

REPORT TO THE LEGISLATURE
LEAD-RELATED CONSTRUCTION CERTIFICATION APPLICATION,
EXAMINATION, AND ACCREDITED TRAINING COURSE FEE
RESTRUCTURING 2020

2020

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH
CENTER FOR HEALTHY COMMUNITIES

To obtain a copy of the Center for Healthy Communities' Report to the Legislature titled, "Lead-Related Construction Certification Application, Examination, and Accredited Training Course Fee Restructuring 2020" contact:

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EXECUTIVE SUMMARY REPORT TO THE LEGISLATURE

California Health and Safety Code (HSC) Section 105250.1 (b) requires the California Department of Public Health (CDPH), in any year Lead-Related Construction (LRC) Program fees are raised or new or additional fees are established, to prepare a report describing the need for a fee increase or establishment of a fee. The report and list of fees are to be made available to the budget committees of the Legislature and to be posted on the CDPH website. The fees are to take effect on July 1 of the year for which they are proposed. The fees collected are deposited into the LRC Fund (Fund 3155) to carry out the purposes of the provisions of HSC, Division 103, Part 5, Chapter 4.

Lead is a known toxin that affects virtually every organ of the body with exposure in young children causing lifelong damage. The CDPH LRC Program certifies lead professionals and accredits training providers that offer LRC courses in California. Individuals certified by the LRC Program provide lead-related inspections and abatement services in residences and public buildings throughout the state in order to prevent and minimize housing-related lead exposure to California's families.

Current LRC Program fees are not sufficient to cover the costs of administering and enforcing the standards and regulations as intended by HSC Section 105250(c). Current LRC Program revenues are \$1.0 million annually (\$575,000 annually from LRC certification fees, plus \$393,000 from a United States Environmental Protection Agency grant). However, projected LRC Program expenditures for fiscal year (FY) 2020-21 are \$1.2 million. With the proposed funding, the LRC Program will be able to address needs such as revising certification examinations, better monitoring of training classes, and encouraging expanded use of properly certified LRC professionals.

CDPH proposes an LRC certification fee increase to reflect inflation and the establishment of both a certification examination fee and a training provider fee to be implemented on July 1, 2020. The proposed LRC fees are to be \$135 per certification, \$70 per examination, and \$36 to training providers for each student taking an LRC course. With the proposed fees, the projected LRC Fund revenues for FY 2020-21 are \$1.2 million.

**LEAD-RELATED CONSTRUCTION CERTIFICATION APPLICATION,
EXAMINATION, AND ACCREDITED TRAINING COURSE FEE
RESTRUCTURING:
LEGISLATIVE REPORT, FEBRUARY 2020**

I. INTRODUCTION

A. Background

The California Department of Public Health’s (CDPH) Lead-Related Construction Program (LRC Program) resides in the Center for Healthy Communities (CHC). The LRC Program certifies approximately 7,000 lead professionals annually and accredits approximately 20 training providers that offer LRC courses in California. Individuals certified by the LRC Program provide lead-related inspections and abatement services in residences and public buildings throughout the state in order to prevent and minimize housing-related lead exposure to California’s families. The regulations implementing the LRC Program’s accreditation and certification requirements are contained in the California Code of Regulations (CCR), Title 17, Sections 35051 through 35097.

In accordance with the federal Residential Lead-Based Paint Hazard Reduction Act of 1992, CDPH is required and authorized to administer a residential lead-based paint hazard reduction program and to adopt and amend regulations implementing the accreditation of training providers and the certification of individuals training to perform lead-related construction work in the state, pursuant to Health and Safety Code (HSC) Sections 105250 and 105250(b). CDPH is further authorized to modify certification requirements for persons engaged in lead construction work based on the needs of the program at HSC Section 105254(c).

In 1994, the Legislature of the State of California established the LRC Program within CDPH in order to meet the requirements of the federal Residential Lead-Based Paint Hazard Reduction Act of 1992. HSC Section 105250(c) specifies that fees “shall be established at levels not exceeding an amount sufficient to cover the costs of administering and enforcing the standards and regulations adopted under this section.” HSC Section 105250(e) instructs the department to, “review and amend its training, certification, and accreditation regulations adopted under this section *as is necessary to ensure continued eligibility for federal and state funding of lead-hazard reduction activities in the state.*” [Emphasis added]

Individuals seeking certification apply to the LRC Program, demonstrating their qualifications, including training, education, experience, etc., and pay a certification fee for initial certification and annual renewal. These fees remained the same \$75 as was initially established by regulation until a \$12 increase in 2018. Based on the United States Department of Labor, Bureau of Labor Statistics, \$75 in 1993 (when the regulations were proposed) is equivalent to \$135 in 2019.

Initially, certification fees were deposited into the General Fund (GF) and the LRC Program received GF allocations. From the late 1990s into the early 2000s, the overall LRC Program GF support approached \$1.6 million annually and the LRC Program employed eight full-time state staff and an additional eight contract staff. At that level of support average certification processing time was more rapid (in 2002 it was 15 days). By FY 2008-09, all remaining GF support was eliminated. In the intervening years, the program has streamlined processes as resources were reduced. At the end of 2019, the LRC Program was staffed by seven positions with variable assistance from part-time students.

This significant reduction of LRC funding and staffing in the past few years resulted in a number of LRC activities being eliminated or postponed. The number of examinations given to individuals seeking certification has declined by 40 percent since fiscal year (FY) 2007-08. The LRC Program lacks funding to suspend or revoke the accreditation of businesses or the certification of individuals who violate requirements for lead-safe work, since the Program cannot afford the cost of an administrative hearing required by government code for potential violators who wish to defend themselves. The backlog of audits, training approvals, and course development puts the program at risk for poor quality training, or being subject to fraud by a training provider who may falsely claim students were trained. Lack of or inadequate training may result in individuals carrying out substandard construction jobs releasing dust, which end up exposing the public to lead.

The program's new, online certification application and payment system, built by Public Health, went "live" March 2019. This system has helped to address the increased demand for LRC certified professionals while also decreasing certification processing times to five days.

Since the elimination of GF support in 2008-09, the LRC Program is supported by the LRC Special Fund (Fund Source: 3155) that receives the certification fees, and by variable, annual federal funding from the United States Environmental Protection Agency (US EPA). Current LRC Program revenues are \$1.0 million annually (\$575,000 from LRC certification fees, plus \$393,000 from the US EPA grant). However, federal funding has declined over the last several fiscal years and the combined funds no longer provide sufficient funds to cover Program costs. Operating costs to support the program are estimated to be \$1.2 million annually. As a result, the LRC Program is increasing fees so that program costs may be fully supported.

Lead is a known toxin that affects virtually every organ of the body. Lead exposure in young children causes lifelong problems such as lowered IQ, learning disabilities, and kidney and cardiovascular disease. It is associated with behavioral problems and delinquency. Lead exposure in adults causes chronic problems, such as kidney disease, and is associated with greater risk for cardiovascular disease, cancer, and mortality.

The Centers for Disease Control and Prevention (CDC) stresses that there is no known safe level of lead in blood. In 2015, 8,500 California children were found to have blood lead levels equal to or greater than five micrograms of lead per deciliter of blood (mcg/dL). Risk factors for lead poisoning include recent renovation in and around an older home with lead in paint or soil, and job-related lead exposures. Lead exposure is cumulative from many sources and early intervention to prevent lead exposure, including properly certified and trained personnel, is crucial to improve outcome in children.

B. Statutory Requirement for Report to the Legislature:

Assembly Bill (AB) 1810 (Assembly Committee on Budget, Chapter 34, Statutes of 2018) created HSC Section 105250.1 which allows CDPH to charge, beginning July 1, 2018, the LRC Program fee of \$87 for an application submitted for lead certification not to exceed the reasonable administrative costs in connection with the application. AB 1810 requires CDPH to prepare a report by February 1 of any year in which the department raises or establishes new or additional fees to the Budget Committees of the Legislature, and to post the report and the list of fees on the CDPH website.

II. PROBLEM STATEMENT

Current fees charged to support the LRC Program are not sufficient to cover the costs of administering the program, as intended by statute (HSC Section 105250(c)). In addition, when individuals no longer paid for certification examinations, there was a coinciding increase in registered individuals not showing up for State examinations and a coinciding decrease in State examination pass rates (described below).

The current certification fees of \$87 (\$75 prior to July 2018) have not kept up with inflation. In order to keep the LRC Program functioning, it has relied upon variable, external grant funding which has declined over the last several fiscal years. A reliable source of funding is necessary to allow the LRC Program to perform all functions required of it and to routinely process certification applications in a timely manner. (See Table II for Program Projected Expenditures for 2020-21.)

In order to comply with its mandate to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible (42 United States Code [U.S.C.] Section 4851 and HSC Section 105250(a)), CDPH has determined that the fees must be increased to a level which will fully support the LRC Program. The proposed fee amendments are further necessary to ensure that CDPH is able to continue its mandate to ensure that individuals engaged in LRC activities are properly trained, that training programs are accredited, and that contractors engaged in lead abatement activities are certified pursuant to HSC Section 105250(b) and 15 U.S.C. Section 2682.

The current program costs are paid from the LRC Special Fund and variable US EPA grant funding. However, inflation has increased program costs without a comparable

increase in program revenue. Revenue for the program comes from certification fees, which have not been significantly changed since they were first proposed in 1993.

Based on data compiled by US EPA, California's low certification fees put it in the minority of US EPA-authorized state lead programs. Of 39 authorized states, 29 charge \$135 or more per year per certified Inspector/Assessor applicant (e.g., Colorado, Georgia, and Oklahoma). At least 31 states charge fees to training providers, which California has statutory authority to do, but currently does not charge. Thirty-five states also charge additional fees for certifying firms that provide LRC services, which California currently does not charge to firms. The lead abatement examination fee in states administered by the US EPA is \$70 and examination fees in states that administer their own lead abatement programs are comparable. California currently does not charge an LRC examination fee.

Historically there was a no-cost contract with a third party to develop examinations (with CDPH approval) and to administer the certification examinations. (The company charged individual test takers to sit for the examinations.) The LRC Program has been prohibited from doing this type of contract since 2014 and now the LRC Program pays the contractor to administer the examinations to test takers with no fee. (Currently the contractor is paid \$28,000 annually, which includes registration, administration, scoring, retention and security of test materials, monitoring and reporting requirements.) Because of limited resources, new examinations cannot be developed, and the number of examinations offered is limited (the current inter-agency agreement allows only four examination dates per year, and the number of people who can sit for an examination had been capped at 50 due to available proctors and seating in state facilities; however, recent negotiation now allow for an average of 75 people to sit for an examination at once. Establishing a certification examination fee would help offset costs for administering the examinations. Including the examination fee would reduce the number of test takers who sign up for a free examination but do not appear on the day of the examination. (From mid-2017 through Mid-2018, the rate of registered individuals not showing up on examination dates has ranged from 24 percent to 52 percent.) Additionally, pass rates have decreased since the examinations became free (the first quarter of 2014 had a 16 percent higher pass rate than the same period in 2018), possibly because applicants are not concerned if they fail and they are not properly prepared because they do not need to pay a fee.

When regulations were proposed in 1993, it was decided that fees to accredit training providers would not be charged in order to encourage training provider applicants to apply. Now there are 20 accredited training providers who require their 97 different courses and courseware be monitored and reviewed by LRC Program staff.

III. SOLUTION AND PROPOSED FEE STRUCTURE

Given the need to restore funding to fully support the LRC Program, CDPH recognizes the need to establish a new fee structure:

- \$70 for a Lead Certification Examination Fee paid to CDPH prior to an individual being allowed to take a lead certification examination to become an Inspector/Assessor, Supervisor, or Project Monitor
- Increase the application fee for LRC certification from \$87 to \$135 per certificate
- \$36 fee for accredited LRC training providers to pay the Department for each Course Completion Form submitted on behalf of a student

The \$70 price of the examination fee is the same as that charged by the US EPA in states that are not federally authorized to have their own lead abatement programs. The examination fee in states that administer their own lead abatement programs are comparable.

The \$135 certification fee is based on inflation of the \$75 fee that was originally set in 1993. The Consumer Price Index indicates that \$75 in 1993 is equivalent to \$135 in 2019.

The determination of the LRC training provider fee of \$36 per Course Completion Form submitted on behalf of a student is described below. The LRC Program sought to charge a fee per student so that new training providers and training providers who teach few students would not get over-charged with a large, flat fee per training provider. The significant amount of accreditation tasks in the LRC Program are performed by two Associate Governmental Program Analysts (AGPAs). Combined salaries and benefits for the two AGPAs total \$219,890. That total divided by the approximately 6,000 Course Completion Forms submitted annually yields \$36 per Course Completion Form.

The LRC Program has statutory authority to charge other LRC-related fees, which has not yet been utilized (such as fees for accredited training providers or certification examination fees). The proposed update to LRC fees will allow the LRC Program to manage current workload and an anticipated increase in workload due to public demand to correct lead hazards. The fee revenue will help to address delayed processing of LRC certification applications, regardless of the recent decrease in federal funding.

LRC training providers will be charged \$36 per Course Completion Form submitted on behalf of a student. Training providers may opt to pass this cost on to students, or they may opt to absorb the costs as training provider class charges currently range from about \$150 to \$800 per student per LRC class. Individuals seeking initial or renewal LRC certification will be charged \$135 rather than \$87 per application, which is a \$48 increase. Individuals seeking initial certification in LRC disciplines requiring a state examination will be charged a one-time fee of \$70.

Table I – Lead-Related Construction Program – Projected Revenue from Fees.

Fee Name	Fee 1993 – June 30, 2018	Fee July 1, 2018 - present	Proposed Fees	Annual Estimated Number of Items per fee	Projected Revenue per Proposed Fee
LRC Certification Fee	\$75	\$87	\$135	7,000 certifications	\$945,000
LRC Exam Fee	None	None	\$70	300 exams	\$21,000
LRC Course Completion Fee ¹	None	None	\$36	6,000 individuals taught in courses	\$216,000
TOTAL					\$1,182,000

¹ LRC Training Provider Course Completion Form Fee.

Without sufficient revenue to support resources needed to fully administer the LRC Program, the program has had to prioritize some tasks at the expense of others. The need for resources is directly linked to increased time needed to process LRC applications. A delay in the time it takes to certify qualified individuals in LRC disciplines directly affects CDPH’s ability to comply with its mandate to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible. (42 U.S.C. Section 4851 and HSC Section 105250(a).) CDPH has therefore determined that increased fees are necessary to restore the intent of the original regulations to make the LRC Program self-supporting, as required at HSC Section 105250(c). These changes will ensure that CDPH continues to effectively fulfill its mandate to address lead-based paint hazards as expeditiously as possible, and ensure that individuals engaged in LRC activities are properly trained, that training programs are accredited, and that contractors engaged in lead reduction activities are certified as required pursuant to HSC Sections 105250(a) and (b), 15 U.S.C. Section 2682, and 42 U.S.C. Section 4851.

CDPH has made a determination that no reasonable alternative considered or otherwise identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, to restore stable funding to fully support the LRC Program. CDPH has determined that no reasonable alternative identified would be as effective as and less burdensome to affected private persons than the proposed action or would be more cost effective to affected private persons. CDPH has determined that no reasonable alternative identified would be as effective in encouraging registrants for the LRC certification examinations to prepare for and appear for the certification examinations.

CDPH has found no reasonable alternatives to increasing LRC fees that would achieve the current needs of the LRC Program or allow CDPH to carry out its statutory duties. The LRC Program has exhausted federal fund grant opportunities.

IV. ECONOMIC IMPACT

CDPH has made an initial determination that these fees would not have a significant economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The information used to determine any costs and impact on businesses is based on current data regarding LRC certified individuals, annual number of individuals taking LRC training provider courses, annual number of LRC certification examinations offered in California, and assumptions and calculations made based on other states' fees.

An advantage to these individuals and businesses paying the fees is that the State will continue to have an LRC Program that promotes a market need for LRC certified individuals.

A secondary benefit to this amendment is that maintaining the LRC Program allows the State and local jurisdictions to continue to qualify for federal lead-abatement grants. Only states with an authorized LRC Program are eligible for annual lead-related federal grant funds (Federal Title X, Section 1011(n)). For example, the City of Long Beach currently receives a United States Department of Housing and Urban Development (HUD) lead hazard control grant of \$4.1 million.

CDPH does not anticipate that the proposed fee structure will create or eliminate jobs within California. Although some individuals may opt to discontinue LRC work in light of increased fees, others will become LRC certified in order to meet demand for LRC work.

CDPH does not anticipate that the proposed fee structure will create, eliminate, or significantly affect new or existing businesses in California. It is anticipated that LRC certified individuals and accredited training providers will continue to perform their work.

The proposed fee structure is not expected to significantly expand existing businesses in California. Only California LRC accredited businesses and certified individuals may legally perform LRC work in this state. LRC business may expand for reasons other than this fee structure, such as a legal settlement with paint companies to fund hundreds of millions of dollars for lead abatement in certain California jurisdictions.

With stable funding the LRC Program will be able to promptly process certification applications, ensure consistent training standards, update examinations, and perform other required functions. It is presumed that more availability of LRC certified individuals will lead to more lead being identified and remediated, which will lead to fewer exposures of the toxic metal to children, families and workers in California.

CDPH has determined that the proposed fee structure would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states. Only LRC accredited training providers and certified individuals may legally perform LRC

work in California, so they have a competitive advantage over businesses from other states. Some contractors and private schools that are considered small businesses will incur some costs due to the proposed fees; however, these costs will neither impose an undue burden nor have a significant economic impact. Thus, there will be no significant adverse economic impact on California businesses.

V. DETAILED DISCUSSION OF EACH FEE

Training Provider Fee: A \$36 fee will be charged for accredited LRC training providers to pay the Department for each Course Completion Form submitted on behalf of a student. The \$36 fee is due to the Department within 30 calendar days of a student passing a final examination. The training provider fee is necessary to provide sufficient program funding to ensure compliance with HSC Section 105250 including monitoring and review of training provider courses and courseware by Department personnel charged with enforcing proper accreditation standards for the LRC Program.

Examination Fee: A \$70 non-refundable Lead Certification Examination Fee will be paid to the Department prior to an individual being allowed to take a lead certification examination to become an Inspector/Assessor, Supervisor, or Project Monitor. The Department may deny authorization to sit for an examination if the fee has not been received at least 14 working days prior to a scheduled examination. The examination fee is necessary to provide sufficient program funding to comply with HSC Section 105250 ensuring a workforce properly trained in lead-related construction by updating certification examinations and providing a sufficient number of annual examinations. Additionally, the examination fee will help offset costs for administering the examinations, reduce the number of examination registrants who do not appear on the day of the examination, and increase pass rates as test takers better prepare for an examination that is not free.

Certification Fee: The application fee for LRC certification is increased from \$87 to \$135. This certification fee increase is necessary in order to account for inflation since the \$75 fee was introduced in 1993, and to provide the LRC Program with full and stable funding to comply with all requirements of HSC Section 105250. The increased fee will bring California in line with other state lead abatement certification programs, will help in reducing certification application turnaround times, and will decrease complaints from frustrated contractors. Full and stable funding will allow the LRC Program to better educate and enforce about LRC requirements in California, which will reduce toxic lead exposures to California children and their families.

Table II – Lead-Related Construction Program Projected Expenditures for 2020-21.

Position	Salary & Benefits	Operating Expenses¹	Total cost per FTE	FTE	Total Costs
Staff Services Analyst (SSA)	\$83,072	\$40,000	\$123,072	3.0	\$369,216

Associate Governmental Program Analyst (AGPA)	\$112,916	\$40,000	\$152,916	3.0	\$458,748
Health Program Manager I (HPMI)	\$142,128	\$40,000	\$182,128	1.0	\$182,128
Other Branch Staff Assisting LRC Program	\$12,000				\$12,000
Department Distributed Administrative Costs					\$215,573
Total 2020-21 Staff and Programmatic Estimated Cost ²				7.0	\$1,237,665

¹ Operating Expenses include equipment, printing, Inter-Agency Agreement for student assistants, Inter-Agency Agreement for examination administration, travel, and training.

² Total costs do not include funding needed to further upgrade and maintain the LRC data system (for example, to address accredited training provider needs).