

CHAPTER 12 LEAD-BASED PAINT

1200 Lead-based paint. It shall be required to perform activities that identify the presence of lead violations in the interior and on the exterior of residential structures in which initial construction was completed prior to January 1, 1978, and such violations shall be addressed in keeping with local, state, and federal guidelines.

1201 Definitions. As used in this chapter, the following terms shall have the meanings indicated. All other terms related to the evaluation, control, and abatement of lead-based paint hazards are used as defined in the Michigan Lead Abatement Act.

- (1) *Michigan Lead Abatement Act* shall mean the State of Michigan statute that addresses the evaluation, control, and abatement of lead hazards, the licensing of lead professionals, and other State laws pertaining to lead hazards as found in the Michigan Public Health Code, Act 368 of 1978 Part 54A. References to the Act include the State's promulgated rules for implementation of the Act.
- (2) *Federal Statute* shall mean the federal statute that addresses the evaluation, control, and abatement of lead-based paint hazards in housing as found in 40 CFR Part 745 and 24 CFR Part 35, both entitled "Lead-Based Paint Poisoning Prevention in Certain Residential Structures."
- (3) *Clearance Examination* shall mean an activity conducted in compliance with the Work Practice Standards of the Michigan Lead Abatement Act, R225.9940 et seq., by third-party, certified personnel following lead-based paint hazard reduction and/or the repair of cited violations for which Renovation, Repair and Painting Program (RRP) certification is required to determine that the lead-based paint hazard reduction activities are complete and that no settled lead dust hazards exist in the dwelling unit or worksite.
- (4) *Deteriorated Paint* shall mean any interior or exterior paint or other coating that, through a visual assessment, is found to be peeling, chipping, crazing, flaking, abrading, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate, or a chewable surface that contains visual signs of *chewing*.
- (5) *Dwelling Unit* shall mean, for the purpose of this Chapter, a unit that meets one of the following criteria.
 - (a) A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation; or
 - (b) A room or group of rooms forming a single habitable space equipped and intended to be used for living, sleeping, cooking and eating which does not contain, within such a unit, a toilet, lavatory and bathtub or shower; or

- (c) Any room or group of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

A basement or attic that is accessible from inside a dwelling unit is considered to be part of the dwelling unit. Common areas and basements and/or attics that are only accessible through a common area or from the exterior of a residential property are not considered to be part of the dwelling unit.

- (8) *Evaluation* shall mean a risk assessment, a lead-dust screening, a lead-BASED paint investigation, paint testing, a clearance examination, or a combination of these to determine the presence of lead violations or lead-based paint.
- (9) *Lead-Based Paint Enforcement Threshold* shall mean the measure of deteriorated paint inside a dwelling unit not to exceed:
 - (a) Two (2) square feet in any one interior room or space, or
 - (b) Ten percent (10%) of the total surface area on an interior component type with a small surface area (such as windowsills, baseboards, or trim). When determining if a deteriorated lead-based paint violation is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, except for the exterior frame or trim, are considered to be interior.
- (10) *Lead-Based Paint Hazard Reduction Activities* shall mean measures designed to reduce or eliminate human exposure to lead hazards through methods including interim controls or abatement or a combination of the two conducted in compliance with the Work Practice Standards of the Michigan Lead Abatement Act, R325.99401 et seq.
- (11) *Lead-Based Paint Violation* shall mean any deteriorated paint condition in pre-1978 housing subject to the presumptions and obligations in Section 1202.
- (12) *Lead-Dust Violation* shall mean the presence of lead content in household dust exceeding the current standards set forth in Section 1206(1)(e) as determined by a dust wipe taken in accordance with Section 1206(1).
- (13) *Lead Violation* shall mean the presence of lead-based paint violation, lead-dust violation, or bare soil located within thirty (30) inches of the foundation wall of any pre-1978 residential structure subject to the presumptions and obligations of Section 1202. For the purposes of this ordinance, lead in drinking water or consumer products are not considered to be lead violations.
- (14) *Lead-Dust Screening* shall mean a limited lead-based paint and lead-dust activity that is required for all pre-1978 residential rental properties that pass visual inspection and to assure that the lead content in household dust falls below the levels as prescribed in Section 1206 (1)(e). A lead-dust screening includes a visual inspection for failing paint above the lead-based paint enforcement threshold and/or other lead-based paint and lead-dust violations. A lead-dust

screening includes the collection of a limited number of dust wipes as required in Section 1204 and the issuance of a "Lead Dust Screening Report" for the purposes of monitoring lead-safe property maintenance.

- (15) *Residential Property* shall mean property zoned for living or dwelling for individuals or households that include one or more dwelling units. The residential property includes any common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents.
- (16) *Residential Structure* shall mean any structure on a residential property, including but not limited to, a house, garage, building, outbuildings, or fence.
- (17) *Renovation, Repair and Painting Program (RRP)* shall mean the U.S. Environmental Protection Agency (EPA) statute (40 CFR Part 745) that requires certification for all home improvement contractors, property management firms, handypersons or others compensated for renovation work that involves window replacement or that disturbs more than six (6) square feet of interior and/or twenty (20) square feet of exterior paint or surface coating in pre-1978 residential housing and child-occupied facilities. This EPA requirement also applies to rental property owners working on rental properties. The individual must complete training, use safe work practices, and verify that the work area is clean after completion of renovations, all of which are defined by the federal statute.
- (18) *Visual Assessment* shall mean a visual examination of all surfaces within the dwelling unit. A visual assessment shall not be considered to be complete if the examining individual is locked out or otherwise prevented from inspecting any room or space within the dwelling unit. For the purpose of determine whether or not a deteriorated lead-based paint violation is interior or exterior as it relates to windows, in addition to that portion of the window component that faces the interior, all exterior-facing portions of the window component, with the exception of the exterior frame or trim, are considered to be interior.
- (19) *Worksite* shall mean an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

1202 Presumptions and obligations.

- (1) Presumptions.
 - (a) For purposes of this Chapter, all paint on the interior or exterior of any residential structure on which the original construction was complete prior to January 1, 1978, shall be presumed to be lead-based.
 - (b) Loose paint particles shall be presumed to be a lead violation. If the loose paint on the cited surface can be satisfactorily demonstrated to not contain lead, no lead violation shall exist.

(2) Obligations.

- (a) Any person seeking to rebut these presumptions shall establish through the means set forth in 1205 that the paint on the residential structure in question is not lead-based paint.
- (b) Residential rental dwellings shall be maintained free of deteriorated paint exceeding lead-based paint enforcement threshold.
- (c) Residential rental dwellings shall be maintained free of lead-dust violations.

1203 Lead violations.

1203.1 Deteriorated lead-based paint violation. The interior of any residential structure on which the original construction was completed prior to 1978, shall be maintained in a condition such that the paint thereon does not become deteriorated paint exceeding the lead-based paint enforcement threshold of this Chapter.

1203.2 Bare soil violation. From May 1 through October 31, bare soil located within thirty (30) inches of the foundation wall of any residential structure is prohibited and shall be presumed to be a lead violation. Such presumed lead violation shall be corrected by proper installation of dense vegetation, permanent paving material, or a minimum six-inch deep cover of loose material such as bark, wood chips, or stone, unless the owner provides testing performed by a Risk Assessor or Lead Paint Inspector that the cited soil does not contain lead hazards as defined by federal statute (40 CFR Part 745 Subpart D Section 745.6(4)(c)).

1203.3 Loose paint particles, removal required. The owner of a dwelling or dwelling unit shall not allow loose paint particles in the interior or exterior of a dwelling or dwelling unit.

1203.4 Lead-dust violation. A lead-dust violation shall be identified and cited in accordance with the procedures set forth in Section 1204.

1203.5 Lead-dust sampling violation. A lead-dust sampling violation shall be cited upon a failure by an owner of a residential property to timely cause dust samples to be taken and certified test results to be submitted to the Department in accordance with the procedures set forth in Sections 1204 and 1206.

1204 Inspections for lead violations.

1204.1 Inspections for lead violations for Certificate of Compliance. All inspections performed on pre-1978 properties to obtain a Certificate of Compliance shall include a visual assessment for deteriorated paint and bare soil violations in accordance as follows:

- (1) When the visual assessment identifies no interior deteriorated lead-based paint violation in rental dwellings, the owner shall cause dust samples to be taken and certified test results to be obtained in accordance with the protocols established for a lead-dust screening in Section 1206 to determine whether a lead-dust violation exists. For rental dwellings containing sixteen (16) or more dwelling units, the owner shall cause dust samples to be taken in units inspected.

- (2) The owner shall cause dust samples for the lead-dust screening to be taken and shall submit all certified test results to the Department prior to the renewal of a Certificate of Compliance under Chapter 10. If all certified results are not submitted within the specified time, a lead-dust sampling violation shall be cited. Where dust sample results are greater than or equal to the levels permitted in Section 1205(1)(e), they shall be cited and additional dust wipe samples shall be taken in the subject areas following cleaning and other lead-dust reduction activities until all said areas are found to be below the listed thresholds.

1204.2 Inspections for lead violations upon complaint. The Department may cite deteriorated lead-based paint (Section 1203.1), bare soil (Section 1203.2), and loose paint particles (Section 1203.3) upon complaint.

1205 Remedy for violations. Following a visual assessment which results in the citation of a deteriorated lead-based paint violation, the violation may be removed only by one of the following methods:

- (1) Certification by a lead-based paint inspector or risk assessor that the residential property has been determined not to contain lead-based paint through a lead inspection conducted in accordance with the Work Practice Standards of the Michigan Lead Abatement Act, R325.99401 et seq.
- (2) Certification by a lead-based paint inspector or risk assessor that all cited violations of Section 1203 have been abated, or interim controls implemented, and clearance has been achieved in accordance with standards found in Section 1206; provided, however, that the residential property has been inspected pursuant to those standards after the deteriorated paint or lead-dust violation was last cited, including a full visual assessment.

1206 Standards for lead safety inspection and report.

- (1) The following standards are required for the dust sampling for a lead-dust screening required by Section 1204:
 - (a) Qualified personnel. Whereas the lead-dust screening by itself does not meet the State standard for clearance, the lead-dust screening shall only be conducted by a state-certified lead inspector, risk assessor, or any similar state-certified personnel that have been trained and certified to collect dust samples for the purposes of conducting clearance pursuant to the Certified Individuals and Firms section of the Michigan Lead Abatement Act, R325.99301 et seq., and whose approval to conduct such dust wipe tests in the city is not subject to State or local suspension or revocation.
 - (b) Examination requirements. Dust samples shall be collected and analyzed in accordance with this section.
 1. Dust samples shall be wipe samples taken on interior windowsills and floors, excluding open porches.

2. Dust samples shall be taken from each of no more than four rooms. The selection of rooms to be tested, where applicable, shall include no less than one bedroom and the living room. At least one wipe sample shall be taken from a windowsill with a paint history, if present, and one from a floor in each room. Where there are less than four rooms, then all rooms shall be sampled.
3. The method for collecting dust samples shall include:
 - (i) Laying out the sample area by using a template or tape to outline the area;
 - (ii) Labeling each tube with its own identification number to be recorded on the sample collection form;
 - (iii) Putting on clean gloves before taking each sample; and not touching anything other than the wipe after putting on the gloves;
 - (iv) Using an unused wipe to sample the entire area inside the template or tape as follows:
 - (a) Starting in the upper corner of the sample area, use a side-to-side motion, wiping the entire area, pressing firmly with the fingers;
 - (b) Fold the wipe sample in half, dirty side in;
 - (c) With the clean side of the sample and starting at the upper corner, use a top-to-bottom motion, wiping the entire area, pressing firmly with the fingers;
 - (d) Fold the wipe sample in half again, dirty side in;
 - (e) With the clean side of the sample, wipe around the entire perimeter, cleaning the corners, fold the sample; and
 - (f) Place the folded wipe sample in the tube.
 - (v) Writing down the measurements of the sample area on the collection form;
 - (vi) Cleaning the sampling equipment after each wipe sample is taken;
 - (vii) Forwarding wipe samples to an authorized laboratory.
4. Dust samples shall be analyzed by a laboratory recognized by the EPA pursuant to the Toxic Substances Control Act as being capable of performing analysis for lead compounds in dust samples.

(c) Coordination with federal and state-funded lead abatement projects. For properties participating in lead abatement activities funded by U.S. Department of Housing and Urban Development or funding administered by the Michigan Department of Health and Human Services, a clearance examination conducted in compliance with the Work Practice Standards of the Michigan Lead Abatement Act, R325.99401 et seq., shall meet the required activities standard of this section.

(d) Report. The certified person or firm completing the lead-dust screening shall submit directly to the City a report that is prepared according to this section.

1. The report shall include the following information:

(i) The address of the residential property and, if only part of a multifamily residential property is affected, the specific dwelling units and common areas affected;

(ii) The date(s) of the examination;

(iii) The name, address, and signature of each person performing the examination, including the person's State certification number;

(iv) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;

(v) The results of the analysis of dust samples, in ug per square foot, by location of sample; and

(vi) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by the EPA pursuant to the Toxic Substances Control Act.

2. The report must be for required activities conducted no more than 90 days prior to the expiration date of the Certificate of Compliance, or one year if coordinated with a federal or state-funded lead abatement project as described in Section 1206 (1)(c).

(e) Lead-dust screening dust standards. Where dust sampling is required by Section 1204, local lead-dust standards will apply and shall be the same as the December 2022 EPA lead hazard standards. These local standards are subject to change.

1. Dust sample results shall be less than:

(i) For floors: 10 ug/ft²

(ii) For windowsills: 100 ug/ft²; and

2. Where dust sample results are greater than or equal to the levels above, additional dust wipe samples shall be taken in the subject areas until all said areas are found to be below the listed thresholds.
- (2) Standards to remedy Section 1205(2) deteriorated lead-based paint violations shall comply with the following:
 - (a) Qualified personnel. A clearance report shall only be issued by state-certified lead inspector, risk assessor, clearance technician, or any similar state certified personnel permitted to collect dust samples for evaluation pursuant to the Work Practice Standards of the Michigan Lead Abatement Act, R325.99401 et seq.
 - (b) Examination and report. Examination procedures and report preparation must follow the procedures set forth in the Work Practice Standards of the Michigan Lead Abatement Act, R325.99401 et seq.
 - (c) Clearance standards. The standards for clearance of abatement activities shall follow the Federal statute (40 CFR Part 745 Subpart L - Lead-Based Paint Activities, 745.227).
 - (3) Validity of wipe test results. For the purposes of meeting the requirement in Section 1204, the results of all successful wipe tests shall be valid for the period of the current Certificate of Compliance unless a subsequent inspection of the dwelling unit conducted by a government entity or their contractor identifies a lead-dust violation, which would immediately cause the previous wipe test results to be invalid.
 - (4) Requirement to avoid conflict of interest. All lead-dust screening and clearance examinations shall be performed by state-certified persons and entities independent of those who have an ownership or other financial or business interest in the residential property cited. In no instance shall entities conduct lead-dust screening activities for another person or entity that provides services in return.
 - (5) Consistency and compliance efforts. Random audits may be performed on third-party service providers to ensure consistency and compliance with the required lead-dust screening and clearance standards. Non-random audits may also be performed based on a reasonable suspicion that a third-party service provider is not providing proper tests. Reasonable suspicion includes, but is not limited to, complaints received about the provider or about a specific residential property inspected by the provider. If the audit results indicate noncompliance with these standards or otherwise call into question the integrity of the individual or firm to satisfy the requirements of this section, the code official may reject individual reports and may bar individuals, corporations, and/or associations from submitting reports in the future. The code official will set forth the reason for rejection and/or barring in writing to the issuer of the reports and any other affiliated persons, corporations and/or associations.

1207 Lead-based paint hazard reduction activities and control. Any person disturbing or removing paint, or in any other way generating excessive dust or debris during work, on the interior or exterior of any residential structure on which construction was completed before 1978, must use lead-safe work practices as described and regulated in the federal statute. All interim controls and maintenance activities must comply with the Renovation, Repair and Painting Program (RRP). If interim controls are part of a wider abatement project, they must also comply with the requirements of the Michigan Lead Abatement Act. All abatement activities must be conducted according to the requirements of the Michigan Lead Abatement Act.

1208 Exemptions.

- (1) The requirements of Section 1203.4 and Section 1203.5 shall not include:
 - (a) Single-family, owner-occupied dwellings.
 - (b) Any rental dwelling that is designated for occupants fifty-five (55) years of age or older and is in compliance with the housing for older persons exemption under the Fair Housing Act.
 - (c) Hotel and motel rooming units that are not extended stay facilities.
- (2) Any rental dwelling exempt under Section 1000.7 of this Code. This exemption does not exempt a residential property from a dust sampling required by any other local, state, or federal law, rule, or regulation.

1209 Occupant protection.

- (1) Occupants shall not be permitted to enter the worksite during lead-based paint hazard reduction activities or RRP-regulated maintenance activities (unless they are employed in the conduct of these activities at the worksite) until after lead-based paint hazard reduction activities or RRP-regulated maintenance activities have been completed, including until any required clearance has been achieved.
- (2) Occupants shall be temporarily relocated during interior lead-based paint hazard reduction activities or RRP-regulated maintenance activities where the occupants do not have safe daily access to sleeping areas, bathroom, and kitchen facilities for more than eight (8) hours. The occupant shall not be permitted reentry until any required clearance examination can be successfully completed on the occupant's unit.
- (3) During relocation, the dwelling unit and the worksite shall be secured against unauthorized entry. Occupant belongings shall be protected from contamination by lead-dust and debris during lead-based paint hazard reduction activities or RRP-regulated maintenance activities. Occupant belongings in the containment area shall be relocated to a safe and secure area outside the containment area or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

1210 Coordination with local public health. The Department may provide reasonable assistance to government agencies working to address lead exposure in housing where an active investigation is being conducted and a child with an elevated blood lead level resides or is known to frequent. These government agencies shall include, but are not limited to, the Kent County Health Department (KCHD), the Michigan Department of Health and Human Services (MDHHS), the U.S. Environmental Protection Agency (EPA), and the U.S. Department of Housing and Urban Development (HUD).

- (1) A Certificate of Compliance may be suspended upon a government entity providing evidence that lead dust exceeding the standards set forth in Section 1206(1)(e) exists at the property.
 - (a) Evidence for suspension. To suspend the Certificate of Compliance, the City must receive evidence within thirty (30) days of inspection. This evidence shall be a copy of a lead risk assessment or other related lead evaluation report(s) conducted by or on behalf of the government entity. Those reports must be prepared by personnel certified by the State to conduct lead evaluation activities pursuant to the Certified Individuals and Firms section of the Michigan Lead Abatement Act, R325.9903 et seq.
 - (b) Reinstatement of Certificate of Compliance. The Certificate of Compliance will not be reinstated until subsequent clearance of the specific lead violations cited in the provided report has been documented. This documentation must be received directly from a government agency and/or an independent and appropriately State-certified lead evaluation professional. The expiration of the reinstated Certificate will be the same as the original Certificate.
- (2) A new or renewed Certificate of Compliance may be denied for any residential property currently under orders to abate lead hazards from a government agency.