

Final Statement of Reasons

Introduction

The California Department of Public Health (Department or CDPH) is required to establish and maintain an authorized state program for lead activities which meets U.S. Environmental Protection Agency (EPA) standards (Health and Safety Code, Section 105250(b)). To comply with this legislative mandate, the Department adopted regulations governing lead activities (Title 17, California Code of Regulations, Section 35001 *et seq.*, referenced herein as “Title 17”) and was subsequently recognized by EPA as an authorized state program in September 1999. Since that time, both EPA and the U.S. Department of Housing and Urban Development (HUD) adopted new regulations governing lead activities (HUD. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule. 64 Federal Register 50140, September 15, 1999) and (EPA. Lead; Identification of Dangerous Levels of Lead, Final Rule. 66 Federal Register 1205, January 5, 2001).

The Department amended Title 17 to incorporate these new, more stringent, federal standards in order to ensure the Department’s continued status as an authorized state program and continued eligibility for federal grant funding. These regulations also reduce the incidence of excessive childhood lead exposure in California and are designed to comply with state legislative mandates (Health and Safety Code sections 105250, 124160, and 124165).

Significant Amendments

1. The regulations allow existing project designers to renew their certification, but eliminate the existing project designer course and prohibit new certification applications for project designers. As noted in the Initial Statement of Reasons (pages 2 and 3), the Department initially proposed eliminating the project designer discipline (and course) entirely because it was redundant of other

disciplines. However, a number of project designers submitted written comments supporting the discipline and requested that they be allowed to continue to design abatement projects. The Department decided to allow existing project designers to renew certification in response to these public 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 and will eliminate the course because there have been no new project designer certification applications, or course offered, since 2004 (indicating no demand for new applications or the course).

2. These regulations adopt a new sampling technician discipline (and sampling technician course) to accommodate documented need in the regulated community (*Summary of Pre-Publication Hearings: Proposed Changes to Title 17 Regulations Governing Lead-Based Paint Activities*, CDPH, Oakland-June 13, 2001, San Diego-June 29, 2001, and Los Angeles-July 10, 2001, pages 3, 4, and 5) and increase the number of individuals who are trained and certified to conduct lead hazard evaluation activities. It is necessary to allow a “sampling technician” to conduct specified and limited lead hazard evaluation activities in order to implement an apprentice-type program to increase the number of individuals qualified to conduct lead hazard evaluation activities, and ultimately lower inspection costs. The sampling technician classification will enable individuals, who do not currently have the experience and/or education to become an inspector/assessor, the ability to conduct specific, supervised lead hazard evaluation activities under the supervision of an inspector/assessor for the purposes of learning the job requirements. The regulations hold the inspector/assessor responsible for all the sampling technician’s lead activities to ensure the evaluations are done properly and interpreted by the professional qualified to conduct lead hazard evaluations.
3. These regulations adopt “lead-safe” work practices for individuals conducting lead activities (e.g., abatement, lead-related construction, disturbing presumed lead-based paint, etc.) to meet the documented needs of 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 12-13), reduce the incidence of childhood lead poisoning, and clarify standard practices needed to prevent the creation of lead hazards and avoid penalties assessed pursuant to Health and Safety Code Sections 105255 and 105256.

4. These regulations adopt a lower numerical standard for lead contaminated dust that was previously established by the federal government (EPA. Lead; Identification of Dangerous Levels of Lead, Final Rule. 66 Federal Register 1205, January 5, 2001). This amendment is intended to ensure that California's standard for lead-contaminated dust is consistent with federal regulatory standards in order to avoid confusion in the regulated community regarding the two different standards. The Department determined that adopting this lower dust standard is necessary to be more protective of children's health than continuing to use the existing (higher) lead-contaminated dust standard.

Authority and Reference Citations

The chapter is amended to reflect the statutory reorganization of the Department of Health Services (DHS) into the California Department of Public Health on July 1, 2007 (California Public Health Act of 2006, SB-162, Ortiz), including:

1. Repealing Section 100275, Health and Safety Code, from the Authority and Reference sections;
2. Adopting Section 131200, Health and Safety Code, in the Authority sections;
3. Adopting Section 131051, Health and Safety Code, in the Reference sections; and
4. Replacing "DHS" with "CDPH" and "Department of Health Services" with "California Department of Public Health."

Forms

The following CDPH forms are revised to (a) replace “DHS” with “CDPH,” (b) replace the outdated Department address and fax number with current contact information, and (c) ensure that “project designer” and “sampling technician” reflect the regulatory language:

1. Form 8488 – Application for Lead Certification.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” and the CDPH outdated address and phone number were replaced with current CDPH address and phone number, as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

Substantive amendments: “Project designer” was replaced by “sampling technician” and the project designer training requirements were replaced by the sampling technician training requirements, as described in the Final Statement of Reasons, “Significant Amendments,” pages 1 and 2. The \$75 sampling technician certification fee reflects Section 35095(a) (“...\$75 application fee per certificate or interim certificate...”) and is identical to the other certification fees.

2. Form 8539 – Proof of Experience.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” and the CDPH outdated address and phone number were replaced with current CDPH address and phone number, as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

3. Form 8553 – Renewal of Lead Certification.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” and the CDPH outdated address and phone number were replaced with current CDPH address and phone number, as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

Substantive amendments: The “sampling technician” certification was added to this certification renewal form to reflect the adoption of the new sampling technician discipline and fee, as described in the Final Statement of Reasons, “Significant Amendments,” page 2. The \$75 sampling technician certification fee reflects Section 35095(b) (“...seventy-five dollar application fee for each certificate or interim certificate renewal..”) and is identical to the other certification renewal fees.

4. Form 8493 – Course Completion Form.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4, and the CDPH outdated address was replaced with the current CDPH address. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

Substantive amendments: The “project designer” course was replaced by the “sampling technician” course as described in the Final Statement of Reasons, “Significant Amendments,” pages 1 and 2.

5. Form 8487 – Application for Training Provider Accreditation, Course and Instructor Approval.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3

and 4, and the CDPH outdated address was replaced with the current CDPH address. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process. The top left header “Health and Welfare Agency” was replaced by “Health and Human Services Agency” to accurately reflect the current agency name. This last correction, inadvertently omitted from the 15-day availability of changes, was completed as the Department prepared final documentation for this rulemaking.

Substantive amendments: The “project designer” course was replaced by the “sampling technician” course as described in the Final Statement of Reasons, “Significant Amendments,” pages 1 and 2.

6. Form 8557 – Application for Training Provider Accreditation and Course Renewal.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4, and the CDPH outdated address was replaced with the current CDPH address. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process. The top left header “Health and Welfare Agency” was replaced by “Health and Human Services Agency” to accurately reflect the current agency name. This last correction, inadvertently omitted from the 15-day availability of changes, was completed as the Department prepared final documentation for this rulemaking.

Substantive amendments: The “project designer” course was replaced by the “sampling technician” course as described in the Final Statement of Reasons, “Significant Amendments,” pages 1 and 2.

7. Form 8552 - Lead Hazard Evaluation Report.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3

and 4. The CDPH outdated address and fax number were replaced with the current CDPH address and fax number. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

8. Form 8551 - Abatement of Lead Hazards Notification.

Non-substantive amendments: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4. The CDPH outdated address and fax number were replaced with the current CDPH address and fax number. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

9. Form 8540 – Authorization to Release Personal Information.

CDPH-certified individuals can complete Form 8540 if they would like their contact information listed on the CDPH website for marketing purposes. Because this form is optional (e.g., CDPH individuals are not required to fill out the form) it is not cited in the regulations. However, because Form 8540 is related to CDPH certification, it is included in this rulemaking file for informational purposes.

All of the amendments to Form 8540 were non substantive as follows: “DHS” and “Department of Health Services” were replaced with “CDPH” and “California Department of Public Health,” as described in the Final Statement of Reasons, “Authority and Reference Citations,” pages 3 and 4. The CDPH outdated address and fax number were replaced with the current CDPH address and fax number. The form date “12/97” (left footer) was replaced with “6/07” to reflect that the form was amended during this rulemaking process.

Section 35001. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35002. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35003. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35004. The definition "CDPH-approved course" was formerly located at section 35023 as "DHS-approved course" and was amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3). The definition is renumbered to maintain an alphabetical listing of definitions.

Section 35005. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35005.1. The definition "certified lead project designer" was formerly located at section 35006. The Department initially proposed the elimination of the project designer discipline, as described in the Initial Statement of Reasons, pages 2-3. After reviewing public comments, the Department amended the regulations to (1) allow existing project designers to renew certifications, (2) prohibit new project designer certification applications, and (3) eliminate the project designer course. The justification for these amendments are explained in the "Significant Amendments" section of this Final Statement of Reasons (pages 1 and 2). This definition is necessary to reflect the project designer discipline and to maintain an alphabetical listing of definitions.

Section 35006. This definition of “certified lead project monitor” was formerly located at section 35007, and was renumbered to this section in order to replace the “certified lead project designer” definition, which the Department initially proposed to eliminate, as previously explained. The definition was amended to adopt the project monitor definition currently located in Section 35007 in order to maintain an alphabetical listing of definitions.

Section 35007. The definition of “certified lead project monitor” was amended to renumber the project monitor definition to Section 35006 in order to maintain an alphabetical listing of definitions, and adopt the new certified lead sampling technician definition. This definition “certified lead sampling technician” is necessary to recognize these individuals as qualified to perform specific job tasks associated with lead hazard evaluation. A certificate is granted by the Department for this discipline to ensure that a minimum competency level has been obtained for individuals to perform the specific job tasks, as specified in Section 36000(d), in order to protect the public from unqualified individuals erroneously conducting lead activities. The creation of a sampling technician discipline is necessary to reduce the incidence of excessive childhood lead exposure in California as determined by the Department pursuant to Health and Safety Code Section 124165 by increasing the number of qualified individuals who can conduct lead hazard evaluation activities as discussed in the “Significant Amendments” section of the ISOR on page 3.

Section 35008. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35009. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35010. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35012. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35013. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35014. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35015. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35016. The term "containment" was amended to reference the most recent revision of the "*Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations*," Society for Protective Coatings, Technology Guide 6, October 1, 2004, (SSPC Guide) for containing debris. This guidance document contains additional methods of containment which are useful for individuals conducting lead activities. The specifications of the SSPC Guide in this definition is not an incorporation by reference, as in this use, the methods contained in the document are illustrative examples to guide the regulated public in their management of containment of lead hazards in conducting lead activities and are not required methods that would be cited as deficient practice if not implemented based on the definition.

Section 35018. The term “continuing education” was amended to reflect the section numbering change that occurred when “DHS-approved course” (section 35023) was re-named “CDPH-approved course” and re-numbered to section 35004 in order to maintain an alphabetical listing of definitions.

Section 35019. The term “course completion form” was amended to reflect the Department’s reorganization and updated forms, as previously explained in the “Authority and Reference Citations” section (page 3) and the “Forms” section (page 4) of this Final Statement of Reasons.

Section 35020. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35021. The term “Department” was amended to reflect the Department’s reorganization and new name, as previously explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Section 35022. The term “deteriorated lead-based paint” is amended 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. This amendment is necessary to improve the clarity of the regulation by using terms that are defined and understood consistently throughout this chapter. One commenter initially requested that the Department repeal the proposed amendments and leave the definition unchanged. The Department initially agreed, and repealed the proposed amendments in post-hearing changes. However, the same commenter then retracted the comment (*“Please retract/delete my previous comments regarding section 35022...”*) and supported the proposed amendment that was originally noticed (*“I support replacing surface coating with presumed lead-based paint”*). After review, the Department determined that the post hearing change was no longer supported by public comment and is inconsistent with the rationale in the

Initial Statement of Reasons. Therefore, the definition reflects the language originally proposed in the Notice of Proposed Rulemaking published April 13, 2007.

Section 35023. The term “DHS-Approved Course” was repealed to reflect the Department’s reorganization and new name, as previously explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons. This definition was replaced by “CDPH-approved course” that is located at section 35004. The definition is renumbered to maintain an alphabetical listing of definitions.

Section 35025. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35026. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35027. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35028. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35029. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35030. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35031. The term "job tasks" was renumbered to this section in order to maintain an alphabetical listing of definitions, but was unchanged from the current definition located in Section 35032.

Section 35032. The definition was amended to redesignate "job tasks" to Section 35031 to maintain an alphabetical listing of definitions. The definition is amended to adopt the term "lead activities" in order to identify an umbrella term that describes activities related to the identification, remediation, or prevention of lead hazards and/or lead exposure. Adopting this term will eliminate redundant and duplicative terminology throughout these regulations. The actions specified (abatement, lead hazard evaluation, lead-related construction work, or any activity which disturbs lead-based paint, disturbs presumed lead-based paint, or creates a lead hazard) are all the actions that have the potential to create a lead hazard and are included in the "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," U.S. Department of Housing and Urban Development, June 1995, and Chapter 7: Lead-Based Paint Inspection, 1997 Revision, "Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing," U.S. Department of Housing and Urban Development (HUD Guidelines) as identifying specific techniques for control of the lead hazard.

Section 35033. The term "lead-based paint" was amended to ensure that the numerical lead standard for milligrams per square centimeter and percent are identical. The amendment eliminates redundant language (e.g., "in excess of...or more than...") and is not considered a substantive change. Non-substantive formatting amendments are intended to improve the clarity of the regulation as the definition in current regulation is open to two interpretations of the percent by weight that is considered lead content that specifies lead-based paint. The tabulation makes it

clear that both measures are lead content that is equal to or in excess of the measure.

Section 35034. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35035. The definition of "lead-contaminated dust" was amended to adopt lower numerical standards for lead-contaminated dust which are based on federal standards (EPA. Lead; Identification of Dangerous Levels of Lead, Final Rule. 66 Federal Register 1205 , January 5, 2001). This definition will reduce the standard for floors from 50ug/ft² to EPA's lower standard of 40ug/ft², and reduce the standard for exterior surfaces from 800ug/ft² to EPA's lower standard of 400ug/ft². EPA adopted these lower standards for lead-contaminated dust *"at those levels the Agency determined could result in a 1 to 5% probability of an individual child exceeding a blood lead level of 10 micrograms per deciliter."* The Department agrees with the reasoning of the EPA and chose to make the same amendment to its definition of "lead-contaminated dust" to maintain an authorized state program and comply with legislative mandates (Health and Safety Code, Sections 105250 and 124160). The definition was amended to delete "window" from "horizontal surface" in order to allow inspector/assessors to sample dust on shelves, mantles, railings, and other "non-window" horizontal surfaces in areas where window surfaces are not readily available. These surfaces as well as any other horizontal surface may contain lead based paint and this allows the inspector/assessor to use his/her professional judgment to determine sampling in lead hazard evaluation. Non-substantive formatting amendments improve the clarity of the regulation. The tabulation makes it clear that all three measures are lead content that is equal to or in excess of the measure.

The Department determined that adopting the lower dust standard will have no fiscal impact (costs or savings) upon private persons or small businesses because the standard is expected to have a minimal impact on lead hazard

reduction activities: The incidence where a dust wipe sample will test between the existing standard (50 ug/ft²) and the lower standard (40 ug/ft²) is expected to occur rarely, if at all. The purpose for adoption of the lower standard is to provide one uniform dust standard in order to eliminate the confusion in the regulated community which currently deals with two standards (e.g., the federal 40 ug/ft² standard and the state's existing 50 ug/ft² standard).

Adopting different numerical standards for dust clearance levels and lead-contaminated dust is not warranted because no credible, health-based data currently exist which demonstrate the need for such distinction. Limiting the applicability of this standard (e.g., by excluding public buildings, etc.) is not justifiable because no credible, health-based evidence currently exists which conclusively demonstrates the need for such a distinction.

Section 35036. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35037. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35038. The term "lead hazard evaluation" was 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.

The definition is amended 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. “Use of X-ray fluorescence (XRF) is not acceptable to determine employee lead exposure” (U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), Standard Interpretations, May 8, 2000) was included in the rulemaking record for purposes of responding to public comment, and is not a document relied upon, but is intended to provide additional information that is consistent with the amendments because it states that airborne testing is the primary method to determine employee lead exposure. Department audits indicate a number of non-certified individuals who are apparently attempting to circumvent the work practice requirements of Section 36000 by stating that the lead hazard evaluation that they are conducting (e.g., operating an XRF to conduct a paint inspection) is for OSHA compliance, when it is clearly a lead hazard evaluation activity. The amendment clarified that air monitoring for lead is the primary measurement to determine employee exposure and is exempt from the definition of “lead hazard evaluation,” while paint testing and other lead hazard evaluation activities continue to be regulated by this Chapter.

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. 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. 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. This amendment clarified that sampling or testing in or on a residential or public building continues to be regulated by this chapter as lead hazard evaluation.

Section 35039. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35040. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35041. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35042. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35043. The definition "presumed lead-based paint" was 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. Experience has shown that very little lead-based paint has been used since January 1, 1978, when the manufacture of the product was stopped in the United States. Therefore, the standard of presumption being based on the "pre-1978"

date is considered restrictive enough to reasonably ensure the definition is accurate. 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 35044. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35045. The term “public building” was amended to mirror State Housing Law, using the same terminology as Health and Safety Code Section 17920.10 that specifies a “...*building or portion thereof*...” as constituting the structure to help clarify that a public building means all or part of a given structure accessible to the public. The definition is amended to include “its land” that is “accessible to the public” because lead contaminated soil is a significant source of childhood lead poisoning, and soil sampling and subsequent abatement activities are routinely conducted as part of lead hazard reduction activities as described in the HUD Guidelines in Section V of both Chapter 11 and 12. The definition of “public building” does not contain an exhaustive list of structures which are accessible to the public, only examples which are intended to be illustrative to assist the public in understanding the scope of the term.

Section 35046. The term “residential building” was amended to mirror State Housing Law, using the same terminology as Health and Safety Code Section 17920.10 that specified a “...*building or portion thereof*...” as constituting the structure to help clarify that a residential building means all or part of a given structure used or intended to be used as a home or residence. The definition is amended to include “its land” that is used or intended to be used as part of a “home or residence” because lead contaminated soil is a significant source of childhood lead poisoning, and soil sampling and subsequent abatement activities are routinely conducted as part of lead hazard reduction activities as described in the HUD Guidelines in Chapters 4, 5, and 6.

Section 35047. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35048. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35049. The authority and reference citations in this section were amended to reflect the Department’s reorganization, as explained in the “Authority and Reference Citations” section of this Final Statement of Reasons (page 3).

Section 35050. The term “work area” was amended to replace “lead-based paint or presumed lead-based paint is disturbed or abatement is conducted” with “lead activities” to eliminate redundant and duplicative terminology and to expand the scope of the definition to all areas where any of the components of lead-based paint management are conducted. This amendment is designed to improve the clarity of the regulation by using terms consistently throughout this chapter and allow the use of the term “work area” to apply to all phases of lead-based paint management as specified in these regulations.

Section 35051. The authority and reference citations in this section were amended to reflect the Department's reorganization, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35052. The section was amended to reflect the Department's reorganization and new name, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35053. The section was amended to reflect the Department's reorganization and new name, as explained in the "Authority and Reference Citations" section of this Final Statement of Reasons (page 3).

Section 35054. The section was amended to reflect the Department's reorganization and new name, as explained in the "Authority and Reference Citations" section (page 3) and the "Forms" section (page 4) of this Final Statement of Reasons. Section 35054(h)(4) was amended to eliminate the project designer exam questions, because the Department is no longer accepting project designer applications as explained in the "Significant Amendments" section (page 1 and 2) of this Final Statement of Reasons. This subsection was amended to specify the minimum number of examination questions for the sampling technician discipline. Initially, the Department proposed that 50 questions is the appropriate, minimum number for the sampling technician course's final examination for students to demonstrate competency in the lead hazard evaluation field. However, a number of CDPH-accredited training providers submitted comments protesting the number of proposed questions (50) for the sampling technician exam, and suggested that a smaller number of exam questions would be sufficient. The commenters stated that the exam is included as part of the 8-hour course, and therefore a smaller number of exam questions would provide more class time for instruction. Upon review, the Department agreed that the number of exam questions could be reduced and identified thirty questions as a satisfactory measure of knowledge attainment for the sampling technician examination in post-hearing changes.

Section 35055. The section was amended to reflect the Department’s reorganization and new name, as explained in the “Authority and Reference Citations” section (page 3) and the “Forms” section (page 4) of this Final Statement of Reasons. “DHS” in subsection 35055(a)(1)(J) was replaced by “CDPH,” as explained in the “Authority and Reference Citations” section (page 3), though that amendment was inadvertently omitted in the double strike-through and double underline regulatory revisions.

Section 35055 was amended to include the sampling technician course as one of the CDPH-approved courses which is not required to include five contact hours of core instructional requirements. The Department determined that students in the eight-hour sampling technician course would not benefit from five hours of core instruction because that would allow only three hours to teach testing and sampling methodologies, which is the emphasis of the class. The sampling technician course includes pertinent core instruction topics, and therefore it would be duplicative not to exempt the course from the core instructional requirements.

Section 35056. The section was amended to reflect the Department’s reorganization and new name, as explained in the “Authority and Reference Citations” section (page 3) and the “Forms” section (page 4) of this Final Statement of Reasons.

Section 35057. The section was amended to reflect the Department’s reorganization as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Article 6: Lead-Related Construction Sampling Technician Course. This Article title was amended to replace “project design” with “sampling technician” to reflect the repeal of the project designer course and adoption of the sampling technician course, as described in this Final Statement of Reasons (pages 1-2).

Section 35061. The section was amended to repeal the project designer course, and adopt the sampling technician course, as described in this Final Statement of

Reasons (pages 1-2). This section sets uniform standards for a sampling technician course. The Department adopted a sampling technician discipline in order to implement an apprentice-type program which is designed to increase the number of individuals qualified to conduct lead hazard evaluation activities, and ultimately lower inspection costs.

The sampling technician course was 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 was 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.

EPA has developed an eight-hour lead sampling technician training course which can be downloaded at either the HUD or EPA websites (<http://www.epa.gov/lead/pubs/leadsamplingtech.htm> or <http://www.hud.gov/offices/lead/training/sampletech/samplingtech.cfm>) The EPA course was designed very differently than the Department's sampling technician course, as EPA envisioned a non-supervised individual conducting clearance inspections, while the Department allows sampling technicians to conduct limited lead hazard evaluation activities, as directed by a CDPH-certified inspector/assessor. See section 36000(d) for additional details. As previously described, the sampling technician discipline reflects public comment received during the pre-publication hearings in 2001.

Although the Department did not adopt the EPA course (because of the “non-supervised” issue and the allowable lead hazard evaluation activities), the training material was reviewed and several components were incorporated into the sampling technician course.

Pursuant to Health and Safety Code Section 105250(d), the Department developed the training course for the sampling technician in consultation with the Division of Occupational Safety and Health (DOSH). The letter confirming this consultation (February 4, 2003 letter from DOSH Supervising Industrial Hygienist Steve Smith to Department Senior Policy Analyst Dan Scannell) was identified in the Initial Statement of Reasons as included in the rulemaking file (“(see February 4 2003 letter....)”(page 2) but was inadvertently not included in the list of references in Notice of Proposed Rulemaking dated April 13, 2007. This document was readily available from the Department upon request during the entire rulemaking process. There were no requests to review this document during the rulemaking and the letter is added to the list of references included in this Final Statement of Reasons.

Section 35061(a). The section sets minimum requirements for classroom instruction, hands-on training, information on state and federal regulations and guidance, and other issues to accurately impart information which is necessary to conduct limited lead hazard evaluation activities.

The 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). The

Department determined that five contact hours of the eight hours of interactive participatory teaching methods is needed to ensure full participation of students in the class in order to improve the student's ability to retain and recall information which is disseminated in the classroom. The amount of contact hours of interactive participatory methods, as compared to the total number of hours for the class, is consistent with other CDPH-approved courses.

The section was amended to reflect the Department's reorganization as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35061(a)(1). This subsection requires 30 minutes of classroom instruction on lead and the health effects limited to lead because this information is included in all CDPH-approved courses, and including the information here will ensure that all CDPH-approved courses are consistent. In addition, the information identified in this subsection (e.g., identification of sources, numerical standards, and health effects) is the most basic, and important information that an individual in the lead hazard evaluation field needs to know in order to understand the purpose for the lead hazard evaluation activities he/she will conduct. Finally, this subsection is also based on the EPA sampling technician course which also requires 30 minutes on this type of background (e.g., "Lead 101") information.

Section 35061(a)(2). This subsection requires one hour of instruction on the state regulations which govern lead hazard evaluation. This subsection is necessary because a sampling technician is required to comply with these regulatory requirements and needs to understand what they legally can and cannot do. This subsection includes delineating the responsibilities between an inspector/assessor and a sampling technician in order to clarify the regulatory requirements which allow a sampling technician to sample paint dust and soil only if an inspector/assessor identifies the sampling locations, makes any recommendations, and completes the recordkeeping and reporting requirements. The Department determined that one hour is sufficient for a student to

understand the requirements of Section 36000 based upon the length of the sampling technician course and the limited lead hazard evaluation activities which can be conducted by a sampling technician. Since the Department recognizes that the sampling technician is supervised by a certified inspector/assessor and will be required to take the CDPH-approved inspector/assessor course if he/she desires to advance his/her career and become an inspector/assessor, this less than comprehensive exposure to the state regulations is deemed adequate to allow the sampling technician to function safely and learn the requirements of lead hazard evaluation through the practical experience attained on the job.

Section 35061(a)(3). This subsection requires one contact hour on job tasks associated with lead hazard evaluation because this information is necessary for students to learn how to conduct lead hazard evaluation. The Department determined that one hour is sufficient for a student to understand this information based upon the length of the sampling technician course and the limited lead hazard evaluation activities which can be conducted by a sampling technician. Since the Department recognizes that the sampling technician is supervised by a certified inspector/assessor and will be required to take the CDPH-approved inspector/assessor course if he/she desires to advance his/her career and become an inspector/assessor, this less than comprehensive exposure to the theory basis of lead hazard evaluation is deemed adequate to allow the sampling technician to function safely and learn the requirements of lead hazard evaluation through the practical experience attained on the job.

The Department reviewed the existing inspector/assessor course to determine which elements should be included in this section and identified visual inspection, sample collection, and post-sampling and post-testing procedures as essential elements of this subsection. Other components of the inspection assessment course related to job tasks [Section 35056(c)(6)], such as review of previous inspection reports and recordkeeping requirements, were not included because the sampling technician will not be conducting those activities. This subsection

includes reiterating the regulatory requirements [36000(d)] that allow a sampling technician to sample paint dust and soil only if an inspector/assessor identifies the sampling locations, makes any recommendations, and completes the recordkeeping and reporting requirements because the Department determined that it is necessary to include this information and clarify that there are no “non-supervised” activities which can be conducted by a sampling technician. Finally, it is necessary to include reference to the Health and Safety Code Sections 105253 and 105256 because these sections set forth requirements related to certification, lead hazard evaluation, and other activities, and include penalties for violations. The Department determined it is necessary for sampling technicians to understand these statutory requirements to which he/she is held in the performance of his/her professional duties.

The Department replaced “is” with “are” in subsection 35061(a)(4)(B) to ensure that the correct verb is used following the text “soil, dust, and paint.”

Section 35061(a)(4). This subsection requires three and one half hours of hands-on training related to lead hazard evaluation activities (visual inspection, testing and sampling paint, dust, and soil, and using an XRF) because a majority of commenters during the 2001 hearings stated that the sampling technician course should include a significant amount of “hands-on” instruction (*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) and the Department agrees with this assessment. Three and one half hours is sufficient time for sampling technician students to learn how to conduct lead hazard evaluation based upon the length of the sampling technician course and the limited lead hazard evaluation activities which can be conducted by a sampling technician. Since the Department recognizes that the sampling technician is supervised by a certified inspector/assessor and will be required to take the CDPH-approved inspector/assessor course if he/she desires to advance his/her career and become an inspector/assessor, this limited and focused

exposure to the practical aspects of lead hazard evaluation is deemed adequate to allow the sampling technician to function safely and learn the requirements of lead hazard evaluation through the practical experience attained on the job. Further, the greater length of time required in practice of the skills set related to lead hazard evaluation is recognized as more helpful to adult learners, who the Department recognizes assimilate learning more readily by practical application of theory that reinforces lecture and discussion content already provided.

Further, the citation in subsection (d)(1) to the HUD Guidelines is a citation to an instructional source and not an incorporation by reference. The Department makes this citation to alert accredited training providers to the need to teach to the HUD Guidelines because these are the nationally recognized standards of practice within the lead related construction work industry. The Department believes students must have instruction on the most recent information regarding techniques for lead related construction work to be adequately trained to complete lead hazard assessment and management. This requirement to review the HUD Guidelines in the course curriculum is intended to require accredited training providers to include this content in their CDPH-approved courses and not to stipulate the content as requirements for the accredited training providers. The current regulation regarding course curricula for the other Department courses related to lead-based paint discipline certification cites the HUD Guidelines with the “most recent revision” for this purpose and that purpose is extended to this citation as well. Thus, the reference to the study guide is not an incorporation by reference of the requirements to be applied as uniform standards, but merely an identification of the informational material to be reviewed as part of the course. The HUD Guidelines are available at no cost at 1-800-245-2691 or on the internet at **www.hud.gov/lead**.

This subsection includes a simulated field visit because this component is also included in the inspector/assessor course, and Department’s ongoing review of courses indicates that this component is especially helpful in helping students

learn how to test and sample paint, dust, and soil as it offers practical experience in a controlled circumstance to reinforce learning.

The Department deleted the text “or most recent revision” in section 35061(a)(4)(A) to clarify that the HUD Guidelines are not incorporated by reference in this section, but are intended to be permissive guidance.

Section 35061(a)(5). This subsection requires thirty minutes of information related to using an XRF instrument because the Department has determined that thirty minutes is adequate time to give students a general understanding of the additional state regulations which govern the possession and use of XRF instruments, based upon the Department’s experience administering similar information in the inspector/assessor course. The specified 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. This subsection is necessary to clarify to the regulated community that the sampling technician course does not include all the information and training needed to possess and operate an XRF analyzer, and is only intended to give sampling technicians a summary of those requirements. This subsection of the sampling technician course includes XRF information because a majority of the comments received during the 2001 hearings stated that a sampling technician should be allowed to use an XRF provided an inspector/assessor identifies the testing locations, interprets the results, and complies with the recordkeeping and reporting requirements (*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), and the Department agrees with this assessment. The regulations cited in this subsection (Title 17, California Code of Regulations, division 1, chapter 5, subchapter 4, groups 1, 1.5, and 2) were identified in consultation with the Department’s Radiologic Health Branch.

The Department amended this subsection in post-hearing changes in response to public comments that a sampling technician should not be allowed to operate an X-ray Fluorescence (XRF) analyzer after taking (only) the 8-hour sampling technician course. The amendments to section 35061(a)(5) clarify that additional training is required, as identified in regulations adopted by the Department pursuant to Health and Safety Code Section 115000, for an individual to operate an XRF.

Section 35065. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35066. The section was amended to reflect the Department's reorganization as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35067. The section was amended to reflect the Department's reorganization as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35070. The section was amended to reflect the Department's reorganization as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35072. This section was amended to adopt a sampling technician discipline, as previously discussed in the "Significant Amendments" section of this Final Statement of Reasons (pages 1 and 2), related to general continuing education. 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).

Initially, the Department proposed eliminating the project designer discipline, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (pages 1 and 2). In response to public comment, the Department provided post-hearing changes that allowed existing project designers to renew certification by reinstating the original language related to project designers in this section. A reference to project designers [in section 35072(a)] was inadvertently not amended to reinstate the original language, which was an oversight that was subsequently corrected.

The section was also amended to reflect the Department’s reorganization as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Section 35076. This section is amended to repeal the project designer course and adopt the sampling technician course, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (pages 1 and 2), related to training providers accreditation and course approval so that accredited training providers know that the sampling technician course must meet the same requirements as all the other courses for application for accreditation, renewal, and course approval by the Department.

The section was also amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) and the “Forms” section (page 4) of this Final Statement of Reasons.

Section 35078. The section was amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Section 35080. The section was amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Section 35081. This section was amended to adopt the sampling technician discipline, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (page 2), related to representation of certification status so that sampling technicians know the representation of certification requirement applies to them as well as all other disciplines cited. Initially, the Department proposed eliminating the project designer discipline, but reinstated the original language in response to public comments, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (pages 1 and 2).

The section was also amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Section 35082. This section was amended to adopt the sampling technician discipline, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (page 2), related to application timeliness so that sampling technicians know the certification application timeliness requirements apply to them as well as all other disciplines cited. Initially, the Department proposed eliminating the project designer discipline, but reinstated the original language in response to public comments, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (pages 1 and 2).

The section was also amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) and “Forms” section (page 4) of this Final Statement of Reasons.

Section 35083. The section was amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) and “Forms” section (page 4) of this Final Statement of Reasons.

Section 35085. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) and "Forms" section (page 4) of this Final Statement of Reasons.

Section 35087. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) and "Forms" section (page 4) of this Final Statement of Reasons.

Section 35088. This new section was adopted to specify that the Department is only approving certification applications for existing project designers, as previously discussed in the "Significant Amendments" section of this Final Statement of Reasons (pages 1 and 2), and will no longer accept new applications for project designer certification. The certification renewal requirements for project designers in section 35088(a) are unchanged and were formerly located at section 35089. The language contained in section 35088(b) is designed to improve the clarity of the regulation to ensure that the regulated community understands the Department is only accepting project designer renewal applications for certification.

Section 35089. This section was amended to repeal the project designer discipline and adopt the sampling technician discipline, as previously discussed in the "Significant Amendments" section of this Final Statement of Reasons (pages 1 and 2). This section adopts certification requirements to ensure that sampling technicians are adequately trained to safely conduct specified lead hazard evaluation activities identified in Section 36000(d). CDPH-certified status is established and required by the Department for this discipline to ensure that a minimum competency level has been obtained for individuals to perform specific job tasks. Adopting the CDPH-certified discipline of sampling technician and requirements for completion of the CDPH-approved sampling technician course (in addition to allowing the applicant to take the CDPH-approved inspector/assessor course instead of the sampling technician course) is necessary to reduce the incidence of excessive childhood lead exposure in

California as determined by the Department pursuant to Health and Safety Code Section 124165 by implementing an inspector/assessor “apprentice” program in order to increase the number of qualified individuals who can conduct lead hazard evaluation activities, and ultimately reduce inspection costs. The sampling technician classification will enable individuals, who do not currently have the experience and/or education to become an inspector/assessor, the ability to conduct limited lead hazard evaluation activities. The sampling technician certification process is similar to the existing worker certification process, where applicants do not need previous experience and/or education, but need to successfully pass one of two identified courses. This determination is based upon both the worker and sampling technician categories being similar apprentice-level disciplines which do not need previous experience and education, as they will learn “on-the-job” from a supervisor or inspector/assessor, respectively.

The Department determined that adopting a sampling technician course will have no fiscal impact (costs or savings) upon private persons or small businesses, as establishing this discipline is not expected to increase or decrease the number of lead hazard evaluation projects in California, which are typically determined by property owners, lending institutions, and federal housing grants. Since 1999, all lead hazard evaluation in California is required to be conducted by a certified individual (e.g., inspector assessor or project monitor), so creating a new discipline does not increase certification costs to private persons or small businesses. Finally, becoming certified by the Department as a sampling technician is voluntary, not mandatory.

The Department initially intended to repeal the project designer discipline entirely, but decided to allow existing project designers to renew certification, as previously discussed in the “Significant Amendments” section of this Final Statement of Reasons (pages 1 and 2). The requirements for project designer certification renewal were relocated to section 35088.

The Department identified widespread support for establishing a sampling technician classification 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).

Section 35091. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) and "Forms" section (page 4) of this Final Statement of Reasons.

Section 35093. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35095. This section was amended to repeal the project designer discipline (as applicable to new certification applications) and adopt the sampling technician course, as previously discussed in the "Significant Amendments" section of this Final Statement of Reasons (pages 1 and 2), related to application requirements for certification so that sampling technicians know the certification application requirements apply to them as well as all other disciplines cited. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) and "Forms" section (page 4) of this Final Statement of Reasons. The \$75 fee for certification applications and renewals specified in subsections 35095(a) and 35095(b) is unchanged and is applicable to sampling technician applications in order to ensure that all certification fees remain identical.

Section 35096. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35097. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 35099. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) of this Final Statement of Reasons.

Section 36000. The section was amended to reflect the Department's reorganization and new name as explained in the "Authority and Reference Citations" section (page 3) and "Forms" section (page 4) of this Final Statement of Reasons.

Subsection 36000(a)(1). This subsection was amended to reference the subsection that allows a "sampling technician" to conduct specified and limited lead hazard evaluation activities in order to implement an apprentice-type program which is designed to increase the number of individuals qualified to conduct lead hazard evaluation activities, and ultimately lower inspection costs. The sampling technician classification enables individuals, who do not currently have the experience and/or education to become an inspector/assessor, the ability to conduct specific lead hazard evaluation activities to learn and practice the processes of lead hazard evaluation in a controlled context. The sampling technician designation is also recognized by the federal government as competent to conduct certain inspection activities (64 Federal Register 50140, *"Requirements for Notification, Evaluation and Reduction of Lead-based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,"* September 15, 1999).

This subsection was amended to clarify that project monitors are qualified to conduct clearance inspections by citing Subsection 36000(c)(3)(A). The inclusion of this exception is to clarify an exception that previously existed in 36000(c)(3)(A), but was misunderstood by the regulated public because it was not cited as an exception in current Subsection 36000(a)(1). The regulation

allows project monitors to conduct clearance inspections, but because former Subsection 36000(a)(1) required an inspector/assessor to conduct lead hazard evaluations, the public understood that they were required to always have an inspector/assessor conduct the clearance inspections as well. This resulted in unnecessary burden to the regulated public to meet the requirements for clearance inspections that are part of lead hazard evaluation. To clarify this situation, the Department amended Subsection 36000(a)(1) to include the exception reference to project monitors conducting clearance inspections and to allow sampling technicians to act within their scope of practice.

The Department determined that adopting the sampling technician discipline and limited work practices will have no fiscal impact (costs) upon private persons or small businesses.

Subsection 36000(d). This subsection allows a “sampling technician” to conduct specified and limited lead hazard evaluation activities in order to implement an apprentice-type program which is designed to increase the number of individuals qualified to conduct lead hazard evaluation activities, and ultimately lower inspection costs. The sampling technician classification will enable individuals, who do not currently have the experience and/or education to become an inspector/assessor, the ability to conduct specific lead hazard evaluation activities under the supervision of an inspector/assessor for the purposes of learning the job requirements. The regulation text specifies the supervisory activities and continues to hold the inspector/assessor 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. The sampling technician designation is also recognized by the federal government as competent to conduct certain inspection activities (64 Federal Register 50140, *“Requirements for Notification, Evaluation and Reduction of Lead-based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance,”* September 15, 1999). The Department identified widespread

support for establishing 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). Sampling technicians are prohibited from conducting any part of an environmental investigation or related lead hazard evaluation activity in the circumstances specified in Subsections (d)(1) and (d)(2) because, in these situations when an individual is identified with lead poisoning or an elevated blood lead level the most qualified individual (e.g. inspector/assessor) is needed to comprehensively identify all potential sources of lead exposure.

Subsection 36000(e). The Department adopted this subsection in post-hearing changes in response to public comments that a sampling technician should not be allowed to operate an X-ray Fluorescence (XRF) analyzer after taking (only) the 8-hour sampling technician course. This subsection clarifies that additional, existing training is required, as identified in regulations adopted by the Department pursuant to Health and Safety Code Section 115000, for an individual (e.g., inspector/assessor or sampling technician) to operate an XRF.

Section 36050. This section sets minimal safety standards for lead activities in order to prevent the generation of lead hazards and protect children in California from lead poisoning. This section sets forth containment requirements for individuals conducting abatement, lead-related construction work, or other activities which disturb lead-based paint or presumed lead-based paint, which can also create significant lead hazards. This section sets forth performance-based requirements for lead-safe work practices in order to reduce the incidence of excessive childhood lead exposure in California as determined by the Department pursuant to Health and Safety Code Section 124165 by requiring these practices to be followed in all lead activities conducted by anyone, certified or not, in the State of California.

State law (Health and Safety Code, Section 105255) specifies that “no person shall perform lead-related construction work on any residential or public building in a manner that creates a lead hazard,” and gives the Department and local enforcement agency the authority to (1) order the abatement of the hazard, (2) issue a cease and desist order, and (3) levy a fine not to exceed \$1,000. However, there are no current regulatory requirements which clarify what lead-safe work practices are appropriate to avoid creating a lead hazard and thereby violating Health and Safety Code Sections 105255 and 105256. This section establishes performance-based lead-safe work practices that are necessary to avoid the creation of lead hazards and prevent violations of Health and Safety Code Sections 105255 and 105256.

The necessity of this section is also demonstrated by the federal government: EPA has documented that renovation and remodeling activities generate a significant amount of lead-contaminated dust in older homes, which is a significant exposure source for children (*“Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume I: Technical Report,”* U.S. Environmental Protection Agency, May 1997). HUD attests that work done on one square foot of paint containing 1 mg/cm² of lead can result in approximately 9,300 ug/ft² of lead-contaminated dust (*“Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,”* U.S. Department of Housing and Urban Development, June 1995, Chapter 4. II. B. Leaded Dust). Using simple lead-safe work practices of containment and cleaning of the work area to ensure there is no visible dust or debris eliminates the hazards generated by activities which disturb lead-based paint and presumed lead-based paint (*“Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,”* U.S. Department of Housing and Urban Development, June 1995, Chapter 4. IV. B. Occupant Protection and C. Cleaning Techniques).

California regulations (Title 17, California Code of Regulations, Section 35037) define “lead hazards” to include *“disturbing lead-based paint or presumed lead*

-based paint without containment.” This regulatory definition of lead hazards differentiates between conducting certain activities with containment (no hazard to children and occupants) and without containment (defined lead hazard). This section sets forth performance-based containment requirements to clarify that the regulated community must avoid creating a lead hazard.

The Department only included requirements for containment and cleaning in this section because those activities are exempted from the definition of “abatement” and the Department determined that these activities can be conducted in a safe manner which does not require certified individuals.

It is the intent of the Department not to specify the means of containment, but the outcome that will result from successful containment. The regulated public may use whatever means it determines to result in successful containment such as those techniques suggested in the definition of containment (Section 35016). Further, it is the intent of the Department not to specify the means of cleaning, but allow those conducting lead activities to determine the best means to achieve the cleaning outcome of no visible dust or debris following the completion of a project.

This section is necessary to interpret and make specific lead-safe work practices without altering, amending, enlarging, or restricting Health and Safety Code Sections 105255, 105256, and 124160(b). The duplication of existing laws is justified to present information in a format readily understood by the regulated community and to include major requirements in a location that is readily accessed by the regulated community.

The Department identified widespread support for establishing performance - based lead-safe work practices 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 12 and 13).

The Department originally proposed language in this section requiring that individuals conducting lead activities would demonstrate compliance “with photographs or other evidence.” The Department received several comments opposing this specific language, and made post-hearing changes to repeal the text to avoid any confusion that it is an exhaustive list of measures that can demonstrate compliance. This section is necessary to allow the Department and local agencies to determine compliance with both this section and with Health and Safety Code Sections 105255 and 105256. Such demonstration “upon request” is based on the practice of review of compliance by the Department and local enforcement agencies on an as needed or random basis and not in every case. The Department and local enforcement agencies do not monitor compliance while work is in progress in each case, but may find it necessary to check compliance due to public complaints or other indications of possible lack of compliance. Requiring evidence of compliance assists in the investigation of complaints and also helps the person conducting lead activities to prove compliance when there is question.

The Department determined that adopting “lead safe” work practices will have no fiscal impact (costs or savings) upon private persons or small businesses for the following reasons: A significant number of jurisdictions (San Diego, Los Angeles, San Francisco, Marin County, Sacramento, Long Beach, Alameda County, etc.) have adopted local ordinances focused upon childhood lead poisoning prevention and lead hazard reduction activities. Many of these ordinances require the lead safe work practices specified in these regulations, and businesses are already adhering to these requirements. Moreover, using tarps and other forms of containment during painting or remodeling is already a work practice standard widely adopted by this industry based on the federal standards. Finally, because state law prohibits the creation of a lead hazard (Health and Safety Code, Sections 105255 and 105256), this section simply sets forth

performance-based standards for the regulated industry to attain to avoid creating a lead hazard and incurring significant fines and penalties. In summary, this section does not impose new standards because numerous businesses are already adhering to these requirements throughout California.

Section 36100. The section was amended to reflect the Department’s reorganization and new name as explained in the “Authority and Reference Citations” section (page 3) of this Final Statement of Reasons.

Subsection 36100(a)(4) was initially amended to repeal the project designer classification as previously discussed in the “Significant Amendments” section of the Final Statement of Reasons (pages 1 and 2), but in response to public comments, the Department is reinstating the original language and keeping the project designer text in this section.

An inadvertent data entry omission was identified in the proposed noticed regulations and was corrected to ensure conformity with existing regulation text (in Section 36100(a)(5), a period was replaced by a comma, and a capital “T” was replaced by a small “t”). The error was corrected using double-underline and double strike-through text, which was not necessary, as it indicated proposed amendments to the section rather than conforming to existing regulation text.

References

1. *“Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,”* U.S. Department of Housing and Urban Development, June 1995, and Chapter 7: *Lead-Based Paint Inspection, 1997 Revision, “Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing,”* U.S. Department of Housing and Urban Development.
2. *“Lead Exposure Associated with Renovation and Remodeling Activities: Environmental Field Sampling Study, Volume I: Technical Report,”* U.S. Environmental Protection Agency, May 1997.
3. *“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.
4. *“Guide for Containing Debris Generated During Paint Removal Operations,”* Steel Structures Painting Council, SSPC Publication No. 96-12, 1996.
5. *“Guide for Containing Surface Preparation Debris Generated During Paint Removal Operations,”* Society for Protective Coatings, Technology Guide 6, October 1, 2004.
6. Letter from Supervising Industrial Hygienist Steve Smith to Department Senior Policy Analyst Dan Scannell, dated February 4, 2003.

STATEMENT OF DETERMINATIONS

The Department determined that no alternatives considered are more effective in carrying out the purpose for which the regulations are adopted or are as effective and less burdensome to affected private persons than the regulations. This conclusion is based upon comprehensive consultation with federal, state, and local agencies, and the regulated community.

The Department determined that the regulations do not impose a mandate on local agencies or school districts, nor are there any costs for which reimbursement is required by Part 7 (commencing with section 17500) of Division 4 of the Government Code.

The Department determined that the regulations do not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Department determined that the regulations do not significantly affect the following:

- (1) The creation or elimination of jobs within the State of California.
- (2) The creation of new jobs or the elimination of existing businesses within the State of California.
- (3) The expansion of businesses currently doing business within the State of California.

The Department determined that the regulations do not affect small businesses because the requirements of the regulations are not new, as they are already specified in federal regulations and local mandates and the industry is already in compliance with these requirements. The regulations are necessary to bring the state requirements into agreement with federal and local mandates currently in effect.

The Department finds that it is necessary for the protection of the health, safety, or welfare of the people of the State of California that the proposed regulations requiring reports apply to businesses.