

Weatherization Program Notice 02-6

Effective Date - July 12, 2002

SUBJECT: WEATHERIZATION ACTIVITIES AND FEDERAL LEAD-BASED PAINT REGULATIONS (Replaces WPN 01-10 Issued 5/10/01)

PURPOSE: The primary purpose is to provide guidance to Regional Offices and States relative to Weatherization health and safety matters associated with lead-based paint in homes. The secondary purpose is to provide information about other Federal lead-based paint rules that apply to Weatherization work.

SCOPE: The provisions of this guidance apply to all grantees applying for financial assistance under the Department of Energy's Weatherization Assistance Program.

PLEASE NOTE: Some of this guidance DOES NOT apply when Weatherization work is done in HUD program housing or when HUD funds are used. The requirements are somewhat different under the HUD's Lead Paint Rule, and agencies who do work in HUD program housing must become familiar with the differences and follow the HUD Rule when weatherizing under those circumstances. See [Attachment A](#) for a discussion about the HUD rule.

BACKGROUND: This Program Notice replaces Weatherization Program Notice 01-10, Weatherization Activities and Federal Lead-based Paint Regulations of May 10, 2001.

Childhood lead poisoning is linked to reduced intelligence, low attention span, reading and learning disabilities, juvenile delinquency, behavioral problems, and other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning, and other sources have been successful in reducing population blood lead levels by more than 80 percent.

However, nearly one million children have excessive levels of lead in their blood, making lead poisoning a leading childhood environmental disease. Lead-based paint, along with the contaminated dust and soil it generates in housing, is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

Congress and Federal agencies responsible for the environment and disease control have become increasingly aware of the lead-based paint hazard. In 1992, Congress passed and President Bush signed into law the Housing and Community Development Act, which included Title X, the Residential Lead-Based Paint Hazard Reduction Act of 1992. Title X authorized EPA, HUD, and OSHA to develop lead-based paint regulations. This Act is the basis for the EPA, HUD, and OSHA regulations discussed in this Program Notice.

The Department of Energy (DOE) is a member of two relevant interagency task forces: the President's Task Force on Environmental Health Risks and Safety Risks to Children and the Federal Interagency Lead-Based Paint Task Force.

POLICY: Lead-based paint dust and other residues are hazards that Weatherization workers are likely to encounter in older homes. HUD estimates that within the national housing inventory, twenty-six million homes have significant lead-based paint hazards (estimates of the National Survey of Lead and Allergens in Housing at: www.hud.gov/lea/HUD_NSLAH_Vol1.pdf). Furthermore, Weatherization work may directly disturb lead-based paint, possibly creating hazardous conditions. While the authorizing legislation for DOE's Weatherization Assistance Program (WAP) does not specifically address lead-based paint hazard reduction, DOE's policy is that Weatherization workers must be aware of the hazard and conduct Weatherization activities in a safe manner to avoid contaminating homes with lead-based paint dust and debris, and to avoid exposing the clients, themselves, and their families to this hazard.

It is important to remember that the WAP's legislated purpose is to install energy efficiency measures in Weatherization clients' homes, in order to lessen their energy cost burden. WAP is not funded to do lead-based paint abatement work, nor to do lead-based paint hazard control or stabilization [1]. In the process of weatherizing a home, workers sometimes encounter and have to disturb painted surfaces that are known or presumed to contain lead-based paint. When that happens, DOE funds may be used to minimize the potential hazard associated with the specific painted surfaces that workers are directly disturbing in the course of installing an energy efficiency measure, but DOE funds may not otherwise be used for abatement, stabilization, or control of the lead-based paint hazard that is in the house.

Weatherization agencies are encouraged to apply for HUD Lead Hazard Control Grants and become certified to do lead-based paint hazard control work. Some agencies are doing this work now as an additional business line, and in at least one state some local agencies are performing Weatherization work and HUD's lead-based paint hazard control work at the same time.

[1] HUD is funded for the general control or stabilization of lead-painted surfaces in low-income homes, and HUD has programs that provide funding for lead hazard control in many communities

Weatherization is an energy efficiency program, not a renovation or remodeling or rehabilitation program, and thus may not be subject to other agencies' rules governing renovation, remodeling, or rehabilitation work. However, there are certain instances in which particular Federal rules relating to lead-based paint hazard do apply to Weatherization work. Attachment A is a summary discussion, for your reference, of the other Federal agency regulations that pertain to lead-based paint hazards and the circumstances under which we believe these regulations apply to Weatherization work. Attachment B is a Flow Chart to assist with determination of the appropriate actions, described below, and applicability of the various Federal rules.

DOE GRANT GUIDANCE: Processes known as lead-based paint abatement, lead-based paint hazard control, or lead-based paint stabilization are not allowable activities using Weatherization Program funds. However, work that is needed in conjunction with Weatherization activities that disturb surfaces having lead-based paint, to prevent the generation of lead-based paint dust and residues, is allowable as long as the work is associated with installing energy efficiency measures.

When Weatherization crews disturb surfaces that may have lead-based paint, they must exercise caution to keep any dust that is generated from becoming a hazard to the clients, to themselves or to

their families. They do this (safeguarding people from lead-based paint hazards) through a set of safe work protocols hereafter referred to as Lead Safe Weatherization (LSW). In the course of applying the principles of LSW to the installation of energy efficiency measures, Weatherization crews may perform some of the same procedures which are used in the control or stabilization of lead-based painted surfaces, but that will be only incidental to following LSW practices while accomplishing the weatherization of the home.

1. State Application . The WAP s Program Year 2002 Annual Grant Guidance, Weatherization Program Notice 02-1, October 29, 2001, requires states to identify and implement Lead Safe Weatherization. As a part of their health and safety plan, States must identify the procedures for local agencies to follow to address lead-based paint issues. These procedures, at a minimum, were specified to include the following:

- A description of the LSW practices to be followed by Weatherization crews;
- The timetable for completing any necessary lead-based paint training for local agency Weatherization crews - see paragraph 8 below, for deadlines in getting all LSW training completed;
- The proper disposal of all materials containing lead-based paint; and
- The description of a deferral policy for dwellings where DOE funding or crew training/readiness is insufficient to perform the appropriate LSW practices.

2. What is LSW? Lead Safe Weatherization (LSW) is a set of protocols to be used when disturbing surfaces that may have lead-based paint, that will reduce and control the amount of lead dust and paint chips that are generated. The protocols, when designed and followed properly, address compliance with applicable regulations, including state and local regulations, and may reduce the risk of liability associated with the work. The protocols require training to gain an understanding of lead-based paint hazards and their harmful effects and to acquire skills in reducing the lead dust generated when painted surfaces are disturbed in the course of installing energy efficiency measures. The protocols involve setup and cleanup practices that contain the spread of the lead dust and debris (generated from the weatherization activities) when the work is finished.

LSW practices/protocols are described in two documents, either of which could be adapted by a state as a model in developing their own set of LSW protocols. These documents are the Montana State University developed LSW curriculum and the State of California WAP booklet titled Lead-Safe Weatherization. Both the curriculum and the booklet are available for review on the WAPTAC website www.waptac.org.

3. When is LSW Necessary ? In order to be as compatible as possible with pertinent requirements imposed by other agencies regulations, DOE recommends that States include in their health and safety plan the following set of criteria for determining when LSW would be performed by local Weatherization agencies:

- The dwelling was constructed pre-1978, and [
- The dwelling has not been determined to be lead-based paint free, and
- Either, the amount of disturbed lead-based painted surface exceeds two square feet per room of interior surface, twenty square feet of exterior surface, or 10 percent of a small component type, e.g., window; or the amount of lead-based paint dust that will be generated by the Weatherization work exceeds the OSHA-defined airborne levels for lead.

4. Testing for Lead-Based Paint and Lead-Based Paint Residues. Testing for lead-based paint is not an allowable weatherization expense; except, when it is related to the installation of energy efficiency measures. These expenditures must be within the limits set by the state in its Weatherization health and safety plan. In pre-1978 houses where the presence or absence of lead-based paint has not been determined, testing for lead-based paint could be worthwhile as an economy step. If the anticipated weatherization/energy efficiency work involves disturbing more than a small amount of painted surfaces, then ruling out the presence of lead in the paint would save extra time and costs associated with doing LSW practices. Testing in a home for lead in a painted surface, when it is done, is limited to only those surfaces that will be disturbed.

Testing can be expensive and may take time. To have any standing in liability suits, testing requires the employment of a person who is a certified Lead Paint Inspector or Risk Assessor and has been trained and is knowledgeable in sampling techniques. The fastest test results are with a XRF (X-RAY Fluorescence) diagnostic tool. It gives an almost instantaneous result, but it is expensive and requires that the operator be certified. Purchases, the cost of training and certification, and maintenance of XRF machines must be funded from other sources, as they are NOT allowable expenditures of DOE Weatherization funds.

Low cost spot-test kits are available that provide a colorimetric (color change) indication of the presence or absence of lead. HUD and EPA are reviewing the efficacy of the commercial kits available, but have not yet completed their findings. Preliminary results indicate that these kits may be useful as a negative screen (an indication that no lead is present); however, agencies should exercise caution since not all spot-test kits are useful as a negative screen.

The following considerations are offered as a guide to determining whether testing is worth the time and money on a case-by-case basis:

- Houses built from 1978 on may be assumed to be free of lead-based paint, without testing.
- In houses built prior to 1930 [2], it is logical to simply assume the presence of lead-based paint and save the cost of testing.
- In homes built between 1930 and 1978, testing may not be warranted if the amount of paint to be disturbed is small, since it may be cheaper to perform LSW for a small area than to incur the expense of testing. However, where the amount of paint to be disturbed is relatively large, it

may be worth the cost of testing, since a negative result would mean that the crews could dispense with having to perform the LSW protocols.

Routine testing of every house for lead paint levels before the start of work (testing of painted surfaces to be disturbed and/or risk assessment) and at the end (clearance testing) is a standard practice associated with lead paint hazard control or abatement work [3] and is not an allowable use of DOE Weatherization funds, except as required when weatherization work is being done on HUD homes or with HUD funds. If a state establishes a regimen of routine risk assessment and clearance testing for all cases where the presence of lead paint is a possibility, the state must use other sources of funding to implement such a policy.

[2] Although WAP Notice 01-10 suggested that 1940 was the cut-off year for prevalence of lead-based paint in housing, newer surveys (see reference to the national Survey of Lead and Allergens in Housing) suggest 1930. One reason for this was the apparent lack of housing construction during the Depression. By the time WWII arrived, metals like lead were diverted for the war effort and when the building boom of the late 1940s hit, lead was already being removed from paint. Generally, it is more likely to find lead in trim and door and window paint, than in wall paint.

[3] Please note that routine clearance testing is not only used for hazard control, but is required in HUD regulations for maintenance and rehabilitation activities in assisted housing.

NOTE: HUD's guidance to its properties has been to test all properties for the presence of lead-based paint, so, the HUD program housing in your area may already have been tested for lead-based paint.

About Clearance Testing - Clearance testing (as required by the HUD Rule) is not a requirement for Weatherization work per se. As such, clearance testing is not an allowable expenditure of DOE funds. However, under some circumstances clearance testing may be required if you are doing Weatherization work in HUD program housing or you are using HUD funds. In these instances, your first course of action should be to ask the HUD program to fund the additional cost for LSW and clearance testing. If no HUD funds are available, DOE funds may be used for clearance testing since it is a requirement in this instance.

5. Deferrals . States should develop a lead-based paint deferral policy to provide guidance to their subgrantees as to when it is prudent to defer certain Weatherization work in homes that have either tested positive or are assumed to have lead-based painted surfaces. The following steps are recommended:

First, the subgrantee should assess the following factors:

1. Is the agency prepared to work with lead-based paint? (i.e., have workers received training in LSW work practices - PLEASE NOTE THE TRAINING REQUIREMENT IN PARAGRAPH 8, BELOW; is the necessary equipment, such as HEPA vacuum cleaners, available; and does the agency's liability insurance cover work with lead-based paint);

2. What is the condition of the painted surfaces in the house? (i.e., are they seriously deteriorated);
3. What is the extent to which the specific energy efficiency measures determined by the audit will disturb painted surfaces? (i.e., will the disturbance likely generate dust in excess of OSHA minimums); and,
4. Will the cost of doing LSW work represent a large portion of the total cost, such as to exceed the amount allowed by the state's health and safety plan (which could be the case if large amounts of lead-based paint surfaces will be disturbed)?

Second, the grantee should determine, based on consideration of the above factors, whether to:

5. Proceed with all the weatherization work, following LSW work practices, or
6. Do some of the weatherization tasks, defer others, or
7. Defer all of the weatherization work.

Deferral would mean postponing the work either until the Weatherization agency is prepared to work with lead-based paint, or until another agency has corrected the problem such that weatherization can be safely performed. In cases where extensive LSW would be necessary, agencies are encouraged to arrange with other organizations, which are funded to do lead-based paint hazard control, to perform some of the more costly activities, such as risk assessment or clearance testing. In areas where there are no organizations performing such work, Weatherization agencies may choose to develop their capabilities for lead-based paint hazard control work, but they may not use DOE Weatherization funds for this purpose. The state's lead-based paint deferral policy should not call for deferring the Weatherization work solely because there is lead-based paint in the home. In such a home, regular Weatherization work that does not disturb painted surfaces can be done.

6. Funding of Lead Safe Weatherization . While the WAP Final Rule of 2000 (Federal Register, December 8, 2000) does not mandate a separate cost category for health and safety, it does allow states to budget health and safety costs as a separate category and, thereby, to exclude such costs from the calculation of average cost per home. States are reminded that, if they continue to budget and report health and safety costs under the program operations category, these costs would be included in the calculation of the average cost per home.

States should carefully consider the approach to be taken when they draft their health and safety accounting procedures. While ease of accounting is an important consideration, states should keep in mind that activities assigned to the health and safety budget category do not have to be cost-justified by the energy audit. When the same items are assigned to incidental repair, weatherization material, or installation cost categories, they must be cost-justified.

Some Weatherization agencies have successfully applied for funding from programs such as HUD's Lead Hazard Control and Healthy Homes to augment their Weatherization efforts when working in homes

with lead paint. In some states, the Legislatures have appropriated separate funding to cover the additional costs to train and certify workers for work in homes with lead paint. Another potential source of funding, subject to each State's approval, is the HHS Low-Income Home Energy Assistance Program (LIHEAP). For your reference, Attachment C is LIHEAP Information Memorandum #2001-15, February 1, 2001, advising States that they may allow expenditure of LIHEAP funds, allocated for Weatherization of homes, to be appropriately used for certain expenses related to LSW.

7. Liability Issues . Unless an agency has specifically purchased additional insurance to cover pollution occurrences, they probably do not have sufficient insurance for their work as required by the WAP's Program Year 2002 Annual Guidance, Weatherization Program Notice 02-1. It is likely that their general liability insurance has a pollution occurrence exclusion. The WAP Annual Guidance requires that agencies have sufficient insurance coverage. When there is a gap in the coverage due to an exclusion, the agency has insufficient insurance. Therefore, WAP subgrantees are required to have Pollution Occurrence Insurance (POI). DOE strongly advises agencies to either refer or defer Weatherization work that will disturb surfaces that may contain lead-based paint, until they have insurance that will provide coverage for LSW work situations involving lead-based paint.

The cost of such insurance is an allowable DOE expense, and we urge agencies to seek ways to obtain the coverage at reasonable rates. DOE's Guidance suggests that States consider undertaking the negotiation of subgrantees liability insurance, in order to get lower cost coverage for work in situations involving lead-based paint. We are told that some agencies have been informed that they are unlikely to get better rates for their liability insurance unless they have had EPA or state training leading to lead-paint certification. This is not true. Agencies who do not have EPA certified workers have gotten POI at a reasonable rate. Note: EPA certification is not a requirement for doing LSW. EPA certification is required only if the intent of the work is to do lead-based paint abatement work.

For insurance shopping: there are features about Weatherization work that state and local agencies should use in making the case for the lower risk associated with the nature of Weatherization work, especially when compared to lead-based paint abatement and lead hazard control work:

Weatherization is different from lead hazard control work and involves lesser levels of work associated with painted surfaces. In fact, the disturbance of painted surfaces, by comparison, is minimal and when it happens, is incidental to the purpose of the work - the installation of energy conserving measures. In addition, not all weatherization work involves disturbing painted surfaces and some homes are lead free, and so the risk basis for insurance rates, unlike insurance for lead hazard control work, should not be based on one hundred percent operations in a lead paint environment for every home weatherized.

DOE is involved with EPA and HUD in continuing discussions with the insurance industry about ways to qualify Weatherization agencies for more favorable rates. We also welcome suggestions from state and local agencies with experience in obtaining reasonable rates for this kind of work, which we will share with the network.

8. Training . WE CANNOT EMPHASIZE TOO MUCH: LSW training for Weatherization workers, both in-house and contractor, is critical to the protection of Weatherization clients and the workers themselves.

Also, it may be helpful or even necessary in getting reasonable Pollution Occurrence Insurance (liability insurance for emissions from lead-based paint and other sources). DOE requires that when the disturbance of painted surfaces is significant (more than the de minimis levels stipulated in the EPA rule or exceeds the emissions levels under the OSHA Rule), Weatherization workers be trained in LSW. If workers have not had sufficient training, states must provide training for them before they work on homes with lead paint where painted surfaces will be disturbed in the course of doing the weatherization measures.

To help states who didn't have a lead paint training program, DOE developed a LSW training course that became available in October, 2001. The course has an easily exportable reference tool illustrating LSW practices. This is not the only training curriculum that is available to states. There are several courses offered by EPA and HUD, that would serve as sufficient training for Weatherization workers to enable them to do LSW. Although the EPA and HUD lead paint training courses acquaint trainees with the proper work protocols, the DOE LSW training addresses work practices for specific weatherization measures. For workers who will have or have had the HUD or EPA training, states may want to augment that training with DOE's LSW reference tool.

The WAPTAC website has information about the above training courses and can be either downloaded or linked to a site where the course can be accessed. All are available to the states for use in crafting a training program. Any of these courses will provide sufficient orientation regarding the lead paint hazard to allow agencies to safely do Weatherization work that disturbs painted surfaces, providing that the agencies follow the state's protocols for LSW activities.

In order to be an allowable use of DOE grant funds, training in the mitigation of lead paint hazards when disturbing painted surfaces must be related to the installation of energy efficiency measures and LSW work practices. Establishing a routine requirement for every Weatherization worker to be an EPA (or the state equivalent) certified lead paint worker is a practice used in lead paint abatement work and is not an allowable use of DOE Weatherization funds. If a state chooses to implement a training policy requiring Weatherization workers to have EPA training and be certified, they must use alternate sources of funding.

An important deadline and training requirement for States:

Within 60 days of the date of this Program Notice revision, all states must have submitted a LSW Training Plan that is a part of the WAP State Plan's Annual File. This plan must have a schedule for the completion of LSW training for direct hire and contractor weatherization workers who work on homes with lead paint where painted surfaces will be disturbed in the course of doing the weatherization measures. This training must be completed as soon as possible, but within nine months of the date of this program notice. States not able to complete this training within the time frame must submit a justification to the Regional Office explaining why. If the request is reasonable, the Regional Offices will grant an extension to the state.

SUMMARY: We appreciate the continued constructive input of many people in attempting to define and resolve issues surrounding the lead-based paint hazard. We understand that many state and local

Weatherization agencies find the incorporation of this guidance into their operations difficult and challenging.

Because of the complexity of these issues, there may be elements that will require still further clarification. The WAPTAC website will soon have a compilation of frequently encountered questions and answers for them. Please let us know your questions and issues, so we can work together on dealing with this important health and safety matter.

John Millhone, Director

Office of Weatherization and Intergovernmental Programs

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