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54 NJR 6(1)
June 6, 2022
Filed May 16, 2022

ENVIRONMENTAL PROTECTION

AIR QUALITY, ENERGY, AND SUSTAINABILITY

DIVISION OF CLIMATE, CLEAN ENERGY, AND RADIATION PROTECTION

COMMISSION ON RADIATION PROTECTION

Radiation Protection Programs

Radon Testing and Mitigation

Jointly Adopted Repeal: N.J.A.C. 7:28-27

Jointly Adopted Amendments: N.J.A.C. 7:28-27.1 and 27.22

Jointly Adopted New Rules: N.J.A.C. 7:28-27A

Proposed: April 5, 2021, at 53 N.J.R. 461(a).

Adopted: March 24, 2022, by Shawn M. LaTourette, Commissioner, Department of Environmental Protection, and December 15, 2021, by Julie K. Timins, M.D., Chairman, Commission on Radiation Protection.

Filed: March 24, 2022, as R.2022 d.054, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 13:1B-1 et seq., 13:1D-1 et seq., and 26:2D-1 et seq.

DEP Docket Number: 04-21-03.

Effective Date: June 6, 2022.

Expiration Date: February 19, 2027.

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(Agency Note: The adopted repeal of N.J.A.C. 7:28-27 will be operative on December 3, 2022. Subchapter 27 will remain effective through, and including, December 2, 2022 (179 after the effective date of this rulemaking - as changed from 119 days after the effective date of this rulemaking). See the notice of proposal and the comments and responses below for a discussion of the changed dates.)

The New Jersey Department of Environmental Protection (Department) and the Commission on Radiation Protection (Commission) are repealing the existing radon certification program and adopting new rules applicable to individuals and businesses that test for or mitigate radon. Any further reference to "Department" means both the Department of Environmental Protection and the Commission, unless the context indicates otherwise. Through this rulemaking, the Department is establishing five categories of certification and an affiliate program that allows individuals to associate with one or more certified businesses to conduct radon testing or mitigation. The adopted rules contain updated protocols for conducting testing and mitigation and additional requirements to clarify the responsibilities of certified individuals and businesses for meeting testing and mitigation requirements.

Summary of Hearing Officer's Recommendation and Agency's Response:

The Department held a virtual public hearing on this rulemaking on May 5, 2021, at 9:00 A.M., through the Department of Environmental Protection's video conferencing software, Microsoft Teams. Anita Kopera, served as hearing officer. Ten people provided oral comments at the public hearing, which are included in the Summary of Public Comments and Agency Responses section below. After reviewing the comments received during the public comment

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period, the hearing officer recommended that the Department adopt the proposed rules with the modifications described below in the responses to comments and in the Summary of Agency-Initiated Changes below. The Department accepts the hearing officer's recommendations.

A record of the public hearing is available for inspection, in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 04-21-03

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

This notice of adoption document can also be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules/adoptions.html>.

Summary of Public Comments and Agency Responses:

The Department accepted comments on the notice of proposal through June 4, 2021. The following individuals provided timely written and/or oral comments:

1. Marc Abramson
2. Diaa Alfahham
3. Michael Almeida

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4. Richard Andrews
5. Moshe Balsam
6. Ronald Barnhill
7. Gunnar Barr, Obar Systems
8. Martin Barry
9. Bebart Basmouk, Five Star Home Inspectors LLC
10. Joseph Benanti
11. James Besser
12. Dennis Blume
13. Stephen Brambilla
14. Nancy Bredhoff, Radon Testing Corp of America
15. Nicholas Bruno
16. Mike Bugge
17. Neil Bunker
18. Jason Chang
19. Brian Cooper
20. Lewis Cossaboon, Haddon Home Inspection Services
21. Marshal Datkowitz
22. Louis DiGeambeardino
23. Mark Diana
24. Robert Dixon
25. John Dixon

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26. Andrew Dobbins
27. Scott Eck
28. Michael Elko
29. Theresa Ensminger, Educated Home Inspections
30. Ashley Falco
31. Robert Fico
32. Rafi Footerman
33. Ryan Francis
34. Joseph Ganguzza, NJ Chapter of the American Association of Radon Scientists and Technologists
35. Kevin Gara
36. Linda Geczi
37. Laura Gill
38. David Grammar, RAdata
39. Kenneth Hartman
40. Joan Hervey
41. John Jasaitis
42. Michael Kenny
43. Wisam Kudeh
44. Robert Learmont
45. Angel Ledesma
46. Timothy Lehman, Timely Home Inspection

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47. Toni Lewis, LHI Analytical
48. Michael Lohn
49. Jeffrey Lublang
50. Jane Malone, American Association of Radon Scientists and Technologists
51. Edward Martino
52. Larry McEntee
53. Liset Medina, Daset Home Inspection
54. Frank Mitchell
55. Michael Mustillo
56. Greg Nelms
57. John Paris
58. Michael Prezioso, Jr.
59. Anthony Quarato
60. James Ragucci
61. George Ratel
62. Wayne Ratti
63. Errol Rijaard
64. Jerry Santangini
65. Bruce Shapiro, New Jersey Realtors
66. Robert Stout
67. John Szulc
68. Steven Temes

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69. Lee Turkowski
70. David Turner
71. Kevin Vargo
72. Steven Verger
73. Timothy Vreeland
74. Laura Wiecezszak
75. Kathryn Wilhelmi
76. Neal Wilson
77. Anthony Zappia
78. New Jersey Chapter of International Association of Certified Home Inspectors
79. JW Inspection

The comments received and the Department's responses are summarized below. The number(s) in parentheses after each comment identify the respective commenter(s) listed above.

General Support

1. COMMENT: Thank you for your considerable effort. (7)
2. COMMENT: It is appropriate for the Department to do away with the requirement to have the notarized signature on the application or certification. (31)
3. COMMENT: There will be a 16-month delay once the rules are adopted to let the industry upgrade the quality and ability of the installation mechanics that do radon mitigation. The National Radon Proficiency Program (NRPP) in its lower tier talks about a minimum level of

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competence. States such as Missouri, that have no radon certification regulations, would benefit from a mitigation technician level. New Jersey, because of its population, demands a higher degree of integrity in the workers that are part of the certified industry. It would not be burdensome for this industry to achieve a higher level of work capability. The 16 months provided to move forward, for those who haven't already started moving forward, is an adequate amount of time. New Jersey is on the right track and these regulations have made good changes.

(38)

RESPONSE TO COMMENTS 1, 2, AND 3: The Department acknowledges the commenters' support for the adopted rules.

General Comments

4. COMMENT: The Summary statement that precedes the document is actually very long, and in some cases the Summary goes into greater detail than the rules themselves. Will the Summary be incorporated into the rules in the future or used for any future reference, or is it just for the purpose of introducing and understanding the rule? (30)

RESPONSE: The Office of Administrative Law's Rules for Agency Rulemaking, at N.J.A.C. 1:30-5.1, Notice of proposed rule, require a State agency to include specific components in its notice of proposal, in order that the notice of proposal complies with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., particularly 52:14B-4. Among these components are the Summary, which is a statement of the proposed rulemaking with a clear and concise explanation of its purpose and effect, and various impact statements. See N.J.A.C. 1:30-5.1(c). The required components are not part of the rules, but are intrinsic parts of the notice of

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proposal as published in the New Jersey Register. As such, these statements may be used in interpreting the rules. See N.J.A.C. 1:30-2.5.

5. COMMENT: Overall, any increased cost to the business has got to be passed on to the consumer. Many people are just scraping by to get a house and will choose not to test their home for radon because of the higher cost. (47)

6. COMMENT: The Department is amending the rules to solve problems that do not exist. The certified individuals continue to promote testing in many ways and these changes will make it more expensive and more difficult to conduct testing, resulting in less testing overall. (52)

7. COMMENT: An additional burden is being placed on home inspectors who test for radon as certified radon measurement technicians and it may cause many to opt out of providing this service, which will lead to additional health risks for the general public. (54)

8. COMMENT: It appears that the current radon measurement technician certification will no longer be valid once the new rules are in effect. The extent of recertification and further education, as it pertains to radon testing with the proposed change, is excessive. It adds a burden, both financial and time to the technician. (67)

9. COMMENT: The proposed fees and compliance obligations represent a major increase in burden to the measurement technicians and their employers. (78)

RESPONSE TO COMMENTS 5 THROUGH 9: The commenters do not specify which requirements of the new rules they believe to be burdensome and likely to result in a decline in testing; accordingly, the Department cannot respond with specificity. All of the new

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requirements are discussed in the notice of proposal Summary, and the related costs are addressed in the Economic Impact statement.

As provided in the notice of proposal, the Department is promulgating new rules governing the certification program, in part to establish a framework for an affiliation program, bring the rules up to date with the most current protocols, and comply with the holding in *New Jersey Department of Environmental Protection v. Radiation Data, Inc.*, No. A-1777-17T3 (App. Div., November 2, 2018). The Legislature charged the Commission with the task of promulgating rules to prohibit and prevent unnecessary radiation. See N.J.S.A. 26:2D-7. Therefore, it is necessary that the Department certify radon testers and mitigators and require radon measurement and mitigation businesses and individuals to meet minimum performance standards prior to, and while, certified to perform radon testing or mitigation. The new rules are intended to ensure that certified individuals and businesses meet those standards. Individuals in all categories of certification, including measurement technicians (a certification category that the new rules continue), must reapply for certification in accordance with the adopted rules.

To the extent the commenters refer to the requirement to follow the most current protocols published by the American Association of Radon Scientists and Technologists (AARST) and the American National Standards Institute (ANSI), through the AARST Consortium on National Radon Standards, following the protocols ensures that the certified individual is performing the testing or mitigation in a manner that protects the certified individual and the public from unnecessary exposure to radiation.

Another new requirement, discussed in the Economic Impact statement, is side-by-side testing. 53 N.J.R. at 477. Such testing is consistent with the United States Environmental

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Protection Agency's (EPA) guidance since the 1980s and the current national protocols (the authorized measurement protocols), which recommend two radon tests when the test is conducted with a charcoal canister, charcoal liquid scintillation device, or electret device in certain circumstances, including during real estate transactions. Several radon measurement businesses in New Jersey already conduct simultaneous radon tests. For those businesses, there will be no additional cost to comply with the requirement to conduct two side-by-side radon tests. The cost will increase approximately \$15.00 to \$20.00 for an affiliate to conduct a test with two devices.

New N.J.A.C. 7:28-27A.6 requires each certified radon measurement technician or specialist to perform an authorized proficiency test one time for each continuous radon monitor (CRM) device model and every electret device model he or she uses for testing. The approximate cost for proficiency testing is \$125.00 to \$160.00 per device. 53 N.J.R. at 477. The additional cost will affect approximately 10 percent of the certified radon measurement technicians and specialists. A majority of testers use only one device model; therefore, most individuals will incur a one-time cost.

As discussed in detail in the Economic Impact statement, some costs will increase as a result of the new rules, but the rules will also result in savings over the prior rules. However, the Department does not anticipate that the rules will cause a decrease in the number of certified individuals or certified businesses. As the Department stated in the Jobs Impact statement, the Department anticipates that the rules may have a positive impact on job creation and retention in the State, since the rules redefine the existing categories for certification. As a result, more

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individuals may qualify for certification, which could result in the creation of new certified radon measurement and mitigation businesses. 53 N.J.R. at 478.

10. COMMENT: The proposed rules should include conditions for when a laboratory closes.

One lab's clients had to resample because no results were given when they closed. There should be an exit strategy provided to prevent laboratories from testing and mitigating. (74)

RESPONSE: The regulation of laboratories, except to the extent that the laboratory is, or applies to be, a certified business, is beyond the scope of this rulemaking.

N.J.A.C. 7:28-27A.1 Scope and Applicability

11. COMMENT: Parts of the Summary contain more detailed information than the proposed rule itself, including interpretations. The Summary states, "If the owner of a building is other than an individual, such as a corporation, and wishes to perform radon testing or mitigation on a building that it owns, the testing or mitigation must be performed by a certified business and individual. To allow otherwise would permit the corporation to use an uncertified individual (an employee, for example) to perform the testing or mitigation, contrary to the statutory prohibition." Where the Summary provides more information (such as the above example), if the detailed additional information that appears in the Summary, but not in the text of the rule, is not added to the rule, or the Summary is not published with the rule, then the intent of some of these (necessary) clarifications will be lost. (30)

RESPONSE: Adopted N.J.A.C. 7:28-27A.1(c) is consistent with the discussion in the notice of proposal Summary at 53 N.J.R. at 462. The subsection allows an individual to test the building

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he or she owns, but if the owner is other than an individual, the subsection states that radon testing or mitigation must be performed by a certified business and certified individual.

“Individual” is defined at adopted N.J.A.C. 7:28-27A.2 as “a human being.” A corporation is not a human being; therefore, the rule is clear that a corporation cannot test or mitigate a building that it owns.

See the Response to Comment 4 for a discussion of the purpose and interpretive use of the notice of proposal Summary.

12. COMMENT: The new program that the National Radon Proficiency Program (NRPP) is developing allows for both a radon mitigation technician and an advanced position. The Department’s radon program is burdened by extensive certification administration needs and meeting those needs interferes with its ability to provide ongoing field compliance oversight and enforcement. The Department should consider regulation through private certification by a recognized national proficiency program to manage radon certification applications and renewals. By taking this step, the Department could either cease issuing its own credentials or condition receipt and maintenance of a State credential on possession of the private certification. California, Connecticut, New Hampshire, Utah, and Virginia rely on private certification alone. Indiana, Kentucky, and Rhode Island, and Colorado require both a state credential and private certification. There are several advantages to this course of action. The Department already relies on nationally recognized credentialing bodies for device approvals, course approvals, and exams. NRPP has a streamlined online process for managing certification applications and renewals, handling inquiries, and collecting certification fees. NRPP has a

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newly updated complaint process that conducts independent review of reported problems and requires disposition of violations that can include credential removal. NRPP does not list NRPP-certified individuals, unless they have a current state credential, where one exists. NRPP has adopted the standards developed by ANSI and AARST: all exams and approved courses align with them. NRPP is working toward accreditation for ANSI-ISO 17024, which is recognized worldwide as a critical requirement for personnel certification bodies that offer certification in many industries, including public health, environment, and national security services. This accreditation is used by government agencies and multinational employers to ensure that personnel certifications are sufficiently rigorous. The United States Department of Housing and Urban Development requires certification by a nationally recognized credentialing body for multifamily loans. A state that partners with private certification programs can focus on higher priority activities than routine processing of applications and renewal documents. This action could lead to elimination (or significant restatement) of many sections of the proposed rules. (34 and 50)

RESPONSE: New Jersey was one of the first states to implement a radon certification program. When the EPA began the selection process to choose nationally recognized organizations to implement a radon credentialing program, the states were asked to participate in the process. At that time, New Jersey's certification program was already well established and nationally respected; therefore, Department staff played a significant role in the search for the appropriate national credentialing organizations and in developing the criteria those organizations were required to meet. In fact, many requirements for the national organizations were based upon New Jersey's prior rules. The adopted rules require exams, protocols, and

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training courses developed by nationally recognized organizations. However, the certification programs offered by these nationally recognized organizations are not as rigorous as New Jersey's adopted rules. In light of the prevalence of radon gas and the well-recognized potential harm from exposure to that gas, the more rigorous certification program in the adopted rules is appropriate for New Jersey.

13. COMMENT: In the Social Impact statement, the Department asserts that the proposed rules will, overall, protect the public health from high levels of radon exposure. The Department's desire to pursue this goal is certainly applauded. Unfortunately, the ramifications of the incremental expenses and the cost of the increased time spent pursuing compliance are being underestimated. Measurement technicians may exit the market. The outcome may very well be fewer service providers, at higher costs, thus discouraging home buyers from utilizing this very important component of a home inspection. (78)

RESPONSE: Adopted N.J.A.C. 7:28-27A provides updated procedures and processes from the prior rules, which were adopted in 1991. The adopted rules implement the most current radon testing and mitigation protocols, based on the most updated science, to help protect the public from the dangers of radon gas. Because the certified individuals and businesses must use the most current protocols, clients can be more confident in the radon test results that they are provided with and can make a more informed decision with regard to mitigation of radon. Similarly, the updated mitigation requirements will provide clients with confidence that mitigation systems will be installed by qualified individuals and that radon levels will be reduced, lowering the risk of lung cancer. As discussed in the Response to Comments 5 through

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9, the Department anticipates that the rules may have a positive impact on job creation and retention, and that more individuals may qualify for certification.

14. COMMENT: The Economic Impact statement seems to have conflicting statements. In the first paragraph, it is acknowledged that the Department anticipates that the proposed rules will have an economic impact on the regulated community, as well as on the public. Yet, at the end of the next paragraph, it is stated that the Department does not anticipate that the requirement to affiliate will have an economic impact on either the individual or the business. These two statements seem at odds with each other. The formalization of the affiliate entity is one of the most substantial changes to the regulations and carries significant increases in responsibilities and liabilities for measurement technicians. How does the Department assert that there is no economic impact? (78)

RESPONSE: The first sentence of the Economic Impact statement summarizes the collective fiscal consequences of the proposed rules that the Department anticipates. As stated in the notice of proposal, 53 N.J.R. at 475, the Department anticipates that the rules, as a whole, will have an economic impact on both the regulated community and the public. In the “Affiliation” discussion of the impact statement, 53 N.J.R. at 475, the Department asserts that the rules related to affiliation should not result in additional costs to the regulated community. The rules, set forth at new N.J.A.C. 7:28-27A.5, Affiliation, relate only to the process of becoming affiliated and notifying the Department of the affiliation. The process of affiliation is only one part of the rulemaking. The Economic Impact statement discusses the entire rulemaking and provides the Department's anticipated costs associated with the various provisions of the rules, and whether

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the costs are one-time or continuing. While the economic impacts will affect affiliates (both businesses and individuals), the impacts are a result of the substantive provisions of the rules, rather than the act of affiliation.

N.J.A.C. 7:28-27A.2 Definitions

15. COMMENT: The standard MS-QA-2019, radon measurement systems quality assurance, should be added to the definition of “authorized measurement protocol.” This standard, which is a vital companion to the other measurement standards, was published in 2019 after the New Jersey rulemaking started. (34 and 50)

RESPONSE: The adopted rules and the testing and mitigation protocols include the requirements certified individuals and businesses must follow. The standard titled, “Radon Measurement Systems Quality Assurance,” ANSI/AARST MS-QA-2019, contains valuable, detailed information that can be used to supplement the rules and protocols, but also includes requirements that individuals and businesses are not required to follow. A certified individual or business may follow the MS-QA-2019, provided the QA requirements of the rules are met, but the Department does not require that standard.

16. COMMENT: The proposed definition of “closed house conditions” should be deleted to avoid conflict with more thorough treatment of the subject within the measurement standards. (34 and 50)

RESPONSE: The Department is deleting the definition of “closed house conditions” at N.J.A.C. 7:28-27A.2 upon adoption. Testing occurs at buildings other than houses, making the term

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“closed house conditions” incomplete. While it is appropriate that testing take place under closed building conditions (a more correct term), the conditions that satisfy the closed building requirements may vary, depending on the type of building being measured; the relevant authorized measurement protocol, as defined at N.J.A.C. 7:28-27A.2, will describe the conditions. Consistent with the authorized measurement protocols, adopted N.J.A.C. 7:28-27A.9(g)7 refers to “closed building conditions,” rather than “closed house conditions,” since buildings of all sorts are subject to testing.

17. COMMENT: The rules should refer to “authorized performance tests,” rather than “authorized proficiency tests.” (34 and 50)

RESPONSE: Laboratories that conduct the tests use the terms “authorized proficiency test” and “authorized performance test,” interchangeably. The adopted definition of “authorized proficiency test” at N.J.A.C. 7:28-27A.2 is sufficient and should not cause confusion.

18. COMMENT: The rules should refer to EPA-recognized proficiency program or national EPA-recognized credentialing body, rather than “nationally recognized organizations.” (34 and 50)

RESPONSE: The definition of “nationally recognized organizations” at adopted N.J.A.C. 7:28-27A.2, specifically includes the National Radon Safety Board and the National Radon Proficiency Program. While the EPA identifies both of these organizations on its website, the EPA does not recommend or endorse any specific service by name. It would be misleading for the rules to state that these credentialing bodies are “EPA-recognized.”

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19. COMMENT: For decades, the EPA had taken the lead on developing the science of radon measurement, approving multiple test devices and analytical methods. The EPA also established guidance on laboratory quality assurance/quality control and device deployment protocols. The EPA and the Department have deferred the setting of radon measurement protocols to professional associations comprised of individuals who make money performing radon testing. There is, therefore, an inherent conflict of interest in these professionals determining how many test devices and how many test locations are required to conduct a "proper" radon test. It seems like there is a profit motive behind the new mandatory "replacement" measurement protocols developed by private-sector, for-profit individuals, and entities. (68)

RESPONSE: "Authorized measurement protocols," defined at adopted N.J.A.C. 7:28-27A.2, include protocol documents published by ANSI and AARST. The ANSI/AARST protocols are based on the EPA measurement and mitigation protocols. ANSI coordinates the development and use of thousands of international norms and guidelines in nearly every business sector. The AARST Consortium on National Radon Standards is a non-profit organization owned by AARST. The consortium serves as the forum for development, maintenance, and publication of national consensus standards. Protocols are developed with input from hundreds of volunteer members representing key stakeholder groups, including analytical laboratories, Federal and state regulators, radon measurement and mitigation contractors, product manufacturers, training organizations, scientists and academia, and environmental consultants. The EPA has also been actively participating in the radon industry-led ANSI/AARST voluntary consensus-based standards process since 2012. Federal participation is governed by the National Technology

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Transfer and Advancement Act of 1995, 15 U.S.C. §§ 3701 et seq., and Circular A-119 (2016, 1998), issued by the Office of Management and Budget, Executive Office of the President. Significant checks and balances promote fairness during protocol development. There is no inherent conflict of interest.

20. COMMENT: With regard to the eight hours of required training regarding multifamily, large, and school buildings, the Department does not mention if this curriculum has already been developed. Eight hours seems lengthy for the material contained in the standards, when most online classes are offering four hours for this topic. While this education is beneficial, the program should not be filled with useless information that does not pertain to the measurement technician. (70 and 71)

RESPONSE: The authorized measurement and mitigation protocols for multifamily buildings and for large buildings and schools provide complex and extensive testing and mitigation requirements that are very different from those for homes. The Department requires individuals to take eight hours of additional training to ensure that the individuals are familiar with the protocols and can conduct the testing and mitigation properly. See N.J.A.C. 7:28-27A.5(b)3, 27A.20(c), 27A.23(b), and 27A.26(c); and 53 N.J.R. at 476. The nationally recognized organizations design the eight-hour training courses to teach the protocols for multifamily, large, and school buildings. Curricula for the courses can be found on the nationally recognized organizations' websites. The Department does not specify the content of the protocols or the training for the specific buildings.

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AARST has advised the Department that it may offer a single class that addresses all three types of buildings (multifamily, large, and school buildings). If an individual takes an eight-hour class that covers all three types of buildings, then the individual will have satisfied the required training for all three types. The rules do not require three eight-hour courses.

At N.J.A.C. 7:28-27A.5(b)3, the Department identified both the training course for multifamily buildings and the training course for schools and large buildings as being eight hours. For clarity and consistency in the rules, adopted N.J.A.C. 7:28-27A.5(b)3, 27A.9(d)2ii, 27A.13(d), 27A.20(c), 27A.23(b), and 27A.26(c) identify both courses as being eight hours.

N.J.A.C. 7:28-27A.3 General Provisions

21. COMMENT: If a measurement technician must give the laboratory the client information, have the laboratory liable for the technician, and then not be able to provide the technician with the results of the test, the technician will be out of a job. The proposed rules are trying to give all the power to the laboratory and make the technician's job obsolete. (74)

RESPONSE: The Department interprets the commenter's reference to "the laboratory" as a reference to a certified business. Many certified businesses are also laboratories. Under the adopted rules, a certified business cannot conduct testing without a certified radon measurement specialist or technician, but must affiliate with one or more certified individuals. Therefore, it is unlikely that the role of the certified measurement technician will become obsolete. The affiliation requirement is new and provides both the certified individual and business with responsibilities and obligations that are clearly defined in the rules. 53 N.J.R. at 463-464. The requirement to provide the measurement business (or laboratory) with the client information is

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not new. See the prior rules at N.J.A.C. 7:28-27.28 and 33. This information is part of the chain of custody form and is used by the business to provide the required test report to the client. See the Response to Comments 25 through 29 regarding the modification at N.J.A.C. 7:28-27A.3 on adoption to include the certified individual among those who may obtain results of testing.

22. COMMENT: A mitigation specialist should not be able to provide testing. (74)

RESPONSE: The adopted rules do not allow a certified radon mitigation specialist to perform a radon test, unless the individual is also certified as a radon measurement specialist or technician. As provided at adopted N.J.A.C. 7:28-27A.13(o), the certified radon mitigation business must ensure that a short-term radon test is conducted within a specified period of time after the mitigation system is installed; however, the rule does not state that the certified radon mitigation business or its affiliates may perform the test. Adopted N.J.A.C. 7:28-27A.3 requires a certified business and individual to conduct activities in accordance with the approved certification. A certified radon mitigation business is not authorized to conduct radon tests; therefore, the business or individual may perform the required test only if the certified radon mitigation business or individual is also certified as a radon measurement business or individual.

23. COMMENT: The National Radon Proficiency Program (NRPP) does not recognize all eight-hour multifamily buildings and/or schools and large buildings training courses as fulfilling the requirement to obtain the NRPP Advanced Certificate Program for same. The Department should clarify whether all NRPP eight-hour multifamily buildings and/or schools and large buildings training courses will fulfill the requirements of this regulation. (30)

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RESPONSE: Before a certified radon measurement individual may test a multifamily building and/or school or large building, adopted N.J.A.C. 7:28-27A.20(c) and 27A.23(b) require the certified individual to complete an eight-hour multifamily buildings training course and/or a schools and large buildings training course provided by a nationally recognized organization, as defined at N.J.A.C. 7:28-27.2. The rules do not require an NRPP Advanced Certificate; however, an NRPP eight-hour multifamily buildings and/or schools and large buildings training course would satisfy the eight-hour requirement. See the Response to Comment 20, regarding a single combined course satisfying the training requirements for all three building types.

24. COMMENT: An active sub-slab depressurization (ASD) system is an ideal engineering control retrofit installation to prevent mold odors (that is, irritant microbial volatile organic compounds) and moisture from entering the indoor environment through open French drains at slab perimeters. Exposure to volatile organic compounds and conditions of elevated indoor relative humidity have significant impact on the healthfulness and aesthetic quality of indoor environments. The most qualified installers of ASD systems are contractors who install radon mitigation systems. Mitigation contractors should be able to install an ASD system to control odors and moisture emanating from open perimeter French drains without clients being burdened with costs associated with compliance with radon regulations. (68)

RESPONSE: The adopted rules establish requirements and procedures that an individual or business must follow to perform radon testing or mitigation in New Jersey. A system installation for a purpose other than mitigating radon is not subject to the adopted rules, notwithstanding that the installer may be a certified business.

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25. COMMENT: The notice of proposal Summary states that certified individuals are not legal representatives and, as a result, are not entitled to receive the results, unless the owner signs the waiver allowing access to the results. A licensed New Jersey home inspector often conducts the radon test on behalf of the buyer. Sellers are typically not present on site when they conduct the inspection, so it is very difficult, if not next to impossible, to obtain written authorization from the seller to release the results to the certified individuals. Whose responsibility going forward would it be to transmit the results to the home inspector's client? (3)

26. COMMENT: There is agreement and understanding that a certified individual is not a legal representative and, therefore, is not allowed to receive the results, unless the owner signs off on a waiver. Can a business issue a report to the prospective buyer and to the owner or owner's legal representative without a waiver? Why is the certified individual who is out in the field doing the work not allowed to receive the results on behalf of their client? The requirement that the owner of the building waive the right of confidentiality for disclosure of radon results is onerous and not easily executable. It is suggested that the New Jersey real estate association be consulted regarding this issue. Perhaps there is already language in the real estate contract that addresses the issue of owner or owner's legal representative waiving rights to disclose confidential information such as radon measurement results. (14)

27. COMMENT: The elimination of the certified individual that was party to the chain of custody from the process of distribution and disclosure of radon test results is counterproductive and potentially damaging to the business's and the home inspector's business models. This also places an implied legal burden between two parties that have no legal relationship: the client of

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the home inspector and the measurement business. The report belongs in the home inspection report because the client purchased this service from the inspector and the certified individual needs access to the result. The measurement business has not sold any devices or services to the home inspector's clients. The measurement businesses have put thousands of dollars into developing customer portals where certified individuals can access their reports for tests they have performed. If this is eliminated, the cost of measurement business services will go up to reflect the additional clerical and possible legal burden. (30)

28. COMMENT: The certified individual is the person placing the radon test during a home sale. A home sale almost never involves having the homeowner present for any of this except for possibly when picking up the device, and even then, most times a realtor provides access to the house. If a certified individual is going to have to obtain an owner's signature for a waiver, this is going to create a very big hassle including time and expense. The certified individual received the results and was responsible for forwarding the results to clients. If the rules state that a realtor is a legal representative, then a certified individual should also be the representative because a home inspector is contractually obliged to the buyers by the home inspection advisory committee. (46)

29. COMMENT: When a certified individual is hired to perform a radon test for a client, that is the professional they expect will not only ensure the quality of the radon testing but will also interpret the test results for them and guide them appropriately should follow-up testing or mitigation be indicated. In every aspect of industrial hygiene and air quality testing, the chain-of-custody and request-for-analysis documentation are sent to the laboratory and the laboratory analytical results are received for possible inclusion in a comprehensive indoor environmental

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health or air quality assessment, which is issued to the client and considered confidential. This is how things are professionally done when environmental health assessments are performed using field testing methods with samples submitted for laboratory analysis. The proposed regulations do not allow a certified individual to receive a copy of the test results from the certified radon measurement business. This is absolutely unacceptable for an environmental testing professional because the test report is needed to do the job correctly. (1, 2, 4, 5, 6, 10 - 19, 21, 22, 24 -28, 30, 32, 33, 34, 36, 37, 39, 40 - 46, 48, 49, 51, 52, 54 - 58, 61, 62, 63, 65, and 67 - 76)

RESPONSE TO COMMENTS 25 THROUGH 29: The certified individual is, as the commenters state, the person who is in contact with the buyer (in the case of a real estate transaction) or the owner regarding radon testing, and is the person to whom the buyer and/or owner will turn for interpretation of the results of the radon testing. It is, therefore, appropriate that the certified individual be provided with the results of the radon testing. This does not violate the spirit of the statutory confidentiality provision, N.J.S.A. 26:2D-73. The statute states, in pertinent part, that “no person shall disclose to any person ... the address or owner of a nonpublic building that the person tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality.” The certified individual who performed the test did so with the consent of the owner and is already aware of the address and owner of the building, and that the building was tested for the presence of radon. The Department is, therefore, modifying N.J.A.C. 7:28-27A.3 on adoption to allow a certified business to disclose the results of the test to the certified individual who performed the test. The certified individual is affiliated with the business that receives the test results, so it is appropriate for the individual to have access to the results, as well.

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30. COMMENT: There are instances when homes are owned by the banks. Perhaps if there is some period of time allowed for the owner to sign the waiver and if they do not sign off within that period, the results can be given to the potential buyers. If the seller's representative signs off on a statement that the owner was contacted, but did not sign, the data can be provided to the buyers. (53)

RESPONSE: Adopted N.J.A.C. 7:28-27A.3(b) expressly states that the prospective buyer who contracts for the testing of a building has the right to receive the results of the testing. This disclosure is allowed by statute, N.J.S.A. 26:2D-73.

The Department is modifying the rule upon adoption to include the statutory provision that the seller must provide the buyer, at the time the contract of sale is entered into, a copy of the results of radon testing and evidence of any subsequent mitigation or treatment.

31. COMMENT: How will the mitigation firm obtain the test results needed for the pre-mitigation test and post-mitigation test? (7)

32. COMMENT: How does the mitigator obtain the pre-mitigation test result and what about confidentiality? (14)

RESPONSE TO COMMENTS 31 AND 32: The building owner or legal representative typically gives the results of the pre-mitigation test to the mitigator. The building owner is contracting with the certified business to mitigate the presence of radon in the building; therefore, the building owner is disclosing to the certified business that there is radon present in the building, and that the building was tested. Because the certified radon mitigation business is conducting

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mitigation activities in the building, the certified business is also aware that the building has been treated for the presence of radon.

In order to verify that the mitigation has been successful, the adopted rules require a certified radon mitigation business to ensure that a post-mitigation test is conducted no sooner than 12 hours after the mitigation system is installed, and no later than 30 days after installation. N.J.A.C. 7:28-27A.13(o). The most recent authorized mitigation protocols dictate the timing of the post-mitigation testing. 53 N.J.R. at 470. By necessity, then, the certified business must learn the results of that post-mitigation test in order that the certified business knows whether the mitigation is successful or if more work must be performed. It is not practical to require the results of the post-mitigation testing be sent only to the building, and then hope that the building owner provides the results to the certified radon mitigation business. If the building owner does not forward the results of the testing, and if the mitigation was not successful, the occupants of the building may continue to be exposed to radon. Accordingly, the Department is modifying the rules upon adoption to enable the certified radon mitigation business to obtain the results of the required post-mitigation testing.

This modification is consistent with the spirit of the statutory confidentiality provision, N.J.S.A. 26:2D-73. The statute states, in pertinent part, that “no person shall disclose to any person ... the address or owner of a nonpublic building that the person tested or treated for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality.” As stated above, the certified radon measurement business is acting with the consent of the building owner, and is aware that the building has been tested and treated for radon. Further, the certified radon mitigation business is aware that the building has been or will be tested for the presence of radon during the period post mitigation.

Radon mitigation services are subject to a form contract that the certified business submits to the Department for approval as part of the application for certification. N.J.A.C. 7:29-27A.11(c)7 and

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27A.13(l). In order to avoid the need for separate waivers of confidentiality, and to further the goal of the Radiation Protection Act to prevent unnecessary exposure to radioactive materials, the Department is adding N.J.A.C. 7:28-27A.13(l)12 upon adoption to require the certified radon mitigation business's form contract to state that the signed contract constitutes authorization for the certified radon mitigation business to obtain the results of the required post-mitigation testing.

33. COMMENT: If the owner of the building is not an individual, certain authorized individuals are listed who can receive the test results for a building owned by a corporation, partnership, etc. This will produce considerable paperwork and increased liability. If the State is going to dictate who can and cannot receive test results and requires a waiver, they should provide the language of the waiver. (7)

RESPONSE: Adopted N.J.A.C. 7:28-27A.3(c) provides a list of individuals to whom a certified business may disclose the results of radon testing, if the owner of the building is other than an individual. Because a business is not human, it can act only through individuals authorized to act on its behalf. This includes entering into contracts, such as with a certified radon mitigation business or individual. It is no more onerous for a certified radon measurement business to ensure that an individual is authorized to receive the results of radon testing than it is for the certified business to ensure that an individual is authorized to enter into a binding contract for the testing services.

Adopted N.J.A.C. 7:28-27A.3(c) states that the results of radon testing may be disclosed to certain representatives of a business that owns a building. The Department is modifying

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N.J.A.C. 7:28-27A.3(c) upon adoption to add the disclosure of the evidence of subsequent mitigation or treatment to the information that a certified business may disclose to a representative of a business.

With regard to the language of the waiver that authorizes the certified business or individual to provide the results of radon testing to an individual other than the owner, adopted N.J.A.C. 7:28-27A.9(o)1 through 4 identify the information that the waiver must include.

34. COMMENT: The business should be able to disclose results to more parties than listed at N.J.A.C. 7:28-27A.3(b) including the property owner, occupant of the property, a prospective buyer, a tenant who contracts for a test, the radon professional who conducted the test, and additional departments as needed to enable data sharing with the Centers for Disease Control and Prevention. (34 and 50)

RESPONSE: The Radiation Protection Act, at N.J.S.A. 26:2D-23, governs the confidentiality of information related to radon testing and treatment. As provided in the Response to Comments 25 through 29, the Department is modifying N.J.A.C. 7:28-27A.3 upon adoption to include disclosure to the certified radon measurement individual who performs a test, and (as to a post-mitigation test) the certified radon mitigation business installing a mitigation system. Disclosure to these individuals and businesses is necessary for them to perform their duties and is not beyond the scope of the statutory confidentiality provision, when considered in the context of the radon testing and mitigation contemplated in the statute. The statute does not include a tenant or non-owner occupant of the building among those who may receive the information absent the owner's written waiver of confidentiality. Nor is disclosure to a tenant or non-owner occupant

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necessary for the certified business or individual to reasonably perform testing or mitigation work. Therefore, only if the owner waives the right of confidentiality can the certified business or individual disclose the information to the tenant or non-owner occupant of the building. As a practical matter, an owner will likely need to communicate with a tenant or non-owner occupant regarding access to the building for purposes of radon testing or mitigation. In such case, the owner is likely to disclose the information to the tenant or non-owner occupant. Nothing in the rules precludes the owner from disclosing the information to whomever the owner chooses.

35. COMMENT: The Department is requiring measurement businesses and/or measurement technicians to buy three documents at \$50.00 per document to provide a service they were already providing under the existing regulations. Explaining that these documents may be some of the least expensive documents available trivializes the impact of the cost on measurement technicians if they are expected to purchase their own (copyrighted) versions. (78)

RESPONSE: The Department is not requiring all certified individuals to purchase each of the protocol documents. 53 N.J.R. at 476. The number of protocol documents a business or individual would need to purchase depends on the types of buildings they choose to test or mitigate. A fundamental aspect of testing and mitigation is to follow a protocol in order to test or mitigate correctly. Therefore, the cost of doing business as a certified individual or business includes the purchase of those protocols. The prior rules similarly required certified individuals and businesses to maintain copies of, and comply with, authorized measurement protocols. See, for example, N.J.A.C. 7:28-27.21, Recordkeeping requirements for a certified radon measurement business or certified radon mitigation business, which requires the certified

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measurement business to maintain copies of the methods and techniques the measurement business uses. The difference is that the protocols for radon measurement and mitigation that use the most current science are issued by entities other than the EPA (which issued the “authorized measurement protocols” as defined at existing N.J.A.C. 7:28-27.2). The entities own the rights to the most current protocols and make them available for a fee, while the EPA does not charge for its protocols.

N.J.A.C. 7:28-27A.5 Affiliation

36. COMMENT: There is a lot of redundancy regarding responsibilities of affiliates. It would be easier if this document combined the responsibilities of the affiliates and then include a second section for the next affiliate. For example, in addition to the above items you are also responsible for the following items. (46)

RESPONSE: The adopted rules are organized to enable an applicant for a business or individual certification to easily locate the requirements specific to the certification. The rules contain a single affiliation section because the same affiliation requirements apply to all individual and business certification categories.

37. COMMENT: Allowing a mitigation specialist to be affiliated with more than one mitigation business will create considerable issues with legal liability and will degrade the quality of the work. (7)

RESPONSE: A mitigation specialist that is affiliated with more than one mitigation business is obligated to perform radon mitigation work as agreed upon in the signed affiliation agreement

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with the business for which the mitigation is performed. Only an individual affiliated with a certified business may do work on behalf of the certified business. See N.J.A.C. 7:28-27A.5(a) and 53 N.J.R at 466. Both the certified radon mitigation business and the individual are responsible for complying with the subchapter. N.J.A.C. 7:28-27A.5(d)6.

38. COMMENT: The Department has not yet posted the affiliation form that the proposed rules require; accordingly, the regulated community cannot comment on the form, or determine whether it is too broad and over-reaching. Since the form cannot be viewed, the regulation should be amended, so that the affiliation form includes only those items at N.J.A.C. 7:28-27A.5(d)1 through 6, and nothing else. (1, 2, 4, 5, 6, 8, 12, 13, 15, 17, 18, 19, 21, 22, 24 - 28, 30, 32, 33, 36, 37, 40, 42, 43, 44, 48, 49, 51, 52, 55, 56, 57, 63, 58, 62, 65, 67, and 72 - 76)

RESPONSE: As provided at N.J.A.C. 7:28-27A.5(d), the affiliation form that the Department will make available at www.njradon.org (as provided in the notice of proposal Summary, 53 N.J.R. at 463) includes only the information that is specified in the rule. Because the affiliation form will contain only the items specified in the proposed rules, the Department provided proper notice of the contents of the form. No change to the rule is necessary.

39. COMMENT: N.J.A.C. 7:28-27A.5(i) allows the Department to limit the number of affiliates associated with a measurement business. It also allows the Department to limit the number of measurement businesses an affiliate is associated with. Should the Department decide to reduce the number of affiliations either way, what is the notification process? Specifically, what kind of advance notice is provided to avoid tests being out in the field when the reduction takes

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effect? Would any and/or all tests being exposed at the time be voided? There are concerns that this policy could limit an individual's ability to freely affiliate with multiple businesses. (1, 2, 4, 5, 6, 8, 12, 13, 15, 17, 18, 19, 21, 22, 24 - 28, 30, 32, 33, 34, 36, 37, 40 - 45, 48, 49, 51, 52, 54 - 58, 61, 62, 63, 65, 67, 69, 73, 74, 75, and 76)

RESPONSE: The Radiation Protection Act (Act) empowers the Department to issue orders for the implementation and enforcement of the provisions of the Act and the adopted rules.

N.J.S.A. 26:2D-9. As with any violation of the adopted rules, as provided at proposed N.J.A.C. 7:28-27A.5(i), potential violations of this subchapter will be investigated by Department staff. If an order is issued subsequent to the Department's investigation and that order denies, suspends, or revokes a certification, or limits the number of affiliations, the recipient of the order may request an adjudicatory hearing within 20 days of receipt of the order. This provides the business or individual with a mechanism by which to dispute the Department's findings. If there is no timely request for an adjudicatory hearing, or if an administrative law judge upholds the Department's order, the individual or business is required to immediately comply with the section of the adopted rules that was violated and reduce the number of affiliations as specified in the order.

The Department is modifying N.J.A.C. 7:28-27A.5 and 27A.31 upon adoption to provide the opportunity for an adjudicatory hearing for orders that limit the numbers of affiliations.

While the violations that lead to such an order may result in penalties, which the Department may pursue in Superior Court, in accordance with N.J.S.A. 26:2D-13, the denial, suspension, or revocation of a certification, and the limitation of the number of affiliates or affiliations are administrative actions subject to the APA. Accordingly, it is appropriate that the rules provide

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for an adjudicatory hearing. Adopted N.J.A.C. 7:28-27A.31 identifies the types of actions that may lead to a limitation on the number of affiliations. The scope and duration of the limitation depends on the severity of the violation; however, the Department will not remove the limitation until the actions that gave rise to the limitation have been corrected.

Additionally, in order that individuals or businesses are aware of suspensions or revocations that may affect them, adopted N.J.A.C. 7:28-27A.31 provides that the Department will notify a business's affiliates of the business's suspension or revocation, and will notify businesses with which an individual is affiliated of an individual's suspension or revocation.

N.J.A.C. 7:28-27A.6 Authorized Proficiency Testing and Calibration for Portable Devices

40. COMMENT: A certified radon measurement business cannot ensure that an affiliate conducts a radon test after passing the authorized proficiency test for that device model. The measurement business can only invalidate the results of any testing performed on a device model for which an affiliate has not passed an authorized proficiency test. (30 and 64)

RESPONSE: The Department acknowledges that a certified individual could deploy a portable device, for which he or she has not passed an authorized proficiency test, without the business knowing. An affiliate must provide, to a certified business, proof of passing an authorized proficiency test for each device model that the affiliate uses. N.J.A.C. 7:28-27A.5(b)4.

Therefore, the certified business can verify whether the test that an affiliate submits was performed with a device model that the affiliate is authorized to use.

The Department is modifying N.J.A.C. 7:28-27A.6 to remove the requirement that the certified radon measurement business ensure that an affiliate conducts a radon test only after

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passing the authorized proficiency test for that device model. This modification will not affect public safety or the protectiveness of the rules. Adopted N.J.A.C. 7:28-27A.9(l) requires a measurement business to invalidate a test that does not meet the requirements of the authorized measurement protocols, the QA plan, or adopted rules. Therefore, the business must invalidate any test that an affiliate performs with a device model for which he or she did not pass the authorized proficiency test.

41. COMMENT: A certified radon measurement business cannot ensure that devices owned by the affiliates are calibrated annually because affiliates could own devices listed with other businesses. Also, devices may be leased, not owned. A device may be out of use for a period of time, and, therefore, not calibrated. In this case, it is not appropriate to specify annual calibration. A suggested revision is that a certified radon measurement business shall ensure that all devices owned or leased by the business and the affiliates are calibrated within the last 365 days or it shall invalidate any testing performed on the device before the date on which the calibration is brought up to date and the calibration certificate is provided by the affiliate. (30)

RESPONSE: A certified measurement technician or specialist may be affiliated with more than one certified measurement business. N.J.A.C. 7:28-27A.5. A certified business is responsible to ensure that the device that its affiliate uses with the business is appropriately calibrated. It is not responsible for a device that the affiliate uses only with a different business.

As provided at adopted N.J.A.C. 7:28-27A.6(b)5, a certified individual must ensure that the device that the individual is using has a current calibration certificate prior to using the device. A business may include a device on its certification (whether initial or renewal) only if

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the device has a current calibration certificate, and the calibration must be completed no more than 12 months prior to the submission of the initial or renewal application. N.J.A.C. 7:28-27A.6(b)3. Therefore, any device that has not been calibrated within the required interval cannot be added to the certification (or cannot be listed on the application for certification renewal). A device that is out of use has likely not been calibrated and cannot be included in the business's, or the individual's, certification.

Adopted N.J.A.C. 7:28-27A.9(l) requires a measurement business to invalidate a test that does not meet the requirements of the authorized measurement protocols, the QA plan, or adopted rules. A measurement made with a device that does not have a current calibration certificate does not meet the requirements of the rules; therefore, the certified business must invalidate a test taken with the device.

The Department is modifying N.J.A.C. 7:28-27A.6(b) upon adoption to remove the requirement that a certified radon measurement business ensure that devices owned by the business and by affiliates are calibrated annually. A certified measurement business would not know that an affiliate used an uncalibrated device until after the test is performed, when the affiliate submits the test data to the business for review. This modification of the rules will not affect public safety or the protectiveness of the rules; any test conducted with an uncalibrated device is not in compliance with the rules and must be invalidated.

In addition, the Department is modifying N.J.A.C. 7:28-27A.6(b)1 and recodified paragraph (b)6 upon adoption to refer to leased devices. As the commenter mentions, an individual may own or lease a device.

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42. COMMENT: A measurement business must submit the name of the device manufacturer, the device model number, the device serial number, the device owner's name, the current calibration certificate, the names of all affiliates that will use the device for testing, and confirmation that each affiliate using the device has passed the authorized proficiency test when a device or device model is added to the certification. The following language should be inserted at N.J.A.C. 7:28-27A.6(d): the measurement business should invalidate the test if an affiliate who is not listed to use the devices performs a test with the device in question. The business will need to be able to cite the regulation on the client report when it invalidates a test for this reasoning. (30)

RESPONSE: Adopted N.J.A.C. 7:28-27A.9(l) requires a measurement business to invalidate a test that does not meet the requirements of the authorized measurement protocols, the QA plan, or the adopted rules. If a test is conducted with a device that is not identified on the certified business's certification, the certified measurement business must invalidate the test because it does not meet the requirements of the rules. The business may cite to N.J.A.C. 7:28-27A.9(l) as the reason for invalidating the test. The Department is not modifying the rules in response to this comment.

43. COMMENT: Proposed N.J.A.C. 7:28-27A.6, Authorized proficiency testing and calibration for portable devices, could increase testing costs by up to \$160.00 for the cost of proficiency tests and another \$160.00 for device calibration. (64)

RESPONSE: As discussed above in the Response to Comments 5 through 9, the authorized proficiency test is a one-time cost per device and is only incurred for portable devices. The

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notice of proposal Summary, 53 N.J.R. at 477, states that the approximate cost for calibration is \$130.00 to \$160.00 per device. A majority of certified individuals who currently own portable devices already pay for the calibration. Portable devices, such as continuous radon monitors, are costly to purchase; therefore, more tests are performed with charcoal canisters than with continuous radon monitors. The Department estimates that these requirements for portable devices will affect only approximately 10 percent of certified radon measurement individuals. The authorized proficiency test is important because it ensures that a certified individual knows how to use the device; and calibration ensures accurate measurements. 53 N.J.R. at 465.

44. COMMENT: Proposed N.J.A.C. 7:28-27A.6 says a measurement technician will be required to send calibration certificates to the Department, rather than to the business. Was that a typo? If it was not a typo, then how is this going to be achieved? Can the certificates be emailed and/or mailed? It is preferable to use email. (46)

RESPONSE: Adopted N.J.A.C. 7:28-27A.6(b) requires an individual to submit the current calibration certificate to the certified business with which the individual is affiliated. See the discussion in the notice of proposal Summary, 53 N.J.R. at 465. The certified business submits the calibration certificate to the Department as an amendment to the business's certification. N.J.A.C. 7:28-27A.7(d). Certificates can be mailed or emailed to the Department.

45. COMMENT: The notice of proposal mentions a radon chamber facility. There are only a few of them in the country. Individuals will have to go to this facility for a type of proficiency test. Please elaborate on what this encompasses. (46)

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RESPONSE: N.J.A.C. 7:28-27A.6(a) requires a proficiency test only for portable devices, since a laboratory is responsible for evaluating the results from non-portable devices. This is discussed in the notice of proposal Summary, 53 N.J.R. at 464. The Department anticipates that approximately 10 percent of certified measurement individuals will use portable devices.

It is true that there is a limited number of approved radon chamber facilities; however, the facilities are used to conducting a large volume of proficiency tests. New Jersey is not the only state that requires proficiency testing. In addition, the National Radon Proficiency Program, for example, also requires proficiency testing as part of its certification process. The Department anticipates that individuals will be able to obtain the required results during the several months of transition to the new rules.

An individual does not need to go to a radon chamber facility in order to take a proficiency test. Rather, the individual sends the portable device to the approved radon chamber facility where the device is exposed to a specific amount of radon for a period of time. The chamber sends the device back to the individual, who reads or analyzes the radon concentration on that device. The individual then sends his or her reading or analysis back to the approved radon chamber facility. To pass the proficiency test, the individual's reading or analysis of the concentration must be within 25 percent of the actual radon concentration. The chamber issues a report stating whether the individual passed the proficiency test. The individual submits the passing report to the Department. If the individual does not pass, the individual must take the proficiency test again.

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46. COMMENT: The concept of requiring measurement technicians to demonstrate proficiency in handling various measurement devices is entirely reasonable. In practice, however, it represents a significant cost to those already providing those services. There are numerous home inspection firms that provide more than one type of measurement device and/or more than one type of continuous radon monitor (CRM). A 10-man inspection firm that uses two models of CRMs will incur a cost of approximately $\$150.00 \times 2 \times 10 = \$3,000$ to meet these proficiency requirements. The increased fees may necessitate dropping services to manage the incremental costs. (78)

RESPONSE: It is the responsibility of the certified radon measurement business to have qualified affiliates who know how to use the various testing devices, and it is the affiliate's responsibility to know how to use the testing devices in order to provide the highest quality radon testing. Regardless of the number of certified individuals a home inspection business employs, the certified individual is responsible for performing one proficiency test for each device model that the certified individual uses. N.J.A.C. 7:28-27A.6(a). The requirement that individuals that use continuous radon monitors and electrets perform a one-time proficiency test per device type assures clients and businesses that the radon testing is being done by qualified affiliates that know how to use their devices correctly.

N.J.A.C. 7:28-27A.9 Responsibilities of a Certified Radon Measurement Business

47. COMMENT: Proposed N.J.A.C. 7:28-27A.9(g) adds additional information to chain of custody forms. For example, the proposed rule requires the date of calibration of the device, which the existing rule does not require. The forms that certified businesses use under the

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existing rules are quite comprehensive and should not be changed. Ten percent of the certified individuals use CRMs and have purchased a system to auto-fill certain fields on these forms.

The proposed changes to the forms will cause individuals a lot of extra work and will result in additional costs to those who have purchased the systems that auto-fill the information. (30, 46, and 76)

RESPONSE: As provided at adopted N.J.A.C. 7:28-27A.9(g), the information on the form identifies the time and location where the test was performed, the client for whom it was performed, the specific device used, when the device (if portable) was calibrated, the affiliate who deployed and retrieved the device, and other information including memorializing the conditions and purpose of the test. The purpose of the chain of custody is to ensure the integrity of the test, so that the test results are reliable. The Department requires devices to be calibrated annually in order to ensure that test results are valid. The tester identifies the date of calibration on the chain of custody form as a confirmation that the device the tester is using is properly calibrated. As discussed in the Economic Impact, there may be a slight increase in cost to develop computer tracking and monitoring. This would be a one-time set-up cost. 53 N.J.R. at 477.

48. COMMENT: Will measurement technicians or measurement businesses be held in violation for tests in the field if an old, outdated chain of custody form is used? How will this be handled at the time of change over to the adopted rules if a test is conducted before the rules are adopted or if tests are in transit to the lab at the time of change over? If a measurement technician inadvertently uses a noncompliant chain of custody form, will the measurement business be

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required to reject the test, or will the measurement technician be afforded the opportunity to submit the appropriate chain of custody form? (78)

RESPONSE: After the measurement business's new application is approved, the business, and its affiliates, are required to use the new chain of custody forms. The Department will work proactively with businesses and affiliates to encourage a smooth transition to the new forms. Submission of the chain of custody information is required at adopted N.J.A.C. 7:28-27A.9(g), as part of the QA plan. Pursuant to adopted N.J.A.C. 7:28-27A.9(l), a certified measurement business must invalidate a test that does not meet the requirements of the business's approved QA plan.

49. COMMENT: At one time in the past, the Department directed measurement businesses to reject samples that were received with an incomplete chain of custody form, then it modified that directive. What will the Department's position be regarding the new chain of custody form? (78)

RESPONSE: Adopted N.J.A.C. 7:28-27A.9(g) clearly identifies the items that a chain of custody form must contain and requires a chain of custody form to be completed in its entirety. The chain of custody form is part of the certified business's QA plan. As the Department stated in the Response to Comment 41, the business must invalidate a test that does not meet the requirements of the QA plan.

50. COMMENT: If it is to become the measurement business's responsibility to disseminate test results, the measurement business will require additional contact information on the chain of custody form. The measurement technician will be able to readily supply the buyer's address

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and email but may or may not have access to the email address for the buyer's lawyer or real estate agent. The measurement technician does not have access to the email address for the homeowner's lawyer or real estate agent. Any requests for information on future chain of custody forms beyond the client's contact information must be optional, and not result in test rejection or report delay. (78)

RESPONSE: The requirement for the business to issue the client report is not new. Prior N.J.A.C. 7:28-27.28(b) and adopted N.J.A.C. 7:29-27A.17(c) both require the measurement business to issue the report. The adopted rules allow the measurement business to issue the report to individuals specifically identified, unless a waiver has been signed by the owner in accordance with adopted N.J.A.C. 7:28-27A.9(o). See the Response to Comments 25 through 29, regarding the modification of N.J.A.C. 7:28-27A.3 upon adoption to include the certified individual among those who may obtain results of testing. The measurement business is not required to issue test results to all the individuals the commenter mentions.

N.J.A.C. 7:28-27A.10 Quality Control Measures

51. COMMENT: Not all tests should be duplicate tests. (29, 56, and 59)

52. COMMENT: Testing using two test devices placed side-by-side in every required test location is excessive. It gives the impression that a single test device, despite all of the quality assurance/quality control that goes into ensuring testing accuracy and precision, is unreliable and insufficient. (68)

53. COMMENT: Duplicates are now required 100 percent of the time. Companies that make charcoal canisters benefit from this requirement. A requirement to install a radon mitigation

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system in every home would be more useful. Individuals who use continuous radon monitors (CRMs) or other electronic monitors will lose half of the monitors to satisfy bureaucracy. Twice as many testing devices will be needed. (73)

54. COMMENT: The requirement for all duplicate tests will increase the cost of radon testing to the measurement technician or the company they are affiliated with for no valid reason.

Duplicates are currently performed every 10 tests, and the two results are always within a .01 pCi/L difference. A retest option is offered to anyone who feels their results are too close to 4.0 pCi/L. (29)

55. COMMENT: The requirement to use two canisters is too expensive and will result in increased fees to clients. (31, 56, and 65)

56. COMMENT: A sole proprietor will pass on the added expense of radon testing to the public. The expense of buying charcoal canisters is now going to be doubled and the laboratories that analyze charcoal canisters are now going to double their profits. (46)

57. COMMENT: Home inspectors have to pay for the duplicate and blank tests when they are doing a free service for radon companies by placing the extra tests. It is the company's responsibility, yet they contribute nothing to the testing, and they will not even divulge the measurements of the duplicates. (62)

58. COMMENT: A likely consequence of the necessary cost increases associated with the shipping and lab analysis of duplicate test devices for every required test location is that fewer people will hire certified professionals to perform elective radon testing. These industry-created measurement protocols will, however, be used to justify price gouging when radon testing is required for real estate purposes and for commercial properties. (68)

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RESPONSE TO COMMENTS 51 THROUGH 58: The adopted rules do not require all tests to be duplicate tests. Unless the applicable protocol requires a duplicate test (such as for a real estate transaction when using devices other than CRMs), adopted N.J.A.C. 7:28-27A.10(c) requires duplicate testing for the lesser of 50 tests per month, or 10 percent of the monthly tests. 53 N.J.R. at 468. This is consistent with the number of duplicate tests that certified individuals are already conducting, as one commenter states. A certified radon measurement business that has access to only a single CRM may use another type of testing device to meet duplicate requirements. N.J.A.C. 7:28-2A.10(c). The Department recognizes that a CRM is a relatively expensive piece of equipment, and a second CRM device may not always be available. 53 N.J.R. at 468.

Following the authorized measurement protocols may result in additional costs to some businesses. The authorized measurement protocols from ANSI/AARST (defined at N.J.A.C. 7:28-27A.2) require duplicate testing in every real estate transaction for devices other than CRMs. This requirement is based on the most current science, intended to protect the public from unnecessary exposure to radiation. Duplicate protocols for real estate transactions have been EPA-recommended in guidance since the 1980s.

As stated in the Economic Impact, 53 N.J.R. at 477, some certified radon measurement businesses already conduct 100 percent duplicate tests, either because they are already following the national protocols, or the duplicates are part of their quality control programs. These businesses will not incur additional costs. Under the adopted rules, all certified measurement businesses are subject to the same duplicate testing requirements.

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59. COMMENT: What is the scientific reason that two tests set four inches apart would be necessary? (29)

60. COMMENT: Was there a problem with measurements made using a single test device? (68)

RESPONSE TO COMMENTS 59 AND 60: Duplicate tests are one of the quality control requirements that ensures the integrity of the radon test, as discussed in detail in the notice of proposal Summary, 53 N.J.R. at 468.

61. COMMENT: The rules should make an exception for the home inspectors, so they do not need to have more certification and regulation that is beyond the scope of what they do. The constant heavy handedness of licensing requirements that require individuals to learn things they will never use is absurd. (73)

RESPONSE: The Radiation Protection Act, at N.J.S.A. 26:2D-70 through 78 (Act), requires the Department to establish a program for the certification of persons to test for, mitigate, and safeguard buildings from the presence of radon gas and radon progeny. Therefore, if a home inspector conducts radon testing or mitigation, the inspector must be certified, and must meet the same education and experience requirements as other certified radon testers and mitigators. A home inspector may avoid the certification requirements (including the education and training requirements) by not performing radon testing or mitigation.

62. COMMENT: If a house has both a slab on grade portion of the home and a basement, like a typical New Jersey split level, currently testing is conducted in both of those locations in that home. Would there now be two devices per location within the house for a total of four in this

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case? Can the Department tell the public how many tests are actually recommended per type of building style or location? This will make it easier to convince the public that it is in their best interest to actually do multiple testing within given structures. (3)

RESPONSE: The authorized measurement protocols specify how many tests must be deployed in a structure and the test locations. The Department cannot, therefore, make a blanket statement about how many tests a particular type of building requires. However, the certified individual can show the client the relevant testing protocol as justification for the number of tests the certified individual must perform.

63. COMMENT: Proposed N.J.A.C. 7:28-27A.10(c)1 states that the control limit for two tests that are less than 2.0 pCi/L is when the absolute value of the difference between the two tests is >1 pCi/L or both tests are not less than the minimum detectable concentration. A revision is suggested for the control limit RPD because a 0.3 pCi/L and <0.2 pCi/L would technically be invalid under this reasoning if one is below the 0.2 pCi/L MDL that the other has to be as well or it will unnecessarily invalidate many low-level tests that are potentially within 40 to 67 percent RPD and should not be invalid. (31)

RESPONSE: The Department reviewed the referenced table control limit requirements for tests that are <2.0 pCi/L. The commenter's concern is valid. The Department has determined that this should be a warning limit, not a control limit and is modifying N.J.A.C. 7:28-27A.10(c)1 to state that the warning limit is triggered when the absolute value of the difference between two tests that are less than 2.0 pCi/L is >1 pCi/L if both tests are above the minimum detectable concentration.

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64. COMMENT: The notice of proposal states, “A certified radon measurement business shall distribute devices for blank measurements among all the places where the devices are stored, transported, and deployed, including: 1. Side-by-side with the test; 2. At the certified business location; 3. At the affiliate’s office and storage area; and 4. In the vehicles that transport the devices.” The radon measurement business cannot “distribute” the blank tests because it cannot oversee or enforce where the affiliates place those blank tests. The business can only instruct the affiliates to comply. (31)

RESPONSE: The Department is modifying N.J.A.C. 7:28-27A.10(e) upon adoption to require a certified radon measurement business to distribute devices for blank measurements and to provide instructions for deploying the devices. The certified business distributes blank devices not only to its affiliates, but also to individuals not subject to certification. N.J.A.C. 7:28-27A.10(c). The deployment instructions will ensure that individuals using the devices are aware of the requirement to deploy duplicate devices and how to deploy them.

65. COMMENT: Proposed N.J.A.C. 7:28-27A.10(j) requires a certified radon measurement specialist responsible for the daily operations of the certified business to, each quarter, prepare and submit, to the individual who signed the application, a written report of the results of duplicate tests, blank tests, authorized proficiency tests, calibrations, and spike tests, voltage drift, zeroing, and reference cell checks, as applicable, and any corrective action. Should this report include results of all mentioned QA/QC tests or only those that required corrective action? (31)

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RESPONSE: Adopted N.J.A.C. 7:28-27A.10(j) specifies that all QA/QC data are to be included in a quarterly written report. The report must document corrective action taken due to inconsistencies in the QA/QC measures as well.

N.J.A.C. 7:28-27A.13 Responsibilities of a Certified Radon Mitigation Business

66. COMMENT: Unless the certified individual is a licensed electrician, the individual should not be overseeing electrical work. A licensed electrician is the only person that should do electrical work. (7)

RESPONSE: In the context of specifying what an uncertified individual may and may not do with regard to a radon mitigation system, proposed N.J.A.C. 7:28-27A.13(n) does state that a certified radon mitigation business shall ensure that an uncertified individual assisting a certified individual with the mitigation shall not oversee the electrical installation. The Department does not mean to imply that a certified individual may perform electrical work that the individual is not otherwise licensed to perform. The Department is modifying N.J.A.C. 7:28-27A.13(n) upon adoption to remove the reference to electrical installation.

67. COMMENT: At proposed N.J.A.C. 7:28-27A.13(n), an uncertified individual may perform basic labor including, but not limited to, moving supplies and tools, drilling holes in a foundation, clearing gravel and dirt from the suction point, cutting pipes, and cleaning the area after the mitigation system is installed. Uncertified persons must be able to do all aspects of the installation as a part of their training. This work can be under the supervision of the specialist. (7 and 30)

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RESPONSE: As set forth at N.J.A.C. 7:28-27A.13(n), as modified upon adoption, there are limited duties that an uncertified individual may perform during and after mitigation system installation. An uncertified individual may not perform all aspects of the radon mitigation installation. Uncertified individuals who perform basic labor tasks can learn from observing a certified individual perform mitigation installations, and this experience can be used toward the requirement for a certified mitigation individual. Adopted N.J.A.C. 7:28-27A.24(c) requires documentation of work experience. In this case, documentation would need to include that the individual performed basic construction tasks and received instruction while observing the certified radon mitigation specialist install mitigation systems. Therefore, the Department is modifying N.J.A.C. 7:28-27A.26(b) upon adoption to include radon mitigation education and experience. For education, an individual can show proof that he or she received mitigation instruction through observing radon mitigation system installation under the direction of a radon mitigation specialist. For experience, an individual can submit documentation of the design and installation of mitigation systems if he or she has obtained mitigation experience by being licensed, certified, or accredited by another state or a nationally recognized organization.

68. COMMENT: Schedule 20 pipe is currently allowed to be used to install a radon mitigation system. Why is four-inch schedule 20 pipe (ASTM D2729) no longer acceptable? (35)

RESPONSE: The adopted rules require certified businesses and individuals to comply with the “authorized mitigation protocol” or “authorized measurement protocol” that applies to the particular mitigation or measurement that is being performed. Adopted N.J.A.C. 7:28-27A.2 defines “authorized mitigation protocol” and “authorized measurement protocol” by

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incorporating by reference certain protocols that are established by the AARST and the ANSI.

The incorporated protocols reflect the most recent science. 53 N.J.R. at 461-462. All three of the authorized mitigation protocols require schedule 40 pipe, with some exceptions based upon the amount of air flow required for the system to be effective and based on approved building codes. Other less rigid pipe, including schedule 20, may be allowable in certain circumstances. The reasons that the authorized protocols allow or no longer allow a particular type of pipe are beyond the scope of this rulemaking.

69. COMMENT: Proposed N.J.A.C. 7:28-27A.13(g) refers to “(n) above.” It should say “(n) below.” (30)

RESPONSE: The Department is correcting N.J.A.C. 7:28-27A.13(g) upon adoption, as noted.

70. COMMENT: Proposed N.J.A.C. 7:28-27A.13(l)9 says a certified radon mitigation business must provide a client with the operation and maintenance of the mitigation equipment, including the possible energy costs as part of the written contract. This information is commonly placed in a packet and on stickers affixed to the actual mitigation system but is not contained in the contract. Typically, the house sells after mitigation, and it is the purchaser that will need this information. (30)

RESPONSE: Adopted N.J.A.C. 7:28-27A.13(l)9 provides the minimum requirement. The business can place additional copies of this information where appropriate, in order for the owner to have access to this documentation.

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71. COMMENT: Proposed N.J.A.C. 7:28-27A.13(l)10 says that the business must provide estimated costs on the system if the installed system does not meet the standards specified in the warranty. This should be made clearer as to which potential costs should be addressed. (30)

RESPONSE: The Department has determined that it would be difficult for a business to provide specific costs for additional work on the system. Therefore, the Department is modifying N.J.A.C. 7:28-27A.13(l)10 upon adoption to require a business to document, in the contract, when there would be additional charges for labor and materials if the system does not meet the standards as specified in the warranty.

72. COMMENT: Proposed N.J.A.C. 7:28-27A.13(m) requires the business that is altering a system to upgrade the system to bring it into compliance with current protocols. If the Department is going to leave this in the regulation it should support the mitigation businesses by issuing a statement to consumers in the form of a fact sheet or a client guidance document. Often consumers will only want to replace a broken fan, as long as the fan is not in the basement. This requirement could potentially lead to consumer pushback, complaints, and bad reviews. (30)

RESPONSE: The Department recognizes that it would be difficult for a business to require a client to pay for upgrades to bring the system into compliance if the client were not inclined to do so. Therefore, the Department is modifying N.J.A.C. 7:28-27A.13(m) upon adoption to require the business, as part of the contract, to advise the client of the upgrades, estimated costs, and health impacts in order for the client to make an informed decision. It is up to the client whether to have the system upgraded.

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73. COMMENT: Proposed N.J.A.C. 7:28-27A.13(o) requires a certified radon mitigation business to ensure that a short-term radon test is conducted no sooner than 24 hours after a mitigation is installed and functioning. The mitigation business is not equipped to ensure that a post-mitigation test is conducted within the specified period and cannot control when consumers using self-service test kits perform the post-mitigation testing. (30)

RESPONSE: A mitigation system is installed to limit an individual's exposure to high levels of radon and reduce the risk of getting lung cancer. Post-mitigation testing is critical because it tells the client and the business if the mitigation system is working properly to bring the radon level down below the Federal and State action level of 4.0 picocuries per liter. The mitigation business is responsible for ensuring that the post mitigation test is conducted, and for training its affiliates regarding the post-mitigation requirements. A certified individual can test the building, or the mitigation specialist can leave a test device with the owner to conduct the test. If the owner does not conduct the test within a reasonable timeframe, the certified business is expected make further arrangements for a certified individual to test the building in order to comply with adopted N.J.A.C. 7:28-27A.26(j). If a building owner, rather than a certified individual, is going to conduct the post-mitigation test, and the certified radon mitigation specialist is concerned that the building owner will conduct a post-mitigation test earlier than 24 hours after the mitigation is complete, the certified radon mitigation specialist can wait a day before providing the test to the building owner.

N.J.A.C. 7:28-27A.16 Recordkeeping

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74. COMMENT: The rules should allow for electronic records inspection as an alternative to in-person records inspection to conserve valuable State personnel time and travel for field inspections and complaint resolution. (34 and 50)

RESPONSE: N.J.A.C. 7:28-27A.16, Recordkeeping, requires a certified radon measurement business and a certified radon mitigation business to maintain records in a format that is immediately available to the Department. The section does not specify the format of the record, provided it is immediately available for inspection. Nor does the section specify that the Department's representative must be physically at the certified business's location in order to request the record. Accordingly, the rules allow for electronic records inspection and electronic records production. An electronic inspection may not be a suitable alternative to an in-person inspection in all instances. As provided at N.J.A.C. 7:28-27A.28, Inspections, the Department and its representatives may enter and inspect any site, building, or equipment to ascertain compliance.

N.J.A.C. 7:28-27A.18 Radon Measurement Specialist - Initial Certification

75. COMMENT: For initial certification as a radon measurement specialist, a radon measurement technician, and a radon mitigation specialist, the applicant must document that they successfully passed a radon examination for the specific category or equivalent category administered by the National Radon Proficiency Program and complete training from a nationally recognized organization. The proposed rule should include the National Radon Safety Board program in addition to the National Radon Proficiency Program as an approved provider of the required exams. The National Radon Safety Board currently offers the radon

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measurement specialist, radon measurement technician, and radon mitigation specialist exams and is in the process of digitizing them for online delivery through virtual proctoring or in-person proctoring. The National Radon Safety Board exam program now meets the Department's requirements. (14)

RESPONSE: In 2015, the Department signed a Memorandum of Agreement (MOA) under which the National Radon Proficiency Program would develop and administer the New Jersey-specific radon certification examinations. The adopted rules supersede the MOA. The proposed rules require an applicant to take and pass the National Radon Proficiency Program examinations, without allowing an alternative. Although only the National Radon Proficiency Program meets the Department's standards at this time, the Department recognizes that, in the future, there may be other examination providers that offer examinations that meet the Department's requirements. The Department is, therefore, modifying N.J.A.C. 7:28-27A.18(c)5 upon adoption to allow other organizations to administer examinations, provided the organization is approved by the Department. The Department will approve an examination that is substantively similar to the National Radon Proficiency Program and will provide a list of approved organizations on its website.

76. COMMENT: Initial training for a specialist should remain 24 hours, where eight of those hours should be used to train individuals about multifamily buildings, and schools and large buildings. (74)

RESPONSE: Individuals applying for initial certification under the prior rules were required to take a training course specifically developed for New Jersey. The number of hours of New

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Jersey-specific training varied from 16 to 24, depending on the level of certification. As discussed in the Response to Comment 75, the National Radon Proficiency Program provides the training under an MOA with the Department.

The Department proposed, at N.J.A.C. 7:28-27A.18(c)3, to require an applicant for initial certification as a radon measurement specialist to take 24 hours of training from a nationally recognized organization. The training need not be specific to New Jersey. The adopted rules supersede the MOA with the National Radon Proficiency Program. The nationally recognized organizations that provide training for radon measurement specialists provide 16-hour courses, except for the training specific to New Jersey. Once New Jersey-specific training is no longer required, few, if any, providers will offer 24-hour training. The Department has reviewed its training requirements and determined that the 16-hour course sufficiently prepares an individual to perform radon testing. Therefore, the Department is modifying N.J.A.C. 7:28-27A.18(c)3 upon adoption to require an applicant for certification as a radon measurement specialist to complete 16 hours of training, which the nationally recognized organizations routinely provide. If the individual decides to test the other building types, the additional training will be required.

N.J.A.C. 7:28-27A.20 Responsibilities of a Certified Radon Measurement Specialist

77. COMMENT: The training courses for multifamily buildings and for schools and large buildings should be approved by a nationally recognized organization, not just provided by the organization. (34 and 50)

RESPONSE: Proposed N.J.A.C. 7:28-27A.20(c) and 27A.23(b) require certified radon measurement specialists and technicians who test multifamily buildings, schools, or large

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buildings to take an eight-hour training course. Proposed N.J.A.C. 7:28-27A.26(c) and 27A.34(e) provide similar requirements for certified radon mitigation specialists and technicians. The proposed rules require the training course to be from a nationally recognized organization. If the nationally recognized organization provides the course itself, presumably that organization also approves of the course; therefore, it is not necessary for the rule to state that the course must be both offered and approved by a nationally recognized organization. However, the Department recognized in the Economic Impact, 53 N.J.R. at 476, that “[t]raining courses are offered by multiple vendors for each category and are available year-round in both classroom and internet formats.” These vendors may or may not be the nationally recognized organizations themselves; therefore, the Department is modifying N.J.A.C. 7:28-27A.20(c), 27A.23(b), 27A.26(c), and 27A.34(e) upon adoption to require the training course to be approved by a nationally recognized organization, but not necessarily provided by one.

78. COMMENT: Technicians can calibrate and perform a proficiency test for the portable equipment that they own. Is the test report generated by the technician or does the report get generated by the business, and is the report reviewed by the measurement specialist before the report is submitted to the client? A technician level for portable devices is contrary to both the National Radon Safety Board, as well as the National Radon Proficiency Program. These are considered analytic service providers, which was in line with the original United States Environmental Protection Agency radon measurement proficiency program. Also, other states consider individuals who use portable devices as laboratories because they are analyzing the test

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device. It is putting a lot of burden on the radon measurement business in New Jersey to oversee what is really a laboratory operation. (14)

RESPONSE: N.J.A.C. 7:28-27A.20 and 27A.23 require the certified radon measurement technician or specialist who performed a test to send the chain of custody forms and determined voltage or CRM results to the certified measurement business. The certified radon measurement specialist who directs the daily operations of the business reviews, approves, and verifies the information and data prior to issuing a test report on behalf of the certified measurement business. The proposed rules, at N.J.A.C. 7:28-27A.6, 27A.20, and 27A.23, place much of the burden on the certified technician or specialist with respect to portable device oversight. This is a change from the prior rules. A certified technician or specialist is responsible for conducting the proficiency test, as well as for ensuring that devices the individual owns or leases are calibrated prior to testing with them.

The Department is modifying N.J.A.C. 7:28-27A.20 and 27A.23 upon adoption to require the certified individual to send all data and chain of custody forms for portable devices to the certified business. The specialist directing the daily operations will review the chain of custody form and client report for all tests, the raw data for continuous radon monitors, and the voltage from electret readers.

79. COMMENT: The proposed rules require each certified business to have an affiliated certified radon measurement specialist or certified radon mitigation specialist, as applicable, responsible for the daily operations of the certified business. N.J.A.C. 7:28-27A.20(j) and 27A.26(k). Does this mean that the certified radon measurement (or mitigation) specialist

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responsible for the daily operations must be at the location where the testing (or mitigation) is taking place before any work can be performed? (38)

RESPONSE: The adopted rules do not require a certified radon measurement or mitigation specialist that is responsible for the daily operations of the certified business to be at the location of the radon testing or mitigation activities performed on behalf of the business. However, the certified radon measurement or mitigation specialist may perform field activities within the scope of the individual's certification. These activities would be in addition to any responsibilities for the daily operations of the certified business.

As discussed in the notice of proposal Summary, the role of the certified radon mitigation or measurement specialist pursuant to the adopted rules is similar to what the prior rules required at N.J.A.C. 7:28-27.2(a) and 27.5(a)2. 53 N.J.R. at 472 and 473. The prior rules required the certified business to have the certified individual on staff or retain the individual as a consultant. The adopted rules require the certified individual to be an affiliate of the business.

N.J.A.C. 7:28-27A.21 Radon Measurement Technician - Initial Certification

80. COMMENT: There is strong opposition to the proposed changes to the existing program because an individual works very hard and pays a lot of money to become certified as a radon measurement technician. Home inspection companies have already suffered enough due to COVID. It will require additional money to take new classes and to take new tests for a whole new program. The measurement technician is a very easy task for a home inspector to complete. The current program already works very well and does not need to be changed. (9)

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81. COMMENT: The requirements for home inspectors that are just deploying radon canisters as a radon measurement technician and sending them to the lab is way too involved. There is no reason for a home inspector to have to be required to have this much training. An abbreviated course and licensing are necessary. (23)

RESPONSE TO COMMENTS 80 AND 81: As provided in the notice of proposal Summary, 53 N.J.R. at 472-473, the Department did not change the training requirements for the radon measurement technician. As in the prior rules, the new rules require a 16-hour training course to ensure that technicians follow the radon testing protocols and to protect public health. The adopted rules, like the prior rules, require initial radiation safety training to ensure that technicians follow the necessary health and safety protocols in order to limit radon exposure. 53 N.J.R. at 466. Unlike the prior rules, the new rules do not include annual safety training; the Department has determined that initial safety training is sufficient. The only new training requirement is for individuals who test multifamily buildings, large buildings, or schools. An individual is not required to test these building types, but if he or she does, then the individual must take an eight-hour training course in the relevant building type. 53 N.J.R. at 472. An individual who is certified under the prior rules and continues at the same level of certification under the adopted rules (such as a certified radon measurement technician) does not need to take an additional examination or re-take the initial 16 hours of training.

82. COMMENT: Each measurement technician wanting to offer the three higher density building services is looking at a fee of between \$150.00 to \$525.00, which is a broad range. With no reason to take any of the courses under the current regulations, few, if any, measurement

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technicians have taken any of the classes. Consequently, the waiver for those who have already taken courses holds little in the way of mitigating costs. The Department is correct in believing that less than 10 percent will choose to test these buildings. With these structures comprising a small portion of the overall testing market, why would measurement technicians want to incur notable expenses for uncertain revenue? The net effect will be to drive the costs up to the consumer with a shrinking service market. (78)

RESPONSE: As discussed in the Response to Comment 61 and the notice of proposal Summary at 53 N.J.R. at 476, these buildings are more complex to test and mitigate, and the protocols are very detailed. The Department's past experience shows that individuals are not familiar with the proper protocols for testing and mitigating these building types. Individuals who pursue testing and mitigation of multifamily, large, and school buildings will incur a one-time cost for additional training that will benefit them for years. The Department has determined that the cost of the additional training is acceptable to ensure that certified individuals perform the testing and mitigation correctly and understand the difficulties and complications they may face. See the Response to Comment 20, which explains that a single comprehensive course may suffice for all three building types, depending on the course content.

N.J.A.C. 7:28-27A.24 Radon Mitigation Specialist - Initial Certification

83. COMMENT: Proposed N.J.A.C. 7:28-27A.24(c)2 states that documentation of work experience for a radon mitigation specialist will be a letter from the employer with whom the individual obtained the work experience or from a reference that has extensive knowledge of the individual's work experience, outlining all applicable responsibilities and specific dates

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performed. This language seemingly disallows the use of a standard resume, as is the current practice. Potential issues are that the ex-employer refuses to provide the letter, the company has closed, or the individual cannot reach employer. Writing a letter for an ex-employee is not on the top of the to-do list for most employers, and there is nothing forcing them to write one. This should not negate the applicant's actual experience. (30)

RESPONSE: Under the prior rules, the Department would accept any type of documentation demonstrating work experience as part of an initial application for certification. Often this documentation is in the form of a resume, or a letter written by the applicant. That an individual includes their own experience in a resume or a letter is not an assurance that the individual actually has the asserted experience. Adopted N.J.A.C. 7:28-27A.24(c)2 requires documentation of work experience from the employer with whom the individual obtained the work experience or from a reference that has extensive knowledge of the individual's work experience. The rule allows documentation to come from someone other than an employer, since the Department recognizes that the individual may not have been an employee at the time of the experience, or documentation may not be available from a former employer. An example of someone other than an employer who may provide the documentation is a certified radon mitigation specialist who trained an individual during the installation of a mitigation system. As discussed in the Response to Comment 67, the adopted rules allow an uncertified individual to observe the installation of a mitigation system and credit the observation as part of the individual's training. Therefore, the certified radon mitigation specialist could document the training. If an individual is concerned that documentation of the experience may later be unavailable, the individual may

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want to obtain the documentation in advance of when it is needed, perhaps at the time the individual acquires the experience.

The documentation must outline the individual's responsibilities and the dates of the work experience. This requirement is similar to references provided on any employment application. The documentation enables the Department to verify the work experience. The Department is specifying the type of documentation it will accept in order that clients can be confident that the certified mitigation specialist or technician has the work experience and education that the level of certification requires. Similarly, a certified business can be assured that an individual has the qualifications for the title prior to becoming affiliated with the business.

N.J.A.C. 7:28-27A.26 Responsibilities of a Certified Radon Mitigation Specialist

84. COMMENT: A certified mitigation specialist's experience requirements should include HVAC, plumbing, electrical, or other relevant trade. (34)

RESPONSE: Adopted N.J.A.C. 7:28-27A.26(b) identifies the education and work experience required of a certified radon mitigation specialist. The relevant education is college level studies in architecture or engineering, and/or technical school education in heating, ventilation, and air conditioning (HVAC). The relevant work experience is the design, construction, and renovation of buildings. An individual may hold a valid New Jersey license as a professional engineer, in lieu of the specified education and work experience.

A certified radon mitigation specialist has a direct impact on public health, in that the individual installs radon mitigation systems that reduce elevated radon levels, thus reducing the

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risk of lung cancer. Accordingly, it is necessary that the individual have education and work experience that provides a genuine knowledge of the design and installation of the systems. Experience with HVAC, plumbing, and electrical are among the types of work experience that will satisfy N.J.A.C. 7:28-27A.26(b), but they are not the only types of “design, construction, and renovation of buildings” that will qualify.

N.J.A.C. 7:28-27A.29 Denial, suspension, or revocation of a certification

85. COMMENT: The notice of proposal states that a suspended individual may not apply for any certification under the subchapter until the suspension is lifted. Will the Department notify the business immediately of the suspension of an affiliate’s certification? (30)

RESPONSE: When a suspension or revocation is effective, it impacts the affiliation agreement between an individual and business. Therefore, is imperative for the suspended or revoked business or individual to be notified of the other party’s suspension or revocation. The Department is modifying recodified N.J.A.C. 7:28-27A.29(i) upon adoption to state that the Department will notify the business if its affiliate’s certification is suspended or revoked and will notify the affiliated individual if the business’s certification is suspended or revoked. The Department is also adding N.J.A.C. 7:28-27A.29(e)2v upon adoption to provide that the suspension or revocation is not operative until there has been an opportunity for the individual or business to request an adjudicatory hearing.

N.J.A.C. 7:28-27A.32 Liability of Certified Radon Measurement or Radon Mitigation Business for Actions of Affiliates

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86. COMMENT: While it is reasonable to assume that a corporation can be responsible for employees at proposed N.J.A.C. 7:28-27A.32, the rule will create a liability issue that will drive costs up. (7)

RESPONSE: Both the certified business and individual share responsibility to ensure that radon testing and mitigation are performed in accordance with the required protocols. Adopted N.J.A.C. 7:28-27A.32(a) limits a certified business's liability to those violations that are within the certified business's reasonable ability to control.

87. COMMENT: Proposed N.J.A.C. 7:28-27A.32 says that a certified business is responsible for any violation of the Act or rules committed by an affiliate of the certified business in the scope of the affiliate's testing or mitigation services if the violation was within the certified business's reasonable ability to control, as delineated in the affiliation form with that certified business.

Will the affiliation form provided by the Department list the actions that are determined that the business does have the reasonable ability to control? The suggested wording change for subsection (b) is, "The liability of the certified business and the affiliate shall be joint and several for violations within the certified business's reasonable ability to control." (30)

RESPONSE: Whether an affiliate's action giving rise to a violation is within the certified business's ability to control depends on the action and the circumstances. The Department will review the specific issues and circumstances present at the time the test or mitigation was conducted in order to determine on a case-by-case basis whether the individual, the business, or both are responsible for a violation of the rules. Adopted N.J.A.C. 7:28-27A.31, Request for an adjudicatory hearing, provides a business with opportunity to request a hearing if the Department

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issues a notice suspending or revoking the business's certification, or limiting the number of affiliates the business can have, and the business believes that it has been improperly held liable for its affiliate's violation of the rules.

For a discussion of the contents of the affiliation form, see the Response to Comment 38.

N.J.A.C. 7:28-27A.33 One-Time Certification Application Requirements for a Certified Radon Measurement Business, Specialist, and Technician and Certified Radon Mitigation Business and Specialist

88. COMMENT: It is absurd to not have a grace period for renewal of licenses. Many consultants carry multiple certifications and licenses in multiple states. It can become difficult to schedule the training for each one when work is busy. There should be a period of renewal after the expiration date. The person cannot legally work but can still schedule training and renew the license. (74)

RESPONSE: Upon certification, an individual takes on the responsibility of renewing his or her certification annually and on-time in accordance with the adopted rules. The certificate showing the individual is certified displays the date of expiration; therefore, the individual knows a year in advance the date by which he or she must take the requisite training and provide renewal application information to the Department. In addition, the Department notifies applicants when their renewal is coming due.

89. COMMENT: The Department is considering eliminating the radon measurement technician license and rolling it into the mitigation technician category. It is not acceptable if this requires

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additional study, testing, and cost to attain a new and higher level of knowledge regarding radon mitigation. A licensed home inspector who is a certified radon measurement technician already has to know a lot of information. A measurement technician does not do construction or need certification for radon mitigation. (20)

RESPONSE: The radon measurement technician category is not being merged into the mitigation technician category, nor is it being merged into the measurement specialist category. As discussed in the notice of proposal Summary at 53 N.J.R. at 474, the Department is eliminating the radon mitigation technician category, not the measurement technician category.

N.J.A.C. 7:28-27A.34 Radon Mitigation Technician

90. COMMENT: In order to become a mitigation technician, an individual should have six months direct (onsite) supervision in radon mitigation work, overseen by a mitigation specialist, or two years of experience in HVAC, plumbing, waterproofing, building, or construction experience. This would provide consistency with other states. This would also allow more robust, meaningful entry level of work and facilitate new hires. (34 and 50)

RESPONSE: The certified radon mitigation specialist is the only certified radon mitigation individual pursuant to the adopted rules. Individuals who are certified under the prior rules as radon mitigation technicians have a period of time in which they may apply for certification as a radon mitigation specialist. N.J.A.C 7:28-27A.34. As discussed in the notice of proposal Summary, the requirement in the adopted rules for education and experience for the certified radon mitigation specialist are revised from the prior rules, making the certification more attainable. 53 N.J.R. at 474. The elimination of the mitigation technician category also benefits

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clients in that the individuals performing mitigation and design all have a higher level of expertise than is required under the prior rules. The Department is not modifying the rules in response to this comment.

N.J.A.C. 7:28-27A.27 Fees

91. COMMENT: The notice of proposal Summary says that the fee structure is unchanged. Simply put, the fee structure is unfair and prejudiced to companies that exceed the maximum number of jobs or tests in the fee structure. In addition, the brackets are too large and need to be reduced in size. A simple solution would be to make smaller brackets and have no maximum. The Department would get more money and the system would be fair. (7)

92. COMMENT: The fees charged for radon testing by the Department are inequitable. They were designed to benefit the larger companies that are doing a high volume of charcoal canister tests. The proposed rules are going to affect businesses and individuals more when electret devices and continuous radon monitors are the primary devices used. Large companies that offer charcoal canister testing are going to be the ones that will exist going forward. The program administration fees should be per test instead of the ranges that benefit large business. (47)

93. COMMENT: The Department should discontinue the activity fees, if these fees are being placed in a general fund and not being utilized for expenses incurred by the radon section. If these fees are used for the program, then there should be one flat fee per mitigation system or one flat fee per measurement test. On a per-mitigation or per-measurement basis, the current graduated activity fees in Fee Schedules B and C at proposed N.J.A.C. 7:28-27A.27 are more costly to those businesses that produce more radon work. This inequity causes unnecessary,

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excessive costs that are passed on to the consumer. A clearer, fairer fee basis per-job will allow for more State oversight on the actual mitigation and measurement work being performed. (34 and 50)

RESPONSE TO COMMENTS 91, 92, AND 93: The program administration fees, N.J.A.C. 7:28-27A.27(c), are unchanged from the prior rules. Under both the prior rules and the adopted rules, the more tests that a business conducts, the greater the fees that the business must pay. However, there is a threshold number of tests for which the fees will no longer increase. There are often economies of scale that a larger business may be able to take advantage of that are not available to a business that conducts fewer tests or provides fewer services. The Department's rules ensure that each business or individual must follow the same rules and is subject to the same standards in order to protect public health and the environment.

The Radiation Protection Act authorizes the Department to collect fees to cover the cost of the program. In actuality, the administration fees and certification application fees that the Department collects account for less than one half of the funding required to run the radon certification program. The radon program also receives funding annually from the United States Environmental Protection Agency's State Indoor Radon Grant to administer New Jersey's radon certification and outreach initiatives. The remainder of the costs are covered by a budget appropriation from the State's General Fund. If these other funding sources were not available, significantly increasing fees in order to fund the entire program would make radon testing and mitigation in New Jersey cost prohibitive for the regulated community.

The program administration fee consists of two fees: the program fee and the activity fee. The program fee is based on estimated per-business costs to the radon certification program

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and on the number of certified businesses, including the processing of monthly reports. These business-based expenses are equally distributed to all businesses, regardless of size or volume of business, through the program fee. Level-of-activity-based expenses include data management. The more measurements or mitigations conducted, the more Department time it takes to enter or transfer the data into the database, and to verify and review it. Therefore, in establishing its fees the Department distributed activity-based expenses among businesses based on the anticipated number of measurements or mitigations, through the activity fee. These fees were assigned to ranges of tests and mitigations.

94. COMMENT: It is an unfair advantage that companies are allowed to sell and analyze charcoal canisters and mitigate. A business with a lot of technicians can do more testing, which definitely gives an unfair financial advantage to them because they can get business that small companies or certified individuals cannot obtain. (46)

RESPONSE: As discussed in the Response to Comments 91, 92, and 93, a larger business may have certain advantages because of its size, but all businesses are subject to the same standards in order to protect public health and the environment.

95. COMMENT: Currently, there is only one level of measurement exam available for measurement. While the Department anticipates that there will be a second exam level for technician prior to the regulations effective date, it is not a certainty. What will happen if the exam is not available prior to the enactment of the new regulations? Will anyone taking the single exam available be qualified for specialist credentials? (78)

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RESPONSE: The National Radon Proficiency Program (NRPP) implemented a second measurement examination for the technician-type level on August 1, 2021. As provided at adopted N.J.A.C. 7:28-27A.18 and 27A.21, a candidate for radon measurement certification must take and pass the NRPP radon measurement professional examination for the level applied for.

96. COMMENT: Proposed N.J.A.C. 7:28-27A.27(d) allows the Department to adjust fees for inflation. Inflation is occurring now and will only get worse, which means that fees will increase. (31)

RESPONSE: The Radiation Protection Act, N.J.S.A. 26:2D-9(l), authorizes the Department to collect fees to cover the cost of administering the Radon Certification program. Both the prior and the adopted rules contain provisions that allow the Department to annually adjust its fees by an inflation factor based on the Consumer Price Index in order that the fees it collects can more closely cover the Department's costs. N.J.A.C. 7:28-27A.27(d). Should the Department need to adjust its fees by more than the annual inflation factor, it may do so through rulemaking.

97. COMMENT: Multiple tests per dwelling unit should no longer be counted for fee purposes. The recordkeeping system can be changed to allow for identifying multiple tests at the same location. Examples of these tests include duplicates, multiple foundations or floor levels, other diagnostic testing, and quality assurance at the same location. (34 and 50)

RESPONSE: The Department did not charge for duplicate, blank, or diagnostic tests under the prior rules and does not do so under the adopted rules. If there are multiple tests conducted in a single building, but in different locations, such as different floors or in a large building in

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multiple locations, each test is considered an individual test for purposes of the fee schedule at N.J.A.C. 7:28-27A.27(c)1.

98. COMMENT: Proposed N.J.A.C. 7:28-27A.33 seems to require fees for an individual certification that has already been paid. While it is entirely reasonable to require individuals to apply under the new regulations if renewal comes up during the 120-day window after the adoption, the unilateral fee for existing certifications is inequitable. The concept of additional fees imposed for any State certification(s) that have previously been paid for is unfair, and any reasonable fee that is not equally assessed of all certificate holders is objectionable. (1, 2, 4, 5, 6, 8, 12, 13, 15, 16, 17, 19, 21, 22, 24 - 28, 30, 32, 33, 36, 37, 40 - 45, 48, 49, 51, 52, 54 - 58, 60, 61, 62, 63, 65, 67, 68, 69, 73, 74, 75, 76, and 78)

RESPONSE: Adopted N.J.A.C. 7:28-27A.33 requires a one-time complete certification application to be submitted to the Department on or before 120 days after the effective date of the new rules. This application would be an initial application, according to adopted N.J.A.C. 7:28-27A.18, 27A.21, or 27A.24, that would include the initial application fee as stated at adopted N.J.A.C. 7:28-27A.27, Fee Schedule A. The notice of proposal Summary discusses this transition period in detail. 53 N.J.R. at 473. Under the prior rules an already-certified individual would pay \$150.00 for three years of certification (three years at \$50.00 renewal fee per year). Under the adopted rules an already-certified individual pays \$175.00 for the first three years of certification following the adoption of the new rules. The fee for the one-time application that is due pursuant to N.J.A.C. 7:28-27A.33 is \$75.00, which accounts for the

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\$25.00 difference. All individuals and businesses that are certified as of the effective date of the new rules are subject to the same one-time application requirement.

The following three examples further demonstrate the initial application process. These examples are based on the postulation that the new rules are effective on January 1, 2022:

1. A certified measurement technician renews the certification on November 10, 2021, with a \$50.00 renewal fee. The next expiration date would be November 10, 2022. Within 120 days after January 1, 2022, this individual must submit an initial application and \$75.00 fee. This individual would now have an expiration date of November 10, 2023, and would pay the renewal fee of \$50.00 at that time.
2. A certified measurement technician's certification has an expiration date of February 10, 2022. This is within the 120-day period after the new rules are effective. Instead of submitting a renewal application and \$50.00 fee, the individual would submit an initial application and \$75.00 fee. This individual's certification would now have an expiration date of February 10, 2023, and would be subject to a renewal fee of \$50.00 at that time.
3. A certified measurement technician's certification has an expiration date of July 10, 2022. On or before 120 days after January 1, 2022, this individual must submit an initial application and \$75.00 fee. This individual's certification would now have an expiration date of July 10, 2023, and would be subject to the renewal fee of \$50.00 at that time.

Although the initial application is due several months before the individual would ordinarily renew, the new certification is in effect for more than a year.

Summary of Agency-Initiated Changes:

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Operative Date of the New Rules, N.J.A.C. 7:28.27.1, 27A.1, 27A.33, and 27A.34

The adopted rules require individuals and businesses that are certified under the prior rules to submit a one-time initial application for certification under the new subchapter. N.J.A.C. 7:28-27A.33. Under this one-time procedure, certified businesses and individuals must affiliate and provide the Department with other documentation that the proposed rules require for an initial certification. The Department will then issue new certification credentials to these individuals and businesses. The one-time procedure applies to all existing categories of certified businesses and individuals, except certified radon mitigation technicians, whose new certifications are governed at N.J.A.C. 7:28-27A.34.

The Department proposed, at N.J.A.C. 7:27A.33, that the one-time initial application for certification would be due on the 119th day after the adoption is published in the New Jersey Register (the publication date is the effective date of the new rules and amendments). The new rules would be operative 120 days after the effective date. Proposed N.J.A.C. 7:28-27.1(a) and 7:28-27A.1(a). Under the proposed rules, on the 120th day after the effective date of the rules (the proposed operative date of the rules), the individuals and businesses must comply with new N.J.A.C. 7:28-27A. Proposed N.J.A.C. 7:28-27A.1(a).

The Department recognizes that some individuals and businesses may wait until the last minute to submit their initial applications pursuant to the new rules. If an individual or business submits its initial application on the proposed deadline of 119 days after the effective date of the new rules, there will not be time for the Department to provide certification credentials to the applicants prior to the proposed operative date of 120 days after the effective date. Although new N.J.A.C. 7:28-27A.33(c) prevents a lapse in certification for those businesses and

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individuals who timely submit their initial applications, there may be confusion if a large number of businesses and individuals have not yet received their new certification credentials before they must begin to comply with the substantive provisions of the new rules. Accordingly, the Department is modifying N.J.A.C. 7:28-27.1 and 7:28-27A.1 upon adoption to provide that the initial application for certification is due on or before the 120th day after the effective date of the new rules and amendments, which is October 4, 2022, and the substantive provisions of the new subchapter will be operative on the 180th day after the effective date, which is December 3, 2022. This will allow approximately two months for the Department to review the initial applications it receives and either issue the certification credential or reject an application. Most individuals and businesses should receive notice of approval or rejection prior to the modified operative date of the new rules.

While the Department will accept applications after October 4, 2022, if an individual or business submits an application such that the Department receives it after October 4, 2022, but before the operative date of the rules (December 3, 2022), the Department will not consider a business or individual certified under the new rules until the Department actually issues the certification credential to the business or individual. See new N.J.A.C. 7:27A.33(d), added upon adoption. Accordingly, for these individuals or businesses there may be a lapse in certification if the Department does not issue the certification credential prior to the operative date of the new rules. An individual or business that does not submit its application such that the Department receives it prior to the operative date of the rules must submit an application for renewal of an expired certification, as the Department proposed at N.J.A.C. 7:27A.33(f) (adopted N.J.A.C. 7:27A.33(g)). New N.J.A.C. 7:28-27A.33(d) provides that an individual and a business that are

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certified as of the effective date of the new rules may affiliate with each other; they do not need to wait for their new certifications in order to complete affiliation. In fact, the affiliation agreement is necessary because a business or individual cannot be initially certified under the new rules unless they are affiliated.

A certified business or individual that timely submits an initial application pursuant to N.J.A.C. 7:28-27A.33 will be considered certified for purposes of the new rules, until the Department notifies the business or individual that its initial application has been approved or rejected. N.J.A.C. 7:28-27A.33(c). Accordingly, if the Department does not notify a certified business or individual prior to the operative date of the rules that the application is approved or rejected, the business or individual may proceed as if it were certified, until such time as the business or individual receives notice from the Department.

The Department is modifying N.J.A.C. 7:28-27A.33(b) upon adoption to clarify the dates in the subsection. The use of “between” two dates in the proposed rule could be interpreted as not including the beginning and end dates of the relevant period. As adopted, the provision applies to an individual or business whose certification would expire during the period that includes and is between the effective and operative dates of the new rules.

For consistency with N.J.A.C. 7:28-27A.33, the Department is also modifying N.J.A.C. 7:28-27A.34 upon adoption to require individuals certified as radon mitigation technicians as of the effective date of the rules to submit renewal applications to become certified radon mitigation technicians on or before 120 days after the effective date, which is October 4, 2022. An individual that does not timely submit an application for certification will not be certified as of 180 days after the effective date of the rules, or December 3, 2022.

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For the same reasons discussed above with regard to one-time certification pursuant to new N.J.A.C. 7:27A.33, the Department is modifying the one-time certification requirements for radon mitigation technicians at N.J.A.C. 7:27A.34 to add new subsection (b). An individual certified as a radon mitigation technician as of the effective date of the adopted rules must submit an application for certification under the new rules on or before 120 days after the effective date in order to ensure that the certification remains in effect on the operative date of the new rules. The Department will accept applications for certification after the deadline, and before the operative date, but there may be a lapse in certification if the Department does not issue the certification credential prior to the operative date of the new rules.

N.J.A.C. 7:28-27A Certification of Radon Testers and Mitigators

The Department is modifying several definitions at N.J.A.C. 7:28-27A.2 upon adoption. The Department is adding a definition of “single-family home,” which is among the building types that a certified radon measurement business may choose to test. The adopted definition of “multifamily building” is changed upon adoption to refer to a residential building “having more than one attached dwelling or other occupied unit including, but not limited to, condominium, townhouse, and apartment buildings.” This distinction is required to enable the Department to correctly track these building types in its database, and to properly clarify the number of units that make up a “multifamily building.” The adopted definition of “acknowledgement notice” clarifies that this notice is used for an expired renewal application in addition to the initial application.

The Department is modifying N.J.A.C. 7:28-27A.3(g) to remove the word “complete.” The section requires certified individuals and businesses to submit their renewal applications at

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least 30 days in advance of the expiration date in order that the existing certification remains uninterrupted until the Department approves or rejects the renewal application. In practice, the Department's review process frequently includes the Department requesting clarifying or additional information from the applicant, if required. The word "complete" in the proposed rule could give the impression that all back and forth between the Department and the applicant must be concluded at least 30 days prior to the expiration date of the certification; this is not the case. By deleting the word "complete," the Department intends to remove that impression.

The Department is modifying N.J.A.C. 7:28-27A.6(d) to remove the requirement for the certified radon measurement business to submit the names of all affiliates that will use the device for testing, and confirmation that each affiliate using the device has passed the authorized proficiency test. Certified measurement specialists and technicians submit this information; therefore, it is not necessary for the rules to require the certified business to submit it.

Adopted N.J.A.C. 7:28-27A.7(c)1 and 27A.11(c)1 require a business to identify, in its application for radon measurement or mitigation business initial certification, the individual who is in charge of tracking affiliates and their certification status. This individual is often different from the individual, or individuals, in charge of the business; therefore, the Department needs contact information for both categories of individual.

The Department is modifying N.J.A.C. 7:28-27A.7(c)2 to replace "government agency" with "municipality, county, state, Federal, or other public agency," so that the language is consistent with N.J.A.C. 7:28-27A.3(c)5.

Proposed N.J.A.C. 7:28-27A.7(c)5 and 27A.11(c)5 required a business to provide, in its initial application for certification, the name and certification number of the measurement or

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mitigation specialists who will direct the daily operations of the business. While the adopted rules require a certified business to have a certified radon measurement or mitigation specialist directing the daily operation of the certified business (see N.J.A.C. 7:28-27A.20(j) and 27A.26(k)), the business does not need to provide the name and certification number of the individual or individuals on its initial application for certification in order to avoid having the business constantly sending in amendments to the certification each time this individual changes. To correct this, N.J.A.C. 7:28-27A.7(c)5 and 27A.11(c)5 are deleted upon adoption.

As discussed in the notice of proposal Summary, 53 N.J.R. at 463, affiliation is a new concept in the Department's radon certification rules. Affiliation is established between a certified business and a certified individual. An individual must be affiliated with the business before the individual performs testing or mitigation services for that business. Similarly, the business must have at least one affiliate before it can be certified. If a business is not yet certified because it does not yet have affiliates, but has received an acknowledgement notice from the Department (indicating that it is qualified for certification, but for its lack of affiliates), an individual may become affiliated with the business. At that point the business would submit the proof of affiliation to the Department, and the Department would then issue the certification credential. An individual may not affiliate with an uncertified business that has not yet received the acknowledgment notice; prior to the acknowledgment notice, there is no evidence that the business will qualify for certification. Similarly, and for the same reasons, a business may affiliate with an individual who has received an acknowledgement notice, but who is not yet certified. If neither the business nor the individual is certified at the time of affiliation, upon receipt of affiliation the Department will issue certification credentials to both the business and

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the individual. The Department is modifying N.J.A.C. 7:28-27A.7(d), 27A.9(b), 27A.11(d), and 27A.13(b) to indicate the timing of affiliation.

As provided in the notice of proposal Summary, N.J.A.C. 7:28-27A.9(d)2 requires a certified measurement business to business to identify on its certification the device models with which its affiliates are proficient and the individual devices that its affiliates use. The former indicates that the affiliates know how to use the equipment, and the latter identifies individual pieces of equipment for which the business must submit a calibration certificate. 53 N.J.R. 464. The proposed rule did not, however, specify how the business should identify the individual pieces of equipment on its certification. A “device” is defined at N.J.A.C. 7:28-27A.2 as “test equipment that is on a nationally recognized organization's approved list of test equipment that can be used to test for radon.” In order that the Department can verify that the piece of equipment meets the requirements of the definition (is on a nationally recognized organizations list), and that the calibration certificate that the business provides is associated with that piece of equipment, it is necessary that the Department knows the make and model of the piece of equipment, as well as the identification number that the nationally recognized organization assigned to it. Adopted N.J.A.C. 7:28-27A.9(d)2 indicates that this information is part of the information required in the non-portable device list that the business submits to the Department.

Proposed N.J.A.C. 7:28-27A.9(d)3 and 27A.13(d)1 required a certified measurement or mitigation business to provide, to the Department, a list of building types to be tested or mitigated, including residential buildings, multifamily buildings, large buildings, schools, and child care centers. Residential buildings, whether multifamily or otherwise, include condominiums, townhouses, apartments, and other building types listed in the protocols

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discussed in the notice of proposal Summary at 53 N.J.R. at 465-466. In order that the Department may more accurately track the types of residential buildings that are tested and mitigated, the Department is modifying the rules to require more specific identification of the residential building types that a business will test or mitigate. The Department is similarly modifying N.J.A.C. 7:28-27A.9(g)8 to require the buildings to be more specifically identified on the chain of custody form. The Department is making corresponding modifications at N.J.A.C. 7:28-27A.17(b)1 on adoption. Adopted N.J.A.C. 7:28-27A.9(g)11 and adopted N.J.A.C. 7:28-27A.17(b)1v require the business to identify whether the test or mitigation was conducted at a child care center. As a result of the modifications discussed above, it is unnecessary for N.J.A.C. 7:28-27A.11(c)5 (proposed as paragraph (c)6) to require the certified business to identify specific building types; the requirement is duplicative.

A certified measurement or mitigation business must provide the Department with the name of any affiliates who will test or mitigate multifamily buildings, schools, and/or large buildings as discussed in the last part of proposed N.J.A.C. 7:28-27A.9(d)3 and 27A.13(d)1. The Department is modifying the rules for clarity. The Department is dividing proposed N.J.A.C. 7:28-27A.9(d)3 and 27A.13(d)1 to add new N.J.A.C. 7:28-27A.9(d)4 and 27A.13(d)2, respectively.

Proposed N.J.A.C. 7:28-27A.9(g) and 27A.10(c) discuss chain of custody forms and duplicate testing, respectively. The Department is modifying these subsections upon adoption for clarification. The proposed rules required a chain of custody form for each device. "Device" is a general term that refers to any type of radon measurement equipment, including portable devices, such as continuous radon monitors and electret devices, and non-portable devices, such

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as charcoal canisters and alpha track devices, as provided in the definitions. As modified, the adopted rules clarify that a business is required to have one chain of custody form for each type of device it lists in the business certification. The proposed rule could have been interpreted as requiring the business to develop a chain of custody form for each piece of equipment, which does not make sense.

Proposed N.J.A.C. 7:28-27A.9(g) required the chain of custody form to be completed in its entirety in the field by an affiliate or individual not subject to certification. It is acceptable to enter some information into the chain of custody form prior to going out into the field, such as the address and contact information, and many businesses pre-fill information on the forms. Instead of requiring the entire chain of custody form to be completed in the field, only specific items of the chain of custody form need to be filled in only while in the field. Therefore, the Department is modifying N.J.A.C. 7:28-27A.9(g) to require the following items of the chain of custody form to be filled in while in the field: whether closed house conditions are met, the certification number of the individual who deploys and retrieves the device, and the time and date the device is deployed and retrieved. The adopted rules allow for the other items of the chain of custody form to be pre-filled. In addition, the Department can require the business to give the chain of custody form to the individual not subject to certification. However, the Department does not regulate individuals not subject to certification, so proposed N.J.A.C. 7:28-27A.9(g) should not have required the chain of custody form to be completed in its entirety by these individuals. While the measurement business cannot make the individual not subject to certification fill out the form completely, it is the business's responsibility to invalidate a test when a chain of custody form is not filled out completely. N.J.A.C. 7:28-27A.9(l). Therefore,

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the Department is further modifying N.J.A.C. 7:28-27A.9(g) on adoption to remove the requirement that the individual not subject to certification must complete certain items on the chain of custody form, and is modifying N.J.A.C. 7:28-27A.9(h)2 to no longer reference 27A.9(g).

The chain of custody form must identify the individual who deploys and retrieves a radon test. If the individual is certified, then the certification number of the individual deploying and/or retrieving the test must be on the chain of custody form. Likewise, if an individual not subject to certification (like the homeowner) deploys or retrieves the test, there must be a place on the chain of custody form for this individual to sign their name. This was not included at proposed N.J.A.C. 7:28-27A.9(g). Therefore, the Department is correcting N.J.A.C. 7:28-27A.9(g)14 and 16 upon adoption to require the signature of the individual not subject to certification on the chain of custody form for tests conducted by such an individual.

Proposed N.J.A.C. 7:28-27A.9(n) and 27A.13(p) required the measurement and mitigation businesses to distribute the most recent version of the testing and mitigation guidance document that is approved by the Department, or they could provide the client with the link to the document on the Department's website. The requirement to provide a link to a specific website could be onerous for the certified businesses, since the document's website address could be long, or could change over time as the guidance document is updated. Accordingly, the Department will keep a link to the most current guidance document on its website at www.njradon.org, and the business may include a reference to www.njradon.org in either the client report or contract, as reflected in the adopted rules.

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Proposed N.J.A.C. 7:28-27A.10 required a certified business to distribute duplicate and blank tests as part of its quality control measures. The purpose of the duplicate and blank tests is to ensure the integrity of the tests conducted in New Jersey. A business that operates in one or more states, including New Jersey, cannot demonstrate the integrity of New Jersey tests by providing the results of duplicate and blank tests performed in other states. Accordingly, the Department is modifying N.J.A.C. 7:28-27A.10(c) and (d) to clarify that for each device type, only duplicate and blank tests that are performed in New Jersey will satisfy the quality control requirements.

As discussed in the notice of proposal Summary, a certified radon mitigation business must develop a written contract as part of its certification application. The contract must disclose whether the certified business is providing a warranty. 53 N.J.R. at 469. Proposed N.J.A.C. 7:28-27A.13(l)5 mistakenly stated that the “warranty ... shall specify ... when no warranty is provided.” It is the contract that must disclose the absence of a warranty. The Department is correcting the error on adoption.

Proposed N.J.A.C. 7:28-27A.13(i)1 and 2 required the mitigation business to provide, to the Department, the method selected to track radon exposure and the reasons the method was chosen, respectively. These are not needed because N.J.A.C. 7:28-27A.13(i) instructs the business to identify the tracking method. The Department is removing the redundancy upon adoption.

The Department is correcting N.J.A.C. 7:28-27A.14(a)4 to require that the QA plan include the information at N.J.A.C. 7:28-27A.9(c) through (o), rather than (a) through (o), as proposed. The information at N.J.A.C. 7:28-27A.9(a) and (b) is not required in a QA plan.

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The Department is correcting N.J.A.C. 7:28-27A.17(c) to remove the list of individuals who may receive the client report because it is an incomplete list. The appropriate individuals are identified at N.J.A.C.7:28-27A.3, General provisions.

The Department is correcting N.J.A.C. 7:28-27A.23(d) and (h) upon adoption to refer to “technician” rather than “specialist.” The section governs certified radon measurement technicians, not specialists.

In addition to the changes discussed above, the Department is modifying the rules upon adoption to correct grammar, punctuation, and word usage.

Federal Standards Statement

N.J.S.A. 52:14B-1 et seq., requires State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The Federal regulations contain no comparable radon certification requirements for individuals or businesses. In some other states, certification is obtained from the state program or through the National Radon Safety Board or the National Radon Proficiency Program, which are private nationally recognized organizations. There is no Federal certification program for radon testing or mitigation. Accordingly, the adopted rules do not exceed the standards or requirements imposed by Federal law and are not promulgated to comply with a Federal requirement.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

7:28-27.1 Scope

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(a) This subchapter is operative through *[(119 days after effective date of the amendment)]* ***December 2, 2022***.

(b) This subchapter establishes rules, requirements, and procedures with which a person who wishes to perform radon testing or mitigation in New Jersey shall comply with in order to become and remain certified. Certification is mandatory in New Jersey pursuant to N.J.S.A. 26:2D-70 et seq., for any person who sells radon/radon progeny devices, tests for radon/radon progeny, or mitigates radon in buildings. Mitigation devices that reduce only radon progeny levels will not be certified under this subchapter. Any person not certified and performing radon services shall be subject to the criminal penalties at N.J.S.A. 26:2D-77.

SUBCHAPTER 27A. RADON TESTING AND MITIGATION

7:28-27A.1 Scope and applicability

(a) N.J.A.C. 7:28-27A.33 and 27A.34 shall be operative on and after *[(the effective date of this subchapter)]* ***June 6, 2022***. The remainder of this subchapter shall be operative on and after *[(120 days after the effective date of this subchapter)]* ***December 3, 2022***.

(b) – (d) (No change from proposal.)

7:28-27A.2 Definitions

The words and terms defined below, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...

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“Acknowledgement notice” means a written statement from the Department to an individual who applies for initial ***or expired renewal*** certification as a radon measurement specialist, radon mitigation specialist, or radon measurement technician, or to a business that applies for initial certification as a radon measurement business or radon mitigation business, that documents that all initial certification application requirements have been met. The acknowledgement notice qualifies an individual and a business to enter into an affiliation. The individual or business is not certified when the acknowledgement notice is issued.

...

"Authorized measurement protocol" means ***the most current revisions of*** “Protocol for Conducting Measurements of Radon and Radon Decay Products in Homes,” ***American National Standards Institute (*ANSI*)/*American Association of Radon Scientists and Technologists (*AARST*)* [MAH-19] *MAH-2019***; “Protocol for Conducting Measurements of Radon and Radon Decay Products in Multifamily Buildings,” ANSI/AARST MAMF-2017; and “Protocol for Conducting Measurements of Radon and Radon Decay Products in Schools and Large Buildings,” ANSI/AARST MALB-2014. ANSI/AARST publications are available at www.aarst.org and www.ansi.org. The Department is incorporating these authorized measurement protocols herein, as supplemented or amended.

...

*[“Closed house conditions” means all windows and doors that let in outside air, on all floors, are kept closed, except for normal entrances and exits. For a test that lasts less than four days, “closed house conditions” means that the said windows and doors are kept closed

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beginning at least 12 hours prior to the start of the test until the conclusion of the test. For all other tests, “closed house conditions” means that the said windows and doors are kept closed from the start of the test until the conclusion of the test.]*

...

“Large building” means a building classified as Group A, Group B, Group F, Group H, Group I, and/or Group M by the International Building Code, incorporated by reference at N.J.A.C. 5:23-3.14; or any other occupancy group included in the Authorized Measurement Protocols.

...

“Multifamily building” means a residential building *[with three or more]* ***having more than one attached* dwelling *or other occupied* unit*[s]* ***including, but not limited to, condominium, townhouse, and apartment buildings*.****

...

“Single-family home” means a residential building with one dwelling unit.

...

7:28-27A.3 General provisions

(a) (No change from proposal.)

(b) No certified business or certified individual shall disclose to any business or individual, except ***the owner,*** the Department of Environmental Protection*,* or the Department of Health, the address or owner of a nonpublic building that the certified business or certified individual has tested or treated for the presence of radon, unless the owner of the building

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waives, in writing, this right of confidentiality. ***In the case of a prospective sale of a building that has been tested for radon gas and radon progeny, the seller shall provide the buyer, at the time the contract of sale is entered into, with a copy of the results of that test and evidence of any subsequent mitigation or treatment.*** Any prospective buyer who contracts for the testing of a building shall have the right to receive the results of that testing.

(c) ***A certified radon measurement business may disclose the results of radon testing to the certified individual who performed the test.*** A certified business may disclose the results of radon testing or mitigation to the owner's legal representative, including an attorney or real estate agent, acting in accordance with a written agreement the attorney or agent has with the owner. A certified individual is not a legal representative. If the owner of the building is other than an individual, a certified business may disclose the results of radon testing ***or evidence of any subsequent mitigation or treatment*** to the following:

1. – 6. (No change from proposal.)

(d) – (f) (No change from proposal.)

(g) A certification shall expire if it is not timely renewed. For purposes of this subchapter, timely renewal of a certification means the business or individual submits a ***[complete]*** renewal application in ***[the]*** order that the Department receives it***[,]*** 30 days or more before the expiration date of the certification.

(h) - (i) (No change from proposal.)

(j) To amend the information in the certification at any time during the certification period or after an acknowledgement notice is received, a business or individual shall submit, to the Department, in writing, the information to be changed. The request for amendment shall be

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signed in accordance with N.J.A.C. 7:28-27A.4. The amendment is not operative until the Department reviews, approves, and confirms the change*,* in writing*,* to the certified business or certified individual. There is no fee to amend a certification.

(k)-(l) (No change from proposal.)

7:28-27A.5 Affiliation

(a) – (h) (No change from proposal.)

(i) If a certified individual or certified business fails to comply with this subchapter, the Department may investigate and, when necessary, limit the number of affiliations for that business or individual until the Department is satisfied that the business or individual can demonstrate compliance.

***1. Notice pursuant to this subsection shall be served by certified mail or by personal service, concisely state the facts that give rise to the order, and advise the violator of the right to request an adjudicatory hearing pursuant to the procedure at N.J.A.C. 7:28-27A.31.**

2. Use of any remedy pursuant to this subsection shall not preclude the use of any other remedy available to the Department.*

7:28-27A.6 Authorized proficiency testing and calibration for portable devices

(a) An individual applying for certification or a certified radon measurement specialist or technician shall pass one authorized proficiency test for each portable device model he or she uses, prior to using the device model.

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1. The authorized proficiency test shall be conducted at an approved radon chamber facility;

and

2. The individual shall submit the results to each certified business with which the individual is affiliated for that device model*[*]; and

3. A certified radon measurement business shall ensure that an affiliate conducts a radon test only after passing the authorized proficiency test for that device model]*.

(b) Each portable device must have a current calibration certificate prior to adding it to the business's certification. A portable device shall be calibrated annually.

1. If a certified individual or an individual with an acknowledgement notice owns ***or leases*** the device, the individual shall submit the current calibration certificate to each business with which the individual is affiliated for that device *[type]*;

2. – 3. (No change from proposal.)

4. An approved radon chamber facility or the device manufacturer shall be used for calibration; ***and***

5. *[A certified radon measurement business shall ensure that devices owned by the business and by affiliates are calibrated annually; and

6.]*A certified individual shall ensure that a device has a current calibration certificate prior to using the device, whether the individual or a certified business owns ***or leases*** the device.

(c) (No change from proposal.)

(d) To add a device model or device, a certified radon measurement business or a business with an acknowledgement notice shall amend its certification as set forth at N.J.A.C. 7:28-27A.3(j) and shall submit the name of the device manufacturer, the device model number, the device

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serial number, the device owner's name, ***and*** the current calibration certificate*[, the names of all affiliates that will use the device for testing, and confirmation that each affiliate using the device has passed the authorized proficiency test in accordance with (a) above]*.

(e) (No change from proposal.)

7:28-27A.7 Radon measurement business - initial certification

(a) – (b) (No change from proposal.)

(c) A complete initial application shall include:

1. The business name, physical location, mailing address; primary and secondary individuals in charge of the business; ***individual in charge of tracking affiliates and their certification status;*** contact information ***for each individual***, which may include a telephone number and electronic mail address; and any branch names, addresses, and contact information;

2. The business's status as a corporation, limited liability company, sole proprietorship, partnership, or *[government]* ***municipality, county, state, Federal, or other public*** agency;

3. – 4. (No change from proposal.)

5. *[The name and certification number of the certified radon measurement specialist or specialists who will direct the daily operations of the business in accordance with N.J.A.C. 7:28-27A.20(j), upon affiliation, in accordance with N.J.A.C. 7:28-27A.5. If the individual is not yet certified, but has received an acknowledgement notice in accordance with N.J.A.C. 7:28-27A.18(d), the business shall provide the individual's name, address, and contact information;

6.]*A list of non-portable devices in accordance with N.J.A.C. 7:28-27A.9(d)2;

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[7.] *6.* An identification of the building types to be tested and the authorized measurement protocols to be followed for each building type in accordance with N.J.A.C. 7:28-27A.9(d)*[3]*;

Recodify proposed 8.-14. as 7.-13. (No change from proposal.)

(d) The Department will issue an acknowledgement notice to an applicant who complies with the requirements of this section. Upon receipt of the acknowledgement notice, the business shall submit amendments in accordance with N.J.A.C. 7:28-27A.3(j) to provide the affiliation forms in accordance with N.J.A.C. 7:28-27A.5, a list of affiliates and their training dates in accordance with N.J.A.C. 7:28-27A.9(d)*[3]**4*, and the portable device information in accordance with N.J.A.C. 7:28-27A.6. Upon approval by the Department ***and affiliation with a certified radon measurement specialist or an individual who has received an acknowledgement notice to become a radon measurement specialist***, a certification credential will be issued. The certification shall contain the information provided in the application and any subsequent amendments in accordance with N.J.A.C. 7:28-27A.3(j).

7:28-27A.9 Responsibilities of a certified radon measurement business

(a) (No change from proposal.)

(b) A certified radon measurement business shall affiliate with at least one certified *[individual]* ***radon measurement specialist or an individual who has received an acknowledgement notice to become a radon measurement specialist***, in accordance with N.J.A.C. 7:28-27A.5, and submit the affiliation form to the Department.

(c) (No change from proposal.)

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(d) A certified radon measurement business shall provide*[,]* to the Department:

1. (No change from proposal.)

2. A list of the non-portable devices*, **including the device manufacturer/model and device number, as assigned by a nationally recognized organization,*** to be used by the business and/or its affiliates and either:

i. – ii. (No change from proposal.)

3. A list of the building types to be tested, including residential *[buildings, multifamily buildings, large buildings, schools, and child care centers. If the list of building types includes multifamily buildings, schools, or large buildings:]** **, non-residential, or school buildings. If residential, whether single-family, condominium, townhouse, apartment and/or other residential building types will be tested.***

[i.] ***4.*** The name of the affiliate or affiliates who will test *[each type of building]* ***multifamily buildings, schools and/or large buildings***; and *[ii. The]* ***the*** date on which *[the]* ***each*** identified affiliate took the eight-hour multifamily buildings training course and/or the ***eight-hour*** schools and large buildings training course, as applicable.

(e) (No change from proposal.)

(f) A certified radon measurement business shall develop and comply with a QA plan in accordance with N.J.A.C. 7:28-27A.14 for each device model identified in its certification and to be used by its affiliates in order to *[assure]* ***ensure*** the reliability and validity of radon measurements. The plan shall be submitted to the Department for approval as part of the business's application for initial certification, or an amendment to its certification, and shall be

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provided to each affiliate annually*[,]* and when the certified business revises the plan to change the procedure affiliates must follow.

(g) A certified radon measurement business shall establish a chain of custody form for each ***type of portable and non-portable*** device and ***each*** building type*[, to be completed in its entirety by an affiliate or an individual not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2]*. The chain of custody form shall be submitted to the Department for approval as part of the business's application for initial certification or an amendment to its certification*[, completed in its entirety in the field for every device,]* and shall include (g)1 through 19 below when the form is completed ***in its entirety*** by an affiliate ***for every device***, and (g)1, 3 through ***[13, 15,]* 17 ***[, and 18]* below when the form is completed by an individual not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2*[:]*. **The affiliate shall complete (g)7 and 14 through 17 in the field.***

1. – 2. (No change from proposal.)

[3. Device;]

3. Portable or non-portable type;

4. - 6. (No change from proposal.)

7. Whether closed ***[house]* *building*** conditions ***, as provided in the applicable authorized measurement protocol,*** were met;

8. The type of building the test was performed in: ***[home, large building]* *residential, non-residential*, *or*** school[, multifamily building, or child care center;]*.*

i. If the building is residential, whether it is a single-family, condominium, townhouse, apartment or other residential building type; and

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[9.] ***ii.*** (No change in text from proposal.)

Recodify proposed 10.-11. as ***9.-10.*** (No change in text from proposal.)

11. Whether the test was conducted at a child care center;

12. – 13. (No change from proposal.)

14. The certification number of the individual who deployed the device*. **If the individual is not subject to certification, the signature of the individual*;**

15. (No change from proposal.)

16. The certification number of the individual ***or the signature of the owner*** who retrieved the device;

17. – 18. (No change from proposal.)

19. The calibration expiration date for the CRM*,* electret reader, or other portable device that the affiliate used for the test.

(h) If the certified radon measurement business provides devices to an individual not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 or 2, the certified business shall also provide a testing instruction document to the individual. The instruction document shall be submitted to the Department for approval as part of its application for initial or renewal certification or as an amendment to its certification, and shall include:

1. (No change from proposal.)

2. The requirement to complete the chain of custody form in its entirety ***[in accordance with (g) above]*;** and

3. (No change from proposal.)

(i) – (m) (No change from proposal.)

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(n) A certified radon measurement business*[, as part of the client report,]* shall *[distribute the most recent version of the testing and mitigation guidance document that is approved by the Department and made available on]* ***include in the client report a reference to*** the Department's website at www.njradon.org ***for the most recent version of the testing and mitigation guidance document that is approved by the Department***. *[In the alternative, the certified business may provide, in the report, the website address where the client may obtain the document.]*

(o) (No change from proposal.)

(q) A certified radon measurement business shall provide radiation safety training to each *[new]* ***prospective*** affiliate, including the following:

1. – 3. (No change from proposal.)

4. A certified radon measurement business shall administer a radiation safety examination to ***prospective*** affiliates and shall determine:

i. (No change from proposal.)

ii. The measures the business will take if the ***prospective*** affiliate does not pass the test, such as additional training*[,]* ***or*** re-administering the test*[, or terminating the affiliation]*.

7:28-27A.10 Quality control measures

(a) – (b) (No change from proposal.)

(c) Throughout each month, a certified radon measurement business shall conduct the lesser of 10 percent duplicates or 50, ***for each portable and non-portable device type and*** distributed among ***New Jersey tests conducted by*** affiliates and individuals not subject to certification

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pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2. When a continuous radon monitor is used for testing and there is no other continuous radon monitor available, another type of device shall be used.

1. The RPD shall be calculated for each duplicate pair and the certified radon measurement business shall use the following ***minimum*** criteria for all duplicate analyses:

<u>Average of the two test devices</u>	<u>Warning Limit *[RPD]*</u> <u>*Triggered*</u>	<u>Control Limit *[RPD]*</u> <u>*Triggered*</u>
≥ 4.0 pCi/L	*RPD > 28.0%	*RPD > 36.0%
2.0 – 3.9 pCi/L	*RPD > 50.0%	*RPD > 67.0%
< 2.0 pCi/L	<p>*[n/a]*</p> <p>*Absolute value of the difference between the two tests is >1 pCi/L if both tests are above the minimum detectable concentration*</p>	<p>*[Absolute value of the difference between the two tests is > 1 pCi/L or both tests are not less than the minimum detectable concentration]*</p> <p>*n/a*</p>

2. (No change from proposal.)

(d) Throughout each month, a certified radon measurement business shall conduct the lesser of five percent blanks or 25, distributed among ***New Jersey tests conducted by*** affiliates and individuals not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2.

1. The ***minimum*** control limits for blanks shall be as follows:

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<u>Device</u>	<u>Control Limit</u>
Non-portable	> Minimum Detectable Concentration
Electret	≥ 2 volts, or as recommended by the manufacturer for that configuration

2. (No change from proposal.)

(e) A certified radon measurement business shall *[distribute]* ***provide instructions for deploying*** devices for blank measurements *, **and shall distribute devices for blank measurements*** among all the places where the devices are stored, transported, and deployed, including:

1. – 4. (No change from proposal.)

(f) A certified radon measurement business shall conduct spike testing for electret readers that it owns. If a device is affiliate-owned, the certified individual shall conduct spike testing and shall submit the results to each certified business with which the individual is affiliated for that device *[type]*.

(g) – (j) (No change from proposal.)

7:28-27A.11 Radon mitigation business - initial certification

(a) – (b) (No change from proposal.)

(c) A complete initial application shall include:

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1. The business name, physical location, and mailing address; primary and secondary individuals in charge of the business; ***individual in charge of tracking affiliates and their certification status;*** contact information *** for each individual***, which may include telephone number and electronic mail address; and any branch names, addresses, and contact information;

2. – 4. (No change from proposal.)

[5. The name and certification number of the certified radon mitigation specialist or specialists who will direct the daily operations of the business in accordance with N.J.A.C. 7:28-27A.26(k), upon affiliation, in accordance with N.J.A.C. 7:28-27A.5. If the individual is not yet certified, but has received an acknowledgement notice in accordance with N.J.A.C. 7:28-27A.24(d), the business shall provide the individual’s name, address, and contact information;]

[6.]* ***5. An identification of the building types to be mitigated ***[, including residential buildings, multifamily buildings, large buildings, schools, and child care centers]*** and the authorized ***[measurement]* ***mitigation***** protocols to be followed for each building type, in accordance with N.J.A.C. 7:28-27A.13(d);**

Recodify proposed 7.-9. as ***6.-8.*** (No change in text from proposal.)

(d) The Department will issue an acknowledgement notice to an applicant who complies with the requirements of this section. Upon receipt of the acknowledgement notice, the business shall submit amendments in accordance with N.J.A.C. 7:28-27A.3(j) to provide the affiliation forms in accordance with N.J.A.C. 7:28-27A.5, and a list of affiliates and their training dates in accordance with N.J.A.C. 7:28-~~[27A.9(d)3]~~***27A.13(d)2***. Upon approval by the Department ***and affiliation with a certified radon mitigation specialist or an individual who has received an acknowledgement notice to become a radon mitigation specialist***, a certification

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credential will be issued. The certification shall contain the information provided in the application and any subsequent amendments in accordance with N.J.A.C. 7:28-27A.3(j).

7:28-27A.13 Responsibilities of a certified radon mitigation business

(a) (No change from proposal.)

(b) A certified radon mitigation business shall affiliate with ***[at least one individual]* *a certified radon mitigation specialist or an individual who has received an acknowledgement notice to become a radon mitigation specialist,*** in accordance with N.J.A.C. 7:28-27A.5 and submit the affiliation form to the Department.

(c) (No change from proposal.)

(d) A certified radon mitigation business shall provide¹ to the Department², a³:

1. A list of the building types to be mitigated, including residential ⁴[buildings, multifamily buildings, large buildings, schools, and child care centers. If the list of building types includes multifamily buildings, schools, or large buildings, a certified radon mitigation business shall provide to the Department:]⁵, **non-residential, or school buildings. If residential, whether single-family, condominium, townhouse, apartment, and/or other residential building types will be mitigated.**

⁶[1.] **2.** The name of the affiliate or affiliates who will mitigate ⁷[each type of building] ***multifamily buildings, schools, and/or large buildings***; and

⁸[2. The] **the** date on which each identified affiliate took the eight-hour multifamily buildings training course and/or the **eight-hour** schools and large buildings course, as applicable.

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(e) – (f) (No change from proposal.)

(g) A certified radon mitigation business shall provide radiation safety training to each ***[new]*** ***prospective*** affiliate and uncertified individuals as specified at (n) ***[above]*** ***below***, including the following:

1. – 3. (No change from proposal.)

(h) A certified radon mitigation business shall administer a radiation safety examination to ***prospective*** affiliates and shall determine:

1. (No change from proposal.)

2. The measures the business will take if the ***prospective*** affiliate does not pass the test, such as additional training^{*,]} ***or*** re-administering the test^{*,]} or terminating the affiliation^{*,]}.

(i) A certified radon mitigation business shall provide, to the Department, the method by which the business shall track radon exposure for each affiliate, including a description of the following:

***[1. The method selected;**

2. The reasons that the method was chosen;]

[3.]** ***1. An explanation of the ***[selected]*** tracking method ***s at (j) below***, including all calculations;

Recodify proposed 4.-5. as ***2.-3.*** (No change in text from proposal.)

(j) – (k) (No change from proposal.)

(l) A certified radon mitigation business shall require an affiliate, prior to each mitigation system installation, to provide the client with a copy of a written contract that has been signed by the affiliate and the client. The form contract shall be submitted to the Department for approval as

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part of the certified business's application for initial certification. If the form is revised, the revised form must be submitted to the Department for approval as part of the certified business's application for renewal certification, or as an amendment to its certification. The form contract shall include:

1. – 4. (No change from proposal.)

5. The warranty, if any, on the reduction of the radon level, ***and the warranty*** shall specify*[:

i. When]* ***when*** a fan is installed on pre-existing pipes, whether the entire mitigation system, including the pre-existing piping, is covered and, if it is not, the specific parts of the mitigation system that are covered*[: or]**. **The contract shall state***

[ii. When] ***when*** no warranty is provided;

6. – 9. (No change from proposal.)

10. *[The estimated potential cost]* ***An indication of whether there would be additional charges*** to the client for *[additional work on the system if the installed system]* ***the certified business to perform further work on the installed system if the system*** does not meet the standards specified in the warranty;

11. The estimated service charge, if applicable, for the certified mitigation business to return to the property to address issues with the system while under warranty; *[and]*

***12. A statement that the signed contract constitutes the client's authorization to a certified radon measurement business to provide to the certified radon mitigation business the results of the post-mitigation testing required at (o) below; and**

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[12]. ***13.*** The statement: “This notice is provided to you by a business certified by the New Jersey Department of Environmental Protection (Department) to perform radon mitigation services. At some time in the near future, a representative of the Department may contact you to ask your permission to visit your building. The purpose of the visit would be to inspect the recently installed radon mitigation system.”

(m) *[If a mitigation system is altered, such as to replace a broken fan or pipe, the certified business altering the mitigation system shall upgrade the system, if necessary, to meet the most recent authorized mitigation protocol.]* Before performing work on an existing mitigation system, the certified business and specialist shall advise the client, in *[writing]* ***the contract***, whether the mitigation system meets the most recent authorized mitigation protocol, and provide a written estimate of the upgrades needed, *[and]* the cost to bring the system into compliance ***, and information regarding the potential health impact if the system is not upgraded***.

(n) A certified radon mitigation business shall ensure that an uncertified individual assisting a certified individual with the mitigation shall not perform any aspect of the system design or installation including, but not limited to, drafting design drawings, installing the pipes, fan, and monitor, ***and** *sealing pipe connections *[and overseeing the electrical installation]*. An uncertified individual assisting a certified individual with the mitigation may perform basic construction tasks including, but not limited to, moving supplies and tools, drilling holes in a foundation, clearing gravel and dirt from the suction point, cutting pipes, and cleaning the area after the mitigation system is installed.

(o) (No change from proposal.)

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(p) A certified radon mitigation business shall *[distribute, with the radon mitigation contract, the most recent version of the testing and mitigation guidance document that is approved by the Department and made available on]* ***include in the contract a reference to*** the Department's website at www.njradon.org ***for the most recent version of the testing and mitigation guidance document that is approved by the Department***. *[In the alternative, the certified business may provide, in the contract, the website address where the client may obtain the document.]*

7:28-27A.14 Quality assurance (QA) plan

(a) The QA plan shall contain the following items, presented in order, and clearly identified:

1. – 3. (No change from proposal.)

4. A description of the business's responsibilities and its requirements regarding affiliates and their responsibilities in accordance with N.J.A.C. 7:28-27A.9[(a)]**** (c) *** through (o); and

5. (No change from proposal.)

(b) (No change from proposal.)

7:28-27A.15 Radiological safety plan

(a) The radiological safety plan shall contain the following items, presented in order, and clearly identified:

1. – 2. (No change from proposal.)

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3. A description of the business's and affiliate's responsibilities in accordance with N.J.A.C. 7:28-27A.9 (p) and (q) for a measurement business and N.J.A.C. 7:28-27A.13(f) through (k) for a mitigation business.

(b) (No change from proposal.)

7:28-27A.17 Reporting

(a) (No change from proposal.)

(b) A radon mitigation business shall submit*[,]* to the Department, on or before the first day of each month:

1. A report on all mitigation work performed during the second previous month*[, and for those mitigations]*. For example, the mitigations conducted during May shall be submitted by July 1. Reports shall be submitted in the format and the media required by the Department and shall include:

i. (No change from proposal.)

*[ii. The type of building mitigated (home, large building, school, multifamily building, or child care center);

iii. If the building is a school, the school name, New Jersey Department of Education school code, and room number of the location mitigated;]*

***ii. The type of building mitigation was performed in: residential, non-residential, or school;**

iii. If the building is residential, whether it is a single-family, condominium, townhouse, apartment, or other residential building type;

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iv. If the building is a school, the school name and New Jersey Department of Education school code;

v. Whether the mitigation was conducted at a child care center*

Recodify proposed iv.-ix. as ***vi.-xi.*** (No change in text from proposal.)

2. – 3. (No change from proposal.)

(c) A client report issued by the certified radon measurement business *[to the building owner, the owner’s legal representative, and/or the buyer]*, in accordance with N.J.A.C. 7:28-27A.3(b) and (c), shall include the following:

1. – 13. (No change from proposal.)

(d) (No change from proposal.)

7:28-27A.18 Radon measurement specialist - initial certification

(a) – (b) (No change from proposal.)

(c) A complete initial application shall include:

1. – 2. (No change from proposal.)

3. Documentation showing that the applicant has completed *[24]* ***16*** hours of initial training from a nationally recognized organization. The documentation shall consist of the individual’s training course certificate, which provides the individual’s name, the name of the course, the approved course number, the number of credit hours, and the date of the course;

4. (No change from proposal.)

5. Documentation showing that the applicant successfully passed a radon examination for radon measurement specialist, or the equivalent category administered by the National Radon

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Proficiency Program ***or other organization that the Department determines administers a substantively equivalent examination. The Department will provide a list of approved organizations on its website, www.njradon.org***. ***[The documentation]* *Documentation*** shall consist of a copy of the individual's examination results;

6. – 8. (No change from proposal.)

(d) (No change from proposal.)

7:28-27A.20 Responsibilities of a certified radon measurement specialist

(a) – (b) (No change from proposal.)

(c) A certified radon measurement specialist shall complete an eight-hour multifamily buildings training course and/or ***[a]* *an eight-hour*** schools and large buildings training course ***[provided]* *approved*** by a nationally recognized organization, and shall provide a copy of each of these training certificates to the radon measurement business, in order to test these building types. This training shall be in addition to the initial training required at N.J.A.C. 7:28-27A.18(c)3.

(d) – (h) (No change from proposal.)

(i) A certified radon measurement specialist when conducting a radon test shall:

1.-2. (No change from proposal.)

3. Use a portable device, only if:

i. – ii. (No change from proposal.)

iii. The data obtained directly from the device are submitted to the certified measurement business for review and reporting***[; and]**.***

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4. If applicable to the test, obtain the signature of the owner or their legal representative on the confidentiality waiver in accordance with N.J.A.C. 7:28-27A.9(o)*[.]**; **and**

5. For a non-portable device, submit the device and chain of custody form to the certified radon measurement business from which the device was obtained. For a portable device, submit the collected data and chain of custody form to the radon measurement business with which the individual is affiliated.*

(j) A certified radon measurement specialist who directs the daily operation of a certified business shall:

1. (No change from proposal.)

2. Prepare and sign affiliation *[letters]* ***forms*** issued by the business;

3. Review*[, approve]* ***the chain of custody form and client report for all tests and the raw data for continuous radon monitors and the voltage from electret readers;**

4. Approve*, verify, and sign the certified business's reports that are specified at N.J.A.C. 7:28-27A.17(a) and (c);

Recodify proposed 4.-7. as ***5.-8.*** (No change in text from proposal.)

7:28-27A.21 Radon measurement technician - initial certification

(a) – (b) (No change from proposal.)

(c) A complete initial application shall include:

1. – 2. (No change from proposal.)

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4. Documentation showing that the applicant successfully passed a radon examination for radon measurement technician **, or the equivalent category **, administered by the National Radon Proficiency Program **or other organization that the Department determines administers a substantively equivalent examination. The Department will provide a list of approved organizations on its website, www.njradon.org**. Documentation shall consist of a copy of the individual's examination results;

5. – 7. (No change from proposal.)

(d) (No change from proposal.)

7:28-27A.23 Responsibilities of a certified radon measurement technician

(a) (No change from proposal.)

(b) A certified radon measurement technician shall complete an eight-hour multifamily buildings training course and/or *[a] **an eight-hour** schools and large buildings training course *[provided] **approved** by a nationally recognized organization, and shall provide a copy of each of these training certificates to the radon measurement business, in order to test these building types. This training shall be **, in addition to **, the initial training required at N.J.A.C.

7:28-27A.21(c)2.

(c) (No change from proposal.)

(d) A certified radon measurement technician or an individual seeking certification as a radon measurement *[specialist] **technician** who receives an acknowledgement notice from the Department in accordance with N.J.A.C. 7:28-27A.21(d) shall affiliate with at least one business in accordance with N.J.A.C. 7:28-27A.5.

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1. – 2. (No change from proposal.)

(e) – (g) (No change from proposal.)

(h) A certified radon measurement technician, when conducting a radon test shall:

1. – 2. (No change from proposal.)

3. Use a portable device only *** if***:

i. ***[If the] *The*** device is identified on the certification of both the certified measurement business and the certified radon measurement ***[specialist]**technician***;

ii. ***[If the] *The*** device has a current calibration certificate; and

iii. ***[If the] *The*** data obtained directly from the device are submitted to the certified measurement business for review and reporting; ***[and]***

4. If applicable to the test, obtain the signature of the owner or their legal representative on the confidentiality waiver in accordance with N.J.A.C. 7:28-27A.9(o) ***; and**

5. For a non-portable device, submit the device and chain of custody form to the certified radon measurement business from which the device was obtained. For portable devices, submit the collected data and chain of custody form to the radon measurement business with which the individual is affiliated*.

7:28-27A.24 Radon mitigation specialist – initial certification

(a) – (b) (No change from proposal.)

(c) A complete initial application shall include:

1. (No change from proposal.)

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2. Documentation showing that the applicant possesses the education and work experience required at N.J.A.C. 7:28-27A.26(b). Documentation of education shall consist of a certified copy of a transcript from an accredited institution or course agenda*, a* *[and]* certificate from a heating, ventilation, and air conditioning training provider*, **and/or documentation from the radon mitigation specialist from whom the individual received mitigation instruction through observing radon mitigation system installation***. Documentation of work experience shall consist of a letter from the employer with whom the individual obtained the work experience*,* or from a reference that has extensive knowledge of the individual's work experience. In either case, the letter must outline all applicable responsibilities and specific dates performed;

3 – 4. (No change from proposal.)

5. Documentation showing that the applicant successfully passed a radon examination for radon mitigation specialist*,* or the equivalent category*,* administered by the National Radon Proficiency Program ***or other organization that the Department determines administers a substantively equivalent examination. The Department will provide a list of approved organizations on its website, www.njradon.org***. Documentation shall consist of a copy of the individual's examination results; and

6. (No change from proposal.)

(d) (No change from proposal.)

7:28-27A.26 Responsibilities of a certified radon mitigation specialist

(a) (No change from proposal.)

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(b) A certified radon mitigation specialist shall possess any combination of three years of relevant education and work experience. For purposes of this section, relevant education means college level studies in architecture or engineering, *[and/or]* technical school education in heating, ventilation, and air conditioning*, **and/or mitigation instruction through observing radon mitigation system installation under the direction of a radon mitigation specialist***; and relevant work experience means the design, construction, and renovation of buildings ***and/or the design and installation of mitigation systems if he or she has obtained mitigation experience by being licensed, certified, or accredited by another state or a nationally recognized organization***. The education and work experience requirements shall not apply to an individual who provides documentation that he or she holds a valid license in New Jersey as a professional engineer.

(c) A certified radon mitigation specialist shall complete an eight-hour multifamily buildings training course and/or *[a]* ***an eight-hour*** schools and large buildings training course ***[provided]* *approved*** by a nationally recognized organization, and shall provide a copy of each of these training certificates to the radon mitigation business, in order to mitigate these building types. This training shall be in addition to the initial training required at N.J.A.C. 7:28-27A.24(c)3.

(d) – (k) (No change from proposal.)

7:28-27A.29 Denial, suspension, or revocation of a certification*; **affiliation limitation***

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(a) The Department may deny a certification to an individual or a business ***or limit the number of affiliations of a certified individual or business*** when the individual or business is not in compliance with all provisions of the Act or this subchapter.

(b) – (c) (No change from proposal.)

***(d) The Department may limit the number of affiliations that a certified individual or business may have if the certified individual or business:**

- 1. Violates any requirements of the certification or provisions of this subchapter;**
- 2. Violates a statute, rule, or order of the Department;**
- 3. Falsifies, or makes false representations to the Department, on any report, record, application requirement, or other certification requirement;**
- 4. Records faulty measurements or installs malfunctioning or ineffective mitigation systems; or**
- 5. Makes false or misleading claims about tests and/or services offered.***

[d)]* *(e)* A *notice of* denial, suspension, or revocation ***or a notice to limit the number of affiliations of a certified individual or business shall be ***[effective immediately upon receipt of the notice by]* *issued to*** the violator.**

1. (No change from proposal.)
2. A notice under this section ***[will]* *shall***:
 - i. – ii. (No change from proposal.)
 - iii. Order the violation to cease; ***[and]***
 - iv. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedure***[s]*** at N.J.A.C. 7:28-27A.31 ***; and**

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v. Become final if a request for adjudicatory hearing is not submitted to the Department in accordance with N.J.A.C. 7:28-27A.31 or when a submitted request for adjudicatory hearing in accordance with N.J.A.C. 7:28-27A.31 has been adjudicated and upheld*.

Recodify proposed (e)-(g) as ***(f)-(h)*** (No change in text from proposal.)

(h)* *(i) Upon suspension or revocation, an individual or business shall immediately surrender their certification documents to the Department.

***1. The Department shall notify the businesses with which the individual is affiliated that the individual's suspension or revocation is final; or**

2. The Department shall notify the business's affiliates that the business's suspension or revocation is final.

(j) The scope and duration of a limitation on the number of affiliates a certified individual or business may have is at the discretion of the Department and will be determined according to the severity of the violation. The Department will not remove the affiliation limitation until the reason(s) for the limitation have been corrected.

(i)* *(k) (No change in text from proposal.)

7:28-27A.31 Request for adjudicatory hearing

(a) Within 20 calendar days from receipt of a ***notice limiting the number of affiliations pursuant to N.J.A.C. 7:28-27A.5(i), or a*** certification denial, or a suspension or revocation issued by the Department pursuant to N.J.A.C. 7:28-27A.29, the individual or business may

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request an adjudicatory hearing to contest such action by submitting a written request to the Department to the following two addresses:

1. and 2. (No change from proposal.)

(b) The individual or business requesting a hearing shall include with the completed

Adjudicatory Hearing Request Checklist*[,] the following information:

1. The name, address, telephone number, and electronic mail address of:

i. The person the Department named in the ***notice limiting the number of affiliations, or*** certification denial or the suspension or revocation for which the hearing is sought;

ii. A contact person or authorized representative, if the person the Department named in the ***notice limiting the number of affiliations, or*** certification denial or the suspension or revocation is other than an individual; and

iii. (No change from proposal.)

2. The date the person received the ***notice limiting the number of affiliations, or*** certification denial or the suspension or revocation for which a hearing is sought;

3. A copy of the ***notice limiting the number of affiliations, or*** certification denial or the suspension or revocation for which a hearing is sought, pursuant to (a) above;

4. – 7. (No change from proposal.)

(c) – (e) (No change from proposal.)

7:28-27A.33 One-time certification application requirements for a certified radon measurement business, specialist, and technician and certified radon mitigation business and specialist

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(a) Notwithstanding the expiration date of its certification, a business or individual that is a certified radon measurement business, specialist, or technician or a certified radon mitigation business or specialist as of **[(the effective date of the proposed new rules)]** ***June 6, 2022***, shall submit a complete initial application to the Department in accordance with N.J.A.C. 7:28-27A.7, 27A.11, 27A.18, 27A.21, or 27A.24, such that the Department receives the application on or before **[(119 days after the effective date of the proposed new rules)]** ***October 4, 2022***.

(b) If the certified business or individual's certification has an expiration date that is **[between (the effective date of the proposed new rules)]** ***on or after June 6, 2022***, and **[(119 days after the effective date of the proposed new rules)]** ***on or before December 2, 2022***, the certified business or individual shall not submit a renewal application, but shall submit an initial application as provided at (a) above.

(c) The Department will consider a certified business or individual that submits an application in accordance with this section to be certified from **[(the effective date of the proposed new rules)]** ***June 6, 2022***, until the Department notifies the business or individual that its initial application has been approved or rejected.

***[(d) If a certified business or individual submits an application for initial certification pursuant to this section such that the Department receives it after October 4, 2022, and on or before December 2, 2022, the certification shall be valid on the later of December 3, 2022, or the date the Department approves the initial application. ***

[(d)]* *(e) An individual's certification credential that is valid on **[(the effective date of the proposed new rules)]** ***June 6, 2022***, shall serve as proof of certification for purposes of affiliation with a certified business.

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(e) *(f)* Upon Department approval of the initial application submitted in accordance with (a) above, the certification for the business or individual shall be valid until the date that is one year from the day and month after the expiration date of the business's or individual's certification in effect as of *(the effective date of the proposed new rules)* **June 6, 2022**.

(f) *(g)* **[An]** **Except as provided in (d) above, an individual or business that does not timely submit an application for certification in accordance with this section shall not be certified as of *(120 days after the effective date of the proposed new rules)* December 3, 2022**. To become certified the business or individual shall submit an application for renewal of an expired certification.

7:28-27A.34 Radon mitigation technician

(a) Notwithstanding the expiration date of his or her certification, an individual who is certified as a radon mitigation technician as of *(the effective date of the proposed new rules)* **June 6, 2022**, shall submit to the Department a complete renewal application as specified at *(c) and (d) and (e)* below or, if the individual meets the requirements of a certified radon mitigation specialist, a complete initial application in accordance with N.J.A.C. 7:28-27A.24, such that the Department receives the application on or before *(119 days after the effective date of the proposed new rules)* **October 4, 2022**.

***(b) If an individual certified as a radon mitigation technician as of June 6, 2022, submits an application for certification pursuant to this section such that the Department receives it after October 4, 2022, and on or before December 2, 2022, the certification shall be valid**

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on the later of December 3, 2022, or the date the Department approves the initial application.*

[(b)] *(c)* The Department will consider a certified radon mitigation technician that submits an application in accordance with (a) above to be certified from *[(the effective date of the proposed new rules)]* **June 6, 2022**, until the Department notifies the individual that the application has been approved or rejected. An individual that does not timely submit an application for certification in accordance with this section shall not be certified as of *[(120 days after the effective date of the proposed new rules)]* **December 3, 2022**. To become certified, the individual shall submit an application for renewal of an expired certification.

[(c)] *(d)* A certified radon mitigation technician shall submit, to the Department, an application for renewal on the form that the Department sends to the individual in advance of *[(the effective date of the proposed new rules)]* **June 6, 2022**.

[(d)] *(e)* The certified mitigation technician shall update the information contained on the form provided at *[(c)]* *(d)* above, and shall provide documentation showing completion of four hours of continuing education from a nationally recognized organization, completed no more than 12 months prior to the renewal application submittal. Documentation shall consist of the training course certificate, which provides the individual's name, the name of the course, the approved course number, the number of credit hours, and the date of the course. Documentation from the conference organizer of the individual's attendance for one day at a national radon training conference or documentation from the training course provider showing an individual instructed four hours of radon continuing education also fulfills this requirement.

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*[(e)]****(f)*** A certified radon mitigation technician shall complete an eight-hour multifamily buildings training course and/or *[a]* ***an eight-hour*** schools and large buildings training course *[provided]* ***approved*** by a nationally recognized organization, and shall provide a copy of each of these training certificates to the radon mitigation business, in order to mitigate these building types.

*[(f)]****(g)*** Upon Department approval of the renewal application, the radon mitigation technician's certification shall, unless suspended, revoked, or canceled, be valid until *[(one calendar year and 120 days after the effective date of the proposed new rules)]* ***December 3, 2023***, and cannot thereafter be renewed.

[(g)] **(h)** (No change in text from proposal.)

[(h)] **(i)** On and after *[(120 days after the effective date of the proposed new rules)]* ***December 3, 2022***, a certified radon mitigation technician shall comply with *[(i)]* **(j)** through *[(n)]* **(o)** below.

Recodify existing (i)-(n) as **(j)-(o)** (No change in text from proposal.)