Public Comments and Department Response**  
**For Regulation Package DPH-07-003:**  
***“Accreditation, Certification, and Work Practice Standards for***  
***Lead-Based Paint and Lead Hazards”***

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A total of sixty-seven (67) public comments were received related to proposed regulation DPH-07-003 as follows:

1. Sixty written public comments were received by the Department during the initial 45-day public comment period (commencing on April 1, 2007 and ending on June 5, 2007). These comments are identified in the List of Commenters as #1- #60.
2. Three written public comments were received by the Department after the close of the initial 45-day public comment period that ended June 5, 2007. These comments are identified in the List of Commenters as #61, #62, and #63.
3. Three written public comments were received during the 15-day post-hearing public comment period (commencing on December 3, 2007 and ending December 19, 2007). These comments are identified in the List of Commenters as #64, #65, and #66.
4. One written public comment was received after the close of the 15-day post-hearing public comment period that ended on December 19, 2007. This comment is identified in the List of Commenters as #67.
5. There was no public hearing requested or scheduled, and no oral comments were received.

**List of Commenters for Regulation Package DPH-07-003**

Name	Organization	Address
<b>Comments received during the 45-day public comment period:</b>		
1. Howard Spielman	Health Science Associates	10771 Noel Street Alamitos, CA 90720
2. Steven Atkins	Apex Companies	5482 Complex Street, Suite 110 San Diego, CA 92123
3. Mark Gigas		1116 Superior Ave Ventura, CA 93004
4. Adrian Rodriguez	Specialized Environmental	12115 Rivera Rd Whittier, CA 90606
5. Prudence Boczarski		1523 Highgate Ave. Los Angeles, CA 90042
6. Steve Cox	Bluesky Environmental & Construction	1629 W. Industrial Park St. Covina, CA 91722
7. Davies Condol	Riverside County Public Health	4065 Country Circle Drive #204 Riverside, CA 92513
8. Michael Cohn	AAA Lead Consultants and Inspections, Inc	1307 West Sixth Street # 134 Corona, CA 92883
9. Janise Moore	Lead Safe Communities	8774 Bandon Drive Dublin, CA 94568
10. Ronald Livermore		1510 Columbia Drive Glendale, CA 91205
11. Joseph Mack	Housing Authority of the City of Los Angeles	2600 Wilshire Blvd Los Angeles, CA 90057
12. Christopher Lee	Environmental Health/Lead Program City of Long Beach	2525 Grand Ave Long Beach, CA 90815
13. Jerome Ripley	University of California Santa Barbara	University of California Bldg 370 Santa Barbara, CA 93106
14. Kathleen Gura		1322 San Pablo Redlands, CA 92373
15. Gary Bayne		41 Collins Drive Pleasant Hill, CA 94523
16. Richard Henry	Los Angeles Unified School District	1240 S. Naomi Ave Los Angeles, CA 90021
17. Steve Denzeler	Lead Tech	605 S. Pacific Avenue, Suite 202 San Pedro, CA 90731
18. Tom Wangerin	Hazard Management	367 Civic Drive Suite 10

Name	Organization	Address
	Services, Inc.	Pleasant Hill, CA 94523
19. John Gura	HomeSafe Environmental, Inc.	24662 Redlands Blvd Loma Linda, CA 92354
20. Burt Olhiser	Vantage Point Consulting	PO Box 1112 Middletown CA, 95461-1112
21. Luis Mena	Menas Environmental Services	5965 Linnet St. San Diego, CA 92114
22. Robert L. Williams,	A-Tech Consulting, Inc.	3410 W. Mac Arthur Blvd., #D Santa Ana, CA 92704
23. Larry S. Wong	Environment, Health, & Safety Office of Risk Services University of California Office of the President	1111 Franklin Street, 10 <sup>th</sup> Floor Oakland, CA 94607-5200
24. Jennifer Morris	2spiral	2342 Shattuck #207 Berkeley, CA 94704
25. Mark Smith	Forensic Analytical	2959 Pacific Commerce Drive Rancho Dominguez, CA90221
26. Christopher Smith	Winzeler & Kelly Consulting Engineers	3410 Industrial Blvd. Suite 102 West Sacramento, CA 95691
27. Stephen Drengson	MACTEC Engineering	5628 E. Slauson Ave. Los Angeles, CA 90040
28. Don Drachenberg		34153 Av. E, Yucaipa, CA 92399
29. Henry Cairus		25027 Mound Street Loma Linda, CA 92354
30. George Johnston		11161 Anderson St. #200 Loma Linda, CA 92354
31. Hal Curtis		25027 Mound Street Loma Linda, CA 92354
32. Susan Davey		25027 Mound Street Loma Linda, CA 92354
33. Donna Gurule	Loma Linda University	Department of Risk Management 25027 Mound Street Loma Linda, CA 92354
34. Michael Hartsfield		3001 Jeffrey Dr., Unit B Costa Mesa, CA 92626
35. Nate Seward	Criterion Environmental, Inc.	1673 Donlon Street, Suite 204 Ventura, CA 93003
36. Ryan Hester	Criterion Environmental, Inc.	1673 Donlon Street, Suite 204 Ventura, CA 93003
37. Don Harman	MACTEC Engineering and Consulting	5628 E. Slauson Los Angeles, CA 90040
38. Chris Gura	Homesafe Environmental	24662 Redlands Blvd Loma Linda, CA 92354

Name	Organization	Address
39. Redenter Broas	Los Angeles Unified School District	1240 South Naomi Avenue Los Angeles, 90021
40. Lionel Reynolds	Winzler & Kelly Consulting Engineers	3410 Industrial Blvd. Suite 102 West Sacramento, CA 95691
41. Larry Gross	Coalition for Economic Survival	5220 Shatto Place, Suite 270 Los Angeles, CA 90020
42. Steve Smith	Dept. of Industrial Relations	P.O. Box 420603 San Francisco, CA 94142
43. Tom Barrett		1026 Mangrove Ave., Suite 10 Chico, CA 95926
44. Deloras Amador	Sigma Engineering, Inc.	2415 Ruelas Street Duarte, CA 91010
45. Rondell Dodson	City of Los Angeles	
46. Sean Andrews	SureTide Technology	1005 A Street, Suite 208 San Rafael, CA 94901
47. Ruth Rodrigues	Los Angeles Housing Dept.	1200 W 7 <sup>th</sup> St. Los Angeles CA 90017
48. Linda Kite	Healthy Homes Collaborative	617 South Olive St., #810 Los Angeles, CA 90014
49. Michael Benefield		51 Essex Street, #11 San Anselmo, CA 94960
50. Joel M. Cohen	The Cohen Group	3 Waters Park Drive, Suite 226 San Mateo, CA 94404
51. Heidi Palutke	Calif. Apartment Association	980 Ninth Street, Suite 200 Sacramento, CA 95814
52. Gerald Kwiat	Ninyo & Moore Environmental & Geologic Consultants Inc.	5710 Ruffin Rd. San Diego, CA 91923
53. Nancy Ibrahim	Esperanza Community Housing Corporation	2337 South Figueroa St. Los Angeles, CA 90007
54. Erika Aguilar Associate Director	L.A. Community Legal Center and Educational	2425 E. Slauson Ave Suite 115 Huntington Park, CA 90255
55. Greg Spiegel	Western Center on Law and Poverty	3701 Wilshire Blvd., Ste. 208 Los Angeles, CA 90010
56. Julie V. Wellings	The Cohen Group	3 Waters Park #226 San Mateo, CA 94403
57. Catherine Wilson Jones	Self-Insured Schools of California	P.O. Box 1847 Bakersfield, CA 93303-1847

Name	Organization	Address
58. Michael C. Sharp	Hazard Management Services, Inc.	P.O. Box 576848 Modesto, CA 95357-6848
59. Jeffrey Klein		4740 West 141 <sup>st</sup> St. Hawthorne, CA 90250
60. Paul Scott, Chief	Architectural Services Division County of Sacramento	10545 Armstrong Ave., Suite 201A Mather, CA 95655
<b>Comments received after the 45-day public comment period:</b>		
61. Michael Dorsey	Dept. of Environmental Health County of San Diego	9325 Hazard Way San Diego, CA 92123
62. Monserrat Bernardino	Coalition for Economic Survival	monsebernardino@yahoo.com
63. Jon Dickason		jongdickason@yahoo.com
<b>Comments received during the 15-day post-hearing public comment period:</b>		
64. Mark Stockwell		
65. Michael Dorsey	Dept. of Environmental Health County of San Diego	9325 Hazard Way San Diego, CA 92123
66. Julie Wellings	The Cohen Group	3 Waters Park #226 San Mateo, CA 94580
<b>Comments received after the 15-day post-hearing public comment period:</b>		
67. Janise Moore	Lead Safe Communities	8774 Bandon Drive Dublin, CA 94568

## **Article 1. Definitions**

### **Section 35001. Abatement.**

**COMMENT: Remove “designed to” from the definition of abatement to improve the clarity of the regulation and close a loophole for unscrupulous, uncertified individuals to do abatement (#9, #46).**

**RESPONSE:** The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

**COMMENT: There is considerable confusion about the broad definition of “abatement.” Revise definition to mirror EPA’s regulations. (#18, #60, #57, #58).**

**RESPONSE:** The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

### **Section 35006. Certified Lead Project Monitor.**

**COMMENT: I support the elimination of the project designer discipline (#3, #4, #9, #46, #18, #60).**

**RESPONSE:** As noted in the Initial Statement of Reasons (pages 2 and 3), the Department proposed eliminating the project designer discipline because it was redundant of other disciplines. However, a large number of project designers submitted comments supporting the discipline and requesting that they be allowed to continue to design abatement projects. The Department has decided to allow existing project designers to renew certification in response to these comments, and because the certification fees generated by the discipline provide needed revenue to the General Fund. The Department will not accept new project designer applications because there would be significant Department costs to do so (such as updating project designer courseware, having

Department staff review applicant education and experience, etc.) and there have been no new project designer applications for several years (indicating no demand for new applicants).

**COMMENT: Eliminating this project designer discipline will have little or no effect (#23).**

RESPONSE: The Department thanks the commenter for the comment, and agrees that prohibiting new project designer applications will have little or no effect on lead activities in California.

**COMMENT: Instead of repealing the project designer classification, remove project designer activities from the supervisor certification; This would increase the need for project designers and increase the quality of abatement project design (#8).**

RESPONSE: The Department disagrees with the comment. The supervisor certification has included project design since 1993, and the Department has not identified any problems, or identified need in the regulated community, that would warrant prohibiting supervisors from project design activities.

**COMMENT: I do not support the elimination of the project designer discipline because larger design projects need a higher level of education that the project designer discipline provides, and project designers are required on certain federal projects (#56).**

RESPONSE: As noted in the Initial Statement of Reasons (pages 2 and 3), the Department proposed eliminating the project designer discipline because it was redundant of other disciplines. However, a large number of project designers submitted comments supporting the discipline and requesting that they be allowed to continue to design abatement projects. The Department has decided to allow existing project designers to renew certification in response to these comments, and because the certification fees generated by the discipline provide

needed revenue to the General Fund. The Department will not accept new project designer applications because there would be significant Department costs to do so (such as updating project designer courseware, having Department staff review applicant education and experience, etc.) and there have been no new project designer applications for several years (indicating no demand for new applicants).

**COMMENT: There are several reasons that there are a small number of project designers, such as lack of incentives, high cost, and rumors that the discipline would be eliminated (#8).**

RESPONSE: The Department thanks the commenter for the comment, and agrees that there are a relatively small number of project designers.

**COMMENT: We oppose repealing the project designer classification. It will only exacerbate the existing poor quality of abatement project design and increase costs (#20, #39, #40).**

RESPONSE: While the Department disagrees that repealing the project designer classification would result in lower quality abatement project design, the Department will allow existing project designers to renew certification because there are no costs to process new project designer applications and update project designer courseware, and a large number of project designers submitted public comment requesting that they be allowed to continue to design abatement projects.

**COMMENT: At a minimum, allow existing project designers to re-certify (#40).**

RESPONSE: The Department agrees with the comment and will allow existing project designers to renew certification.

**COMMENT: There is a need for this certification and course. (#18, #60, #20, #56).**

RESPONSE: The Department agrees that there is some value to the project designer discipline and will allow existing project designers to renew certification because a large number of project designers submitted public comment requesting that they be allowed to continue to design abatement projects. The Department disagrees that the project designer course is needed because there is no demand for the course as evidenced by the lack of new project designer applications over the past several years.

**COMMENT: Instead of repealing the project design classification, adopt an 8-hour design course that could be taken by certified inspector/assessors (#20).**

RESPONSE: The Department disagrees with the comment, because adopting a new 8-hour course for inspector/assessors would increase Department costs and is outside the scope of the rulemaking. In addition, there are existing courses (supervisor, project monitor) that an individual can take in order to meet the project design requirements.

**COMMENT: Retain project designer but incorporate it as a “master” certification for individuals who are supervisors, project monitors, and inspector assessors and reduce combined certification fees from \$300 to \$75. This would provide cost savings to certified individuals and better value to consumers by having better trained individuals designing abatement plans. (#43).**

RESPONSE: The Department disagrees with the comment to create a “master” project designer certification because the Department has not identified any problems with the current requirements for designing abatement plans in section 36100(a)(4) since their adoption in 1998. Reducing certification fees and creating a “master” certification is outside of the scope of the regulation.

### **Section 35007. Certified Lead Sampling Technician.**

**COMMENT: I support the adoption of the sampling technician discipline; this will help prevent childhood lead poisoning and create new business opportunities and revenue for inspector/assessors (#2, #9, #46, #41, #48, #53, #54, #55, #62).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: I do not support the adoption of the sampling technician position because it will allow under-trained, inexperienced, and unproven individuals (“novices”) to conduct lead hazard evaluation activities and replace inspector/assessors with sampling technicians (#3, #5, #10, #14, #17, #19, #35, #36, #39, #52).**

RESPONSE: The Department disagrees with the comment that the sampling technician will “replace” inspector/assessors because a sampling technician cannot conduct any lead hazard evaluation activities unless he/she is supervised by an inspector/assessor. For example, sampling technicians are only allowed to conduct visual inspections and sample or test soil, dust, and paint if an inspector/assessor identifies the specific locations where soil, dust, and paint is sampled or tested, interprets the results, and complies with the record keeping and reporting requirements in section 36000(b). A sampling technician is prohibited from interpreting results, identifying sampling locations, or other activities which can only be conducted by an inspector/assessor. Therefore, a sampling technician cannot “replace” an inspector/assessor because all sampling technician activities are contingent upon significant inspector/assessor oversight, direction, and participation.

The Department disagrees that sampling technicians will be “under-trained” because the 8-hour sampling technician course is the same duration and contains similar course material as the federal USEPA course, and no problems have been identified with the training in that 8-hour course.

The sampling technician is designed to operate as an apprentice, as directed by an inspector/assessor. Like other apprentice programs, this typically entails allowing individuals without previous experience to conduct limited, specific activities as directed by a supervisor (i.e., in this case, a CDPH-certified inspector/assessor). Therefore, the Department acknowledges that some sampling technicians may be initially inexperienced but does not consider that problematic given the significant oversight by the inspector/assessor in this apprentice-like program.

Finally, as noted previously, the Department identified “*strong support in favor*” of adopting a sampling technician discipline based upon extensive pre-publication public comments (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, pages 3, 4, and 5). During those hearings, no commenters opposed the sampling technician discipline. Several of the comments in support of the sampling technician discipline were as follows:

- (1) *“Many housing agencies and children’s advocacy groups requested that the Department adopt this discipline to increase the number of individuals qualified to conduct lead hazard evaluation activities in order to reduce overall costs for lead hazard reduction activities.”*
- (2) *The sampling technician discipline would “increase the number of individuals qualified to conduct sampling activities, which would help identify lead hazards and prevent childhood lead poisoning.”*
- (3) *“Local building and housing staff stated that adding this discipline would help housing authorities and other entities conduct code enforcement activities.”*
- (4) *“Several respondents stated that a sampling technician would be useful as an entry-level position to encourage economic development.”*

**COMMENT: Leave this section as is and create a new number for the Sampling Technician such as 35007.1 (#40).**

RESPONSE: The Department disagrees with the commenter because the proposed regulatory amendment already accomplishes the same result as the proposed comment.

**COMMENT: I oppose the sampling technician discipline and do not believe that it will reduce the cost of lead hazard evaluation services. There isn't enough work for these technicians. (#43).**

RESPONSE: The Department disagrees that there is not enough work for sampling technicians: The number of lead hazard evaluation activities has increased nearly 30% since 2005, based upon the Department's database of Lead Hazard Evaluation Reports [submitted by Inspector/Assessors pursuant to section 36000(b)(2)]. Regarding speculation of the sampling technicians' effect on lead hazard evaluation costs, the Department notes that many housing agencies and children's advocacy groups stated that adopting the sampling technician discipline would "reduce overall costs for lead hazard reduction activities" (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, page 3). The commenter did not provide any evidence to counter the statements identified in the aforementioned pre-publication summary document.

**COMMENT: The sampling technician discipline will reduce sampling costs for consumers, increase the number of buildings sampled, and increase consumer demand for lead sampling (#54, #55, #62).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: I do not support the adoption of the sampling technician position. The only persons who should conduct lead hazard evaluation are inspector/assessors (#21, #22, #24, #25, #26, #27, #28, #29, #30, #31, #32, #33, #34, #35, #37, #44, #45, #47, #59, #63).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: If sampling technicians want to become a certified inspector/assessor, they will need to take the 5-day course and pass a difficult exam. Its unlikely many sampling technicians will pass the exam, and therefore we do not think this new discipline will increase the number of inspector/assessors (#58).**

RESPONSE: The Department thanks the commenter for the comment.

#### **Section 35016. Containment.**

**COMMENT: This definition of “containment” should be amended to provide an explicit qualitative expectation that the containment system will contain all hazards. Require that the containment method be appropriate for the work performed (#41, #48, #53, #54, #55, #62).**

RESPONSE: The Department disagrees that “containment” should be amended, as the performance-based definition has been in use since 1998 without any problems identified by the Department. “Containment” is a performance-based definition that is applicable to, and adaptable to, specific work sites, projects, and activities. The suggested comment is duplicative of the existing definition to “...contain lead hazards inside a work area...” and is therefore unnecessary.

**COMMENT: This definition of “containment” should also reference the HUD Guidelines because the SSPC Guidelines for Paint Removal may not be applicable for containment needed during construction and renovation (#53, #54, #55, #62).**

RESPONSE: The definition of “containment” already contains a reference to the HUD Guidelines for individuals using containment for construction and renovation purposes.

**Section 35022. Deteriorated Lead-Based Paint.**

**COMMENT: This definition of “deteriorated lead-based paint” should not include either “presumed lead-based paint” or “surface coating” because this definition is intended to describe the condition of lead-based paint. These additional words are confusing and expand the definition of lead-based paint to non-lead-based paint, which would be a big fiscal impact to small businesses who conduct abatement (#9). I retract this comment and support replacing “surface coating” with “presumed lead-based paint” as originally proposed (#67).**

RESPONSE: The Department notes that commenter #9 is the same person as commenter #67. This commenter submitted initial written comments regarding this definition (#9) and subsequently retracted them in a later written comment (#67). The Department thanks the commenter for the comment.

**COMMENT: Modify the regulation to indicate that this definition does not change state law and clarify possible enforcement criteria and actions (#51).**

RESPONSE: The Department disagrees with the comment that further amendments are necessary. The Department is not authorized to amend existing statutes, nor can the Department adopt or amend regulations in a way that restricts or enlarges a statute (e.g., laws that govern enforcement of substandard housing conditions).

**COMMENT: Health and Safety Code section 17920.10(c) includes a certain de minimus size before lead-based paint is considered a substandard housing condition. The section states that the de minimus level will no longer apply**

**if the Department subsequently amends the definition of “lead-based paint” in regulation. This amendment could be interpreted as a change that will cause the de minimus provision to be stricken from the Health and Safety Code (#51).**

RESPONSE: The Department notes that the purpose of amending this definition was to replace “surface coating” with “presumed lead-based paint” because surface coating is not defined and could be broadly interpreted, while presumed lead-based paint is clearly defined in section 35043. The amendment limited the scope of this definition. While the Department agrees that this amendment could be interpreted as a change that will cause the de minimus provision to be stricken from the Health and Safety Code, the Department notes that this chapter has never included a de minimus standard for lead-based paint, because there is no credible, health-based data to justify such an exemption.

**COMMENT: This amendment may result in local enforcement agencies declaring a building substandard due to the presence of peeling paint without establishing that any lead-based paint is actually present. Modify regulations to require that an enforcement action for habitability/substandard housing include a finding that the paint contains lead (#51).**

RESPONSE: The Department disagrees with the comment that local enforcement agencies will declare a building substandard due to the presence of peeling paint without establishing that any lead-based paint is actually present. For example, although Health and Safety Code Section 105256 authorizes local enforcement agencies to take enforcement actions based on “presumed lead-based paint,” the standard enforcement protocol for these agencies is to test the paint for lead before pursuing enforcement actions. This standard enforcement protocol used throughout California recognizes that “presumed lead-based paint” is a rebuttable definition, meaning that testing is used to confirm or negate the presence of lead in the paint prior to initializing enforcement actions. In addition, the Department

disagrees that further amendments are necessary. The Department is not authorized to amend existing statutes (e.g., related to enforcement of substandard housing conditions), nor can the Department adopt or amend regulations in a way that restricts or enlarges a statute.

**Section 35032. Lead Activities.**

**COMMENT: We strongly support the definition of lead activities (#5, #55).**

**RESPONSE:** The Department appreciates your support of the adoption of the term “lead activities.”

**COMMENT: Adopting “lead activities” to include all lead work will require additional time, effort, expense, and additional document management (#13, #42).**

**RESPONSE:** The Department disagrees with the comment, because a definition for “lead activities” was adopted to provide an umbrella term in order to eliminate redundant and duplicative terminology throughout these regulations, and does not impose any “additional time, effort, expense, and additional document management.”

**COMMENT: Amend “lead activities” to limit it to only housing built before 1978 and child-occupied facilities (#18, #60, #58).**

**RESPONSE:** The Department disagrees with the comment, because the definition “lead activities” is an umbrella term including “abatement,” “lead hazard evaluation,” and “lead-related construction,” each of which are already defined in regulations or statute more broadly than the commenter suggests. Revising those definitions in a more limited manner is outside the scope of the proposed regulations, and limiting the term “lead activities” would be confusing and contradictory. In addition, the definition “lead activities” is an umbrella term intended to eliminate

redundant and duplicative terminology throughout these regulations and does not by itself impose any additional requirements or expense.

**Section 35033. Lead-Based Paint.**

**COMMENT: We strongly support the amendments to this section (#55).**

**RESPONSE:** The Department thanks the commenter for the supportive comment.

**Section 35035. Lead-Contaminated Dust.**

**COMMENT: Thank you for adopting the stricter federal lead levels. Adopting the federal dust standard of 40, 250, and 400 ug/ft<sup>2</sup> is long overdue (#5, #11, #20, #41, #48, #53, #54, #55, #62).**

**RESPONSE:** The Department appreciates your support to adopt lower dust standards in the definition of “lead-contaminated dust” which reflect federal levels.

**COMMENT: The change to “horizontal surfaces” is more practical as many horizontal surfaces that should be tested are not window surfaces (#41, #48, #53, #54, #55, #62).**

**RESPONSE:** The Department appreciates your support of the proposed amendment.

**COMMENT: Explain your justification in extending lead dust levels designed to protect children to all public buildings. Limit hazards to children and housing built before 1978 and child-occupied facilities. (#18, #60, #23, #58).**

**RESPONSE:** The Department disagrees with the comment, because the proposed definition neither limits nor expands the scope of lead dust levels and its application to building types. The existing regulatory requirements for lead hazard evaluation and abatement are already applicable to all residential and public buildings. The justification for the existing rule can be found in the 1997 rulemaking record, and it is not necessary to repeat it. Limiting dust lead levels to

housing built before 1978 and child occupied facilities is outside the scope of these regulations.

**COMMENT: The proposed regulation adopts the U.S. Environmental Protection Agency's 400 ug/ft<sup>2</sup> clearance standard for lead contaminated dust in window troughs, and makes it applicable to all exterior surfaces, for both clearance and non-clearance sampling. This will increase the fiscal impact on private persons because additional hazards will be identified (#12, #20).**

RESPONSE: Since its adoption in 1997, the definition of "lead-contaminated dust" has not differentiated between post-abatement dust and non post-abatement dust, because the Department can find no credible health based data which would justify this distinction. Since 1997, this definition of "lead contaminated dust" has applied to all types of lead hazard evaluation activities, including clearance inspections. Adopting a higher dust lead level for "non-clearance" testing is not health protective of the public or children. Since 1997, this definition has used the term "for exterior floor and exterior horizontal window surfaces" instead of the USEPA's "window trough" because it allows inspector/assessors to sample dust on shelves, railings, and other exterior areas where window troughs are not available and/or where the property owner seeks additional information regarding potential lead hazards. This discretionary ability to sample dust in various locations provides inspector/assessors and property owners more options to evaluate potential lead hazards in public and residential buildings. The Department disagrees with the comment that this standard will increase costs because the federal standards have already been universally adopted by the regulated industry in California since 2001, and the proposed regulation is intended to eliminate the confusion and discrepancy resulting from the existing, outdated state standard (800 ug/ft<sup>2</sup>) and the lower federal level (400 ug/ft<sup>2</sup>).

**COMMENT: Limit the proposed 400 ug/ft<sup>2</sup> exterior dust standard to apply only to clearance inspections, similar to applicability of the federal U.S. Environmental Protection Agency's 400 ug/ft<sup>2</sup> standard (#12, #20).**

RESPONSE: The Department disagrees with the comment to create two different standards (a clearance standard and a lead hazard standard) for lead-contaminated dust. Since its adoption in 1997, the definition of “lead contaminated dust” has applied to all types of lead hazard evaluation activities, including clearance inspections. The definition of “lead-contaminated dust” has not differentiated between post-abatement dust and non post-abatement dust, because the Department can find no credible health based data which would justify this distinction: Adopting a higher dust lead level for “non-clearance” testing is not health protective of the public or children.

COMMENT: **Link these regulations to the federal regulations so that when their regulations are amended, the Title 17 regulations will be automatically updated (#43).**

RESPONSE: The Department thanks the commenter, but notes that changes to these regulations must be conducted in compliance with the Administrative Procedures Act and can not be “automatically” adopted without following these standardized rulemaking procedures.

COMMENT: **The proposed dust standards will increase consistency and compliance during enforcement activities (#53, #54, #55).**

RESPONSE: The Department thanks the commenter for the supportive comments.

### **Section 35038. Lead Hazard Evaluation.**

COMMENT: **“Lead hazard evaluation” should be changed to “lead evaluation” because lead hazard evaluation implies you are testing for hazards, which is not the case during lead inspections (#14).**

RESPONSE: The proposed amendment is not necessary, because the term “lead hazard evaluation” has been used in the regulations for ten years with no identified problems by the Department’s enforcement staff and “lead hazard

evaluation” includes testing for lead hazards, lead-based paint, and potential exposure sources.

**COMMENT: “Lead hazard evaluation” should be limited to determine lead hazards only for children (#18, #60, #58).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the regulation.

**COMMENT: Amend “Lead hazard evaluation” to clarify what is meant by “for compensation” (#57).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the regulation.

**COMMENT: We use DHS certified inspector assessors and project monitors to conduct lead hazard evaluation for in-house maintenance and renovation or demolition projects. We do not treat these projects as “abatement.” This approach is less expensive than the proposed standard (#60).**

RESPONSE: The Department thanks the commenter for the comment. Using CDPH-certified personnel to conduct lead hazard evaluation continues to be required under these regulations. The proposed regulations do not incorporate maintenance, renovation, and demolition activities under “abatement” – these activities are not regulated by section 36100.

**COMMENT: “Lead hazard evaluation” should be re-defined to be consistent with federal EPA definition (#57).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the regulation.

**COMMENT: The proposed regulation would hinder the regulated community in performing various lead hazard evaluation activities, such as Phase 1 inspections, assessing potential hazards, and evaluating waste (#56).**

RESPONSE: The Department thanks the commenter for the comment. However, without a more specific comment regarding the perceived shortcomings of the regulation, the Department cannot provide a more specific response.

**COMMENT: An inspector performing a Phase 1 inspection does not have to be a CDPH-certified inspector assessor because they can identify the building age and whether it is painted. Inspection of paint condition or sampling of paint is not a Phase 1 activity (#56).**

RESPONSE: The Department agrees that individuals are not required to be CDPH-certified if they identify a building's age and determine if it is painted. However, the Department's enforcement staff has identified numerous instances where an inspector took paint samples during a Phase 1 inspection. This type of compensated sampling activity is considered lead hazard evaluation and would require CDPH-certification.

**COMMENT: Title 17 was written so the state could meet federal Title X requirements to become a state authorized lead program. Title X does not regulate all lead hazard evaluation activities, so neither should the Title 17 regulations. If you are stuck on monitoring every sample taken, at least revise the 8552 form. (#12).**

RESPONSE: The Department disagrees with the commenter. "Lead hazard evaluation" is broadly defined to incorporate and regulate any activity which is designed to inspect and identify lead-based paint and lead hazards, and is more protective of public health than the more limited federal Title X requirements. This definition is intended to ensure that lead hazard evaluation is conducted in accordance with accurate testing methodologies and by trained and certified individuals, in order

to ensure that consumers are protected by fraudulent and inaccurate testing services, and receive accurate results of possible sources of lead exposure. It is not necessary to revise the 8552 form because the revised definition of “lead hazard evaluation” does not alter the reporting requirements specified in section 36000(b).

**COMMENT: I disagree that the proposed elimination of examples of lead hazard evaluation is based upon these examples being considered exhaustive by consultants, rather than illustrative. (#12).**

RESPONSE: First adopted in 1997, “lead hazard evaluation” is broadly defined to incorporate and regulate any activity which is designed to inspect and identify lead-based paint and lead hazards. This definition is intended to protect public health by ensuring that lead hazard evaluation is conducted in accordance with accurate testing methodologies and by trained and certified individuals, in order to ensure that consumers are protected by fraudulent and inaccurate testing services. The term “lead hazard evaluation” is amended to eliminate several examples of lead hazard evaluation (lead inspection, risk assessment, and clearance inspection) because a significant number of consultants perceived the examples to be exhaustive, rather than illustrative. This amendment is necessary to clarify that these regulations govern all lead hazard evaluation activities, and are not limited to those three examples. This amendment is necessary because the Department identified individuals who were conducting limited lead hazard evaluation (e.g., lead screen, lead survey, abbreviated risk assessment, Phase 1 or Phase 2 property inspections, etc.) who mistakenly believed that they were not governed by these regulations.

**COMMENT: Under the proposed regulations, lead sampling (prior to re-painting or renovation/demolition) will be considered lead hazard evaluation. But the HUD Guidelines only have sampling protocols for inspections and risk assessments, and property owners want more limited (less expensive) sampling. Also, if a laboratory is required for samples, it will prohibit use of**

**an XRF. Finally, sending the 8552 form and attachments to the State seems overly burdensome (#61, #65).**

RESPONSE: First adopted in 1997, “lead hazard evaluation” is broadly defined to incorporate and regulate any activity which is designed to inspect and identify lead-based paint and lead hazards, and the scope of this definition was not amended in the proposed regulation. A property owner can opt for a limited or extensive lead hazard evaluation, as long as the sampling is conducted by a CDPH-certified individual and the testing procedures (e.g., how to take a dust wipe sample or paint sample or soil sample) identified in the HUD Guidelines are conducted in accordance with section 36000(a)(2). There is no requirement that a property owner be limited to only an inspection, risk assessment, or clearance inspection.. In addition, an XRF can be used – a laboratory is only required for samples taken for laboratory analysis (section 36000(a)(3)). Finally, CDPH certified personnel are only required to submit the 8552 form. The attachments are only to be submitted *upon request* by the Department during an audit pursuant to section 36000(b)(3).

**COMMENT: Elimination of examples of lead hazard evaluation (lead inspection, risk assessment, and clearance inspection) implies that any work involving an on-site investigation of painted surfaces (especially for non-abatement renovation work) will require a full report including a DHS form 8552. Must all samples (except for air and hazardous waste) be reported to DHS? Does it also apply to homeowners? (#16, #14).**

RESPONSE: “Lead hazard evaluation” is broadly defined to include the on-site investigation, for compensation, of lead-based paint or lead hazards (e.g., dust and soil) in public and residential buildings. The definition (and related requirements of section 36000) apply regardless of the type of post-lead hazard evaluation activity (e.g., abatement, renovation, lead-related construction, painting, etc.). An individual (such as a homeowner) who is not compensated

can conduct lead hazard evaluation activities without meeting the requirements of section 36000 (e.g., certification requirements, reporting, recordkeeping, etc.).

**COMMENT: We support the proposed clarifying amendments to section 35038 in order to prevent circumvention of these regulations (#55).**

RESPONSE: The Department thanks the commenter for the comment.

Subsection 35038(b). Lead Hazard Evaluation (Cal-OSHA exemption).

**COMMENT: It has always been clear that the Cal-OSHA exemption applied only to air sampling and not to paint sampling (#9, #46).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: Lead hazard evaluation activities that are conducted for Cal-OSHA compliance purposes should not require a CDPH-certified individual, because this will reduce paint sampling and therefore may lead to increased lead exposure for children and workers, increased costs, and less compliance (#18, #60, #20, #49, #58).**

RESPONSE: The Department disagrees with the comment. Many contractors take paint samples during “pre-bidding” periods for various purposes, and these activities continue to be unregulated because “lead hazard evaluation” excludes any uncompensated activity (e.g., the contractors are not being paid by the owner to take the paint samples, they are sampling to determine if their bid needs to include additional abatement-related costs because of the presence of lead-based paint). The regulations do not propose eliminating the “for compensation” clause, and therefore the Department does not anticipate any increased costs nor any changes in the current unregulated pre-bidding sampling activities. The regulations continue to require a CDPH-certified individual conduct lead hazard evaluation, and do not impose any additional certification requirements: the exemptions identified in both Title 8, California Code of Regulations, Section

1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are related to monitoring of airborne lead levels (not paint sampling).

**COMMENT: Individuals collecting paint samples to determine compliance with Cal-OSHA do not need the level of training required for CDPH certification. The training required under Title 8 CCR 1532.1 and 5216 is sufficient (#56).**

RESPONSE: The Department disagrees with the comment. Paint sampling is lead hazard evaluation and has required CDPH training and certification since 1998. Amending this definition did not change this certification requirement, it only clarified that the exemptions identified in both Title 8, California Code of Regulations, Section 1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are both related to monitoring of airborne lead levels. The training identified by the commenter under Title 8 CCR 1532.1 and 5216 is insufficient to train and individual to conduct lead hazard evaluation and does not meet minimum federal standards for an authorized state lead program.

**COMMENT: Insert “inspection for potential lead hazards to workers and” before “air monitoring for lead” to allow non-certified individuals to collect paint samples (#66).**

RESPONSE: The Department disagrees with the comment. Paint sampling is lead hazard evaluation and has required CDPH training and certification since 1998. Amending this definition did not change this certification requirement, it only clarified that the exemptions identified in both Title 8, California Code of Regulations, Section 1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are both related to monitoring of airborne lead levels. Amending this definition to allow non-certified individuals to conduct paint sampling is outside the scope of the regulation.

**COMMENT: Requiring a CDPH-certified inspector to collect a small number of paint samples (“less than ten”) will result in higher costs for buildings which do not meet the definition of child-occupied (#23).**

RESPONSE: The Department disagrees with the comment because there is no current or proposed exemption for lead hazard evaluation based on the number of samples collected, and therefore no higher costs will result. In addition, the regulations govern lead hazard evaluation in public or residential buildings, and are not limited to (undefined) “child-occupied facilities.”

**COMMENT: Eliminate the Cal-OSHA exemption (subsection b) because it is duplicative and confusing: Air monitoring cannot be used to identify lead hazards or lead-based paint (#9).**

RESPONSE: The Department disagrees with the comment. Amending this definition to clarify that the exemptions identified in both Title 8, California Code of Regulations, Section 1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are both related to monitoring of airborne lead levels is necessary because the Department’s enforcement unit has identified numerous instances where inspector/assessors were unknowingly violating these regulations. This clarification is intended to assist the public in understanding the term, particularly for those individuals who cannot readily access the California Code of Regulations.

**COMMENT: The requirement that paint sampling for CCR Title 8 compliance (Cal-OSHA) would have to be done by a certified inspector assessor would require additional document management, and additional, time, effort, and expense (#13, #42, #58).**

RESPONSE: The U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) determined that air monitoring (not paint testing) is to be used to determine compliance with worker exposure to airborne lead levels (“Use

of X-ray fluorescence is not acceptable to determine employee lead exposures,” May 8, 2000, [www.osha.com](http://www.osha.com), letter to Ken Martin, Niton Corporation, from Richard Fairfax, Director of OSHA Enforcement Programs). The Department is clarifying the language related to air monitoring for lead in order to be consistent with OSHA and help the regulated community understand these requirements. Amending this definition to clarify that the exemptions identified in both Title 8, California Code of Regulations, Section 1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are both related to monitoring of airborne lead levels is necessary because the Department’s enforcement unit has identified numerous instances where inspector/assessors were using X-ray fluorescence machines to test paint and were not complying with the regulations because they erroneously claimed that it was an exempted lead hazard evaluation activity. The clarification of the existing requirement would not require additional document management, additional time, effort, and expense.

**COMMENT: Retain original language of section or amend to allow surface area and substrate sampling to determine employee exposure. This will require Cal-OSHA staff to become CDPH-certified in order to conduct enforcement activities (#42).**

**RESPONSE:** The Department disagrees with the comment. The exemptions identified in both Title 8, California Code of Regulations, Section 1532.1 and Title 17, California Code of Regulations, Section 70100 and 70200 are related to monitoring of airborne lead levels (not paint sampling). The regulations continue to require a CDPH-certified individual conduct lead hazard evaluation, and do not impose any additional certification requirements.

Subsection 35038(c). Lead Hazard Evaluation (hazardous waste characterization).

**COMMENT: We support the clarification to the hazardous waste exemption in the definition of lead hazard evaluation (#9, #46, #55).**

RESPONSE: The Department appreciates your support of the proposed amendments.

**COMMENT: I do not support the amendments related to sampling done for waste characterization, and think that they will increase costs (#13, #23).**

RESPONSE: The Department disagrees that the proposed amendment will increase costs, because it clarifies that sampling or testing (for lead) in or on a residential or public building continues to be regulated by this chapter as lead hazard evaluation. The definition is amended to clarify that the exemption related to the identification and disposal of hazardous waste materials (Title 22, California Code of Regulations, Division 4.5, Chapters 10, 11, 12, 13, and 18, and the California Health and Safety Code, Section 25163, subdivision (c)), is limited to testing building materials which are already removed from public and residential buildings and which are being tested, prior to disposal, to determine if they are required to be transported to a hazardous waste landfill site. This amendment is intended to assist the public in understanding the term and to clarify that hazardous waste characterization is not regulated by this chapter when the testing is conducted on waste debris removed from a building. The Department is proposing this clarifying amendment because recent audits indicate a number of non-certified individuals who are apparently attempting to circumvent the certification and work practice requirements of Section 36000 by stating that the lead hazard evaluation that they are conducting is for hazardous waste characterization, when it is clearly a lead hazard evaluation activity conducted inside a residential or public building.

**COMMENT: This proposal conflicts with lead-safe schools curriculum which allows a non-certified individual to conduct paint sampling without being CDPH certified (#57).**

RESPONSE: The Department reviewed the lead safe schools curriculum identified by the commenter and found no text which suggests that a non-certified individual can conduct paint sampling. The curriculum is very clear that air sampling is the

method used to determine employee exposure to lead, and that CDPH certified individuals are required to conduct lead-related construction and lead hazard evaluation activities.

**COMMENT: Waste characterization is performed prior to the bidding of major construction and renovation projects. Eliminating this exemption for ceramic tile will result in increased project costs, delays, and documentation requirements without providing any public health benefits (#23).**

RESPONSE: The Department disagrees with the comment. Sampling conducted by contractors prior to the bidding process continues to be a non-regulated activity because the owner does not compensate the contractor for the testing: the activity is not regulated by this chapter pursuant to the definition of lead hazard evaluation which continues to define the activities as the "...on-site investigation, for compensation, of lead-based paint and lead hazards..." In addition, lead hazard evaluation is limited to lead-based paint and lead hazards, which do not include ceramic tile. Therefore, the Department disagrees that the clarifying amendments to this definition will increase costs, delays, and project documentation.

**COMMENT: Individuals collecting waste samples to determine compliance with Cal/EPA (Title 22 CCR Division 4.5 Hazardous Waste) do not need the level of training required for CDPH certification. The training required under Title 8 CCR 1532.1 and 5216 is sufficient (#56).**

RESPONSE: The Department agrees that individuals testing debris and waste for hazardous waste characteristics (and determining application of hazardous waste disposal requirements) are not required to be CDPH certified: The testing of debris and waste (emphasis added) generated by a construction, abatement, lead related construction, or painting project has always been exempt from these regulations because lead hazard evaluation is limited to the investigation of lead-

based paint or lead hazards in public or residential buildings, and waste debris is no longer part of a residential or public building. The definition is amended to clarify that the exemption related to the identification and disposal of hazardous waste materials (Title 22, California Code of Regulations, Division 4.5, Chapters 10, 11, 12, 13, and 18, and the California Health and Safety Code, Section 25163, subdivision (c)), is limited to testing building materials which are already removed from public and residential buildings and which are being tested, prior to disposal, to determine if they are required to be transported to a hazardous waste landfill site. This amendment is intended to assist the public in understanding the term and to clarify that hazardous waste characterization is not regulated by this chapter when the testing is conducted on waste debris removed from a building.

**COMMENT: The revision appears to prevent non certified individuals from testing waste material other than components. Insert “materials and” before “components” (#66).**

**RESPONSE:** The Department disagrees with the comment: Individuals testing debris and waste for hazardous waste characteristics (and determining application of hazardous waste disposal requirements) are not required to be CDPH certified. Amending this definition clarified that the exemption related to the identification of hazardous waste materials (Title 22, California Code of Regulations, Division 4.5, Chapters 10, 11, 12, 13, and 18, and the California Health and Safety Code, Section 25163, subdivision (c)), is limited to testing building materials which are already removed from public and residential buildings and which are being tested, prior to disposal, to determine the applicability of hazardous waste requirements. Additional amendments to this definition are unnecessary and may create confusion.

**Section 35040. Lead-Related Construction.**

**COMMENT: Define what is meant by “significant exposure to adults” or what standards should apply (#40).**

**RESPONSE:** The Department thanks the commenter, but the comment is outside the scope of the regulation.

**Section 35043. Presumed Lead-Based Paint.**

**COMMENT: We support the amended definition of presumed lead-based paint (#9, #46, #58).**

**RESPONSE:** The Department thanks the commenter for the comment.

**COMMENT: We understand the state’s intent to adopt the federal standard in order to be consistent (#55).**

**RESPONSE:** The Department thanks the commenter for the comment.

**COMMENT: I oppose the amended definition because commercial and industrial buildings are still being covered with lead-based paint. Consider adding an exemption for coatings on structural steel (#14, #18, #60).**

**RESPONSE:** The Department disagrees with the comment, because experience has shown that very little lead-based paint has been used since January 1, 1978, when the Consumer Product Safety Commission limited the amount of lead in paint. Therefore, the standard of presumption being based on the “pre-1978” date is considered restrictive enough to reasonably ensure the definition is accurate. The definition “presumed lead-based paint” is amended to adopt the “pre-1978” standard for presumed lead-based paint recognized by the federal government (40 CFR Part 745.220, “Target Housing”). While there may have been rare instances where lead-based paint was used after January 1, 1978, it

does not warrant extending the presumption of lead-based paint to all types of buildings (such as public buildings and schools) built after January 1, 1978. Further, the caveat of the tested lead content that demonstrates the paint is not lead-based is included in the definition because some “pre-1978” paint was not lead-based, and if it was not, should not be considered lead-based just because of the date of construction of the structure to which it is applied. Nor should paint applied after 1978, that was not lead-based, be automatically deemed “presumed lead-based paint” and require treatment as such, with unnecessary and costly abatement and containment procedures, simply because the structure to which it is applied was built “before January 1, 1978.” The intent of this specification is to make the presumption of lead-based paint less restrictive on the lead activities industry and the public in general while still minimizing excessive childhood lead exposure in California as determined by the Department pursuant to Health and Safety Code Section 124165.

**Section 35045. Public Building.**

**COMMENT: Eliminate “public building” from the entire chapter. The regulations should be limited to housing built before 1978 and child-occupied facilities, or areas of buildings occupied by young children (#18, #60, #40, #58).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the regulation.

**COMMENT: We strongly support the amendments to this section (#55).**

RESPONSE: The Department thanks the commenter for the supportive comment.

**Section 35046. Residential Building.**

**COMMENT: We strongly support the amendments to this section (#55).**

RESPONSE: The Department thanks the commenter for the supportive comment.

**Section 35050. Work Area.**

**COMMENT: Title 17 needs to be amended to limit its applicability (to child-occupied facilities and housing built before 1978), not expand it (to all residential or public buildings (#18, #60, #58)).**

RESPONSE: The Department disagrees with the comment, because this chapter has applied to all residential and public buildings since 1997, and the proposed amendments do not limit nor expand the scope of the regulation. Limiting the scope of the chapter as suggested by the commenter would be outside the scope of the published regulation.

**COMMENT: We strongly support the amendments to this section (#55).**

RESPONSE: The Department thanks the commenter for the comment .

**Section 35055. Core Instruction Course Requirements.**

**COMMENT: Delete the following from the core instruction course: waste identification and management (2)(a), ambient air quality standards (2)(b), respiratory protection (3)(A-G), and simulated field visit (4)(b). (#14)**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the published regulation.

**Section 35061. Sampling Technician Course Requirements.**

**COMMENT: We strongly support the amendments to this section (#55).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: Adopt a course that is specific to building inspectors, if the need is for more certified folks in the code enforcement departments, rather than adopting a sampling technician course (#5, #39).**

RESPONSE: The Department disagrees with the comment, noting that the sampling technician course is not intended to be used solely for building department staff. The proposed sampling technician course is based upon documented support and suggestions from the regulated community (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, pages 3, 4, and 5). A majority of comments received during these 2001 public hearings supported the concept of a CDPH-certified individual taking soil, dust, and paint samples, conducting a visual inspection, and using an X-ray fluorescence (XRF) instrument, provided an inspector/assessor identified the sampling locations, interpreted the results and completed all recordkeeping and reporting requirements. The sampling technician course is designed specifically to incorporate those concepts supported by a majority of respondents, representing certified individuals, small businesses, accredited training providers, school districts, local health and housing agencies, and children's health advocates.

COMMENT: **We support the 8-hour sampling technician course and think it is an adequate amount of time to teach individuals how to test and sample dust, paint, and soil (#9, #46).**

RESPONSE: The Department thanks the commenter for the comment .

COMMENT: **It does not take a five-day course, three years of experience, and passage of a difficult exam to know how to collect a paint chip (#18, #58 #60).**

RESPONSE: The Department agrees that sampling technicians need minimal training and experience to conduct lead hazard evaluation as long as a CDPH-certified inspector/assessor identifies the sampling locations and completes the reporting and recordkeeping requirements.

**COMMENT: Eight-hours is an insufficient amount of time for the sampling technician curriculum and 50 exam questions (#14).**

RESPONSE: The Department agrees that the number of exam questions could be decreased in order to allow more class time for training instruction, and has identified thirty exam questions (rather than fifty) to be sufficient in order to test students on their retention of knowledge in the sampling technician course.

**COMMENT: Eight-hours is an insufficient amount of training for the sampling technician course; require a minimum of two days or the 40 hour inspector/assessor course (#2, #6, #11, #14, #17, #39).**

RESPONSE: The Department disagrees with the comment. The 8-hour course is sufficient to train a sampling technician how to conduct the limited lead hazard evaluation activities allowed under section 36000(d). The Department has determined that it is not necessary to increase the amount of training for the sampling technician course, because both the U.S. Environmental Protection Agency and the U.S. Department of Housing and Urban Development have required the eight-hour course with no documented problems. In addition, the requirements for the duration of the course [section 35061(a): “...a minimum of 8 contact hours...”] gives training providers the discretionary ability to increase the duration of the course.

The proposed sampling technician course is eight hours in duration, because the Department determined that an apprentice-level lead hazard evaluation course could be completed in one day while covering all the necessary curriculum needed to teach an individual how to conduct the activities listed in Section 36000(d). Eight hours was also the amount of time for the class as identified by a majority of commenters during the 2001 hearings (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, page 4).

**COMMENT: How can anyone learn all the information to operate an XRF and analyze testing combinations without more than 8 hours of training (#5, #39)?**

RESPONSE: The 8-hours of training is sufficient for a sampling technician, as many activities, including those identified by the commenter, are prohibited and/or require additional training: For example, the sampling technician is prohibited from analyzing testing combinations (only an inspector/assessor can identify sampling locations and analyze results), and therefore this information is not included in the 8-hour course. In addition, the sampling technician can test or sample soil, dust, and paint, but it is the inspector assessor who identifies these sample locations and the type of lead hazard evaluation activity (inspection, risk assessment, etc.). Finally, to operate an XRF, inspector/assessors and sampling technicians are required to complete XRF-specific training in addition to the 40-hour inspector assessor course and the 8-hour sampling technician course: Regulations governing radiation information and safety training (Title 17, California Code of Regulations, division 1, chapter 5, subchapter 4, groups 1, 1.5, and 2) currently require an additional 8 hours of XRF training provided by the XRF manufacturer. The Department amended section 35061(a)(5) to clarify that these additional requirements apply to anyone operating an XRF. Therefore, the 16 hours of training (8-hour sampling technician course and 8 hours of radiation safety) for the sampling technician course is determined sufficient to operate an XRF, provided an inspector/assessor identifies the testing locations.

**COMMENT: Five days of classroom training is not enough (#10).**

RESPONSE: The Department determined that the 8-hour course is sufficient to train a sampling technician how to conduct the limited lead hazard evaluation activities allowed under section 36000(d). The Inspector/Assessor course is five days (40 hours), and has been determined to be properly educating inspector/assessors over the past decade.

**COMMENT: Sampling tech will mirror federal EPA inspector class in practice. Shouldn't the training be the same (#11)?**

RESPONSE: The Department disagrees with the comment because the sampling technician course will not mirror the EPA inspector course. As noted in the Initial Statement of Reasons (Page 12), the EPA course was designed very differently than the proposed course, as EPA envisioned a non-supervised individual conducting clearance inspections, while the Department is proposing an individual conducting limited lead hazard evaluation activities as directed by a CDPH-certified inspector/assessor.

**COMMENT: Include information on applicable Title 8 worker protection regulations in the sampling technician training (#42).**

RESPONSE: The Department disagrees with the comment because Title 8 is designed to protect workers who conduct "lead related construction" and may be exposed to airborne lead via demolition and other high-risk construction activities. Sampling technicians are only trained to sample lead-based paint and hazards, and do not conduct (nor are they qualified or trained to conduct) lead-related construction. Title 8 information in the sampling technician course would be unnecessary and waste valuable class time.

### **Section 35072. General Continuing Education Requirements.**

**COMMENT: The general continuing education course is not appropriate for sampling technicians. Sampling technicians should have a separate ½ day refresher course specific to sampling technicians (#14).**

RESPONSE: The Department disagrees with the comment. The Department determined that the general continuing education course is the most appropriate continuing education (CE) course for a sampling technician because it includes topics related to lead hazard evaluation (while the alternative worker CE course does not). The general continuing education course is also the required CE

course for other CDPH-certified individuals who can conduct lead hazard evaluations (e.g., inspector/assessor, project monitor).

**Section 35088. Project Designer.**

**COMMENT: No longer accepting new project designer applications provides an unfair advantage to existing project designers and will lead to an eventual shortage of project designers. Allow new project designer applications (#66).**

**RESPONSE:** The Department disagrees that additional project designers are needed because there is no demand for the course (e.g., no training providers have offered the course for many years) and a Department survey indicated that the discipline was not needed. Therefore, there is no identified “advantage” to allowing existing project designers to re-certify, nor will this regulation result in a shortage of project designers. As noted previously, the Department has decided to allow existing project designers to renew certification because a large number of project designers submitted public comment requesting that they be allowed to continue to design abatement projects. The regulations do not provide an unfair advantage to existing project designers because other CDPH-certified disciplines (supervisor, monitor) can design abatement projects. There is no identified advantage of keeping the existing project designer course and allowing new project designer applications.

**Section 35089. Certification Procedures for Sampling Technician**

**COMMENT: We support the sampling technician apprentice concept where experience and education are not needed. (#9, #46).**

**RESPONSE:** The Department thanks the commenter for the comment .

**COMMENT: Replace “successfully complete” with “has a course completion form” in order to be consistent with other disciplines. (#46).**

RESPONSE: The Department agrees with the comment and incorporated the suggested amendment.

COMMENT: **The sampling technician should have some environmental field experience, but should not be required to have completed postsecondary education (#2, #17).**

RESPONSE: The Department disagrees that it is necessary to impose education or experience requirements for the sampling technician discipline (beyond successful completion of the sampling technician course). The regulations require that an inspector/assessor, meeting sufficient education and experience requirements, provide oversight to the sampling technician.

COMMENT: **The 8 hours of sampling technician training should be applied towards future inspector/assessor training, for sampling technicians working towards being inspector assessors. Otherwise it limits the proposal's usefulness and cost-effectiveness (#56).**

RESPONSE: The Department disagrees with the comment. The apprentice-level sampling technician discipline can provide the necessary experience for an individual to become an inspector assessor, but the 8-hour course is not sufficient to meet (or partially substitute for) the course requirements of the 40-hour inspection and assessment course specified in section 35056.

### **Section 36000. Requirements for Lead Hazard Evaluation.**

COMMENT: **Prohibit inspector/assessors, project monitors, and sampling technicians from conducting lead-related construction work or any activity which disturbs lead-based paint or presumed lead-based paint on the same structure to avoid possible conflict of interest (#1).**

RESPONSE: The Department has determined that it is not necessary to incorporate the language suggested by the commenter because the Department's enforcement

staff have not identified any such conflict of interest situations over the past ten years, and the potential problem is adequately addressed in section 36000(a)(1).

**COMMENT: The regulation implies that the certified inspector/assessor be onsite directly supervising and instructing the sampling technician which will require billing for two people rather than one, which is more expensive (#18, #60, #19, #20, #23, #56, #58).**

RESPONSE: The Department disagrees with the commenter's interpretation that that the inspector assessor is required to be on-site. The regulations require that an inspector/assessor identify the sampling locations for the sampling technician, and that can be completed either in the office or on-site. There is no requirement that both a sampling technician and inspector/assessor conduct lead hazard evaluation on-site at the same time.

**COMMENT: A sampling technician discipline has value if that individual can collect samples without the certified inspector/assessor being present. But the language seems to preclude this, so provide amendments allowing this to occur (#20).**

RESPONSE: The Department disagrees that further amendments are needed, because the regulations require that an inspector/assessor identify the sampling locations for the sampling technician, and that can be completed either in the office or on-site. There is no requirement that both a sampling technician and inspector/assessor conduct lead hazard evaluation on-site at the same time.

**COMMENT: Soil testing should only be required for clearance inspections if lead-contaminated soil was abated (#12).**

RESPONSE: The Department disagrees with the comment, because soil can become contaminated by an adjacent paint abatement project, or by activities that displace soil, and soil sampling may be necessary to complete a clearance inspection. For example, if paint abatement is conducted on the exterior surface

of a residential building, the soil could become contaminated (with paint chips and debris) due to faulty containment. In this “non-soil abatement” situation, soil sampling would be an appropriate activity. A primary purpose of a clearance inspection is to ensure that abatement activities do not create lead contaminated dust or lead contaminated soil, and testing soil and dust can help ensure that a “post-abatement” structure is free of lead hazards.

**COMMENT: We support the activities that a sampling technician can conduct, and support the activities which are delineated between the inspector/assessor and sampling technician in section 36000(d), which basically make the inspector/assessor ultimately responsible for the lead hazard evaluation and report (#9, #46).**

RESPONSE: The Department thanks the commenter for the comment .

**COMMENT: An Inspector/Assessor is not going to follow up on each Sampling Technician’s findings and will accept them as-is without checking to see where the samples were taken or how the XRF was operated (#6, #5, #10, #14, #39)?**

RESPONSE: The Department disagrees with the comment, because a sampling technician is prohibited from interpreting results, or “findings,” and cannot identify sampling locations. The proposed subsection allows sampling technicians to conduct visual inspections and sample or test soil, dust, and paint, provided an inspector/assessor identifies the specific locations where soil, dust, and paint is sampled or tested, interprets the results, and complies with the record keeping and reporting requirements in section 36000(b). The inspector/assessor is responsible for identifying the appropriate locations, interpreting results, and keeping records and reports to ensure the inspections are done properly and interpreted by the professional qualified to conduct lead hazard evaluations. Any individual (e.g., Inspector/Assessor, Sampling Technician, etc.) found violating this Chapter faces applicable enforcement actions, such as suspension or

revocation of certification status, as well as fines and penalties identified in Health and Safety Code section 105253.

**COMMENT: The proposed sampling technician would result in the line between the inspection and abatement to disappear. For example, an abatement company could have worker “A” do both the abatement and clearance inspection under the “supervision” of an inspector/assessor (#10).**

RESPONSE: The Department disagrees with the comment because section 36000(a)(1) expressly prohibits the inspector/assessor, project monitor, and sampling technician from conducting lead hazard evaluation and abatement on the same structure.

**COMMENT: The proposed sampling technician activities are not as stringent as EPA: Sampling technicians in EPA states are only allowed to take dust samples after non-abatement jobs, while the proposed sampling technician is allowed to take dust, paint, and soil samples and use an XRF. (#14).**

RESPONSE: The Department disagrees with the comment. The proposed sampling technician is more stringent than the EPA model: EPA allows unsupervised individuals to conduct sampling and comply with recordkeeping and reporting requirements, while the proposed model allows the sampling technician to conduct limited activities, as directed by an inspector/assessor.

**COMMENT: The regulations state that lead inspections and risk assessments must be conducted by certified lead inspector/assessors, and does not say “parts of these activities can be conducted by others” (#14).**

RESPONSE: The proposed regulations state that lead hazard evaluation shall be conducted only by a certified inspector assessor, or as specified in subsections 36000(c)(3)(a) or 36000(d). Section 36000(d) allows a sampling technician to sample or test paint in certain, specified circumstances.

**COMMENT: Define “supervision” (#14, #17, #39).**

RESPONSE: It is unnecessary to define “supervision” because the term is not used in the regulations.

**COMMENT: Radioactive material should not be put in the hands of entry level people with one day of training (#14).**

RESPONSE: An XRF instrument (i.e., containing a radioactive source) cannot be used by a sampling technician after taking the one day class: Additional state regulations, adopted by the Department pursuant to Health and Safety Code Section 115000, impose additional requirements upon individuals who own and operate an XRF analyzer. These additional requirements (which also apply to inspector/assessors) require an additional 8 hours of radiation safety training for individuals who seek to use an XRF instrument. Section 36000(e) was adopted to clarify these additional regulatory requirements to anyone operating an XRF.

**COMMENT: Adopt a clearance technician instead of a sampling technician, and limit that person to taking dust and soil samples at clearance (#14, #17, #18, #60, #39).**

RESPONSE: The Department disagrees with the comment. As noted previously, the Department identified *“strong support in favor of adopting a sampling technician discipline”* based upon extensive pre-publication public comments (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, pages 3, 4, and 5): *“A majority of respondents stated that the proposed technician should be DHS-certified and supervised by a DHS-certified Inspector/Assessor. Commenters stated that, as long as the technician was supervised by a DHS-certified Inspector/Assessor, the individual could take soil, dust, and paint samples, conduct visual inspections, and use a X-Ray*

*Fluorescence instrument. However, commenters stated that the DHS-certified Inspector/Assessor would have to supervise the technician by identifying the sample location, interpreting the results, and being responsible for any recordkeeping/reporting requirements.”*

In addition, the Department notes that (under the federal model) a clearance technician is unsupervised and may provide inaccurate lead hazard evaluation activities and results. A sampling technician is managed by an inspector/assessor, who can review the inspection results (and re-inspect, if needed) and compile the report findings for the property owner.

**COMMENT: The inspector/assessor can identify sampling locations for the sampling technician, but what if the situation changes at the job site (#17)?**

RESPONSE: The Department thanks the commenter for the comment, and notes that prudent business practices would dictate regular communication between the sampling technician and the inspector/assessor during lead hazard evaluation (e.g., via cell phone, cell phone photographs, texting, etc.) to reconcile any issues arising at a jobsite. This type of communication is common practice in the construction industry.

**COMMENT: I’m worried that the proposed sampling technician may increase our liability exposure and insurance premiums (#17, #34, #43).**

RESPONSE: The Department disagrees with the comment because no evidence has been submitted that suggests that the proposed sampling technician discipline would increase liability exposure or insurance premiums, and the Department has been unable to identify any independent data that would substantiate the comment.

**COMMENT: HUD is revising its 1995/1997 HUD Guidelines. Referencing these “outdated” documents in these regulations may be misleading. Identify how LBP hazard criteria is to be applied to adult exposures. Postpone**

**these regulations until the new HUD guidelines are published. Is all testing for LBP considered lead hazard evaluation? Use the January 5, 2001 EPA regulations for lead hazard evaluation instead of the HUD Guidelines (#40).**

RESPONSE: The Department will consider proposing future regulatory amendments to incorporate any revisions to the HUD Guidelines once they are published and finalized. Any on-site investigation, for compensation, for lead-based paint continues to be regulated by this chapter. The current HUD Guidelines are comparable to the 2001 EPA regulations related to testing and sampling methodologies, and there is no identified purpose to adopt the 2001 EPA testing standards. It is expected that the HUD Guidelines will be revised and updated in the near future, and the Department will subsequently review the modified guidelines and determine if they should be adopted in this chapter. Finally, the Department thanks the commenter for the comment related to adult exposure, but the comment is outside the scope of the regulation.

COMMENT: **We think it is reasonable to interpret section 36000(d) (“an inspector/assessor identifies the specific locations”) to allow a inspector/assessor to instruct the sampling technician at the office or on the phone, and not necessarily at the job site, though the language is vague (#48, #50, #54).**

RESPONSE: The Department thanks the commenter, and agrees that the regulation does not require that the inspector/assessor be at the job site in order to identify sampling locations for the sampling technician.

COMMENT: **The sampling technician would best serve the individual and the community if the sampling technician can work independently at the project site (e.g., provided a sampling plan by a CDPH certified individual (#56).**

RESPONSE: The Department agrees with the commenter, and notes that the regulation does not require that the inspector/assessor be at the job site in order to identify sampling locations for the sampling technician.

**COMMENT: The regulations would allow sampling technicians to be “supervised” by a certified inspector/assessor similar to the way asbestos SSTs are supervised by CACs. That concept does not work (#19).**

RESPONSE: The Department agrees with the commenter that the regulations would allow sampling technicians to be “supervised” by a certified inspector/assessor similar to the way asbestos SSTs are supervised by CACs. However, the Department disagrees that this concept would not work, and notes the commenter did not provide any additional information or data that would suggest that this concept would not work. Without a more specific comment regarding the perceived shortcomings of the apprentice-type sampling technician discipline and issues related to that individual being “supervised,” the Department cannot provide a more specific response.

**COMMENT: As a project monitor, I can conduct paint sampling under the current regulations. Under the proposed regulations, I would have to be an inspector/assessor (#64).**

RESPONSE: The Department thanks the commenter for the comment, but notes that the existing regulations [section 36000(b)(3)(A)] only allow a project monitor to conduct a clearance inspection, which is limited to dust sampling and does not include paint sampling. The proposed regulations do not limit or expand what lead hazard evaluation activities can be conducted by a project monitor.

**COMMENT: It is woefully unclear who can perform sampling for maintenance or renovation project, whether the person must be certified (does a salaried employee qualify as receiving compensation?), if the sampling requires a Form 8552, and if a clearance inspection is required (#57).**

RESPONSE: The requirements for lead hazard evaluation require that anyone who is conducting on-site sampling or testing of paint, dust and soil, for compensation, be CDPH-certified and follow the requirements of section 36000. There is no exemption for lead hazard evaluation based upon the purpose of the testing (e.g., for maintenance or renovation purposes): all lead hazard evaluation activities are regulated by this section and require CDPH-certification and the submission of Form 8552. Compensation is a well-understood term that means monetary payment for services rendered, such as pay or salary, and would include any type of payment to the person conducting the testing, including salary. A clearance inspection is only required after abatement is completed in accordance with sections 36100(a)(6) and 36100(b)(4).

COMMENT: **Dust and soil samples are often analyzed on-site with an XRF. Prohibiting this by limiting analysis to EPA recognized laboratories seems unreasonable (#61, #65).**

RESPONSE: The Department disagrees that this section prohibits the use of an XRF for dust and soil sampling. Section 36000(a)(3) requires that "...paint, dust, and soil samples taken for laboratory analysis (emphasis added) " must be analyzed by an EPA-recognized laboratory. Using an XRF on-site to sample paint, dust, and soil is allowed under this section because the samples are not taken for laboratory analysis, and an XRF is one of the approved testing methods identified in the HUD Guidelines as specified in section 36000(a)(2). XRFs are a universally recognized testing device used in the regulated community to test paint, dust and soil for lead. This rulemaking did not amend any requirements related to submitting samples for laboratory analysis.

COMMENT: **Sending Form 8552 and all the attachments to the state seems overly burdensome (#61, #65).**

RESPONSE: Section 36000(b)(2) requires that the inspector/assessor conducting the lead hazard evaluation send only the 1-page Form 8552 to the Department. The

attachments are only required to be sent to the Department if the Department requests the attachments, pursuant to section 36000(b)(3). The Department requests a small number of attachments each year in order to audit lead hazard evaluation activities to ensure compliance with these regulatory requirements.

**Section 36050. Lead-Safe Work Practices.**

**COMMENT: We support this section to help contractors understand how to avoid creating lead hazards (#9, #46, #41, #48, #53, #54, #55, #62).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: I oppose the requirement to document proof of containment for any lead hazard activities by a photograph or other evidence. It is arbitrary, implies guilt until proven innocent, and would also increase costs. (#13, #16, #18, #60, #23, #57, #58).**

RESPONSE: The Department agrees with the comment and has repealed the text “with photographs or other evidence” to eliminate any confusion that it is an exhaustive list of measures that can demonstrate compliance.

**COMMENT: Limit this section to EPA’s regulations that govern pre-1978 housing and child-occupied facilities (#18, #60, #57, #58).**

RESPONSE: The Department disagrees with the comment, because this section is intended to clarify the lead safe work practices that are necessary to avoid creating a lead hazard and thus violating Health and Safety Code sections 105255 and 105256. These statutes prohibit the creation of a lead hazard “...on any residential or public building...” and “...at a location or premises..” and are not limited to pre-1978 housing and child-occupied facilities. This section is intended to be consistent with these statutes, and should not be amended to be less protective than was identified by the state legislature.

**COMMENT: We are fully supportive of not restricting this section to pre-1978 housing (#48, #53).**

RESPONSE: The Department thanks the commenter for the comment.

**COMMENT: Are other “lead-safe” work practices besides containment required? The “no visible dust and debris” cleanup standard might be confusing to some because the regulations also have dust wipe sample standards. Define “lead safe” work practices or costs to consumers and businesses will be adversely affected (#20).**

RESPONSE: There are no work practices required in this section other than using containment and ensuring that the work area has no visible dust and debris following the completion of the project, which can be accomplished with a visual inspection. Because the section does not require a clearance inspection or any dust sampling, the Department does not anticipate anyone confusing the requirements of this section with the lead hazard evaluation requirements in section 36000. The Department disagrees that it is necessary to define “lead safe” work practices, because the term is only used as the section title and has no regulatory effect, and the regulatory text clearly explains what is required to comply with the section (e.g., “use containment..”). The Department disagrees that this section will “adversely affect costs,” because Health and Safety Code Sections 105255 and 105256 prohibits any activity that creates a lead hazard, and this section establishes performance-based work practices that are appropriate to avoid creating a lead hazard. All contractors conducting lead activities, excluding lead hazard evaluation, should already be using lead-safe work practices to prevent violations of Health and Safety Code Sections 105255 and 105256.

**COMMENT: It appears that DHS wants anyone who disturbs lead-based paint to be certified. There is no allowance for repair and maintenance activities. There is a huge financial difference between treating repair as repair and**

**not as abatement. This proposed change seems to eliminate this differentiation and will increase costs or non-compliance (#57, #64).**

RESPONSE: This section does not require that anyone who disturbs lead-based paint, or conducts repair and maintenance activities, to become CDPH certified. CDPH certification is required only for individual conducting lead hazard evaluation and abatement activities. This section does not expand the definition (or eliminate the differentiation) of abatement to include maintenance or repair, and will not increase costs or non-compliance.

COMMENT: **I do not support allowing non-certified contractors to conduct lead abatement (#6).**

RESPONSE: This section does not amend any of the existing certification requirements and work practice standards for individuals conducting abatement. This section requires lead-safe work practices for anyone conducting non-abatement activities (e.g., lead-related construction work or other activities which disturb lead-based paint or presumed lead-based paint), in addition to the existing requirements for individuals conducting abatement (section 36100). The proposed section is intended to clarify the lead safe work practices which are necessary to avoid creating a lead hazard (and subsequently violating Health and Safety Code sections 105255 and 105256).

COMMENT: **Contractors will not use lead safe work practices without training and certification. Untrained, irresponsible owners/contractors may disturb lead-based paint (or presumed lead-based paint) without any requirement that they know what they are doing; How will the contractor (or “owner/builder”) know what lead-safe work practices are if he/she is not trained (#5, #6, #14)?**

RESPONSE: Training or certification requirements for renovation or remodeling activities will be considered during future rulemaking, because the Department is

awaiting the U.S. Environmental Protection Agency's (EPA) current efforts to adopt final regulations governing these activities (before amending this Chapter). Ensuring that California's regulations are as protective as federal regulations is necessary to ensure California's continued status as an EPA-authorized lead program. In the interim, the Department is working closely with the Contractor's State License Board (CSLB) to increase knowledge of lead hazards among licensed contractors via the CSLB newsletter and other outreach and education opportunities.

**COMMENT: Who will ensure that contractors use lead-safe work practices and demonstrate compliance(#5)?**

RESPONSE: State law (Health and Safety Code, Sections 105255 and 105256) authorizes the Department or local enforcement agency to enforce lead-related construction work, conditions, or activities which create a lead hazard(s).

**COMMENT: The regulation does not say how long contractors must keep documentation that demonstrates compliance (#14).**

RESPONSE: Health and Safety Code, Sections 105255 and 105256, authorizes the Department or local enforcement agency to enforce lead-related construction work, conditions, or activities which create a lead hazard(s), and does not specify a time period for determining compliance. The Department determined that it is not necessary to identify a time period for compliance because the statute did not specify a timeframe.

**COMMENT: This section 36050 could result in a large number of employees who would now need to be CDPH certified pursuant to Health and Safety Code section 105250(d), and may increase Cal-OSHA enforcement and compliance activities and costs, and confuse employers' ability to comply with worker protection requirements known as Title 8 (#42).**

RESPONSE: The Department disagrees with the comment, because Health and Safety Code section 105250(d) governs training and certification requirements, and the proposed section does not include any training or certification requirements. In addition, Cal-OSHA is charged with enforcing “lead-related construction” where airborne levels of lead meet or exceed regulatory standards set forth in Title 8 (Title 8, California Code of Regulations, section 1532.1). This section will not increase airborne levels of lead during construction activities, and therefore will not increase the number of Title 8 incidents, or Cal-OSHA activities or costs. Finally, the Department disagrees that employers could confuse the brief requirements of this section with the comparatively complex requirements incorporated in Title 8 (e.g., air sampling, medical monitoring and blood lead testing, warning sign notification, training, certification, etc.)

**Section 36100. Requirements for Abatement.**

COMMENT: **Eliminate “is designed to” to improve the clarity of the regulation and protect children from lead poisoning: “Designed to” is confusing (#9, #46).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

COMMENT: **Use the term “lead-based paint” instead of “lead paint” to accurately reflect the context of the section (#16).**

RESPONSE: The Department thanks the commenter, and is planning to make this amendment, and other Section 100 changes, in a future rulemaking package. The non substantive Section 100 amendments in this regulation are based solely on the Departments reorganization (e.g., from the California Department of Health Services to the California Department of Public Health). The Department has identified a number of Section 100 amendments, but is deferring those to a later date in an attempt to make the existing regulation package less complex.

**COMMENT: Inspector/assessors should be allowed to prepare abatement plans (#2).**

**RESPONSE:** The Department disagrees with the comment because inspector/assessors are not trained (via the DHS-approved Inspection and Assessment course) or tested (via the Lead Certification Examination) on how to prepare an abatement plan.

**COMMENT: Only project designers should be allowed to design abatement projects. Supervisors are not as qualified as project designers to design abatement projects (#8).**

**RESPONSE:** The Department disagrees with the comment. The supervisor certification and project monitor certification have included project design since 1993, and the Department has not identified any problems which would warrant prohibiting supervisors from project design activities.

**COMMENT: We support removing project designer from creating abatement plans (#9, #46).**

**RESPONSE:** The Department thanks the commenter for the comment.

### **Comments Not Attributed to a Specific Section**

**COMMENT: DHS has done an admirable job with these proposed regulations. They will help California communities address lead hazards and prevent childhood lead poisoning (#9, #46).**

**RESPONSE:** The Department thanks the commenter for the comment.

**COMMENT: The proposed regulations are in the short-range interest of our training program because they will dramatically increase the number of individuals requiring lead certification since they mandate that almost all inspections and work be done by certified people (#18, #60,).**

RESPONSE: The Department disagrees with the comment. Incorporating a sampling technician discipline does not “increase the number of individuals requiring certification,” though it may increase the number of individuals who voluntarily decide to become CDPH-certified. The Department has not identified any revisions to these regulations that would increase the number of individuals requiring lead certification.

**COMMENT: Replace “Department of Health Services” and “DHS” with “Department of Public Health” and “DPH” throughout the regulations, and amend the Authority Cited and Reference sections to include the law that made this change (#9).**

RESPONSE: The Department agrees with the comment and has revised the chapter accordingly.

**COMMENT: HUD is in the process of revising their own regulations on lead. Is the state working closely with HUD (#7)?**

RESPONSE: The Department works closely with several federal agencies (U.S. Department of Housing and Urban Development, U.S. Environmental Protection Agency, etc.) as they adopt or consider adopting federal regulations related to lead, and will continue to do so (e.g., participate in work groups or advisory committees, submit public comment on proposed federal regulations, etc.) in the future.

**COMMENT: Consider adopting a training for homeowners and contractors who do small renovations (#5).**

RESPONSE: Training or certification requirements for renovation or remodeling activities will be considered during future rulemaking, because the Department is awaiting the U.S. Environmental Protection Agency's (EPA) current efforts to adopt final regulations governing these activities (before amending this Chapter). Ensuring that California's regulations are consistent with federal regulations is necessary to ensure California's continued status as an EPA-authorized lead program.

**COMMENT: I could expect that soon Project Monitors and Supervisors will be able to conduct lead inspections and risk assessments, which would be the death knell for inspector/assessor certification (#5).**

RESPONSE: The Department is not proposing to allow project monitors or supervisors to conduct lead inspections or risk assessments.

**COMMENT: Contractors may ignore needed containment by relying on an inspection done by his own (perhaps untrained, perhaps unscrupulous) sampling technician who found no lead (#5).**

RESPONSE: Sampling technicians are, by definition, trained and certified. All testing and sampling locations and results are identified by an inspector assessor. Individuals who violate the provisions of this Chapter (e.g., those who may be "unscrupulous" or "ignore the need for containment") are subject to enforcement penalties.

**COMMENT: Why even have certifications when the contractor can get around the need for such (#5)?**

RESPONSE: This Chapter regulates abatement and lead hazard evaluation activities (e.g., requiring certified individuals conduct certain activities). A contractor must comply with the certification and work practice requirements, and cannot ignore, bypass, or otherwise “get around” these regulatory requirements without being in violation and subject to enforcement actions.

**COMMENT: Update DHS forms to replace “Department of Health Services” and “DHS” with “Department of Public Health” and “DPH,” and update fax and mailing address information (#9, #46).**

RESPONSE: The Department agrees with the comment and revised the CDPH forms accordingly.

**COMMENT: Drop the current mandated work practices of the HUD Guidelines and instead mandate the requirements of Subpart L of 40 CFR Part 745 (#18, #60).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

**COMMENT: Federal EPA certified individuals are required to be recertified every three to five years. California needs to extend the length of lead certifications. Two years at a minimum, up to four years (#11).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

**COMMENT: Section 36100 should be revised to include the following language: “Hazardous waste characterization must be conducted by a certified lead inspector/assessor who is independent from the certified individual or firm conducting lead abatement activities.” Both the initial and refresher**

**training should incorporate federal and state hazardous waste requirements including EPA interpretation that abatement waste is household waste, not hazardous waste. (#12).**

RESPONSE: The Department thanks the commenter, but the comment addresses multiple issues that were not addressed in the rulemaking effort and were not identified in the Informative Digest that was published in the California Regulatory Register, and are therefore outside the scope of the rulemaking.

COMMENT: **Provide more information regarding the “comprehensive consultation with federal, state, and local agencies and the regulated community that leads you to believe that no alternative considered would be more effective ...and less burdensome...” (#18, #58, #60).**

RESPONSE: As noted in the rulemaking file, these regulations were developed in consultation with certified individuals, health, housing, building agencies, small businesses, and the public during a series of pre-publication hearings held throughout California. Additional information is provided in the document “*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*,” California Department of Health Services, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001 as provided in the list of references and included in the rulemaking file. In addition, the Department consulted with Cal-OSHA, the CA Building Standards Commission, and the CA Department of Housing and Community Development in developing these regulations. Finally, the rulemaking file contains sufficient information which substantiates the Department’s position that no alternative considered would be more effective and less burdensome.

COMMENT: **Instead of regulating activities in residential and public buildings, limit these activities to child-occupied facilities and housing built before 1978. Add a “target audience” for this regulation to reflect USEPA**

**regulations and be limited to children (#18, #60, #40, #49, #50, #56, #57, #58).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

COMMENT: **The statement of determinations says that no alternative considered would be more effective. I disagree because the USEPA regulatory model (limiting regulations to pre-1978 housing and child-occupied facilities) would be a better alternative (#58).**

RESPONSE: The Department thanks the commenter for the comment, but notes that limiting the Title 17 regulations to pre-1978 housing and child-occupied facilities is outside the scope of the rulemaking. In addition, Labor Code section 6716 (“lead related construction work”) and Health and Safety Code section 105256 (making it illegal to create a lead hazard) are not limited to particular structures.

COMMENT: **Continuing education classes every two years is not often enough. Inspector/assessors should have their own refresher course, rather than take the general continuing education course. (#14).**

RESPONSE: The Department thanks the commenter, but the comment is outside the scope of the rulemaking.

COMMENT: **The proposed regulations are unreasonable, unlikely to encourage compliance, will potentially conflict with Cal-OSHA regulations, will increase costs, will affect other state regulatory agencies, and will not have any effect on lead exposure (#15, #56).**

RESPONSE: The Department disagrees with the comment. The Department consulted with Cal-OSHA in developing these regulations, and no conflict is identified. The

Initial Statement of Reasons did not identify any increased costs or effect on other state agencies as a result of the regulations and the commenter has provided no data to suggest costs will increase. Lead exposure is expected to be reduced due by adopting a performance-based standard for lead-safe work practices in Section 36050. The proposed regulations were developed during pre-publication hearings with the regulated community and are considered reasonable.

**COMMENT: Certified Industrial Hygienists (CIHs) should be exempt from lead certification training requirements, as the 3-day lead course for CIHs is no longer offered in the state (#50).**

RESPONSE: The Department thanks the commenter, but the comment is outside of the scope of this regulation. The 3-day lead course is offered by accredited training providers based upon demand, and can be offered at any time in California.

**COMMENT: Implement reciprocity between California and other states (#20).**

RESPONSE: The Department thanks the commenter, but the comment is outside of the scope of this regulation.

**COMMENT: I do not support this regulation as written (#38).**

RESPONSE: The Department thanks the commenter for the comment. However, without a more specific comment regarding the perceived shortcomings of the regulation, the Department cannot provide a more specific response.

**COMMENT: The draft regulations that our (Cal-OSHA) staff reviewed in 2003 were substantially different than the proposed regulations (#42).**

RESPONSE: The draft regulations that Cal-OSHA reviewed in 2003 (dated 11/20/02 with an electronic timestamp of 12/13/02) included several other proposed amendments, such as the adoption of a (1) renovation and remodeling course, (2) steel structures course, (3) registration of lead-related businesses, (4) increased certification and accreditation fees, and (5) disposal requirements for lead debris. Because these components had an identified fiscal impact on the Department and small businesses, they were eliminated from the proposed regulations but may be included in future rulemaking. In addition, the section numbering in the 2003 draft regulations was revised in the proposed regulations. However, the remaining components of the 2003 draft regulations, such as section 36050 (Lead Safe Work Practices), were incorporated into the proposed regulations and are not considered “substantially different.”

**COMMENT: What is the failure rate for the inspector/assessor and project monitor state exams (#44)?**

RESPONSE: In the past year, the state exam failure rate is 39.3% for inspector/assessors and 54.8% for project monitors. This information is provided in order to respond to the commenter, and is not being relied upon for any other reason and is not being added to the rulemaking .

**COMMENT: Reconsider changes and re-author language that will clarify the regulations or they will be ignored. Title 17 is a string of convoluted, vague language that makes consistent interpretation impossible (#57).**

RESPONSE: The Department has made amendments to these regulations based upon specific public comments submitted to date. The Department thanks the commenter for the comment, but notes that no specific regulatory text revisions were submitted by the commenter for the Department to consider.

**COMMENT: The proposed regulations seek to radically expand the scope of the regulations to include any public building regardless of presence or potential exposure of children, which will cost businesses and government a substantial amount of money to comply. (#49, #58, #64)**

RESPONSE: The Department disagrees with the comment, because this chapter has applied to all public and residential buildings since 1998, and therefore the proposed regulations do not expand the scope of the regulations, nor do they increase costs to businesses or government entities.

**COMMENT: The current regulations are flawed and need revision, and the proposed regulations will make the situation worse, and I oppose them despite the fact that they could bring me financial gain. These changes are not good public policy and should not be implemented. The regulation should be limited to pre-1978 housing and child-occupied buildings similar to EPA's 40CFR Part 745 (#49).**

RESPONSE: The Department thanks the commenter for the comment, but disagrees that the regulations "will make the situation worse." The Department notes that this chapter has governed all lead hazard evaluation and abatement activities, in all public and residential buildings, since 1998. The proposed regulations do not extend the scope of the regulations.

**COMMENT: Why are high hazard lead operations and conditions in industrial buildings and steel structures not included in the scope of this regulation ? (#40).**

RESPONSE: The U.S. Environmental Protection Agency (EPA) is currently developing regulations governing lead activities in industrial buildings, such as steel structures. The Department is awaiting the publication of EPA's proposed regulations governing these types of structures before amending this Chapter.

Ensuring that California's regulations are as protective as federal regulations is necessary to ensure California's continued status as an EPA-authorized lead program. In the interim, the Department is working closely with the Contractor's State License Board (CSLB) to increase knowledge of lead hazards among licensed contractors via the CSLB newsletter and other outreach and education opportunities.