



Department of Commerce

Washington Lead-Based Paint Program

*Report on Performance and Outcomes
2015-2017 Biennium*

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Report to the Legislature
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Acknowledgements

Washington State Department of Commerce

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Introduction

Background

The Lead-Based Paint Program aims to ensure that work performed on homes containing lead-based paint is completed in a safe and healthy manner. According to the Center for Disease Control, lead-based paint is the leading environmental hazard to children under the age of six. In children, even low levels of lead exposure can cause nervous system and kidney damage, learning disabilities, attention deficit disorder, decreased intelligence, speech, language and behavioral problems, poor muscle coordination, decreased muscle and bone growth, and hearing damage.¹

U.S. Environmental Protection Agency (EPA) and Washington state rules banning the use of lead-based paint apply to all housing built before 1978, although the majority of lead-based paint hazards are found in housing built before 1960.

Commerce's enforcement program helps ensure children are safe from lead exposure. Our first priority is education and training – informing contractors that the methods they are using may unnecessarily expose children to the dangers of lead. The Lead-Based Paint Program consists of two programs: the Lead Paint Abatement Program (abatement) and the Renovation, Repair, and Painting Program (RRP program).

This biennial report provides updates on program status, costs, and the number of persons certified, as specified in RCW 70.103.050.²

Lead Paint Abatement Program

In 2003, the Legislature established the Lead Paint Abatement Program in the Department of Commerce. The program's statutory authority³ aims to protect the public from exposure to lead hazards and ensures the availability of a trained and qualified workforce to identify and address lead-based paint hazards.

The abatement program accredits lead-based paint training programs and certifies lead-abatement firms and individual workers who perform lead-based paint remediation work. We process certification and accreditation applications, track licensees, review training provider and program effectiveness, provide technical assistance, investigate potential violators, enforce rules, conduct outreach, maintain website information, and represent the agency regarding all lead issues.

¹ U.S. Environmental Protection Agency, "Protect Your Family from Lead in the Home," (2017), <https://www.epa.gov/lead/protect-your-family-lead-your-home>

² Washington State Legislature, RCW 70.103.050, (2003, 2010), <http://app.leg.wa.gov/rcw/default.aspx?cite=70.103>

³ Washington State Legislature, RCW 70.103.010, (2003), <http://apps.leg.wa.gov/rcw/default.aspx?cite=70.103.010>

Renovation, Repair, and Painting Program

In 2010, the Legislature created the RRP Program, which the lead-based paint unit now runs alongside the abatement program. The RRP program essentially performs the same functions as the abatement program, but is geared toward contractors performing work that is not specifically aimed at removing lead, such as home remodeling or painting. The RRP program rule applies to anyone who performs work for compensation on a pre-1978 residence. This work must disturb more than 20 square feet of exterior paint and six square feet interior paint.

Program Status, Costs, and Certifications Issued

Program Status

Database

The lead-based paint program database was created in 2007. The needs of the program have outgrown the database's capacity due to the addition of Renovation, Repair and Painting (RRP) certifications. The old database held duplicated records, was slow to produce results to inquiries, and was difficult to use. During the 2015-17 Biennium, the program contracted with Artesia Consulting for a new database and worked with Commerce's Information Services staff to incorporate it into Commerce's information systems. The database allows individuals to pay certification fees electronically.

RRP and abatement certifications are issued electronically. Each firm or individual receives an electronic certificate. The new database has streamlined the certification issuance process, allowing for greater efficiencies. Commerce staff are now able to cross-reference individual certifications with firm certifications. This allows Commerce staff to easily verify that a firm's employee is also certified when conducting field inspections, as both the firm and every employee performing work must be certified. With the use of Microsoft Surface tablet computers in the field, our enforcement officer has the ability to check the database remotely, avoiding the chance of issuing a citation erroneously.

The new database also allows training providers to submit student rosters electronically. This cuts down on the data entry required by program staff.

Stakeholder Work

During the summer of 2016, the program convened three meetings with stakeholders to discuss the programmatic fees of \$25 for three- and five-year certifications. This is the lowest fee for this type of certification in the nation, according to a Commerce survey of all of the 14 states that issue lead-based paint certifications. Stakeholders consisted of lobbying groups, landlord groups, regulated individuals, training providers, sister agencies, and members of the public.

The stakeholder group agreed to ask the Legislature to increase fees to \$30 per year for each type of certification. This fee increase would allow Commerce to hire two additional enforcement staff for the state. This would increase the program's ability to conduct outreach and education to the impacted public, and increase the program's enforcement capacity. A decision package was created and approved supporting this increase.

During the 2017 legislative session, Commerce drafted and proposed agency request legislation to increase certification fees. Sponsors in the House and Senate introduced companion bills HB

1873⁴ and SB 5643.⁵ However, neither of the bills reached the Governor’s desk, and language addressing the proposal did not make it into the 2017-2019 operating budget. Work with stakeholders continues as the 2018 legislation session approaches. Commerce will continue supporting the passage of legislation increasing lead-based paint certification fees. Both companion bills will be automatically reintroduced.

Citations

The program issued 25 violation citations between Oct. 1, 2015 and Sept. 30, 2017. Fines averaged \$2,000 per site. The amount actually collected was much lower because many first-time offenders take the training and become certified, which significantly reduces the fine. Fines are reduced on a case-by-case basis according to a matrix of factors. Fee and fine collection data follows.

Hearings Process

Once a citation is issued, the contractor can appeal the fine using an informal hearing process. The program spent eight months making sure the process used was fair and impartial to all impacted parties. This included mapping the flow of the citation from issuance to final payment disposition.

The focus of the process is on the contractor receiving training. If this occurs, then the fine is significantly reduced. The new process greatly reduces the time between the contractor calling in for a hearing and the conference call that initiates the hearing process.

Certification Credentials

All lead-based paint program staff are up to date on EPA certification credentials. Two of the staff are certified Risk Assessors and one is a certified Supervisor.

Costs

The Lead-Based Paint Program is funded through an annual operating grant from the EPA and fees and fines. Program income generated from certification fees and fines must be spent first to offset federal funds.

Program Revenue, Fiscal Years 2016-17

Year	Federal Funds	Fees and Fines (O6K Account*)
2016	\$365,184	\$67,628
2017	\$395,121	\$48,285

⁴ Washington State Legislature, *HB 1873 – 2017-18*, (2017), <http://app.leg.wa.gov/billsummary?BillNumber=1873&Year=2017>

⁵ Washington State Legislature, *SB 5643 – 2017-18*, (2017), <http://app.leg.wa.gov/billsummary?BillNumber=5643&Chamber=Senate&Year=2017>

Program Distributions, Fiscal Years 2016-17

Year	Federal Funds	Fees and Fines (O6K Account*)
2016	All funds spent	\$114,706**
2017	All funds spent	\$30,171**

*Collected fees and fines are held in the Lead Paint Account, O6K.

**Program income spending from fees includes revenue from previous years.

Number of Persons and Firms Certified

From Oct. 1, 2015 to Sept. 30, 2017, Commerce issued lead-based paint certifications to:

- 125 lead-based paint abatement firms.
- 351 individual lead-based paint abatement workers.
- 2,299 renovation, repair, and painting firms.*
- 6,439 renovation, repair, and painting individuals.*

*Note: The new database allows us to more accurately track certifications. Previous reports included records that were duplicated in the old system, creating the appearance of a decrease in this report.

Recommendations

Increase Certification Fees

Current Certification Fee Structure

Commerce currently collects a \$25 fee for a three-year abatement certification or five-year Renovation, Repair, and Painting certification. The EPA provides a yearly grant that funds both the abatement and the RRP programs with the long-term goal that eventually the lead-based paint program will be financially self-sustaining. According to a Commerce-conducted survey of all of the 14 states that issue lead-based paint certifications, fees in Washington are the lowest in the nation and keep both programs financially dependent on federal EPA grant money. No other state has certification fees under \$125 per year.

Potential Loss of Federal Funding

According to documents obtained by the Washington Post,⁶ the EPA plans to dismantle the federal role in reducing lead hazards for children, including elimination of grants to states to support the activities described in this report. Should federal funding be cut, the proposed fee increases would prevent the Washington program from shutting down. Federal funding may cease as soon as Sept. 30, 2018.

Recommended Certification Fee Structure

Commerce recommends raising the certification fees to \$30 per year. This proposed fee increase was agreed upon through a stakeholder engagement process during the summer of 2016. The increase in fees will allow the program to hire two additional full-time inspectors. Additional inspectors will increase the enforcement capacity of the program, which will better protect children from lead exposure.

Increased enforcement capacity will also increase the value of lead certifications for firms that are currently being undercut by uncertified firms performing dangerous lead-abatement work without proper training. Increasing the fees to \$30 per year would make the abatement program fees \$90 for a three-year certification, and the RRP fees \$150 for a five-year certification. Even after increasing certification fees, Washington would still have the lowest lead-based paint fees in the nation.

Current and Proposed Fees for Lead-Based Paint Programs

Fee Structure	RRP: Five-Year Certification	Abatement: Three-Year Certification
Current Fee	\$25	\$25
Proposed Fee	\$150	\$90

⁶ The Washington Post, *EPA's spending cut plan*, (2017), https://www.washingtonpost.com/apps/g/page/politics/epas-spending-cut-plan/2188/?tid=a_inl