

# ADM78-16

## Part I:

**IBC: [A] 107.2, 107.2.7 (New), Chapter 35; IEBC: [A] 106.2, 106.2.6 (New), Chapter 16**

## Part II:

**IRC: R106.1.1, Chapter 44**

THIS IS A 2 PART CODE CHANGE. PART I WILL BE HEARD BY THE ADMINISTRATIVE CODE COMMITTEE. PART II WILL BE HEARD BY THE IRC-BUILDING CODE COMMITTEE. SEE THE TENTATIVE HEARING ORDER FOR THESE COMMITTEES.

**Proponent :** Jonathan Wilson, National Center for Healthy Housing, representing National Center for Healthy Housing (jwilson@nchh.org)

## Part I

### 2015 International Building Code

Revise as follows:

**[A] 107.2 Construction documents.** *Construction documents* shall be in accordance with Sections 107.2.1 through ~~107.2.6~~ 107.2.7.

Add new text as follows:

**107.2.7 Certifications where painted surfaces are disturbed** Where repair, alteration, or addition being performed in a Group R-2, R-3, or R-4 occupancy built before 1978 is covered by the Lead Renovation, Repair, and Painting rule at 40 CFR 745 or a state program authorized by that rule, and will disturb painted surfaces, the construction documents shall include a copy of the firm's certificate to conduct the disturbance activities under the applicable rule.

**Exception:** The occupancy is not a target housing or child-occupied facility as defined by 40 CFR Part 745.

### 2015 International Existing Building Code

Revise as follows:

**[A] 106.2 Construction documents.** Construction documents shall be in accordance with Sections 106.2.1 through ~~106.2.5~~ 106.2.6.

Add new text as follows:

**106.2.6 Certifications where painted surfaces are disturbed.** Where repair, alteration, or addition being performed in a Group R-2, R-3, or R-4 occupancy built before 1978 is covered by the Lead Renovation, Repair, and Painting rule at 40 CFR 745 or a state program authorized by that rule, and will disturb painted surfaces, the construction documents shall include a copy of the firm's certificate to conduct the disturbance activities under the applicable rule.

**Exception:** The occupancy is not a target housing or child-occupied facility as defined by 40 CFR Part 745.

**Reference standards type:**

**Add new standard(s) as follows:**

U.S. Environmental Protection Agency, 40 CFR 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures (2015)

## Part II

### 2015 International Residential Code

Revise as follows:

**R106.1.1 Information on construction documents.** *Construction documents* shall be drawn upon suitable material. Electronic media documents are permitted to be submitted where *approved by the building official*. *Construction documents* shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that it will conform to the provisions of this code and relevant laws, ordinances, rules and regulations, as determined by the *building official*. Where repair, alteration, or addition being performed in an occupancy built before 1978 is covered by the Lead Renovation, Repair, and Painting rule at 40 CFR 745 or a state program authorized by that rule, and will disturb painted surfaces, the construction documents shall include a copy of the firm's certificate to conduct the disturbance activities under the applicable rule.

Reference standards type:

Add new standard(s) as follows:

U.S. Environmental Protection Agency, 40 CFR 745 Lead-Based Paint Poisoning Prevention in Certain Residential Structures (2015)

**Reason:** Since April 22, 2010, renovations performed for compensation in child-occupied facilities and housing built before 1978 must comply with federal requirements at 40 Code of Federal Regulations (CFR) Part 745 Subpart E, known as the Renovation, Repair and Painting (RRP) rules. While it was not a consensus process, the Environmental Protection Agency (EPA) adopted the rule in 2008 after considering more than 750 public comments,<sup>1</sup> completing a detailed cost-benefit analysis, and demonstrating that the rule would result in a net benefit to society.<sup>2</sup> As of December 31, 2014, 14 states<sup>3</sup> (Alabama, Delaware, Georgia, Iowa, Kansas, Massachusetts, Mississippi, North Carolina, Oklahoma, Oregon, Rhode Island, Utah, Washington, and Wisconsin) have adopted equivalent regulations and are responsible for administering the requirements. In the remaining 36 states, EPA is responsible for compliance and enforcement.

As of December 31, 2014, more than 130,000 firms have been certified by EPA or a state to perform work covered by the RRP rule.<sup>4</sup> More than 500,000 individuals have been certified to supervise the work on behalf of these lead-safe certified renovation firms. With these numbers, property owners have reasonable access to sufficient lead-safe certified renovation firms and certified renovators.

EPA has taken aggressive action to enforce the RRP rule. In 2014 alone, EPA took action against 61 renovators, as well as one home improvement chain, requiring compliance with the rule, and collecting more than \$500,000 in fines.<sup>5</sup> The 14 EPA-authorized states have taken additional enforcement actions.

These enforcement actions highlight two challenges. First, people in the homes and child-occupied facilities were not adequately protected from lead hazards, especially lead in dust. Children are most vulnerable to lead because exposure can cause permanent harm to their brain development.<sup>6</sup> Second, renovators who are certified and complying with the rule are put at a serious competitive disadvantage against those who ignore or are unaware of the requirements.

Rather than focusing on enforcement, a better approach is to prevent the violations through education and planning and to level the playing field for the hundreds of thousands of renovators that consistently comply with the RRP rule. While state and local building code officials have no direct responsibilities to ensure compliance with these federal and state requirements, their role in administering the International Existing Building Code (IEBC) as required by Section 101.3 to "achieve compliance with minimum requirements to safeguard the public health, safety and

welfare insofar as they are affected by the repair, alteration, change of occupancy, addition and relocation of existing buildings" is critical to educating contractors and identifying potential compliance problems so that children's health is protected. Similar provisions in the International Building Code (IBC) and the International Residential Code (IRC) make safeguard the public health, safety and general welfare a priority.

This proposal modifies the IEBC and IBC, by adding new sections 106.2.6 and 107.2.7 respectively that require permit applicants who are conducting activities covered by the rule to include, with their other construction documents, a copy of their lead-safe certified renovator certificate. It would only apply to Group R-2, R-3, and R-4 occupancies built before 1978 that are within the scope of the rule. An exception in the section makes clear that the requirement would only apply in child-occupied facilities, such as child-care centers, and housing other than those without a separate bedroom (known as zero-bedroom dwellings). It also modifies sections 106.2.6 of the IEBC and 107.2 of the IBC to include the new section.

To the IRC, it modifies section R106.1.1 to require permit applicants who are conducting activities covered by the rule to include, with the other construction documents, a copy of their lead-safe certified renovator certificate.

By requiring the documentation as part of the permitting process, renovators are alerted to the RRP requirements so that they can obtain the necessary training and certification before undertaking the work. They will also be reminded of their work practice compliance requirements under the RRP rule. This provision asks the code official to confirm that the person has submitted a copy of the certificate provided by EPA or the state. It does not ask the code official to enforce the federal rule. Because it is not a technical requirement, it is appropriate to include in Chapter 1 for administrative requirements.

This oversight will help to level the playing field between contractors who are complying with the rule and those who are under-pricing and undercutting their competitors by not complying with the law, whether intentionally or out of ignorance. By merely asking an applicant for the missing documents, the code official can influence those not following the law into compliance before the work even starts.

Compliance is important because renovation of painted surfaces in pre-1978 housing is a significant source of lead dust that poisons children. The dangers associated with lead poisoning are well known: serious health effects, detrimental effects on cognitive and behavioral development, with serious personal and social consequences that may persist throughout their lifetime.<sup>6</sup>

There is no safe level of lead exposure for children; even low levels of lead exposure can damage intelligence.<sup>6</sup>

**Bibliography:** <sup>1</sup> Lead Renovation, Repair, and Painting Program Docket, U.S. Environmental Protection Agency, accessed January 7, 2015, <http://www.regulations.gov/#!docketBrowser;rpp=25;po=0;dct=PS;D=EPA-HQ-OPPT-2005-0049>.

<sup>2</sup> Lead Renovation, Repair, and Painting Program OMB Review Under Executive Order 12866, U.S. Environmental Protection Agency, <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OPPT-2005-0049-1438>.

<sup>3</sup> Locate Certified Renovation and Lead Dust Sampling Technician Firms, U.S. Environmental Protection Agency, accessed January 7, 2014, [http://cfpub.epa.gov/flpp/searchrrp\\_firm.htm](http://cfpub.epa.gov/flpp/searchrrp_firm.htm).

<sup>4</sup> Fiscal Year 2015, Justification of Appropriation Estimates for the Committee on Appropriations, USEPA, 2014, EPA-190-R-14-002, page 480-482, [www.epa.gov/ocfo](http://www.epa.gov/ocfo).

<sup>5</sup> EPA Takes Action to Protect Public from Harmful Lead Exposure, U.S. Environmental Protection Agency, 2014, <http://yosemite.epa.gov/opa/advpress.nsf/bd4379a92ceceac8525735900400c27/4d5ce2ba2475c83485257db30058>

<sup>6</sup> CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention, Centers for Disease Control and Prevention, 2012, [www.cdc.gov/nceh/lead/acclpp/cdc\\_response\\_lead\\_exposure\\_recs.pdf](http://www.cdc.gov/nceh/lead/acclpp/cdc_response_lead_exposure_recs.pdf).

**Cost Impact:** Will not increase the cost of construction

Renovators are already required to comply with the RRP rule. This proposal will simply require that the construction documentation submitted to the building code official include the certificate demonstrating that the firm is a lead-safe certified renovation firm. Under the rule, the renovation firm is required to possess these certifications at

the work site. Therefore, including them in the construction documentation should not affect construction costs.

The economic benefits from this rule are substantial. Authorizing a code official to be able to ask for the certificates should prompt property owners to select the certified renovation firms that can provide the necessary documents. To become certified, the renovators had to complete a training course successfully and demonstrate that they have the knowledge to perform the work safely. The firms and the renovators also committed to complying with the rule.

The renovations performed by certified individuals and firms should be done more safely. Consistent with the rule, they will avoid making excessive lead-contaminated dust, contain the dust they incidentally make, clean up any dust residues, and pass a wipe test they administer. In justifying the rule, the EPA demonstrated that these methods will result in fewer children with high levels of lead in their blood. As a result, children are less likely to suffer harm from lead-contaminated dust.

The rule may actually lower the costs of construction by avoiding the costs of expensive clean-ups when a renovation firm lacking the training and certification creates lead-contaminated dust that remains after the renovations are done. Once dust is spread throughout a home, it is difficult and expensive to cleanup.

**Analysis:** A review of the standard(s) proposed for inclusion in the code, 40 CFR Part 745, with regard to the ICC criteria for referenced standards (Section 3.6 of CP#28) will be posted on the ICC website on or before April 1, 2016.

**ADM78-16 : 106.2.6 (New)-  
WILSON5193**

## Public Comment ADM78-16 PART II NELTNER-B :

**Proponent : Tom Neltner (tneltner@edf.org) requests Approve as Submitted.**

### **Commenter's Reason: Response to Committee comments:**

*The standard referenced does not meet the requirements of CP #28 and these requirements should not be covered under code enforcement.* Response: We addressed this issue in the proposal. The current International Residential Code incorporates by reference regulations from four federal regulatory agencies:

- Three from the Consumer Product Safety Commission (CPSC);
- Three from the U.S. Department of Commerce;
- One from the U.S. Department of Transportation; and
- Two from the Federal Emergency Management Agency.

The proposal would add one rule from the Environmental Protection Agency. While it was not a consensus process, the Environmental Protection Agency (EPA) adopted the rule in 2008 after considering more than 750 public comments, completing a detailed cost-benefit analysis, and demonstrating that the rule would result in a net benefit to society. The process was rigorous and meets the requirements of CP#28.

The states agree. As of July 20, 2016, 14 states (Alabama, Delaware, Georgia, Iowa, Kansas, Massachusetts, Mississippi, North Carolina, Oklahoma, Oregon, Rhode Island, Utah, Washington, and Wisconsin) have adopted equivalent regulations and are responsible for administering those regulations. In the remaining 36 states, EPA is responsible for compliance and enforcement.

ADM78-16 Part II is essentially the same as Part I. In its review of Part I, the committee raised different concerns. For completeness, we include our responses to those concerns below :

*The requirements in this proposal are outside the scope of code enforcement. The code official should not be asked to enforce federal requirements in 40 CFR Part 745. If the states and EPA are enforcing this, why add this onto the code office?* Response: The proposal in no way asks the code official to enforce the federal requirements. That was made clear in the justification for the proposal and in testimony by EPA enforcement representatives. The proposal asks the code official to confirm that the contractor submitting an application for a building renovation permit has a valid EPA or State issued RRP certification if the work is to be at a pre-1978 residence (formally, a pre-1978 Group R-2, R-3, or R-4 occupancy), and the work will disturb painted surfaces.

*The code office staff would have to learn the program to see if documentation was needed or not. How and where to apply this standard appropriately is not within the expected knowledge base for a code official.* Response: Hundreds of thousands of renovators have learned what work is covered by the rule and which is not. The applicability section is less than 500 words. EPA's Small Business Compliance Guide summarizes the key applicability requirements in one page (see attached). It is relatively simple, especially compared to the complexity of the building code and the many other required construction documents. We recognize that code officials would need to become familiar with the requirements, but they would need to do so only at a high level, and, given the known risk of long-term harm to children's health, learning about them is reasonable for these professionals.

*How would a code official verify the first built date for existing buildings?* Response: The code official does not need to know the precise date of construction. The only issue is whether the building was constructed before 1978. Even in cases of uncertainty about the building's age, it is usually clear whether the building is pre-1978 or it is post-1977. A contractor seeking a permit should know the actual or approximate date because the renovation requirements often involve knowing the code in effect when the building was constructed. If the contractor does not have any knowledge of the building age, then the code official would presume that it is built before 1978. Should there be a question about the date's being pre-1978, the code official should be able to confirm it from internal records.

*There appears to be a conflict between the proposal and the trigger language in the federal law.* Response: The proposal was written to be slightly narrower in scope than the federal rule to keep it simpler for the code official.

*The proposed language does not require enforcement, just certification, but the code official has no controls over contractor certification.* Response: Correct, the proposal does not require enforcement of the federal requirement

by code officials. The code official simply needs to confirm that the contractor is qualified to do the work properly and safely by ensuring the contractor has a lead-safe renovator certificate.

*Therefore, this is adding a layer of bureaucracy with no gain to safety in the building.* Response: A certified contractor has committed to following the federal law and will use supervisors and workers who have been trained to use lead-safe work practices. Compared to renovations performed by contractors who are not certified, the work is more likely to be done in a manner that does not create lead hazards that threaten children with long-term harm from lead poisoning. This proposal also levels the playing field for those contractors who do follow the law. We are asking code officials to play their traditional role of evaluating renovations that require a permit so they will not harm residents. It is not adding another layer of bureaucracy, but using an existing process to protect children - the very purpose of the codes.

*The exception is unclear as to what types of dwellings would not have to comply with the base requirement. Perhaps it would be better to provide an exception that stated single room occupancies and housing for the elderly as explained in the testimony.* Response: The definitions are in the referenced code. It seems more straightforward to simply reference the definition; this avoids confusion about any differences in wording between the referenced code and this proposal.

*There was a question as to if there was viable and easily available testing for existing sites.* Response: Not applicable. Testing is not within the scope of the proposal, only submission of a copy of a certification document is.

*There is a related change, ADM85.* Response: We are not submitting public comment on ADM85.

**Bibliography:** Small Entity Compliance Guide to Renovate Right: EPA's Lead-Based Paint Renovation, Repair, and Painting Program, EPA-740-K-10-003, Environmental Protection Agency, 2011, page 9, <https://www.epa.gov/sites/production/files/documents/sbcomplianceguide.pdf>.