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**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 Proposed Repeal: N.J.A.C. 7:28-27**

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

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

Authorized By: Shawn M. LaTourette, Acting Commissioner, Department of Environmental Protection, and the Commission on Radiation Protection, Julie K. Timins, Chair.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 04-21-03.

Proposal Number: PRN 2021-033.

**A public hearing** concerning this notice of proposal will be held on May 5, 2021, at 9:00 A.M. In light of the current COVID-19 public health emergency, this hearing will be held remotely. Interested parties for the hearing are asked to email [radon@dep.nj.gov](mailto:radon@dep.nj.gov) to obtain instructions on how to attend this hearing remotely or visit the Department of Environmental Protection (Department), Commission on Radiation (Commission) webpage at [www.njradon.org](http://www.njradon.org) to obtain a

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link to enter the virtual meeting lobby. You will need to supply your name for entrance into the virtual meeting. If you do not have internet access you can call (856) 338-7074, and when prompted enter conference ID No. 528896812.

Submit comments by June 4, 2021, electronically at <http://www.nj.gov/dep/rules/comments>. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

The Department encourages electronic submittal of comments. In the alternative, comments may be submitted on paper to:

Alice A. Previte, Esq.

Attention: DEP Docket Number 04-21-03

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

The notice of proposal may be viewed or downloaded from the Department's website at <http://www.nj.gov/dep/rules>.

The agency proposal follows:

### **Summary**

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As the Commission and the Department have provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

The Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (the Act), governs the possession, handling, and use of sources of radiation within the State of New Jersey. The Act established the Commission and vested in that body the power to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation. Radon is a naturally occurring radioactive gas, and exposure to radon is exposure to radiation. The Act, at N.J.S.A. 26:2D-70 through 78, 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, and gives the Department broad authority to implement the program. Further, the Act authorizes the Department to establish and charge fees, through the promulgation of rules, for any of the services it performs under the Act. Therefore, both the Commission and the Department jointly propose this rulemaking.

Radon is the leading cause of lung cancer for non-smokers and the second leading cause of lung cancer for the general population. According to the United States Environmental Protection Agency (EPA), testing is the only way to know the level of exposure to radon. [www.epa.gov/radon](http://www.epa.gov/radon). The EPA recommends testing for radon and reducing (or mitigating) radon in homes that have high levels of radon. The Department's existing rules at N.J.A.C. 7:28-27 govern the certification of individuals and businesses who test for, and mitigate, radon by establishing several categories of certification.

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The Department proposes new rules governing the radon certification program. The proposed new rules establish categories of certification, but do not continue each of the existing categories. There are six categories of certification in the existing rules; the Department proposes to discontinue the mitigation technician category. In addition, the proposed experience and education requirements for some individual certification categories differ somewhat from the existing rules.

The most significant change to the rules is the proposed establishment of an affiliate program that allows individuals to associate with one or more certified businesses to conduct radon testing or mitigation; an employment relationship is not required. Under the affiliation, the certified business is responsible for the activities of the certified individuals. The certified individuals must comply with the certified businesses' quality assurance (QA) plans and radiological safety plans, as applicable.

Like the existing rules, the proposed new rules contain protocols for conducting testing and mitigation. The new rules update the protocols to the most recent science, as 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, and incorporate those protocols, as supplemented or amended. The new rules also differ from the existing rules regarding the conduct of calibrations and proficiency tests for portable devices; responsibility for meeting testing and mitigation requirements; post-mitigation testing; and training for testing and mitigating multifamily, school, and large buildings.

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The Act, at N.J.S.A. 26:2D-75, gives the Department the authority to establish a fee schedule to cover the cost of the certification program. The new rules, like the existing rules, contain fees for the certification program. The Department does not propose to increase fees, or add additional fees, except as to out-of-State businesses that the Department inspects for compliance. The new rules require out-of-State businesses to pay the Department's inspection costs. The fees established for travel to inspect out-of-State businesses will cover these costs.

As explained further below, the proposed amendments at N.J.A.C. 7:28-27 (the existing radon certification program rules) and portions of proposed new N.J.A.C. 7:28-27A will take effect when the adopted rules are effective. The remainder will take effect 120 days after the effective of the adopted rules. On that date, the repeal of N.J.A.C. 7:28-27 will be effective and the Department will also administratively recodify proposed N.J.A.C. 7:28-27A as 7:28-27, updating cross-references throughout.

This Summary, in most cases, discusses the proposed new sections individually; however, some proposed sections, such as definitions, are discussed under more than one subject heading.

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

Proposed N.J.A.C. 7:28-27A.1 states that the proposed new subchapter establishes rules, requirements, and procedures applicable to individuals and businesses who wish to perform radon testing or mitigation in New Jersey. Proposed new subsection (a) states the operative date of the new subchapter and will be deleted as no longer applicable upon the

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effective date of the proposed repeal of existing N.J.A.C. 7:28-27 and the recodification of proposed new N.J.A.C. 7:28-27A as 7:28-27.

The Act, at N.J.S.A. 26:2D-73, and the existing rules make certification mandatory for any person who tests for radon, or who mitigates radon in buildings. To be more scientifically accurate, “radon” is proposed to be defined at N.J.A.C. 7:28-27A.2 more broadly than in the existing rules. In addition to the radioactive noble gas radon-222, “radon” also includes the short-lived radionuclides that are products of the decay of the noble gas. The proposed definition of “radon” would not affect the mitigation or testing process. “Mitigate” has the same meaning as in the existing rules.

Consistent with N.J.S.A. 26:2D-72, the certification requirements in the proposed rules do not apply to any individual performing testing or mitigation on a building that he or she owns. The Department interprets “person,” at N.J.S.A. 26:2D-72, as referring to an “individual” (defined in the proposed rules as a human being), rather than the entire category of “persons” in the existing definition at N.J.A.C. 7:28-27.2. 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.

The proposed subchapter does not apply to an individual performing testing or mitigation without remuneration, as provided at N.J.S.A. 26:2D-72. Also excluded are

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individuals or businesses that are subject to the Uniform Construction Code's techniques for new construction set forth at N.J.A.C. 5:23-10, individuals or businesses that manufacture or sell radon measurement devices, but do not otherwise test for or mitigate radon in New Jersey, and retail outlets that do not provide radon testing services. N.J.A.C. 5:23-10, the Radon Hazard Subcode of the Uniform Construction Code, sets forth construction techniques for radon-prone areas. As provided at N.J.A.C. 5:23-10.1(b), the subcode relates to construction techniques to minimize the entry of radon gas and radon progeny into buildings and facilitates any subsequent remediation that might prove necessary. The Radon Hazard Subcode is intended to complement the Department's rules (see N.J.A.C. 5:23-10.2(a)1), and the Department does not consider construction activities under the subcode to constitute radon mitigation. Similarly, the Department does not consider the manufacture and sale of testing devices to be radon testing or mitigation, such that certification is required. Analysis of radon in water is governed by the Department's "laboratory certification" rules at N.J.A.C. 7:18, rather than the proposed subchapter.

Proposed N.J.A.C. 7:28-27A.1(d) is a severability provision, providing that if a section of the subchapter is found to be invalid or unenforceable, the remaining sections of the subchapter would be unaffected by this decision.

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

Proposed new N.J.A.C. 7:28-27A.3, General provisions, contains requirements applicable to radon testing and mitigation generally. These include certification and application

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requirements for individuals and businesses who test for, or mitigate, radon; instructions for certification renewal, certification expiration, amendments to certification, and voluntary cancelation of certification; and contact information for the Department. The section also recites the confidentiality provisions of the Act (N.J.S.A. 26:2D-73) and the Act's statement that violations of the certification, confidentiality, and reporting requirements are subject to criminal prosecution (N.J.S.A. 26:2D-77).

### *Confidentiality*

Under the Act, at N.J.S.A. 26:2D-73, with limited exceptions, no person may disclose the address or owner of a building that has been tested or treated for the presence of radon, unless the owner allows the disclosure. The proposed new rules apply to certified businesses and individuals; therefore, the proposed confidentiality provision at N.J.A.C. 7:27A.3(b) is similarly limited. However, although the confidentiality provision in the rules is limited, the statutory confidentiality provision is not. For example, an individual who conducts a radon test without remuneration is not subject to the proposed rules, but remains subject to the statutory confidentiality requirement.

The Department interprets N.J.S.A. 26:2D-73 as allowing disclosure to the legal representative of the owner, such as an attorney, or a real estate agent acting under a listing or other written agreement. In practice, radon testing is frequently conducted as part of a real estate transaction and is often coordinated by the attorney or real estate agent for the owner's convenience and with the owner's consent. It is appropriate, therefore, that these

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representatives have access to the test results on the owner's behalf. A certified individual is not a legal representative and is, therefore, not allowed to receive results unless the owner or the owner's legal representative signs a waiver. If the owner of the building is other than an individual, such as a corporation, the proposed rule identifies the authorized individual to whom the certified business may disclose the test results.

### *Certification, generally*

No business or individual subject to the proposed subchapter may test for, or mitigate, radon in the State unless the business or individual is certified. Certification is obtained by submitting an application and fee. The application form, available from the Department's website, [www.njradon.org](http://www.njradon.org), provides a mailing address or other instructions for submitting the application. Although the Department accepts only hard copies of applications now, in the future, the application may be entirely electronic. By providing that the instructions are on the application form, the proposed rule allows for this eventuality. The specifics of certification are discussed further below.

A certified business and certified individual must comply with the Act and the rules in order to remain certified. To remain certified, the business or individual must renew before the expiration date, which is one year after the certification date; otherwise, the certification will expire. "Expiration date" is a new term, defined in the proposed rules as 11:59 P.M. on the date that is one year from the date of the issuance of a certification. For instance, if the certification was issued on February 1, 2020, it would expire at 11:59 P.M. on February 1, 2021.

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To avoid a lapse in certification, the business or individual must submit a renewal application, such that the Department receives it at least 30 days prior to the expiration date. So, in the example involving a certificate issued on February 1, 2020, the renewal application must be received by the Department by January 2, 2021. As proposed, a timely renewal application will allow the certification to continue uninterrupted until the Department approves the new certification. If the Department receives the renewal application fewer than 30 days before the expiration date and the application is not approved by the expiration date, the application will continue through the review process until the Department approves or denies the application. If the Department has not approved the application as of the expiration date, the new certification will begin on the date of approval, which will leave a gap between the expiration of the previous certification period and the beginning of the new certification period. If the application is received by the Department after the expiration date, the certification will lapse on the expiration date and the new certification period will begin when the Department approves the application. As a result, a business or individual will be uncertified and unable to test for or mitigate radon for the period between the expiration date and the date that the Department approves the application.

Under the existing rules, if a certification expires (is not timely renewed), the business or individual must submit an initial application, as if it were a new applicant. The new rules do not require a previously certified business or individual to submit an initial application; instead, a renewal application is sufficient, along with the expired renewal fee. The amount of the expired renewal fee would be the same amount as the initial certification fee currently charged

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by the Department. Therefore, although the labels differ, the proposed fee is the same as under the existing rules. For these previously certified businesses and individuals, the Department already has the information from the initial application, and from any subsequent renewals or amendments; therefore, a complete initial application is unnecessary. When a certification is renewed, the certified business or individual must provide the Department with the most up-to-date information.

In the event that required information changes during the certification period, the certified business or individual would be required to update information immediately, rather than waiting for the end of the certification period. For example, such information could include adding affiliates or devices. The individual or business may amend its certification by submitting the information to the Department, in writing. The amendment is operative when the Department provides a written confirmation of the change. The proposed new procedure differs from existing N.J.A.C. 7:28-27.3(f), which requires a certified business to submit changes in application information to the Department 30 days in advance of the change occurring, and changes in certified personnel 14 days in advance. As in the existing rule, there is no fee to amend a certification.

A certification can be canceled by providing written notice to the Department. Cancellation is final on the date of the communication through which the Department provides a written acknowledgement. The proposed rule provides a web address where someone can obtain information regarding the certification program.

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**N.J.A.C. 7:28-27A.4, Signatories**

Proposed new N.J.A.C. 7:28-27A.4, Signatories, replaces existing N.J.A.C. 7:28-27.4. Like the existing rule, the proposed rule provides certification language for individuals and businesses to include on their applications for certification (initial and renewal), and requests to amend a certification. The proposed rule provides a certification for an individual, and a separate certification for a business. Under the existing rule, a business representative could be required to sign both certifications. Both the existing and proposed rule specify who must sign the certification application on behalf of a business, depending on how the business is structured. The existing rules do not define “business.” The Department proposes to define “business” broadly to include a sole proprietorship, corporation, limited liability company, partnership, or government entity. An “applicant” is defined in both the existing and proposed rules as any individual or business that applies for certification.

Neither the individual’s signature nor the business representative’s signature must be notarized under the proposed rule. This is a departure from the existing rule. A notarized signature serves as assurance that the individual signing the document is who he or she purports to be, but does not ensure that the contents of the application are correct. Over the nearly 30 years that the radon certification program has been in place, the validity of the signatures on applications has not been an issue; accordingly, the proposed rule does not continue the existing notary requirement.

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

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The existing rules governing the Department's radon testing and mitigation certification program make reference to the employees, staff members, and consultants of a certified business. See, for example, existing N.J.A.C. 7:28-27.6(a)7, which requires an applicant for a radon measurement business to identify on its application the certified radon measurement specialists and certified radon measurement technicians employed by the business as staff members or consultants to be utilized by the applicant. Under the proposed rules, a certified business creates an affiliation relationship with certified individuals who test for radon or install radon mitigation systems through an arrangement with the certified business. The certified individual does not need to be an employee of the certified business in order to affiliate with it.

"Affiliation" is a proposed new concept in the Department's radon certification rules. Affiliation is established between the certified business and the certified individual by completing an "affiliation form," which is a document recognized by the Department and signed by the certified business and its affiliate, that details the responsibilities of both the certified radon business and the affiliate. The required affiliation form will be made available on the Department's website at [www.njradon.org](http://www.njradon.org). Each certified business must have at least one affiliate because a measurement or mitigation specialist is responsible for the daily operations of the business. Each certified individual must be subject to at least one affiliation (but may be subject to more than one). The new rules lay out the requirements for a business and individual to follow during the affiliation process. "Affiliate" or "affiliated," "affiliation," and "affiliation form" are proposed to be defined at N.J.A.C. 7:28-27A.2.

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“Acknowledgement notice” is also a new term defined at N.J.A.C. 7:28-27A.2. It is a written statement from the Department to an individual or business that applies for initial certification and provides documentation that all initial certification application requirements have been met. An individual or business is not yet certified when the acknowledgement notice is issued, but the acknowledgement notice allows the individual or business to enter into an affiliation and sign an affiliation form.

An individual must be affiliated with the business before the individual performs testing or mitigation services for that business. In order to become affiliated with a certified business, an individual must provide the business with either proof of certification (the “certification credential,” defined at N.J.A.C. 7:28-27A.2) or the acknowledgement notice as specified at N.J.A.C. 7:28-27A.18(d), 27A.21(d), or 27A.24(d). Depending on the type of building the individual will test or mitigate, the individual must also provide the business with evidence of completion of the training course for the type of building. The training requirements are discussed in radon measurement business – initial certification and renewal certification, N.J.A.C. 7:28-27A.7 and 27A.8 below. If the individual will use a portable device to measure radon, the individual must provide proof of passing the applicable authorized proficiency test.

A business establishes affiliations with individuals (either certified individuals or individuals who are the subject of an acknowledgement notice) by submitting the affiliation form to the Department as an amendment. The mandatory affiliation form must include: the business’s name, and certification number if the business is already certified; the business representative’s name and signature; the affiliate’s name, certification number if the individual

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is already certified, and signature; the date the form is signed; a statement that the business has provided to the affiliate the quality assurance (QA) plan (if applicable), the radiological safety plan, and radiation safety training; and a statement that the certified business and affiliate are both responsible for complying with this subchapter when conducting testing or mitigation. The Department will confirm the affiliation in writing to the business and affiliate, at which time the affiliation is effective. If the individual is not yet certified (but has an acknowledgement notice), the Department will then issue a certification credential to the individual. The new rules establish the mechanism by which a certified radon measurement business can add or remove an affiliate from its certification by amending the certification. See proposed N.J.A.C. 7:28-27A.3(j).

By signing the affiliation form, the individual acknowledges that he or she is bound by N.J.A.C. 7:28-27A, which requires compliance with the applicable protocols. An affiliate must comply with the more stringent of either the rules or the protocol. For example, if the rules require spike tests to be conducted at a rate of three per 100 tests with a minimum of three per year and a maximum of six per month, and the appropriate protocol requires this amount plus additional spike tests for certain situations, then the protocol would be followed because it is more stringent. The signature of the certified business on the affiliation form is confirmation that the business has provided its QA plan (if applicable) and radiological safety plan to the affiliate. The individual must follow the certified business' QA plan and radiological safety plan (if affiliated with a certified radon measurement business), or radiological safety plan (if affiliated with a certified radon mitigation business). If an individual is affiliated with multiple

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businesses, he or she must follow the plan for the business for which radon testing or mitigation is being conducted. A “quality assurance plan,” or “QA plan,” as defined at N.J.A.C. 7:28-27A.2, is applicable only to certified radon measurement individuals and businesses, and is discussed more fully below.

A certified business has substantial obligations with regard to its affiliates, as described further below in the Summary of proposed N.J.A.C. 7:28-27A.9, Responsibilities of a certified radon measurement business, and N.J.A.C. 7:28-27A.13, Responsibilities of a certified radon mitigation business, including ensuring that its affiliates are in compliance with the proposed rules. If the Department determines that a business is not in compliance with the rules, the Department may limit the number of affiliations with the business until the Department is satisfied that the business can demonstrate compliance. Similarly, if an individual is not in compliance, the Department can limit the number of businesses with which the individual is affiliated, until the individual can demonstrate compliance.

The Act, at N.J.S.A. 26:2D-7, authorizes the Commission to promulgate rules to prohibit and prevent unnecessary radiation. The Act requires that the Department administer those rules (N.J.S.A. 26:2D-9). If radon testing or mitigation is not properly conducted, there is the potential for people to be exposed to unhealthy levels of radon, a radioactive substance. A business or individual that is not in compliance is, therefore, potentially allowing people to be exposed to radiation. In order to prevent that potential exposure, the proposed certification program provides a means for the Department to ensure that certified businesses and individuals can safely perform their responsibilities.

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“Certified business” is a new defined term used as a shorthand in the proposed rules for either a certified radon measurement business, or a certified radon mitigation business, as applicable in context. Similarly, “certified individual” is a new defined term that the proposed rules use as a shorthand for a certified radon measurement technician, certified radon measurement specialist, or certified radon mitigation specialist, as applicable in context. “Certified individual” also means a certified radon mitigation technician (see N.J.A.C. 7:27A-34, for requirements to achieve certification and responsibilities upon certification); however, as discussed below, the proposed rules phase out that certification category. The terms “certified radon measurement technician” and “certified radon measurement specialist” have the same meaning as in the existing rules. The proposed term “certified radon mitigation specialist” differs from the existing rules. Under the proposed rules a “certified radon mitigation specialist” not only evaluates diagnostic tests to determine appropriate radon mitigation and safeguard strategies for a building, as in the existing rules, but also designs and installs the systems. See definitions at proposed N.J.A.C. 7:28-27A.2. The role of each of these professionals is discussed - in radon measurement specialist – responsibilities of a certified radon measurement specialist, N.J.A.C. 7:28-27A.20, Responsibilities of a certified radon measurement technician – N.J.A.C. 7:28-27A.23, and Radon mitigation specialist – responsibilities of a certified radon mitigation specialist, N.J.A.C. 7:28-27A.26.

**N.J.A.C. 7:28-27A.32, Liability of a Certified Business for the Actions of its Affiliates**

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The Superior Court of New Jersey, Appellate Division, interpreted existing N.J.A.C. 7:28-27.29 as requiring an employment relationship between a certified individual and a certified business, in order for the certified business to be vicariously liable for the certified individual's violations of the Act. *New Jersey Department of Environmental Protection v. Radiation Data, Inc.*, No. A-1777-17T3 (App. Div., November 2, 2018). The proposed rules make the certified business responsible for the actions of its affiliates as delineated in the affiliation form, if the violation is within the certified business's reasonable ability to control; therefore, if the affiliate is not in compliance, both the individual and the certified business can be held responsible for a violation. The Department and Commission intend that, under the proposed rules, the certified business and the certified individual subject to an affiliation are jointly and severally liable for the certified individual's violations of the Act or the rules promulgated pursuant to the Act.

The proposed rules provide that a certified individual may affiliate with more than one certified business. The liability of a business for the violations of its affiliates extends only to those violations that occur when the individual is performing testing or mitigation services under his or her affiliation with the particular business. For example, if an individual is affiliated with both Business A and Business B, and does not comply with the appropriate protocols when performing testing or mitigation services under the affiliation with Business B, Business A is not liable for that violation.

**N.J.A.C. 7:28-27A.6, Authorized proficiency testing and calibration for portable devices**

*Authorized proficiency testing*

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An “authorized proficiency test,” a new term defined at proposed N.J.A.C. 7:28-27A.2, is a test to ensure that a certified individual is capable of using a particular radon measurement device. The authorized proficiency test is conducted in accordance with procedures developed by a “nationally recognized organization,” proposed to be defined as including the National Radon Proficiency Program, the National Radon Safety Board, or other recognized independent administrative program that provides radon certification, accreditation, chamber approval, standards development, and proficiency services.

“Device,” “device model,” “portable device,” and “non-portable device” are new terms defined in the proposed rules. See proposed N.J.A.C. 7:28-27A.2. Devices can be either portable or non-portable, depending upon whether additional laboratory equipment is needed to analyze the sample and generate results. A “portable device” is a device that does not require additional laboratory equipment to obtain a test result. Portable devices that do not need to be analyzed in a laboratory to obtain the radon concentration include continuous radon monitors and electret devices. In contrast, a “non-portable device,” such as a charcoal canister, charcoal liquid scintillation device, or alpha track detector, does require laboratory equipment to analyze the sample to obtain the radon concentration.

Proposed N.J.A.C. 7:28-27A.6(a) requires that an individual must pass one authorized proficiency test for each device model the individual uses. By definition, a “device model” refers to a portable radon test device. The proposed rule does not require an authorized proficiency test for non-portable devices because evaluating the results of tests from non-portable devices is the responsibility of a laboratory, which must be certified in accordance with

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N.J.A.C. 7:18, Regulations Governing the Certification of Laboratories and Environmental Measurements.

The proposed rule requires the 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, discussed below. At least one affiliate who will use the device must pass the authorized proficiency test before the business adds the device model to its certification and the device model must be identified on the business's certification before an affiliate of the business may use the device model. It is not necessary that every affiliate of the business pass the proficiency test for the device model; however, until the affiliate passes the authorized proficiency test, that affiliate may not use the device model. The proposed rule requires the authorized proficiency test to be conducted at an "approved radon chamber facility," defined at proposed N.J.A.C. 7:28-27A.2. Approved radon chamber facilities are certified or approved by nationally recognized organizations to administer the tests and to calibrate devices. The individual is required by the proposed rule to submit proficiency results to each radon measurement business with which that individual is affiliated for that device model. The business is responsible for ensuring that an affiliate conducts a radon test only after the authorized proficiency test for that device model is passed.

Unlike the existing rules, the proposed rules do not allow a business to be certified based on the provisional proficiency of its certified individuals. See existing N.J.A.C. 7:28-

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27.6(a)9iii through v. When the radon certification rules were promulgated in the early 1990s, authorized proficiency tests were available only at certain times of the year. They are now available throughout the year. It is not necessary, therefore, to allow an individual to use a device model pending the results of a proficiency test.

#### *Calibration of portable devices*

The business must provide, to the Department, the calibration certificate for each portable device it owns as well as each portable device that its affiliates own or use and must add the device to its certification. "Calibration," a proposed new term, is the process of checking the reading of the device to see how the measurement compares to the true value or a standard of known accuracy. A device that is not calibrated will not provide an accurate measurement; therefore, calibration is necessary. Calibration is performed by an approved radon chamber facility or the device manufacturer.

The requirements for calibration are proposed at N.J.A.C. 7:28-27A.6(b). If the affiliate owns the portable device, then the affiliate must calibrate it and submit a calibration certificate for the device to each business with which the individual is affiliated for that device type. This enables the business to ensure that its affiliate is using equipment that will properly measure radon levels. If a certified business owns the device, the business must send the device for calibration. Each time the individual uses a device, he or she must ensure that there is a current calibration certificate. Before a certified individual uses any device to conduct a measurement on behalf of the business, the business must add the device model to its

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certification. The business adds the device to its certification by submitting an amendment to the certification.

The existing rule requires the certified radon measurement business to calibrate devices at least twice a year. See existing N.J.A.C. 7:28-27.33(a)8. The proposed rule requires annual calibration for each portable device. This is the frequency recommended by the device manufacturers.

The proposed rules do not require calibration of non-portable devices because additional laboratory equipment is required to analyze the sample collected by the non-portable device and generate reportable results. A facility that analyzes a sample collected by a non-portable device is currently regulated under the laboratory certification rules at N.J.A.C. 7:18. Pursuant to those rules, the facility is required to conduct spike tests (the test of the accuracy of a non-portable device), to pass a proficiency test, and to calibrate the equipment that it uses to analyze the tests from the non-portable devices.

#### **N.J.A.C. 7:28-27A.7 and 27A.8, Radon Measurement Business – Initial Certification and Renewal Certification**

As required by the Act, at N.J.S.A. 26:2D-70 and 72, a business that tests for the presence of radon gas in buildings, defined at proposed N.J.A.C. 7:28-27A.2 as a “certified radon measurement business,” must obtain a certification from the Department. The existing definition of “certified radon measurement business” includes the sale of radon testing devices; however, the Act does not discuss sale of radon testing devices; therefore, the sale of devices is

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not included in the proposed rules. Proposed N.J.A.C. 7:28-27A.1(c) excludes from the certification program retail outlets that do not otherwise test for or mitigate radon. Therefore, if a business sells radon test devices, but provides no radon testing or mitigation services, it is not subject to Department certification under the proposed rules. Issuing a report of test results to an individual not subject to N.J.A.C. 7:28-27A is a radon testing service, and only a certified business may issue such a report.

Proposed new N.J.A.C. 7:28-27A.7 governs the initial certification of a radon measurement business. Renewal of the certification is in accordance with N.J.A.C. 7:28-27A.8. To become certified, a business submits an application for initial certification to the Department. The application form is available from the Department, on its website at [www.njradon.org](http://www.njradon.org). The application contains the business name, physical location, address, and telephone number, as required at existing N.J.A.C. 7:28-27.6(a). The application also includes the identity of the primary and secondary individuals in charge of the business and any branch names, addresses, and contact information. The requirement in the existing rules for the owner, officer, partner, director, or principal shareholder to list any interest, financial or otherwise, in radon mitigation businesses or services, is not in the proposed rules. In the Department's experience with the radon measurement business certification program, this information has not been necessary.

The existing rules require the radon measurement business to identify the certified radon measurement specialists and certified radon measurement technicians employed by the business as staff members or consultants. As discussed above, the affiliation framework would

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require only the relationship established through the affiliate agreement. Therefore, the proposed rule does not require information regarding employees, staff members, or consultants. It is not necessary that the individual be certified when he or she affiliates with a business. Provided the individual has received an acknowledgement notice from the Department indicating that the individual has met the certification requirements to become certified, the certified business or the business with an acknowledgement letter may affiliate with the individual and submit the affiliation letter as an amendment to the business application. For example, if both an individual and a business are submitting initial applications, an individual cannot be certified until he or she affiliates with a business with an acknowledgement letter; however, the new business is not yet certified, because it has no affiliates. In that case, the individual would obtain the acknowledgement notice from the Department, affiliate with the new business, which also has an acknowledgement notice from the Department, then the business would submit the affiliation form to the Department as part of an amendment to its initial application for certification. Both the individual and the business would be certified when the Department provides certification credentials. An acknowledgement notice from the Department is not the same as certification and is not an authorization for the individual to conduct radon testing. Until the business and the individual are certified, the individual may not conduct radon testing. Certification of radon measurement individuals is discussed below in the summary of proposed N.J.A.C. 7:28-27A.18, 27A.19, 27A.21, and 27A.22.

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The certified business must also identify the certified radon measurement specialist who will direct the daily operations of the business in accordance with N.J.A.C. 7:28-27A.20(j).

Under some circumstances, such as if the business is new, the responsible individual may not yet be certified. Provided the individual has an acknowledgement notice from the Department pursuant to N.J.A.C. 7:28-27A.18(d), indicating that he or she is otherwise qualified to be a certified radon measurement specialist, the business may identify the individual as a certified radon measurement specialist in an amendment to its certification application.

In addition to general information regarding the business, the proposed rules require the applicant to identify the types of buildings that the certified business will test, and the authorized measurement protocol that will be followed for each building type. “Authorized measurement protocols” are defined at proposed N.J.A.C. 7:28-27A.2 as documents developed by the American National Standards Institute together with the American Association of Radon Scientists and Technologists, both national leaders in developing standards and protocols. The protocols referenced include those for homes, multifamily buildings, schools, and large buildings. The Department is incorporating the protocols, as supplemented or amended, into the proposed rules. The business must identify its affiliates who will test multifamily buildings and/or large and school buildings. Affiliates must take training courses before they are authorized to test these types of buildings; therefore, the business must show that its affiliates are qualified to conduct such testing. “Multifamily building” is defined in the proposed rules as a residential building with three or more dwelling units. “Large building” is defined with a reference to the “International Building Code – New Jersey Edition,” incorporated into the

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Department of Community Affairs' Uniform Construction Code at N.J.A.C. 5:23-3.14, and the Authorized Measurement Protocols.

As discussed above, the business must provide information regarding device models and devices, and a copy of the calibration certificate for each portable device. The existing rules governing applications for initial certification (existing N.J.A.C. 7:28-27.6) and renewal certification (existing N.J.A.C. 7:28-27.22) require a business to submit in its application the results of proficiency tests for both portable and non-portable devices. As discussed above regarding authorized proficiency examinations and calibration for portable devices, the proposed rules do not require a certified individual or business to pass an authorized proficiency test for non-portable devices. Therefore, the proposed rules do not require such information in an application for initial or renewal certification. Although proposed N.J.A.C. 7:28-27A.6 requires an affiliate to pass an authorized proficiency test for portable devices, unlike the existing rules, proposed N.J.A.C. 7:28-27A.7 does not require the certified business to provide the Department with proof that the affiliate has passed the test; the affiliate will provide the proof to the Department.

A non-portable device requires laboratory equipment to analyze the collected samples. In its application for certification, the business must identify the analytical laboratory that the business will use for that analysis. The Department requires the identity of the laboratory in order to ensure that the laboratory is certified pursuant to N.J.A.C. 7:18, Regulations Governing the Certification of Laboratories and Environmental Measurements.

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The business must provide the Department with a copy of its QA plan, radiological safety plan, chain of custody forms, instruction document, confidentiality waiver, and each reporting form that it uses to report results to clients. The contents of these plans, documents, and forms are discussed below in the summary of proposed N.J.A.C. 7:28-27A.14, 27A.15, and 27A.17, respectively. "Client" is a new term, defined at N.J.A.C. 7:28-27A.2. A client is the individual or business that owns the building that is tested or mitigated through services regulated under this subchapter. A certified business must provide the client with specific information, as discussed below.

The Department will issue a certification credential to a business that complies with all certification requirements. The business's initial certification contains the information that the business provided in the application. The certified business can change the information when it renews its certification, or by amending the certification. Except for information regarding affiliates, and except as otherwise set forth above, the proposed application requirements are consistent with the existing application requirements.

Existing N.J.A.C. 7:28-27.22 sets forth the requirements of renewal certification for all of the categories of individuals and businesses. The proposed subchapter has separate certification renewal sections for each of the certification categories. For example, proposed N.J.A.C. 7:28-27A.8 applies to a certified radon measurement business. To a large extent, however, the requirements are the same for all applicants. All applicants renew by submitting an application on the form that the Department will send to the certified business or individual prior to the expiration date of the certification. The form will contain all of the information on

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the certified individual's or certified business's existing certification. The business or individual must review the information and correct or update it, as needed, and return the form with the appropriate fee.

The existing rules require a certified business or individual to include in the renewal application all of the information that the business or individual submitted in the initial application for certification. Under the proposed rules, the Department assumes that the information in the individual's or business's existing certification (initial, renewed, or amended) remains valid at the time of the renewal. Therefore, the proposed rules require the renewal application to include only information that differs from the existing certification. If the certification has expired and the application is to reinstate the certification, the application includes only the information that differs from the most recent certification.

As provided at proposed N.J.A.C. 7:28-27A.8, a certified radon measurement business includes in the application calibration information for the portable devices that its affiliates use. Because calibration of portable devices is required annually pursuant to proposed N.J.A.C. 7:28-27A.6, the certified business must provide documentation that the calibration has been performed for each device to be included on the certification. A business applying for initial certification may not yet have this information, in which case the business would provide the information to the Department as an amendment to its certification once the information is available (and before the affiliates use the devices on behalf of the business). The business must also submit documentation of spike testing of electret readers that it owns and that its affiliates own, discussed below in the summary of proposed N.J.A.C. 7:28-27A.10. This

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documentation is not required as part of an application for initial certification, because the spike testing is conducted based on the number of tests performed with the electret readers. A business that has not been certified has not yet used electret readers and will not have performed spike testing.

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

Proposed new N.J.A.C. 7:28-27A.9 establishes the responsibilities of a certified radon measurement business. For many of the items on the proposed list of responsibilities, the rule cites to another rule provision where the requirement is discussed in more detail. The purpose of this section is to identify, in one location, the responsibilities of the certified business.

The certified business must maintain its certification by renewing it as needed, and by amending the information on the certification, in order to ensure the information is current. As discussed above regarding proposed N.J.A.C. 7:28-27A.7 and 27A.8, this includes (but is not limited to) identifying new devices and affiliates. As provided at proposed N.J.A.C. 7:28-27A.5(a), only a certified individual that is affiliated with the certified radon measurement business may perform radon testing services on behalf of the business, and the business is liable for the actions and violations of its affiliates pursuant to proposed N.J.A.C. 7:28-27A.32. Accordingly, it is incumbent on the business to ensure that radon testing that its affiliates perform complies with the proposed rules. Responsibility includes ensuring that the affiliates follow the authorized measurement protocols, the business's QA and radiological safety plans,

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and the conditions or limitations of the business's certification. For example, if a certain device is not identified on the business's certification, the affiliate may not use that device. If the business has not identified on its certification that it will test multifamily dwellings, then the affiliate may not test those buildings.

Although the certified radon measurement business does not need to employ a certified radon measurement specialist, one or more certified radon measurement specialists must be affiliated with the business and direct its daily operations. The proposed rules do not specify the nature of the relationship between the business and the specialist or specialists but leave it to them to arrange. As provided at N.J.A.C. 7:28-29A.20(j), this certified radon measurement specialist (or specialists, if more than one) is responsible for affiliation letters, reports, QA and radiological safety plans and compliance with those plans, recordkeeping, and the business's annual certification.

The business, through the designated certified radon measurement specialist or specialists, must develop and comply with a QA plan for each device model (type of measurement equipment) that its affiliates will use. These QA plans are discussed in the summary of proposed N.J.A.C. 7:28-27A.14. The business must also develop and comply with a radiological safety plan that its affiliates must follow. Radiological safety plans are discussed in the summary of proposed N.J.A.C. 7:28-27A.15. Both the QA and radiological safety plans are subject to Department approval and are part of the certification program authorized pursuant to N.J.S.A. 26:2D-70 and 71. The business submits the plans to the Department with the application for initial certification, or renewal certification, and the plans become part of the

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certification. If either plan is amended, the business submits the plan as an amendment to its certification pursuant to proposed N.J.A.C. 7:28-27A.3(j). The certified business must provide the plans to affiliates as part of the affiliation form requirements (N.J.A.C. 7:28-27A.5(c)), as well as annually, and when there are changes to the procedures that affiliates must follow.

The certified business must train its new affiliates on radiation and radiation safety, radon and the risk of developing lung cancer from radon exposure, and the radiation safety practices that the affiliate must follow. The certified business develops the training as part of the radiological safety plan, discussed in the summary of proposed N.J.A.C. 7:28-27A.15 below, and describes the training in the radiological safety plan. The existing rules, at N.J.A.C. 7:28-27.34, require not only an initial training on radiation safety, but also annual refresher training. The Department has determined, based on its experience, that the initial safety training is sufficient. The proposed rule, therefore, does not require annual refresher training.

Existing N.J.A.C. 7:28-27.34, Minimum requirements for radiological safety plans, requires the business to track the technicians' and specialists' exposure to radon by wearing a badge to detect radiation while they are in the field or keeping records of the radon concentration in each building. Under the existing rules, a certified radon measurement business may be required to limit an individual's exposure to radon, depending on the degree of a certified radon mitigation specialist or technician's exposure to working level months (WLM) per year. See existing N.J.A.C. 7:28-27.34. WLM is discussed further in the summary of the proposed responsibilities of a certified radon mitigation business, N.J.A.C. 7:28-27A.13. The proposed rules do not require a certified radon measurement business to perform exposure

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tracking for certified individuals. In the Department's experience, there has never been a case where an individual ever came close to being near even one WLM per year of exposure when conducting radon testing; therefore, the Department proposes to drop this requirement for measurement.

A business with an acknowledgement notice and a certified business must provide, to the Department, a list of the portable devices owned by the business and/or its affiliates to be used for radon testing, including the manufacturer, the model number, the serial number, and the device owner's name, and must ensure that each affiliate using the device has passed the authorized proficiency test. Businesses must also provide a list of the non-portable devices to be used by the business and/or its affiliates and the name and certification number of the analytical laboratory that will analyze each device, or state that the certified business will analyze the devices itself. In the latter instance, the certified business must be certified pursuant to the Department's laboratory certification rules at N.J.A.C. 7:18 and provide its certification number to the Department on its application.

A certified business will identify, to the Department, the building types that it will test, including residential buildings, multifamily buildings, large buildings, schools, and child care centers. In order to be able to test multifamily buildings, schools, and large buildings, the business must have affiliated individuals that have taken additional training courses. The business must identify the affiliates who will test multifamily buildings, schools, and large buildings, and provide the dates of their required training. Specific training requirements are discussed in the summary of responsibilities of certified individuals, below.

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In addition to QA and radiological safety plans, the certified business must have a chain of custody form to accompany each test. The business submits blank chain of custody forms for Department review and approval as part of its application for initial or renewal certification, or as an amendment to its certification. This requirement is not in the existing rule. The purpose of the chain of custody is to ensure the integrity of the test, so that the test results are reliable. Chain of custody forms are mentioned at existing N.J.A.C. 7:28-27.33, in the context of what is required in a QA plan. Unlike the proposed rule, the existing rule does not specify the contents of the chain of custody form. The proposed rule identifies specific information regarding the client, the purpose of the test, the device used, the test location, the test dates and times, and the certified individual who performs the test.

The affiliate performs a radon test by deploying a device that samples the air in one or more locations in a building. The specific location of each test is based on the applicable authorized measurement protocol. The affiliate completes the chain of custody form in the field (at the location where the test is taken). The information on the form ensures the integrity of the test by identifying 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, and the affiliate who deployed and retrieved the device. If the test is sent to the laboratory for analysis, the certified individual identifies the laboratory on the form. The form also memorializes the conditions that were present when the test was performed, and the purpose of the test (for example, for a real estate transaction or after radon mitigation was performed), and whether the test was a standard, blank, or duplicate (discussed below with

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regard to quality control plans). Among the items of information that the affiliate records on the chain of custody form is whether “closed house conditions” were met during the sampling. “Closed house conditions” is a new term at proposed N.J.A.C. 7:28-27A.2 and refers to whether doors and windows of a building have been closed and for how long.

If the business provides testing devices to an individual other than one of its affiliates, such as an owner who is not subject to certification, the proposed rule requires the business to provide the individual with instructions for testing. The instruction document includes the specific testing requirements, instructions to complete the chain of custody form, and directions for returning the device to the business. The business submits the instructions document as part of its application for initial or renewal certification, or as an amendment to its certification. This requirement is not in the existing rule.

A certified business must ensure that a radon test is conducted using a device that it, or its affiliate, owns, and the device must be identified on the business’s certification. Further, as discussed above, if the test is taken with a portable device, there must be a current calibration certificate, and the affiliate using the device must have taken and passed an authorized proficiency test. When a business or affiliate acquires a new device, and an affiliate passes an appropriate authorized proficiency test, the business must add the device to its certification. Similarly, it may be necessary for a business to remove a portable device from its certification. The business with an acknowledgement notice or a certified business can add a device model or device to its certification by amending the certification. See proposed N.J.A.C. 7:28-27A.3(j). The amendment to add or remove a device model or device is effective when the Department

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provides written confirmation to the business indicating that the amendment was processed; the business and its affiliates may not use the device model or device until the amendment is effective. If the addition of the device model or device is part of the renewal application, the addition is effective when the renewal is effective.

Annual calibration of portable devices is required, as discussed above in the summary of proposed N.J.A.C. 7:28-27A.6. Electret devices, which are also portable devices, are subject to additional tests, called “spike tests,” to ensure that they are measuring properly. The number and frequency of the tests are discussed in the summary of proposed quality control provisions at N.J.A.C. 7:28-27A.10 below. As discussed in the summary of proposed N.J.A.C. 7:28-27A.6 above, non-portable devices are not subject to annual calibration. Instead, a laboratory or the certified business analyzes the devices.

If the certified business determines that a test does not meet the requirements that the subchapter establishes, whether the test is conducted by an affiliate or otherwise, the certified business must invalidate the test. If the certified business has reason to invalidate a test, it must identify the reason on the client report form, and not provide the results of the test to either the client or to the Department. This is a new provision, not in the existing rules.

In most instances, a radon test is performed in order that a certified radon measurement business can issue a report on the concentration of radon the test detected. Certified individuals perform these tests, but so do individuals who are not subject to the certification requirements. These include, as provided at proposed N.J.A.C. 7:28-27A.1(c), individual property owners testing their own properties, and individuals and businesses who

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conduct radon testing without remuneration. A certified radon measurement business may issue reports only for tests conducted by its affiliates and the limited categories of owners or entities not receiving remuneration. The certified business reports test results to the Department in accordance with N.J.A.C. 7:28-27A.17(a) and in a client report form in accordance with N.J.A.C. 7:28-27A.17(c). The business submits the client report form it plans to utilize for these limited categories to the Department for approval as part of its application for initial or renewal certification, or an amendment to its certification.

When it issues the report to the client, the certified business must either distribute a copy of the most recent version of the Department-approved testing and mitigation publication, or provide in the report the Department's website address where the client can read the publication. Existing N.J.A.C. 7:28-27.28 refers to the name of publication, "Radon Testing and Mitigation: The Basics," and requires the certified business to provide a hard copy to the client. The proposed rule allows the certified business to conserve paper, while still making the publication available to the client. The proposed rule does not identify the title of the publication. Although the publication needs to be one that is approved by the Department, it does not need to be issued by the Department; the title and contents may change over time. The Department provides the most recent Department-approved publication on its website.

As provided in the Act, and discussed in the summary of proposed N.J.A.C. 7:28-27A.3(b) and (c) above, when a property has been tested for radon, the results of any testing are confidential. A certified business cannot provide an address and corresponding radon test result to an individual other than the owner or the owner's legal representative, or the buyer in

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the case of a prospective sale, unless the owner waives their right to confidentiality in writing.

The proposed rule requires a certified business to establish a confidentiality waiver form and to require affiliates to use the waiver if results are to be provided to anyone other than the building owner or representative. The business submits the confidentiality waiver as part of its application for initial or renewal certification, or as an amendment to its certification. This requirement is not in the existing rule.

**N.J.A.C. 7:28-27A.10, Radon Measurement Business - Quality Control Measures for a Certified Radon Measurement Business**

Among the responsibilities of the certified radon measurement business at N.J.A.C. 7:28-27A.9 is the development of quality control measures to ensure that the devices that the business uses are working properly and providing accurate test results. Proposed N.J.A.C. 7:28-27A.10 provides the required quality control measures. "Quality control" is defined at proposed N.J.A.C. 7:28-27A.2 as the technical activities that measure the attributes and performance of a process against defined standards to verify that they meet established specifications, including documentation.

The certified business must implement quality control checks for all devices. In this way, it ensures the integrity of the test. Among the quality control requirements are "duplicate measurements" and "blank measurements," new terms proposed to be defined at N.J.A.C. 7:28-27A.2. A blank measurement is from a device that is not exposed to the air in the location where the other devices are deployed. The blanks are used to determine if the devices have

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been contaminated during storage. A duplicate measurement means performing a test with two devices at the same place and time. The test results for the two devices should be the same, or within a close range, as discussed below. A difference in the results of the two tests could suggest a potential testing problem, such that subsequent testing may be needed. In most instances, a duplicate measurement is made on the same type of device as the primary device; however, when a continuous radon monitor is used for the test and there is no other continuous radon monitor available to use for the duplicate measurement, the rule allows the duplicate to be made with another type of device. The continuous radon monitor is a relatively expensive piece of equipment, and an affiliate may not have access to more than one to deploy at a location. A continuous radon monitor is an active radon test, meaning that it samples the level of radon in the air at regular intervals, and reports those levels within a short period of time, often on a graphic display. In contrast, a passive test collects a sample of the air in a location, and the device is then sent to a laboratory for analysis.

Proposed N.J.A.C. 7:28-27A.10 requires a certified business to conduct duplicate measurements for 50 tests per month, or 10 percent of the total number of tests performed in a month, whichever is less, and prescribes criteria for duplicate analyses. The proposed rule includes a formula for calculating the “relative percent difference” or “RPD” for each duplicate pair. “Relative percent difference” or “RPD” is a new term defined at proposed N.J.A.C. 7:28-27A.2 and is a statistic to evaluate the difference between two measurements when one does not know which of the two measurements is correct. If more than five percent of the evaluations of RPD for the duplicates fall within the warning limit, or more than one percent of

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the checks falls outside the control limit for a device type, the business is required to conduct an investigation, take appropriate corrective action to fix the problem, and document the issue and corrective action. When problems with the RPD continue, the affected device needs to be taken out of service until the problem is identified, corrected, and documented. "Minimum detectable concentration" is defined in the proposed rules as the lowest concentration that is detectable at an established confidence (95 percent at minimum) and it is the basis for determining certain control limits.

A business conducts testing through its affiliates. It also provides tests directly to individuals who are not subject to the certification requirements (proposed N.J.A.C. 7:28-27A.1(c)1 and 2). The business must distribute devices for duplicate measurements to individuals identified at N.J.A.C. 7:28-27A.1(c)1 and 2 and affiliates, so that the business has measurements across the full spectrum of users, providing data that will allow it to better evaluate the operation of the devices.

The proposed rule also requires a business to conduct blank measurements for five percent of the total number of tests per month or 25 each month, whichever is less. As stated above, a blank measurement is intended to test whether the devices were contaminated during storage. As with the duplicate measurements, the business must distribute devices for blank measurements among its affiliates and the individuals not subject to certification, in order to ensure the integrity of the devices.

"Spike testing" is a part of the quality control program. The proposed rule requires a certified business that owns, or has affiliates that own, electret readers to conduct spike tests

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at a rate of three per 100 tests, with a minimum of three per year and a maximum of six per month. The results of spike testing are monitored, recorded, and documented by the certified radon business, and any significant deviation from the known concentration must be investigated. Spike testing provides proof of continued accuracy of the entire measurement system.

The proposed rule requires each shipment of electret devices from the manufacturer to be evaluated for voltage drift, the electret reader to be zeroed, and the reference cells to be checked at least once weekly and all results documented. These checks are required to ensure that the electret reader is operating properly. The affiliate is required to submit the results of these checks to the certified business weekly in order for the radon measurement specialist to review the data. If the required limits for these checks are exceeded, the business must instruct the device owner to take the affected device out of service until the problem is identified, corrected, and documented.

Every calendar quarter, the certified radon measurement specialist identified at proposed N.J.A.C. 7:28-27A.9(e) must prepare a written report of the results of the quality control measures identified at N.J.A.C. 7:28-27A.10.

**N.J.A.C. 7:28-27A.11 and 27A.12, Radon Mitigation Business – Initial Certification and Certification Renewal**

As required by the Act, at N.J.S.A. 26:2D-70 and 72, a business that safeguards buildings from the presence of radon gas must obtain a certification from the Department. This

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safeguarding is referred to in the rules as “mitigation” and a certified business that designs and installs systems in buildings to mitigate and safeguard against radon exposure is a “certified radon mitigation business,” defined at proposed N.J.A.C. 7:28-27A.2. The proposed definition is comparable to the existing definition, but uses the term “radon exposure,” rather than “radon contamination.” The proposed definition does not refer to “radon contamination” because the presence of radon gas is not generally referred to as “contamination.” Mitigation is not considered the remediation of contamination; instead, the purpose of the mitigation is to reduce human exposure to radon.

Proposed N.J.A.C. 7:28-27A.11 provides the requirements for the initial certification of a radon mitigation business, and proposed N.J.A.C. 7:28-27A.12 provides the requirements for a renewal certification. The procedures for initial certification and renewal certification are the same as for a radon measurement business, discussed above in the summary of proposed N.J.A.C. 7:28-27A.7 and 27A.8. The radon mitigation business does not use devices as defined at proposed N.J.A.C. 7:28-27A.2, so does not provide information on devices or calibration, does not need chain of custody forms, or QA plans, and does not provide reports to clients; therefore, these aspects of the applications differ from the applications for radon measurement businesses. Like a radon measurement business, the radon mitigation business must provide the Department with authorized protocols; however, the protocols that the applicant submits to the Department are the “authorized mitigation protocols” defined at proposed N.J.A.C. 7:28-27A.2. Like the authorized measurement protocols, the authorized mitigation protocols are developed by nationally recognized organizations and are periodically updated. The

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Department is incorporating the protocols, as supplemented or amended, into the proposed rules. The proposed rule also requires a radon mitigation business to submit a copy of the business's form contracts for a fan installation and for a full "mitigation system" that is defined in the proposed rules as the series of steps used to reduce radon levels in a building. If radon is present in a building, the certified business would install a full mitigation system and the contract would include a description of the entire system. Alternatively, a certified radon mitigation business would install a fan to activate the radon-resistant elements required by the Radon Hazard Subcode at N.J.A.C. 5:23-10. In such cases, the contract would include a description of the fan installation. The existing rules do not have a comparable requirement to provide copies of contracts.

Existing N.J.A.C. 7:28-27.8 requires a business to submit a description of all mitigation systems offered, types of diagnostic evaluations that will be performed, procedures to be used for performing diagnostic tests, and proof that mitigation systems and diagnostic tests were effective in reducing radon levels in homes. The proposed subchapter does not require the business to submit this information. The Department has never based qualification for certification on whether the mitigation systems or diagnostic tests are effective, making the submission unnecessary.

The existing rules require a certified business or individual to include, in the renewal application, all of the information that the business or individual submitted in the initial application for certification. Under the proposed rules, as discussed above, the Department assumes that the information in the individual's or business's existing certification (initial,

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renewed, or amended) remains valid at the time of the renewal. Therefore, the proposed rules require the renewal application to include only information that differs from the existing certification. If the certification has expired and the application is to reinstate the certification, the application includes only the information that differs from the most recent certification. Although the proposed rules require payment of an “expired renewal fee,” this fee is the same as the initial certification fee.

Except for information regarding affiliates, and except as set forth above, the proposed initial and renewal application requirements are consistent with the application requirements at existing N.J.A.C. 7:28-27.6.

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

Proposed new N.J.A.C. 7:28-27A.13 establishes the responsibilities of a certified radon mitigation business. As discussed above in the summary of proposed new N.J.A.C. 7:28-27A.5 regarding affiliates and N.J.A.C. 7:28-27A.9 regarding a certified radon measurement business, only a certified individual that is affiliated with the certified business may perform services on behalf of the business, and the business is liable for the actions and violations of its affiliates pursuant to proposed N.J.A.C. 7:28-27A.32. As with a certified radon measurement business, the daily operations of a certified radon mitigation business must be directed by one or more affiliated certified radon mitigation specialists.

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The affiliates of a certified radon mitigation business are primarily certified radon mitigation specialists. For 16 months after the proposed rules are operative, there may be some affiliated certified radon mitigation technicians, as discussed below in the summary of proposed N.J.A.C. 7:28-27A.34. The certified business must develop and comply with a radiological safety plan designed to limit its affiliates' exposure to radon to a level that is as low as is reasonably achievable. The contents of the plan are discussed in the summary of proposed N.J.A.C. 7:28-27A.15 below. The plan includes radiation safety training, which is identical to the training discussed above in the summary of the responsibilities of a radon measurement business.

Existing N.J.A.C. 7:28-27.34, Minimum requirements for radiological safety plans, directs the business to require technicians and specialists to wear a badge that tracks exposure to radiation while they are in the field or keeping records of the radon concentration in each building. The proposed rule provides an alternative to wearing a badge. Proposed N.J.A.C. 7:28-27A.15 requires the certified business to either require an affiliate to wear a passive long-term radon detector (badge) for a period of at least three months, or to calculate the affiliate's estimated exposure to radon. To estimate exposure, the formula in the proposed rule uses the highest pre-mitigation radon test result the business obtained during the past year and the maximum total time spent by an affiliate in buildings while conducting mitigations for the past year to obtain the "working level month" per year. "Working level" or "WL" and "working level month" or "WLM" are defined at proposed N.J.A.C. 7:28-27A.2. The proposed definition of "working level" differs from the existing definition, in that the proposed definition identifies a

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working level as the rate of exposure to a unit of radon decay product. The existing definition refers to a concentration of radon in air. "Working level month" is a new definition that refers to accumulated human exposure to radon decay product, where one WLM = one WL exposure for 170 hours. WLM is used at existing N.J.A.C. 7:28-27.24, but not defined.

Under the existing rules, a certified radon mitigation business may be required to limit an individual's exposure to radon, depending on the degree of a certified radon mitigation specialist or technician's exposure to WLM per year. See existing N.J.A.C. 7:28-27.34. For example, if an affiliate's estimated exposure is two WLM per year, the business would need to instruct the affiliate that he or she cannot enter homes with high radon concentrations. If there is the potential that an affiliate could be exposed to more than four WLM per year, the business must investigate and take steps to reduce the affiliate's exposure. A business must ensure that no affiliate is exposed to more than four WLM per year. The proposed rules do not contain such prescriptive language. In the Department's experience, there has never been a case where an individual ever came close to being near even one WLM per year of exposure; however, it would be more likely to happen for mitigation because individuals spend more time in the elevated radon area than when conducting a test. Therefore, the Department proposes to allow the certified mitigation business to use a formula to calculate estimated exposure, if the certified individual does not wear a passive long-term detector (badge). Although the likelihood of exposure to more than one WLM per year is small, the proposed rules require the certified business to notify an affiliate when the affiliate's actual or estimated exposure exceeds two WLM/year.

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The certified radon mitigation business is required to develop a written contract as part of its certification application. Affiliates are required to provide the contract to the client prior to installing the mitigation system. The contract must be signed by the affiliate and client and must include information identifying the certified business, the affiliate signing on behalf of the business, and the client. The contract must also provide a description of the radon mitigation system components and instructions on their operation and maintenance and state that a short-term radon test will be conducted as required at N.J.A.C. 7:28-27A.13(o). The proposed rule recites a statement that each contract must contain, notifying the client that a Department representative may contact the client to conduct a site visit to inspect the mitigation system. The contract must disclose whether the certified business is providing a warranty, or guarantee, that the level of radon will remain at a reduced level. If there is a warranty, the certified business must state in the contract whether the entire mitigation system is covered by the warranty, or if only portions are covered. The certified business must estimate the cost to the client if the installed system does not meet the warranty specifications and the business must perform further work, including the cost of any applicable service charge. The form contract must be submitted to the Department for approval. The existing rules do not require a contract, but existing N.J.A.C. 7:28-27.7 states that if a business provides a warranty for a mitigation system, the business must explain the coverage and honor the warranty.

When it installs radon mitigation systems, a certified radon mitigation business can retain, by employment or otherwise, the services of uncertified individuals. The uncertified individual may not perform any aspect of the system design or installation including, but not

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limited to, drafting design drawings, installing the pipes, fan, and monitor, sealing pipe connections, and overseeing the electrical installation. In order to perform these and other activities related to the actual mitigation, the individual must obtain certification under the proposed subchapter. 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. This is consistent with the Act, at N.J.S.A. 26:2D-72, which requires anyone who performs mitigation activities to be Department certified.

Another proposed new requirement applies when a business is altering an existing system, such as to replace a broken fan or pipe. In such cases, the proposed rule requires the certified business to notify the client in writing if the existing mitigation system does not comply with the most recent approved mitigation standards and provide the client with a written estimate of the upgrades and associated cost to bring the system into compliance.

After it installs a mitigation system, the certified radon mitigation business must ensure that a short-term radon test is conducted. Unless the individual conducting the test falls within the exempt categories at N.J.A.C. 7:28-27A.1(c), only a certified radon measurement business may conduct the test. See proposed N.J.A.C. 7:28-27A.1(b). Existing N.J.A.C. 7:28-27.7 requires the test to be conducted no sooner than 12 hours after the system is installed. Proposed N.J.A.C. 7:28-27A.13(o) requires the test to be conducted no sooner than 24 hours after the system is installed, and within 30 days after the installation. The proposed timing of the post-

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mitigation testing follows the nationally accepted requirements in the most recent authorized mitigation protocols.

The certified business must either distribute a copy of the most recent version of the Department-approved testing and mitigation publication or provide in the contract the link to the Department's publication, as discussed above in the summary of proposed N.J.A.C. 7:28-27A.9, Responsibilities of a certified radon measurement business.

Several requirements that are at existing N.J.A.C. 7:28-27.7, Certification requirements for a radon mitigation business, are not in the proposed rules. The existing rule requires a system to be installed under the direct supervision of either a specialist or technician. This requirement is not necessary in the proposed rule because a certified individual will be present for every mitigation, as required at N.J.A.C. 7:28-27A.13(c). As stated above, the proposed rules prohibit non-exempt uncertified individuals from performing mitigation work. Uncertified individuals may assist with the work, but the role of such an individual is limited. The proposed rules do not specifically state that a certified radon mitigation specialist must perform a visual inspection and diagnostic test because these tasks are required under the authorized mitigation protocols that the certified individual must follow. The proposed rules do not state that the certified business must obtain all necessary permits. The authorized mitigation protocols refer individuals to their Federal, State, or local authorities regarding code compliance. To the extent that the required permit is issued by an entity other than the Department, such as a municipal construction permit, the issuing entity has enforcement authority. To the extent the required

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permit is a Department permit, enforcement provisions are contained in the applicable Department rules.

#### **N.J.A.C. 7:28-27A.14, Quality Assurance Plan**

The quality assurance plan, or QA plan, establishes the activities required to establish precision and accuracy of the radon test data. “Quality assurance” or “QA” and “quality assurance plan” or “QA plan” are defined at proposed N.J.A.C. 7:28-27A.2. A QA plan is a formal document describing, in detail, the necessary quality assurance policies, quality control procedures, and other technical activities that need to be implemented to ensure that the results of the work performed will satisfy the stated performance or acceptance criteria. The existing rules provide the elements of a QA plan at N.J.A.C. 7:28-27.33, Elements of quality assurance plans. Proposed N.J.A.C. 7:28-27A.14, Quality assurance plans, differs from the existing rules in order that the plans meet the requirements of current best practices, and integrate with the rest of the rulemaking, including the affiliate framework.

QA plans apply only to radon measurement, not radon mitigation. Accordingly, the requirements at proposed N.J.A.C. 7:28-27A.14 apply only to certified radon measurement businesses and certified radon measurement specialists and technicians. Each certified business must have a QA plan, and provide that plan to its affiliates. Like the existing rule, the proposed rule requires the QA plan to be signed. The existing rule requires the author to sign the plan, but does not specify that the author must be a certified individual. Proposed N.J.A.C. 7:28-27A.20(j) requires the certified radon measurement specialist (or specialists) responsible

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for the certified business's operations to prepare the certified business's QA plan; therefore, the certified radon measurement specialist responsible for the plan must also sign it on behalf of the business. The QA plan, like the proposed rules, states that a certified radon measurement specialist or specialists will oversee the daily operations of the certified business.

The QA plan must have a title page that provides information about both the document and the certified business. Both the existing and proposed rules require a table of contents for the plan, but the existing rule does not require the contents be listed in a specific order; the proposed rule does. Both the existing and proposed rules require a description of the business's organization. The proposed rule does not require a list of names of all technicians and specialists, because this list changes too frequently to include it in the QA plan. Instead, the business can provide a description of the reporting structure between the individual that signs the application, the measurement specialists performing quality assurance (those with responsibility to oversee the daily operations of the certified business), and the affiliates.

The proposed rule requires a description of the testing procedures that the affiliates will use (as do the existing rules), including specific information about each device, the authorized measurement protocols, and a discussion of how the certified business will ensure that its affiliates follow the protocols. The QA plan must also discuss how it will ensure that its affiliates follow the QA plan, and how it will verify that the affiliates have the required training for the specific building types that they will test (for example, school, child care, multifamily). The rule requires the plan to include a discussion of the requirements for using and filling out a chain of custody form, which includes a statement that the affiliate must fill out the chain of custody form

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in the field. The plan must also include a discussion of the confidentiality waiver form. In addition, the plan must include descriptions of various business practices, including (among others) procedures that the affiliates must follow, authorized proficiency tests for the various device models, data validation procedures, and quarterly quality assurance reports.

Neither the proposed rule nor the existing rule requires a copy of the chain of custody form to be part of the QA plan, but the proposed rule requires the form to be submitted as part of the initial application or an amendment to the certification. Also, the proposed rule establishes calibration requirements that are not in the existing rules, including who is required to calibrate the devices, the timing of calibration, and the approved radon chamber facilities and/or manufacturers that will calibrate the devices.

Existing N.J.A.C. 7:28-27.33(a)5 and 6 discuss testing, sample tracking, and chain of custody procedures that apply to both the measurement business and laboratory. Neither the existing, nor the proposed, subchapter regulates laboratories; therefore, the proposed rule does not contain laboratory-related requirements. The existing rule requires the plan to recite equipment maintenance procedures. These are routine procedures established by device manufacturers; the Department does not develop or enforce these procedures, so they are not in the proposed rule. The existing rule also requires a description of the calibration standards and sources that the approved radon chamber facility or device manufacturer is responsible for during calibration. The certified business and affiliate are responsible for ensuring that the devices are calibrated by an approved radon chamber facility or device manufacturer; therefore, the calibration-related requirements are not in the proposed rule.

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### **N.J.A.C. 7:28-27A.15, Radiological Safety Plan**

A radiological safety plan is a certified business's manual for its affiliates, describing the measures that the business prescribes to protect its affiliates from exposure to radon, a radioactive material. Both a certified radon measurement business and a certified radon mitigation business must have a radiological safety plan. A certified individual responsible for overseeing the daily operation of the certified business prepares and signs the plan.

Like the QA plan, discussed in the summary of proposed N.J.A.C. 7:28-27A.14 above, the radiological safety plan has a title page and a table of contents. The radiological safety plan includes the safety practices that each affiliate must follow, with separate practices applicable to measurement and mitigation activities. The description of the radiation safety practices that radon testers need to follow is similar in the existing and proposed rules, except as follows. Existing N.J.A.C. 7:28-27.34 requires radon samples to be analyzed in a low radon area in order to limit the tester's exposure to radon. The proposed rule does not continue this requirement because test devices are not analyzed in the field. Existing N.J.A.C. 7:28-27.34 requires gases to be exhausted outdoors and above the roof during mitigation. The location and elevation of the point where the gases are exhausted are elements of the authorized mitigation protocols (incorporated into the proposed rules by reference) and are necessarily accommodated in mitigation systems. The requirement does not need to be recited in the proposed rules.

Existing N.J.A.C. 7:28-27.34 requires the radiological safety plan to include annual safety training. The Department has determined that the initial safety training (discussed at proposed

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N.J.A.C. 7:28-27A.9 and 27A.13) is sufficient. The radiological safety plan must discuss only initial safety training.

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

In order that the Department can ensure that the certified business and certified individuals are complying with the rules, the business must maintain records and make them available to the Department on request. For both the certified radon measurement business and the certified radon mitigation business, the proposed rule requires information related to affiliates, their training and proficiency, the plan or plans applicable to each type of business, and the work the certified business performs.

Both existing N.J.A.C. 7:28-27.21, Recordkeeping provisions, and the proposed rule require a certified business to maintain copies of the certification credential of certified individuals; however, the proposed rule refers to a business's affiliates, rather than employees of the business. The existing rule requires a certified business to maintain copies of all applications it submits to the Department. The Department maintains its own copies of these records, so the proposed rule does not require the certified business to maintain them. Unlike the existing rule, the proposed rule does not require records to be kept in hard copy. Provided the record is immediately accessible to the Department on request, the business may maintain the record in whatever format it chooses.

#### **N.J.A.C. 7:28-27A.17, Reporting**

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Proposed N.J.A.C. 7:28-27A.17, Reporting, requires each certified radon measurement and mitigation business to report, to the Department, by the first of each month the tests and mitigations that the certified business performed two months previously. The proposed rule gives the example of reporting by July 1 for tests or mitigations performed in May. The first of the month reporting requirement is the same as at existing N.J.A.C. 7:28-27.28, Reporting requirements, but the proposed rule expands upon the data that the certified businesses must include in those reports.

The certified radon measurement business must report all of the information it records on the chain of custody form, discussed in the summary of proposed N.J.A.C. 7:28-27A.9. For each building mitigated, the certified radon mitigation business must provide the location and the type of building mitigated, the mitigation system installed, the date of the mitigation, and the certified individual who installed the system. If the building is a school, specific information about the school, such as the school name, the New Jersey Department of Education school code, and the room number of the location tested must be included. The certified radon mitigation business must provide in its report information regarding pre-mitigation testing, including the date and location of the testing, the device or devices used, and the certified radon measurement business that conducted the test. The proposed rule requires the certified business to provide similar information for the required post-mitigation testing. If a post-mitigation test report is not available at the time of the report to the Department, the certified radon mitigation business must provide it in the next month's report. The existing rule requires the certified business to provide the address, lot, and block number of the building tested or

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mitigated; however, the proposed rule does not require a certified business to collect or report the lot and block number because this information has never been used by the Department. A certified individual responsible to oversee the daily operation of the certified business must sign a letter stating that the individual has reviewed, verified, and approved the report, and submit that letter with the report to the Department.

The proposed rule, like the existing rule, specifies the contents of testing reports that a certified radon measurement business gives to a client, or to the prospective buyer if the testing is associated with a real estate transaction. The proposed substantive requirements for the testing reports are the same as in the existing rule; however, the Department has clarified the description of the information. As in the existing rule, the client report must include information about the business, the devices, the test, the laboratory (if any) that analyzed the samples, the location of the building tested, and the owner of the property. The client report must also include a statement regarding the confidentiality of the report, including the address of the building tested and the results of the test.

#### **N.J.A.C. 7:28-27A.18 and 27A.19, Radon Measurement Specialist – Initial and Renewal**

##### **Certification**

Pursuant to existing N.J.A.C. 7:28-27, a certified individual who tests for radon is either a “certified radon measurement specialist,” or a “certified radon measurement technician.” To become certified under the proposed rules, an individual submits an application for initial

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certification to the Department. The basic application process is the same as discussed above regarding certified businesses.

On the application the individual must provide a name, home mailing address (which can be a post office box), and a physical home address (no post office box). The Department may request other contact information on the application, such as a phone number and email address. Existing N.J.A.C. 7:28-27.10(a)1 requires only the applicant's name, home address, and telephone number. The proposed rule requires the applicant to provide his or her Social Security number. The Child Support Program Improvement Act, P.L. 1998, c. 1 (N.J.S.A. 2A:17-56.60.a) requires a State agency, such as the Department, to require the applicant for any professional or occupational license to provide his or her Social Security number on the license application. Although the requirement is not in the existing rule, which was promulgated prior to the Child Support Program Improvement Act, the Department's existing application asks for a Social Security number in compliance with the statute.

The applicant must also provide documentation that he or she has the necessary training, education, and work experience. The proposed rule identifies the documentation that satisfies the requirement. The education and work experience requirements at proposed N.J.A.C. 7:28-27A.20(b) have been expanded from existing N.J.A.C. 7:28-27.9. The existing and proposed rules provide for a combination of radiation work experience and education, or a certified health physicist certification. An applicant that does not possess a bachelor's degree can, under the proposed rules, become certified, if the applicant has an associate's degree plus four years of radiation work experience, or five years of radiation work experience. "Radiation

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work experience” is defined at proposed N.J.A.C. 7:28-27A.2. Existing N.J.A.C. 7:28-27.9(a)2 requires more specific experience than does the proposed rule. The Department has determined that significant experience provides the necessary background for an individual to function as a radon measurement specialist in the absence of a degree or certified health physicist certification.

The applicant must also take and pass a radon measurement examination for radon measurement specialist or the equivalent category administered by the National Radon Proficiency Program and complete 24 hours of initial training from a nationally recognized organization. Existing N.J.A.C. 7:28-27.10 is similar, requiring a Department-approved course with emphasis on radon, and a written examination offered, or approved, by the Department. The proposed rule does not expressly require the training to be Department approved; however, by limiting the training to courses from nationally recognized organizations, the proposed rules limit the training providers to those that the Department considers to be qualified. The proposed rule identifies only the National Radon Proficiency Program as the approved provider of the required examination. The Department reviewed existing providers of examinations and considers only the National Radon Proficiency Program as meeting the Department’s requirements.

The National Radon Proficiency Program currently offers only one examination for the measurement category; therefore, the measurement specialist and technician applicants would take the same examination. It is anticipated that by the time the proposed rules are adopted the National Radon Proficiency Program will establish two separate examinations, one for a

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higher level of certification and one for a lower level of certification. In that case, the Department will modify the rule on adoption to identify which examination the measurement specialist and measurement technician are required to take. If the National Radon Proficiency Program has not modified the examination by the time the rules are effective, the Department will later publish a notice of administrative change when the two examinations are established, and in the notice will identify which examination is to be taken by each category of certification.

Existing N.J.A.C. 7:28-27.11 provides for a provisional certification; the proposed rule does not. When the proposed rules were promulgated, the Department offered the examination at limited times during the year. The provisional certification allows an individual to work as a certified radon measurement specialist until he or she can take the test. The National Radon Proficiency Program provides the examinations throughout the year, making this aspect of the provisional certification unnecessary. The existing rule also provides a provisional certification to enable an individual to acquire radon work experience. The existing rule does not provide a number of tests or mitigations that must be performed during the provisional period and many individuals conducted only one or two tests or mitigations in that six-month period. The proposed rule allows an individual to be certified after completing the initial training course and passing the exam, which provide an individual with sufficient information to conduct radon testing. Therefore, provisional certification for the purpose of obtaining experience is not needed.

As discussed in the summary of proposed requirements for certified radon measurement businesses, if an affiliate is going to conduct radon testing in multifamily

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buildings, large buildings, or schools, the affiliate must have completed the eight-hour course in the relevant building type, as identified at proposed N.J.A.C. 7:28-27A.20(d). This requirement is new.

Proposed N.J.A.C. 7:28-27A.20 requires the individual applicant for certification to identify the devices that he or she owns or will use. A certified business must include in its certification the devices it owns and its affiliates will use, as well as those that its affiliates own. See proposed N.J.A.C. 7:28-27A.7(c). If the applicant affiliates with more than one certified business, the applicant will identify devices for each certified business. As provided in proposed N.J.A.C. 7:28-27A.6, before a certified individual may use any device, he or she must take and pass authorized proficiency testing for the device. Proposed N.J.A.C. 7:28-27A.9 requires the applicant to show that he or she has passed the required proficiency testing for each device the applicant identifies. At the time of initial certification, the applicant will be affiliated with a certified business, but it is likely that the individual will not yet possess devices. Once the individual is certified and has access to the business's devices, and after the individual obtains devices of his or her own, the certified individual must amend his or her certification as provided at N.J.A.C. 7:28-27A.3(j) to add (or remove) devices. Until the certified individual includes a device on his or her certification, and the device is included on the certification of the business with which he or she is affiliated, the certified individual may not use the device.

When the individual submits, to the Department, a complete application for initial certification that complies with proposed N.J.A.C. 7:28-27A.18, the Department will issue an acknowledgment letter. The individual may present the acknowledgement notice to a certified

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business or a business with an acknowledgement notice in order to affiliate with the business.

When the business submits the amendment with the affiliation form to the Department as provided at proposed N.J.A.C. 7:28-27A.5, the Department will issue the certification credential to the individual. To update information on the certification, such as to add other affiliations or devices, the individual must amend the certification.

Renewal of the individual's certification is the same procedure as discussed above regarding a certified business, in the summary of proposed N.J.A.C. 7:28-27A.8 and 27A.12, initial and renewal certification of a radon measurement and mitigation business.

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

Certified radon measurement specialists and technicians conduct radon testing in buildings on behalf of certified radon measurement businesses. As discussed above, the relationship between the certified business and the certified individuals is based on the concept of "affiliation," through which the certified businesses develop QA and radiation safety plans, and identify appropriate protocols, and the affiliates acknowledge that they must follow the plans and protocols. The Department does not require an employment relationship between the affiliates and the certified businesses. Because the Department does not regulate employment relationships, certified businesses should refer to the New Jersey Department of Labor and Workforce Development's rules and educational materials to determine whether or not a particular affiliate is considered an employee of the certified business for the purpose of

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the taxation, wage and hour and benefits compliance, and similar requirements. A certified individual may affiliate with more than one certified business, but the individual must affiliate with at least one. If the certified individual is affiliated with more than one certified business, the individual will follow the QA plan, radiological safety plan, and identified protocols established by the business for which the individual is performing services. As provided for at proposed N.J.A.C. 7:28-27A.5, if a certified individual does not comply with the subchapter, the Department may limit the number of certified businesses with which the individual may affiliate, until the individual demonstrates compliance. For example, if a certified individual routinely uses one business's chain of custody form for another business's device, the Department may allow only one affiliation until the issue can be resolved.

Proposed N.J.A.C. 7:28-27A.20 establishes the responsibilities of a certified radon measurement specialist. These responsibilities have been discussed throughout the summary above and generally include affiliating, obtaining the necessary education, experience, and training, complying with the certified business's QA and radiological safety plans, calibrating each portable device and ensuring that the portable device has a current calibration certificate before use, completing a chain of custody form for each test, submitting all data to the certified business, and otherwise complying with the proposed subchapter.

As discussed in the summary of proposed N.J.A.C. 7:28-27A.9, a certified radon measurement business must identify one or more certified radon measurement specialists to oversee the daily operations of the business. The proposed requirement is similar to existing N.J.A.C. 7:28-27.5(a)2, which requires the certified business to have on staff, or retain as a

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consultant, a certified radon measurement specialist to direct the measurement activities of the certified business, and sign and be responsible for the review, approval, and verification of reports. As provided at proposed N.J.A.C. 7:28-27A.20(j), the certified specialist (who must be affiliated with the business) ensures that the certified business and its affiliates are in compliance with the proposed subchapter. More specifically, the certified radon measurement specialist prepares the affiliation forms, plans, and reports discussed in the summary above, signs them on behalf of the business, and implements the plans. The certified radon measurement specialist is also responsible for reporting, to the Department, on behalf of the certified business, and renewing and amending the business's certification.

**N.J.A.C. 7:28-27A.21 and 7:28-27A.22, Radon Measurement Technician – Initial and Renewal Certification**

As stated above, a certified individual who tests for radon is either a “certified radon measurement specialist” or a “certified radon measurement technician.” The overall initial and renewal certification process for a radon measurement technician is the same as for the certified radon measurement specialist discussed above. To become certified under the proposed rules as a “certified radon measurement technician,” an individual submits an application for initial certification to the Department. The process and contents of the initial and renewal applications are the same as discussed in the summary of the requirements for the certified radon measurement specialist, although the education and training requirements differ. In contrast to an applicant for certification as a radon measurement specialist (see

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proposed N.J.A.C. 7:28-27A.20), an applicant for certification as a radon measurement technician needs only 16 hours of initial training, rather than 24 hours. Further, there is no requirement that the individual have a bachelor's or associate's degree, or an offsetting number of years of radiation work experience. The training and education requirements are consistent with existing N.J.A.C. 7:28-27.12.

Unlike existing N.J.A.C. 7:28-27.12, the proposed rule does not require an applicant certified as a radon measurement technician to have six months of measurement work experience. The Department has reviewed this requirement and determined that the completion of the initial training course and the passing of the examination are sufficient for full certification. As with radon mitigation specialists, the rulemaking does not provide for provisional certification, because examinations are offered throughout the year, and the proposal does not require work experience.

#### **N.J.A.C. 7:28-27A.23, Responsibilities of a Certified Radon Measurement Technician**

With the exception of overseeing the daily operation of the certified radon measurement business, and as discussed in the summary of proposed N.J.A.C. 7:28-27A.21 and 27A.22, the responsibilities of the certified radon measurement technician at proposed N.J.A.C. 7:28-27A.23 are the same as those of the certified radon measurement specialist, discussed above.

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**N.J.A.C. 7:28-27A.24 and 27A.25, Radon Mitigation Specialist – Initial and Renewal**

**Certification**

Pursuant to existing N.J.A.C. 7:28-27, a certified individual who mitigates radon in buildings is either a “certified radon mitigation specialist,” or a “certified radon mitigation technician.” The Department proposes only one category of certified mitigation individual, the “certified radon mitigation specialist.” To become certified pursuant to proposed N.J.A.C. 7:28-27A.24 as a “certified radon mitigation specialist,” an individual submits an application for initial certification to the Department. The general requirements for the application for initial or renewal certification is the same as for the certified radon measurement specialist, discussed above. The education and experience requirements differ.

Proposed N.J.A.C. 7:28-27A.24(c) requires the applicant to show that he or she has a combined three years of relevant education and work experience. Education need not be a college degree, but must consist of studies in architecture, engineering, or heating, ventilation, and air conditioning. Relevant work experience is the design, construction, and renovation of buildings. The education and work experience requirements do not apply to an applicant who is a New Jersey licensed professional engineer. Existing N.J.A.C. 7:28-27.15 requires five years of combined relevant college education and work experience. The proposed rule specifies that the education be college studies or technical training. The Department has determined that three years represents sufficient education and experience for the mitigation specialist category.

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Existing N.J.A.C. 7:28-27.15 requires an applicant for certification as a certified radon mitigation specialist to have six months of measurement work experience either in New Jersey or in reciprocal agreement state. The proposed rule does not have a separate work experience requirement, but requires only three years of combined relevant education and work experience. As discussed below under the heading “reciprocity,” the Department does not recognize certification in a state other than New Jersey.

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

Certified radon mitigation specialists (and technicians, under the existing rules) install mitigation systems and otherwise mitigate the presence of radon in buildings on behalf of certified radon measurement businesses. As discussed above, the proposed rules establish the relationship between the certified business and the certified individuals based on the concept of “affiliation,” through which the certified businesses develop QA and radiation safety plans, and identify appropriate protocols, and the affiliates acknowledge that they must follow the plans and protocols. The basic obligations of affiliation are discussed above regarding certified radon measurement specialists and affiliates.

Proposed N.J.A.C. 7:28-27A.26 establishes the responsibilities of a certified radon mitigation specialist. These responsibilities have been discussed throughout the summary above and generally include affiliating, obtaining the necessary training, complying with the certified business’s radiological safety plans, and otherwise complying with the proposed

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subchapter. In addition, the certified radon mitigation specialist provides the client with a contract that meets the requirements of proposed N.J.A.C. 7:28-27A.13(l). If the work involves alteration of an existing mitigation system that does not meet the most recent authorized protocol, the certified individual must provide the client with a written estimate of the necessary upgrades and the cost of bringing the system into compliance with the protocols, as provided at N.J.A.C. 7:28-27A.13(m). Because a certified radon mitigation business can perform mitigation work only through its affiliates, the responsibilities of a certified radon mitigation specialist are substantially the same as for a certified radon mitigation business.

As discussed above in the summary of proposed N.J.A.C. 7:28-27A.13, a certified radon mitigation business must identify one or more certified radon mitigation specialists to oversee the daily operations of the business. The proposed requirement is similar to existing N.J.A.C. 7:28-27.7(a), which requires the certified business to have on staff, or retain as a consultant, a certified radon mitigation specialist to direct the mitigation activities of the certified business. The proposed rule requires the identified individual to ensure that the certified business and its affiliates are in compliance with the proposed subchapter. More specifically, the certified radon mitigation specialist prepares the affiliation forms, plans, and contract discussed in the summary above, signs them on behalf of the business, and implements the plans. The certified radon mitigation specialist is also responsible for reporting, to the Department, on behalf of the certified business, and renewing and amending the business's certification.

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**N.J.A.C. 7:28-27A.33, One-Time Initial Application Requirements for Measurement Business, Specialist, and Technician; and Mitigation Business and Specialist**

Proposed new N.J.A.C. 7:28-27A.33 provides a one-time application process for individuals and businesses that are certified pursuant to the existing rules to become certified under the proposed new rules. The fee for this one-time application requirement is the initial application fee. These certified businesses and individuals must affiliate and provide the 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 proposed rule applies to all existing categories of certified businesses and individuals, except certified radon mitigation technicians, whose new certifications are governed by proposed N.J.A.C. 7:28-27A.34, discussed below.

Every certified business or individual must apply for a new certification. The applications are due before the 120th day after the adopted rules are effective. If the certification of a business or individual is scheduled to expire during that period, the business or individual should not submit a renewal application, but instead should submit an initial application under the proposed rules. A certified business or individual that timely submits an application under the proposed rule will remain certified until the Department either rejects the application or approves it and issues the new certification credential, even if the certification would otherwise have expired in the interim. When the Department issues the new certification credential, the certification will be valid for one year following the date the certification would have otherwise expired. For example, assume a business or individual is

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certified, and the certification expires on April 1, 2021. If the adopted rules are effective on January 4, 2021, a business or individual who is in certified status on the effective date must submit an initial application to the Department on or before May 3, 2021 (120 days after the effective date). If the Department receives the initial application by May 3, the individual or business will remain in certified status until the Department approves or rejects the application. If the application is approved, the new certification expiration date will be April 1, 2022. Similarly, if the business or individual's certification expires on June 1, 2021, the business or individual must still submit an initial application on or before May 3, 2021. The new certification will expire on June 1, 2022.

An individual or business that does not submit an application for certification during the 119-day period will no longer be certified and will have to submit an application for renewal of an expired certification under the proposed rules.

Except for the initial and renewal application provisions, the existing rules will remain in effect until 120 days after the proposed rules are effective. On the 120th day the proposed rules will supersede the existing rules. See proposed amended N.J.A.C. 7:28-27.1 and 27.22 and proposed new 27A.1 and 27A.33. Although the proposed rules will not be operative during the 119-day period during which the certified individuals and businesses must apply for certification under proposed N.J.A.C. 7:28-27A.33, the application for certification requires the individuals and businesses to submit information that is not required under the existing rules. This includes, for example, affiliation forms, extensive quality control measures, and updated protocols.

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

Proposed N.J.A.C. 7:28-27A has only one category of certified individual who mitigates radon – the “certified radon mitigation specialist.” Individuals who are certified radon mitigation technicians as of the effective date of the proposed rules may continue to conduct radon mitigation activities, but the Department will not certify any new radon mitigation technicians. The mitigation technician certification is being eliminated because the mitigation specialist certification is more attainable due to the revised education and radiation work experience requirements in the proposed rule. Clients will benefit from having the higher level of expertise for all mitigation system designs and installations.

An individual with an existing radon mitigation technician certification will need to submit an application for certification under the new rules no later than 119 days after the effective date of the adopted rules. (See N.J.A.C. 7:28-27A.34.) An individual who meets the criteria for a certified radon mitigation specialist will choose to apply for either renewal of the technician certification or initial certification as a certified radon mitigation specialist. There is no fee for a certified mitigation technician to apply to renew his or her certification. The certified mitigation technician will need to submit an application to become certified as a mitigation specialist within one year, at which time he or she will pay an initial application fee. Provided the Department receives the certified radon mitigation technician’s application for renewal or certification as a mitigation specialist within the required period, the individual’s certification will remain valid until the Department notifies the individual that the application

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(either for renewal certification as a radon mitigation technician or initial certification as a radon mitigation specialist) has been approved or rejected.

The substantive requirements for renewal certification are the same as at existing N.J.A.C. 7:28-27.18, but include the requirement that the individual has affiliated with a certified radon mitigation business, including an acknowledgement that the individual must comply with the radiological safety plan and the approved mitigation protocols. The one-time renewal provisions are comparable to those for other certified individuals and businesses, as provided at proposed N.J.A.C. 7:28-27A.33, with two exceptions. First, once the application is approved, the certification is valid for one calendar year after the deadline for submitting an application. Second, the Department will not renew the certification. This does not mean, however, that the individual cannot continue to work in radon mitigation. When it is time to renew the certification, or even before, the individual may apply for certification as a radon mitigation specialist pursuant to proposed N.J.A.C. 7:28-27A.24.

To become certified as a radon mitigation technician under the existing rule, an individual must show that he or she has at least two years in the building or construction trades, including the heating, ventilation, and air conditioning trade. Proposed N.J.A.C. 7:28-27A.24, Radon mitigation specialist – initial certification, requires an individual to have three years of combined education and experience to qualify as a certified radon mitigation specialist. The combination of the experience that the existing rule requires to become a certified radon mitigation technician and the one year that the existing certification remains in effect under the proposed rules will provide the individual with sufficient experience to apply to the Department

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for certification as a radon mitigation specialist under the proposed rules. In fact, the Department anticipates that few of the individuals certified as radon mitigation technicians under the existing rules will need to wait even a year to apply for certification as a radon mitigation specialist. As soon as the individual has the required three years' experience, he or she may apply for certification as a radon mitigation specialist.

A certified radon mitigation technician may perform the same activities as stated above at N.J.A.C. 7:28-27A.26, Responsibilities of a certified radon mitigation specialist, except a certified radon mitigation technician may not direct the activities of a certified business. A certified radon mitigation technician is subject to the certified business's radiological safety plan and the authorized mitigation protocols that the certified business identifies. As stated above regarding a certified radon mitigation specialist, the proposed rule limits the duties that an uncertified individual working with the certified radon mitigation technician may perform.

#### **N.J.A.C. 7:28-27A.27, Fees**

The Department proposes fees for the various services that it provides under the subchapter, as set forth at N.J.A.C. 7:28-27A.27. These include initial and renewal application fees, inspection fees, and program administration fees, which are unchanged from existing N.J.A.C. 7:28-27.30. The category of "expired renewal fee" is new, and is applicable to renewal of certifications that have expired; however, the amount of the fee is the same as for the initial certification, which is the fee that the existing rules apply to renewal of an expired certification. Therefore, the fee is not a new fee. There is no proposed fee associated with applications for

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radon mitigation technicians, since the proposed rules do not provide for certification as technicians past the first year the proposed rules are in effect.

“Program administration fee” is a newly defined term at N.J.A.C. 7:28-27A.2, although the fee is not new. The program administration fee in the proposed fee table is not the same amount as is published in the existing rule. The program administration fee published in the existing rule is the fee as of the date the rule was first promulgated. Over time, by operation of note “\*\*” at existing Fee Schedule B at N.J.A.C. 7:28-27.30, the Department has adjusted the fee based on an inflation factor, and posted the adjusted fees on its website. The proposed rule reflects the fees in effect as of the date of the publication of this rulemaking. If the Department has applied the inflation factor to adjust the fees before the rules are adopted, the Department will modify the fees upon adoption to reflect the most current fees. The Department proposes to continue adjusting the fees annually by an inflation factor; however, the proposed rule provides that the Department will publish a notice of administrative change to ensure that the published rule text reflects the fees in effect. Additionally, the proposed rule specifies that if the inflation factor is negative, the fees will remain unchanged. The existing rule does not have a similar provision.

The Department inspects certified businesses to ensure that they are in compliance with the certification requirements. See existing N.J.A.C. 7:28-27.24 and proposed N.J.A.C. 7:28-27A.28. Some of these certified businesses are located outside of New Jersey. As a result, the Department incurs additional expenses associated with these businesses. Proposed N.J.A.C. 7:28-27A.27(e) requires an out-of-State business to pay the costs the Department incurs for the

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inspector's travel to the inspection including, but not limited to, motor vehicle mileage reimbursement, motor vehicle rental and insurance, airfare, hotels, parking, transportation, and allowances for meals, incidental expenses, and per diem. The business will pay the inspector's hotel and transportation directly to the vendor in advance of the inspection and must reimburse the Department for remaining expenses within 30 days after the travel. The proposed fees for out-of-State businesses are not unique to the radon certification program. The Department requires out-of-State laboratories to reimburse it for the costs incurred as part of an out-of-State laboratory compliance inspection, as provided in the Regulations Governing the Certification of Laboratories and Environmental Measurements at N.J.A.C. 7:18-2.9(f). These costs, which include motor vehicle rental and insurance, airfare, hotels, transportation, and allowances for meals, incidental expenses, and per diem, are not incurred for in-State business inspections.

#### **N.J.A.C. 7:28-27A.28, Inspections**

In order to ensure that the certified businesses are complying with the rules, the Department inspects the businesses. See existing N.J.A.C. 7:28-27.24. Proposed N.J.A.C. 7:28-27A.28 contains the same substantive provisions as the existing rule regarding inspection of property and equipment and interviewing individuals. The Department proposes to add the term "affiliate" where appropriate, in order that the inspection provisions apply also to inspection of the activities of affiliates.

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**N.J.A.C. 7:28-27A.9, Denial, Suspension, or Revocation of a Certification**

If a business or individual is not in compliance with the rules, existing N.J.A.C. 7:28-27 provides that the Department may deny, suspend, or revoke a certification. Proposed N.J.A.C. 7:28-27A.29 is comparable. The proposed rule rephrases the existing provisions for clarity and to make the rule more comprehensive.

Both the existing and proposed rules provide, as the first reason for suspending a certification, that the individual or business “violates any requirements of the certification or provisions of this subchapter.” The existing rule also states that the Department may suspend or revoke a certification if the individual or business changes personnel or techniques without telling the Department, does not pay fees, does not submit monthly reports on time, does not conduct testing according to protocols, tests, or mitigates when they are not certified, does not pass the authorized proficiency test, does not follow the QA plan or radiological safety plan, or does not grant access for the inspection. These and other violations of the subchapter are not separately identified in the proposed rule, but are included in the general prohibition on violating requirements of the certification or the subchapter.

The existing rule provides for a suspension of no longer than four months. The proposed rule does not limit the length of a suspension, but instead states that the duration is at the discretion of the Department and according to the severity of the violation. The existing rule requires an individual that is suspended for a testing violation to take and pass a proficiency test before the suspension can be withdrawn. This is not in the proposed rule. Instead, the Department will reinstate a certification when the suspension period is ended and

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the reason for the suspension is corrected. If an individual's certification is suspended due to the failure to take and pass a proficiency test, the individual will be required, under the proposed rule, to take and pass the proficiency test when the suspension is lifted. A suspended individual may not apply for any certification under the subchapter until the suspension is lifted.

The existing subchapter allows an individual or business to request revocation of their certification. The proposed subchapter refers to this type of request as a "cancellation." See proposed N.J.A.C. 7:28-27A.3(k). Cancellation differs from revocation, in that the Department revokes a certification; an individual or business may request cancellation. Under both cancellation and revocation, the individual or business must reapply in order to be certified again. The existing rule provides that a revocation is for a specific period of time, not to exceed two years. Under the proposed rule, a revocation is open ended, and will not end until the reasons for the revocation are corrected and the Department permits the individual or business to apply for certification.

#### **N.J.A.C. 7:28-27A.30, Criminal Penalties**

As provided in the Act, a business or individual who is subject to the proposed rules and who performs radon testing or mitigation without being Department certified commits a crime. Proposed N.J.A.C. 7:28-27A.30 recites the Act's prohibition and allows the Department to seek other available remedies, such as suspension or revocation, as discussed above, or monetary

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penalties as allowed pursuant to the Act. See N.J.S.A. 26:2D-13. The proposed rule is the same as existing N.J.A.C. 7:28-27.26.

#### **N.J.A.C. 7:28-27A.31, Request for Adjudicatory Hearing**

A business or individual whose certification has been denied, suspended, or revoked may request an adjudicatory hearing. See existing N.J.A.C. 7:28-27.27 and proposed N.J.A.C. 7:28-27A.31, Request for adjudicatory hearing. As in the existing rule, the proposed rule requires the request for a hearing to be submitted within 20 days. The new section describes the contents of the request. These include a completed Adjudicatory Hearing Request Checklist, which the Department includes with every denial, suspension, and revocation issued under the subchapter. The rule not only requires the requestor to provide identifying information and the enforcement document for which a hearing is sought, but also provides that any general denial of the Department's findings, as set forth in the enforcement document, will have the effect of an admission of each finding. The Department has found that more detailed responses to the findings result in a more complete factual record. The Department will deny the request for a hearing if it is untimely or incomplete or if the requestor has not demonstrated that there is a contested case. See the Office of Administrative Law's Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The hearing will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Office of Administrative Law's Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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### **Reciprocity**

Existing N.J.A.C. 7:28-27.23 provides for reciprocity, allowing the Department to waive the initial certification review if an individual has been certified in a state or territory that the Department recognizes as having a certification program at least as stringent as the Department's. The Department has not recognized the certification program of any state or territory since the inception of the certification program in 1991. Accordingly, the proposed rules do not contain a comparable provision.

### **Social Impact**

Radon is a naturally occurring, radioactive gas that can seep into homes from the rocks and soil under the home. Radiation is known to cause cancer and other adverse health effects in humans. Radon is the leading cause of lung cancer among non-smokers and the second-leading cause of lung cancer among smokers. The lifetime risk of lung cancer death from exposure to radon at the action level of 4 picocuries per liter (pCi/L) is two out of 100 for the general population (includes smokers and non-smokers).

The proposed rules will, overall, protect the public health from high levels of radon exposure. In New Jersey, the annual average number of radon tests performed is approximately 80,000, and the annual average number of mitigations is approximately 4,500. The Department estimates that 33 percent of homes in New Jersey have been tested for radon, and 48 percent of those homes with test results showing radon levels at four pCi/L or higher have been mitigated. The purpose of the proposed subchapter is to protect the public by

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requiring radon measurement and mitigation businesses and individuals to meet minimum performance standards prior to and while certified to perform radon testing or mitigation and to maintain the availability of quality services at a reasonable cost. The proposed rules provide the process by which the Department will determine that radon testers and mitigators meet minimum standards of proficiency. The rules require businesses to use authorized testing procedures and effective mitigation systems which, in turn, will reduce health risks from radon. Proficient testers and mitigators also assist the Department by providing reliable information and data which are necessary for the Department and the public to make informed decisions about radon exposure and mitigation. The proposed rules continue the existing rules' requirement of a thorough reporting system that will discourage false or misleading statements on radon exposure.

### **Economic Impact**

The Department anticipates that the proposed rules will have an economic impact on the regulated community, as well as on the public.

#### *Affiliation*

There are 14 radon measurement businesses and 17 mitigation businesses certified under the existing rules. Approximately 900 individuals are certified as of the date of publication of this notice of proposal. The Department anticipates that all businesses and individuals will pursue certification under the proposed rules, which will require each to

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become affiliated. The certified business will affiliate with at least one individual, and the individual will affiliate with at least one business. As discussed in the Summary above, the proposed rules provide specific requirements for measurement and mitigation specialists and technicians to become affiliated with a certified business in order to conduct testing or mitigation activities. The affiliation form will clearly define and delineate the role and responsibilities of affiliates and businesses.

In the proposed rules the individual must first meet the certification requirements and obtain notification from the Department stating that the certification requirements have been met. The individual then chooses a certified business to become affiliated with and provides them the Department notification. The certified business may then provide the individual with the various plans and radiation safety training that the proposed rules require and affiliate with the individual. The Department does not anticipate that the requirement to affiliate will have an economic impact on either the individual or the business.

#### *Protocol Documents*

The proposed rules require the certified businesses and individuals to comply with authorized measurement and mitigation protocols. The protocol documents are available from either the American National Standards Institute (ANSI) or the American Association of Radon Scientists and Technologists (AARST) at a cost of \$50.00 each. If a certified business or individual plans to test or mitigate all three building types, then the cost will be a maximum of \$150.00 for each business or individual, until ANSI or AARST revises a protocol and the

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businesses or individual must purchase a copy of the new protocol. ANSI coordinates the development and use of thousands of international norms and guidelines in nearly every business sector, charging fees for standards from about \$50.00 to more than \$400.00. The radon protocols are some of the least expensive documents offered.

### *Training*

The proposed rules require an eight-hour training course for multifamily buildings and/or an eight-hour training course for schools/large buildings for those specialists and technicians who choose to test or mitigate these building types. This is a new requirement, not contained in the existing rules. These buildings are more complex to test and mitigate; therefore, additional training will help certified individuals understand the difficulties and complications they may face. Each training course will only need to be taken once and will cost approximately \$50.00 to \$175.00 per training course. If an individual has already completed the course prior to the operative date of the proposed rules, the individual does not need to take the course again.

Many certified individuals choose not to test and mitigate these building types, so this additional cost will apply to only a small percentage of individuals who wish to extend their service capabilities. In addition, the cost is a one-time cost and minor in comparison to the benefit the public will receive by hiring well-trained individuals. Training courses are offered by multiple vendors for each category and are available year-round in both classroom and internet formats. The Department anticipates less than 10 percent of the approximately 900 individuals

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certified as of the date of this notice of proposal will choose to test or mitigate these building types.

A business will need to collect the training certificates and keep records of individuals who can test for these building types, ensuring that no test results are provided to a certified individual that did not provide a training certificate to the business. A certified business may incur costs associated with updating its recordkeeping or database, but this is a one-time cost. Tracking its affiliates' compliance may take a business 10 to 15 hours annually.

The existing rules require a certified business to provide initial radiation safety training and annual refresher training to its employees. The proposed rules require only initial radiation safety training for all affiliates. A certified business may save between 20 and 40 hours per year because they will not need to provide annual refresher training.

#### *Application Requirements*

Under both the existing and proposed rules, the certification period is one year, and an annual renewal is required. Initial and renewal applications for businesses and individuals are required to be notarized in the existing rules. The proposed rules do not require the application to be notarized. If a business or individual pays for a notary service, the proposed rules will save as much as \$2.50 per notarized signature, which is the statutory maximum pursuant to N.J.S.A. 22A:4-14.

Under the existing rules, when the Department receives a renewal application fewer than 30 days before the expiration date, and if the application is not approved by the expiration

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date, the business or individual must resubmit an initial application and provide an initial application fee, which is higher than the renewal fee. In this case, two applications and fees would be submitted. The proposed rules will allow the renewal application to continue through the review process after the date of expiration. The certified individual or business does not need to resubmit the application or pay an additional fee. This will result in a savings of \$400.00 for a business, \$150.00 for a specialist, and \$75.00 for a technician.

If a certified business or individual allows a certification to expire, the existing rules require the business or individual to submit an initial certification application and initial application fee in order to reinstate the certification. The proposed rules require an expired renewal fee (which is the same as an initial application fee) and a renewal application. The renewal application is less detailed than an initial application, providing a time savings to the applicant.

### *Measurement*

Pursuant to the existing rules, the business has more responsibility than the individual radon measurement specialist and the radon measurement technician for many of the testing-related activities. For example, the existing rules lay out the business's responsibility for quality assurance, quality control, chain of custody, and the devices used. As summarized above, the proposed subchapter clearly defines the business's and the measurement specialist's or the measurement technician's joint responsibilities for these activities and for testing, in general. The individual will need to perform, and be accountable for, all aspects of testing and will see

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an increased cost, as discussed below. In addition, the proposed rules require a business to ensure that its affiliates conduct radon testing in accordance with the authorized protocols.

The existing rules require a specialist to conduct many of a certified business's routine activities. The proposed rules require a minimum of one specialist to direct the activities of the business. The responsibilities are essentially the same with a few new ones; however, there should be no increase in the cost associated with the new requirements.

The measurement specialist's initial education and training requirements are proposed to be changed, so that an individual does not need to have a bachelor's degree in a natural science or engineering. A bachelor's degree in any other subject or an associate's degree plus radiation experience, as well as five years of radiation experience and no formal education will be permissible under the new rules. There is significant cost savings to individuals as they do not need to have a college education to become a specialist. A business may benefit from having more specialists available.

A certified business is currently required to submit an initial and annual renewal application to the Department, to develop and implement a QA plan, radiological safety plan, and chain of custody form, to secure the services of a laboratory certified pursuant to N.J.A.C. 7:18 for non-portable device analysis, and to distribute the most recent version of radon testing and mitigation guidance. The proposed subchapter continues these requirements, although the contents of the individual QA and radiological safety plans differ somewhat under the proposed rules. The Department anticipates that a business will spend between 20 and 60 hours to revise its existing QA plan to meet the proposed requirements. Approximately 10 to

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25 hours may be needed for the radiological safety plan revisions. These are one-time costs to the business.

Under the proposed rules a certified business will be responsible for developing and submitting, to the Department, for review a testing instruction document for homeowners and those conducting testing without remuneration and a confidentiality waiver. While these requirements are not in the existing rules, businesses currently use these documents. There is no anticipated cost associated with these proposed requirements.

A measurement business invalidates a radon test if certain specific criteria are not met. The existing rules require the business to discuss the method used to invalidate a radon test in the QA plan, while the proposed rules provide specific criteria for invalidating a test. Businesses currently conduct duplicate and blank testing in accordance with the testing protocol cited in the existing rules. The proposed subchapter sets forth requirements that the business must follow to ensure that duplicate and blank testing are conducted with specified frequency and placement. There is no anticipated cost associated with these proposed requirements. Currently, a certified radon measurement business that uses electret devices participates in spike testing, evaluates voltage drift of devices, zeroes the electret reader, and checks reference cells as a part of its ongoing quality control program. As summarized above, the proposed rules would require a certified business that owns, or has affiliates that own, electret readers to conduct spike samples at a rate of three per 100 tests, with a minimum of three per year and a maximum of six per month and to conduct the other checks of the electrets and reader. The estimated cost of spike testing is \$20.00 to \$200.00 per device.

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These are already part of the routine testing and checks that are conducted for electret devices and readers under the existing protocols, so the business will not incur additional costs to implement these proposed requirements.

### *Proficiency Testing*

Existing N.J.A.C. 7:28-27.6(a)9 requires a radon measurement business to annually conduct one proficiency test for each device model used. Proposed 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. 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. The businesses will no longer be responsible for proficiency testing, so they will see a cost savings.

### *Calibration*

Under the existing rules, a radon measurement business is responsible for the annual calibration of every CRM device and electret reader used on its behalf. The proposed rules require a certified radon measurement technician or specialist to perform an annual calibration for each CRM device and every electret reader that the individual uses for testing. The business is responsible for calibrating devices it owns. The approximate cost for calibration is \$130.00 to

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\$160.00 per device. This will not be an additional expense for many certified individuals

because they already pay for the annual calibration of their devices under the existing rules.

The increased responsibility for this tracking in the proposed rules will result in a slight increase in cost for some businesses if they need to develop computer tracking and monitoring. This will be a one-time set-up cost.

### *Real Estate Transactions*

Although the proposed rules do not directly refer to real estate transactions, the rules may have an economic impact on them. Radon tests are frequently conducted as part of a real estate transaction. Under the proposed rules, when the test is conducted with a charcoal canister, charcoal liquid scintillation detector, or electret device, there must be two side-by-side radon tests. Currently in New Jersey, only one test is conducted for tests with all devices. The proposed requirement is consistent with the EPA's guidance since the 1980s and the current national protocols (the proposed "authorized measurement protocols"), which recommend two radon tests when the test is conducted with a charcoal canister, charcoal liquid scintillation device, or electret device. The two tests are conducted simultaneously in the same location, which more readily identifies a potential testing problem. As discussed in the Summary above, the two tests should provide a similar result. If the results do not meet the specified criteria, an additional test may be necessary. If a radon concentration is elevated and mitigation is necessary, two tests will provide increased assurance that the recommendation for mitigation is based on quality testing.

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Several radon measurement businesses in New Jersey already conduct two simultaneous radon tests. These businesses follow the national protocols, and in some cases, they decided to conduct two tests in order to meet the monthly duplicate requirements. For those businesses, there will be no additional cost to comply with the proposed requirement to conduct two side-by-side radon tests. For a radon measurement business that currently conducts only a single test, there will be additional costs. The cost will increase approximately \$15.00 to \$20.00 for an affiliate to conduct a test with two devices. The affiliates will most likely pass their increased cost for two devices instead of one along to the client. The cost will increase approximately \$30.00 to \$50.00 for a homeowner to conduct the test with two devices on the homeowner's own property.

### *Mitigation*

The existing rules require a specialist to conduct many of the business's routine activities. The proposed rules require a minimum of one specialist to direct the activities of the business. As discussed above with regard to economic impact on mitigation, the Department does not anticipate that the proposed requirement that an affiliated certified mitigation specialist direct the activities of the business will have an economic impact.

The mitigation specialist's initial education and training requirements in the proposed rules differ from the existing rules in that an individual does not need to have a combination of five years of education and experience. Any combination of three years of education and experience will be permissible under the new rules. This will allow more individuals to become

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specialists, and a business may benefit from having more specialists available. It will also reduce the economic impact to the individual, who can become a certified mitigation specialist sooner.

The existing rules require a certified business to submit an initial and annual renewal application to the Department, to develop and implement a radiological safety plan and to distribute the most recent version of radon testing and mitigation guidance. These continue to be required by the proposed new subchapter. The Department anticipates that it will take a business between 10 and 25 hours to revise its radiological safety plan to meet the proposed rule requirements. This is a one-time cost to the business.

The Summary discusses the items that will be required in a contract with a client, and as part of a warranty, if a warranty is provided. These items include identifying whether the pre-existing pipe is covered in an existing mitigation system, providing the estimated potential cost to the client for additional work on the system if the installed system does not meet the standards specified in the warranty, and 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. Many businesses already include these items, but for those that do not, the cost to implement these will be minimal.

### *Fees*

The Department proposes a new fee for out-of-State businesses to cover the Department's cost to travel for inspections. These costs include motor vehicle mileage

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reimbursement, motor vehicle rental, airfare, hotels, parking, transportation, and allowances for meals, incidental expenses, and per diem, and will be assessed on average once annually for each business certification type. The costs vary for each business depending on the region of the United States in which it is located.

### *Transition*

The transition from the existing rules to the new rules will require certified businesses and individuals to submit an initial application, with a renewal fee, within 119 days of the effective date of the proposed amendment, allowing enough time for them to prepare for the new requirements. This will be a one-time date for applications and those with renewal dates within that 119-day period will not renew during that time. After the initial application, each business or individual will renew their certification by their original expiration date beginning one year after the effective date of the proposed rules. New certification requirements must be effective at the same time for all certified businesses and individuals, making the 119-day application deadline a necessity. This transition will result in a one-time cost to existing certified businesses and individuals. Individuals will incur a cost of \$50.00 to \$75.00, while businesses will incur a cost of \$200.00 for the initial application submission.

### *Mitigation Technician Category*

The existing rules have both a mitigation specialist and mitigation technician category of certified individuals. The proposed rules have only the mitigation specialist category as

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discussed in the Summary above and the mitigation technician certification category will no longer be available one year after the effective date of the proposed new subchapter. The transition from the existing rules to the new rules will require any individual that is a certified mitigation technician to submit an initial mitigation specialist application with an initial fee within one year after the effective date of the proposed rules. As of this notice of proposal, 14 mitigation technicians will need to consider upgrading their certification to a mitigation specialist.

A mitigation technician who becomes a mitigation specialist will have to take 24 hours of initial training (vs. 16 hours for the technician level) and an exam. Most existing mitigation technicians have taken 24 hours of training already, but if an additional eight hours needs to be taken, it would be a one-time cost of approximately \$150.00. Individuals will pay a one-time fee of approximately \$150.00 to take the exam, and a one-time initial application fee for a specialist of \$150.00. Proposed changes to the mitigation specialist education and experience requirements will make it easier for more individuals to become specialists, allowing them to start their own mitigation businesses if they choose.

### **Environmental Impact**

The proposed rules will continue to ensure that quality radon testing and mitigation services are available to the public. As a result of the proposed rules, members of the public can expect to obtain accurate tests results to enable them to assess mitigation requirements, if any. If mitigation is required, the proposed rules will enable consumers to obtain the mitigation

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services that will protect them from unnecessary exposure to radon. The public confidence in the measurement and mitigation services will continue to be enhanced by the proposed requirement that radon testers and mitigations meet annual certification standards, which demonstrate to the Department that they are taking accurate radon measurements and implementing effective mitigation techniques. New Jersey residents will be provided with accurate information regarding their exposure to radon and the steps necessary to reduce that exposure. In addition, they can feel confident that the business they hire to mitigate radon is knowledgeable in radon mitigation practices.

#### **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 proposed rules do not exceed the standards or requirements imposed by Federal law and are not promulgated to comply with a Federal requirement.

#### **Jobs Impact**

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The Department anticipates that the proposed rules may have an impact on job creation and retention in the State, since the proposed rules redefine the existing categories for certification. As a result of the proposed rules, more individuals may qualify for certification, which could result in the creation of new certified radon measurement and mitigation businesses. The Department is unable to estimate the number of jobs that may result.

### **Agriculture Industry Impact**

The proposed rules govern the certification of radon testers and mitigators. The Department does not anticipate that the proposed rules will have an impact on the State's agriculture industry.

### **Regulatory Flexibility Analysis**

As required by the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has evaluated the proposed rules to determine their impact on small businesses. The proposed rules affect owners of radon testing and mitigation businesses and certified radon testers and mitigators. The Department estimates that all of the businesses affected by the proposed amendments meet the definition of “small business” under the New Jersey Regulatory Flexibility Act. The reporting, recordkeeping, and compliance requirements, and their associated costs, are discussed in the Summary and Economic Impact.

The Radiation Protection Act and its requirement that all businesses and non-exempt individuals who test for or mitigate radon in the State be Department-certified does not make

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an exception or accommodation for small businesses. Therefore, the proposed new rules and amendments do not exempt small businesses or provide a different standard for small businesses.

### **Housing Affordability Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4.1b, the Department has evaluated the proposed rules to determine their impact, if any, on the affordability of housing. The proposed rules govern the certification of radon testers and mitigators, both businesses and individuals, within the State of New Jersey. Most radon tests and mitigations are conducted during real estate transactions. However, the costs associated with radon testing and mitigation, when compared to the cost of a real estate transaction are a small percentage of the total cost. The average cost of testing is approximately \$200.00, while the average cost of installation of a mitigation system is approximately \$1,800. Accordingly, the Department has determined that the proposed rules are extremely unlikely to evoke a change in the average costs associated with housing in the State.

### **Smart Growth Development Impact Analysis**

Pursuant to N.J.S.A. 52:14B-4, as amended effective July 17, 2008, by P.L. 2008, c. 46, the Department has evaluated the proposed rulemaking to determine its impact, if any, on smart growth development. The proposed rules govern the certification of radon testers and mitigators, both businesses and individuals, within the State of New Jersey. The Department

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has determined that the proposed rules will not impact housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan, as the proposed rules govern the certification of radon testers and mitigators.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

In accordance with N.J.S.A. 52:14B-4(a)(2) and 2C:48B-2, the Department has determined that the proposed rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:28-27.

**Full text** of the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 27. CERTIFICATION OF RADON TESTERS AND MITIGATORS

##### 7:28-27.1 Scope

**(a) This subchapter is operative through (119 days after effective date of the amendment).**

**(b)** This subchapter establishes rules, requirements, and procedures [that] **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

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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 [in] at N.J.S.A. 26:2D-77.

#### 7:28-27.22 Renewal of certification

(a) [A] **Except as provided at N.J.A.C. 7:28-27A.33 and 27A.34**, a certification will be valid for one year following the date of issuance. No radon measurement, mitigation, or safeguard activity shall be conducted after the expiration of the term of a certification unless an application [for renewal certification] has been received by the Department [30 days prior to the expiration date of the certification and is pending approval] **as provided at N.J.A.C. 7:28-27A.33 and 27A.34**. If the [renewal] application is rejected by the Department, no radon measurement, mitigation, or safeguard activity may be conducted after receipt by the applicant of notice of rejection.

(b) An application [for a renewal certification] shall contain all the information required [in an initial certification, proof of successful completion of the continuing education requirements for the requested certification and the proper fee] **at N.J.A.C. 7:28-27A.33 or 27A.34, as applicable.**

[1. For a certified mitigation business, renewal of certification shall, in addition to the initial application requirements, be based on the effectiveness of the previous years' mitigation systems installed.

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2. Upon completion of the final mitigation system installation, a post mitigation radon measurement test shall be conducted. If the post mitigation test is short term, it must be conducted at least in the lowest livable area. The lowest livable area, such as the basement, does not have to be finished or even used as livable space. If this test is at or below 4 pCi/l the mitigation is deemed effective. If the post mitigation test result is above 4 pCi/l, a long-term radon test must be conducted in the lowest living area of the house. If the result of this test is at or below 4 pCi/l the mitigation is deemed effective.]

(c)-(d) (No change.)

## **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). The remainder of this subchapter shall be operative on and after (120 days after the effective date of this subchapter).

(b) This subchapter establishes rules, requirements, and procedures with which an individual or business wishing to perform radon testing or mitigation in New Jersey shall comply in order to become, and remain, certified. Except as set forth at (c) below, certification is mandatory in New Jersey for any business or individual performing radon testing or mitigation services in buildings, as required pursuant to N.J.S.A. 26:2D-70 et seq.

(c) The certification program established in this subchapter shall not apply to:

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**1. An individual performing testing or mitigation on a building he or she owns, as provided at N.J.S.A. 26:2D-72. If the owner of a building is other than an individual, radon testing or mitigation performed on the building shall be performed by a certified business and certified individual;**

**2. An individual performing radon testing or mitigation without remuneration, as provided at N.J.S.A. 26:2D-72;**

**3. An individual or business subject to the new construction techniques set forth at N.J.A.C. 5:23-10;**

**4. A retail outlet that does not provide any services set forth in this subchapter;**

**5. An individual or business that manufactures or sells radon measurement devices, but does not otherwise test for, or mitigate, radon in New Jersey; and**

**6. A business that samples and analyzes for radon in water as regulated by N.J.A.C. 7:18.**

**(d) If any provision of this subchapter, or the application thereof to any individual, business, or circumstance, is adjudicated to be invalid or unenforceable to any extent, the remainder of this subchapter, or its application to any individual, business, or circumstance other than those that are the subject of the adjudication, shall continue to be unaffected by the adjudication.**

#### **7:28-27A.2 Definitions**

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

**“Acknowledgement notice” means a written statement from the Department to an individual who applies for initial 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.**

**“Affiliate” or “affiliated” means, as to a certified radon measurement technician or certified radon measurement specialist, an individual who deploys and retrieves radon measurement devices through an arrangement with a certified radon measurement business as delineated in a completed affiliation form. As to a certified radon mitigation specialist, “affiliate” or “affiliated” means an individual who installs radon mitigation systems through an arrangement with a certified radon mitigation business, as delineated in a completed affiliation form. The affiliate need not be an employee of the certified business.**

**“Affiliation” means the association of a certified radon measurement technician or certified radon measurement specialist with a certified radon measurement business, or the association of a certified radon mitigation specialist with a certified radon mitigation business. Affiliation is established between the certified business and the affiliate by completing an affiliation form. An individual or business can have multiple affiliations.**

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**“Affiliation form” means a document recognized by the Department and signed by a certified business or a business with an acknowledgement notice and a certified individual or an individual with an acknowledgement notice that details the responsibilities of both the certified radon business and the certified individual in accordance with this subchapter.**

**"Applicant" means any business or individual who applies for certification.**

**“Approved radon chamber facility” means a performance test chamber that is certified or approved by a nationally recognized organization to perform testing for the authorized proficiency program and perform instrument calibrations.**

**"Authorized measurement protocol" means “Protocol for Conducting Measurements of Radon and Radon Decay Products in Homes,” ANSI/AARST 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](http://www.aarst.org) and [www.ansi.org](http://www.ansi.org). The Department is incorporating these authorized measurement protocols herein, as supplemented or amended.**

**“Authorized mitigation protocol” means “Soil Gas Mitigation Standards for Existing Homes,” ANSI/AARST SGM-SF-2017; “Radon Mitigation Standards for Multifamily Buildings,” ANSI/AARST RMS-MF-2018; and “Radon Mitigation Standards for Schools and Large Buildings,” ANSI/AARST RMS-LB-2018. ANSI/AARST publications are available at [www.aarst.org](http://www.aarst.org) and [www.ansi.org](http://www.ansi.org). The Department is incorporating these authorized**

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measurement protocols herein, as supplemented or amended.

**"Authorized proficiency test"** means a radon measurement device performance test conducted in accordance with the requirements of a nationally recognized organization.

**"Blank measurement"** means a method of evaluating a detector response from sources other than the radon exposure at a testing location, such as during shipping, storage, and handling.

**"Business"** means and includes, without limitation, a sole proprietorship, corporation, limited liability company, or partnership, of the United States, any state, and any political subdivision or agency thereof.

**"Calibration"** means the process of determining the response of an instrument or measurement system to a series of known radon values over the range of the instrument or measurement system, and adjusting the response, if necessary, based on known radon levels.

**"Certification credential"** means a certificate printed on State of New Jersey stationery, or other official written or electronic documentation of certification issued by the Department, which shows that an applicant meets all certification requirements of this subchapter and is approved and certified for one year. The name of the certified business or individual, certification number, and dates of the certification period are listed on the certification credential. For initial and renewal applications, a certification credential will be issued when the Department approves the application.

**"Certified business"** means a certified radon measurement business or a certified radon mitigation business, as applicable.

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**“Certified individual” means a certified radon measurement technician, certified radon measurement specialist, or certified radon mitigation specialist, as applicable. “Certified individual” also means a certified radon mitigation technician certified in accordance with N.J.A.C. 7:28-27A.34.**

**"Certified radon laboratory" means a radiological laboratory that analyzes samples for the presence of radon and/or radon progeny in a facility separate from the location in which the sample was taken using stationary detection equipment, and that holds a current valid certification issued by the Department pursuant to N.J.A.C. 7:18 for radon analysis.**

**"Certified radon measurement business" means a business certified pursuant to this subchapter to test for the presence of radon gas in buildings.**

**"Certified radon measurement specialist" means an individual certified pursuant to this subchapter to perform radon measurement activities and evaluate radon measurements, and to direct the operations of a certified radon measurement business, if agreed upon by the specialist and business.**

**"Certified radon measurement technician" means an individual certified pursuant to this subchapter to perform radon measurement activities.**

**"Certified radon mitigation business" means a business certified pursuant to this subchapter to design and install systems in buildings to mitigate and safeguard against radon exposure.**

**"Certified radon mitigation specialist" means an individual certified pursuant to this subchapter to inspect a building, evaluate diagnostic tests to determine appropriate radon**

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**mitigation and safeguard strategies for a building, and to design and install systems in buildings to mitigate and safeguard against radon exposure.**

**“Client” means the individual or business that owns the building that is tested or mitigated through services regulated pursuant to this subchapter.**

**“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 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.**

**"Department" means the New Jersey Department of Environmental Protection.**

**“Device” means test equipment that is on a nationally recognized organization’s approved list of test equipment that can be used to test for radon.**

**“Device model” means a unique number or name given to portable test equipment that is made by a device manufacturer.**

**“Duplicate measurement” means two devices placed side-by-side, approximately four inches apart, during the same time period in order to determine the ability of the measurement to be consistently reproduced.**

**“Expiration date” means 11:59 P.M. on the date that is one year from the date of the issuance of a certification.**

**“Individual” means a human being.**

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**“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.**

**“Minimum detectable concentration (MDC)” means the lowest concentration that is detectable at an established confidence level (95 percent at a minimum). Refer to “Radon Measurement Systems Quality Assurance” (ANSI/AARST MS-QA), as supplemented or amended, for the method to calculate MDC using the equation for the Lower Limit of Detection Counting Technology (LLD<sub>CT</sub>) Methods for CRMs and the Lower Limit of Detection Non-Counting Technology (LLD<sub>NCT</sub>) Methods for EICs.**

**“Mitigate” means to apply materials and/or install systems and materials to reduce the radon concentration in the indoor atmosphere or prevent entry of radon into the indoor atmosphere.**

**“Mitigation system” means a step, or series of steps, employed to actively reduce radon levels in buildings including, but not limited to, sealing techniques, natural and forced air ventilation techniques, soil depressurization techniques, and the installation of a fan to activate radon-resistant elements of new construction.**

**“Multifamily building” means a residential building with three or more dwelling units.**

**“Nationally recognized organization” means the National Radon Proficiency Program, National Radon Safety Board, or other recognized independent administrative program that provides radon certification, accreditation, chamber approval, standards development, and proficiency services.**

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**“Non-portable device” means a device that requires additional laboratory equipment in order to analyze the sample collected and generate reportable results including, but not limited to, a charcoal canister, charcoal liquid scintillation detector, or alpha track detector. Non-portable devices shall be analyzed by a certified laboratory pursuant to N.J.A.C. 7:18.**

**“Picocurie per liter (pCi/L)” means 2.2 disintegrations of radioactive decay in one liter. It is used as a measure of the concentration of radon gas in air. One picocurie is equivalent to one trillionth of a Curie.**

**“Portable device” means a device that does not require additional laboratory equipment in order to analyze the sample collected and generate reportable results, such as, but not limited to, a continuous radon monitor or electret device, including the electret reader. Portable devices do not require the analysis to be conducted by a certified laboratory pursuant to N.J.A.C. 7:18.**

**“Program administration fee” means the fee charged in accordance with N.J.A.C. 7:28-27A.27(c) to fund the radon certification program.**

**“Quality assurance” or “QA” means the activities required to establish confidence that radon test data are of the required precision and accuracy.**

**“Quality assurance plan” or “QA plan” means a formal document describing in detail the necessary quality assurance policies, quality control procedures, and other technical activities that must be implemented to ensure that the results of the work performed will satisfy the stated performance or acceptance criteria. The quality assurance plan defines objectives to**

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be attained and the responsibilities and authorities of personnel, especially in regard to data quality and corrective action.

“Quality control” or “QC” means the technical activities that measure the attributes and performance of a process against defined standards to verify that they meet established specifications, including documentation.

“Radiation work experience” means the experience an individual obtains from performing work related to radiation including, but not limited to, radiation protection; use of radiation equipment, devices, and instruments; monitoring, testing, and analyzing radiation; reviewing, interpreting, and analyzing radiological data; and radon measurement activities.

“Radon” means the radioactive noble gas radon-222 and the short-lived decay products of radon-222 decay, including polonium-218, lead-214, bismuth-214, and polonium-214.

“Relative percent difference” or “RPD” means a statistic used to evaluate the difference between two measurements. The “RPD” normalizes the difference between two measurements by dividing by the best estimate of the true value, which is the mean of the two results. The difference is compared as a fraction to the mean of the two results as there is no reason to assume that one measurement is more accurate than the other, and over time a set of “RPD” values can be used as an estimate of imprecision.

“Spike testing” means exposing a device to known radon concentrations in a radon chamber facility to test the accuracy of the device. The concentrations are as recommended by the manufacturer to simulate exposures normally encountered in field measurements.

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**"Working level" or "WL" means a unit of radon decay product exposure rate. One working level refers to the concentration of short-lived decay products of radon in equilibrium with 100 pCi/L in the air.**

**"Working level month" or "WLM" means a unit of exposure used to express the accumulated human exposure to radon decay products, where one WLM = one WL exposure for 170 hours.**

#### **7:28-27A.3 General provisions**

**(a) No business or individual subject to this subchapter shall test for, or mitigate, radon in the State of New Jersey without being certified pursuant to this subchapter.**

**(b) No certified business or certified individual shall disclose to any business or individual, except 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 waives, in writing, this right of confidentiality. 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 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 to the following:**

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**1. For a corporation:**

**i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other individual who performs similar policy or decision-making functions for the corporation; or**

**ii. The manager of the certified business, provided the authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;**

**2. For a limited liability company, an individual who has the authority to bind the limited liability company to the provisions of this subchapter, including without limitation, an officer, member, or manager of the limited liability company;**

**3. For a sole proprietorship, the proprietor;**

**4. For a partnership, a general partner;**

**5. For a municipality, county, state, Federal, or other public agency, either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:**

**i. The chief executive officer of the agency; or**

**ii. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (such as a Regional Administrator); and**

**6. A duly authorized representative of any of the above, if the authorization is made in writing by an individual described at (c)1 through 5 above. A duly authorized representative may be either a named individual or any individual occupying a named position.**

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**(d) Each certified business and certified individual shall remain in compliance with and conduct activities in accordance with the approved certification and the provisions of the Act, this subchapter, and all other applicable municipal, county, State, and Federal statutes, rules, regulations, and codes.**

**(e) To become certified to test or mitigate radon in accordance with this subchapter, a business or individual shall submit an application on a form provided by the Department at [www.njradon.org](http://www.njradon.org), and the appropriate fee to the Department, as directed on the application form.**

**(f) Any business or individual subject to this subchapter who performs radon testing or mitigation without being certified shall be subject to the criminal penalties at N.J.S.A. 26:2D-77.**

**(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) A renewal application that is received by the Department less than 30 days before the certification expiration date and is not approved by the expiration date, shall continue through the review process after the certification expires. The new certification period shall begin on the date the Department approves the application.**

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**(i) If a renewal application is not received by the Department prior to the expiration date, to renew its certification, the business or individual shall submit a renewal application with the proper fee for the expired renewal in accordance with N.J.A.C. 7:28-27A.27(d).**

**(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 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) To cancel a certification, a certified business or certified individual shall submit a written and signed request to the Department. The cancellation shall be final upon written confirmation by the Department.**

**(l) Any questions concerning the requirements of this subchapter should be directed to the New Jersey Department of Environmental Protection, Bureau of Environmental Radiation, Radon Section, at the address set forth at N.J.A.C. 7:28-1.5(a). Applications and forms are available at [www.njradon.org](http://www.njradon.org).**

#### **7:28-27A.4 Signatories**

**(a) An individual applying for initial or renewal certification, or amending an existing certification, shall provide and sign the following statement on his or her application, renewal form, or request for an amendment:**

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**“I certify under penalty of law that the information provided in this document is true, accurate, and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including fines and/or imprisonment. I am aware that the certification for which I am applying requires compliance with N.J.A.C. 7:28-27A at all times when providing radon services under that certification.”**

**(b) A business applying for initial or renewal certification, or amending an existing certification, shall provide and sign the following statement on its application, renewal form, or request for an amendment:**

**“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents. I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate, or incomplete information, including the possibility of fine and/or imprisonment. I am aware that the certification for which this business is applying requires compliance with N.J.A.C. 7:28-27A at all times when the business and affiliates are providing radon services under that certification.”**

**(c) For purposes of (b) above, the following individuals shall sign:**

**1. For a corporation:**

**i. A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other individual who performs similar policy or decision-making functions for the corporation; or**

**ii. The manager of the business applying to be certified, provided the authority to sign**

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documents has been assigned or delegated to the manager in accordance with corporate procedures;

2. For a limited liability company, an individual who has the authority to bind the limited liability company to the provisions of this subchapter, including, without limitation, an officer, member, or manager of the limited liability company;

3. For a sole proprietorship, the proprietor;

4. For a partnership, a general partner;

5. For a municipality, county, state, Federal, or other public agency, either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

i. The chief executive officer of the agency; or

ii. A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (such as a Regional Administrator);

6. A duly authorized representative of any of the above, if the authorization is made in writing by an individual described at (c)1 through 5 above. A duly authorized representative may be either a named individual or any individual occupying a named position.

#### **7:28-27A.5 Affiliation**

(a) A certified business shall ensure that radon services are conducted on its behalf by a certified individual with whom the business is affiliated, or by an individual not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2.

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**(b) Prior to affiliation, an individual shall provide to the certified business or business with an acknowledgement notice:**

**1. If the individual is not yet initially certified, a copy of the Department's acknowledgement notice as specified at N.J.A.C. 7:28-27A.18(d), 27A.21(d), or 27A.24(d);**

**2. If the individual is certified, a copy of a valid Department certification credential;**

**3. If the individual will test or mitigate multifamily buildings or schools and large buildings, proof of an eight-hour training course for multifamily buildings, and/or an eight-hour training course for schools and large buildings, in accordance with N.J.A.C. 7:28-27A.20(c), 27A.23(b), and 27A.26(c); and**

**4. If the individual will use a portable device, proof of passing the authorized proficiency test for each device model.**

**(c) A certified business or business with an acknowledgement notice shall provide the following to each prospective affiliate:**

**1. A copy of the QA plan, prepared in accordance with N.J.A.C. 7:28-27A.14;**

**2. A copy of the radiological safety plan, prepared in accordance with N.J.A.C. 7:28-27A.15; and**

**3. Radiation safety training, in accordance with N.J.A.C. 7:28-27A.9(q) and 27A.13(g).**

**(d) A certified business or a business with an acknowledgement notice and a certified individual or an individual with an acknowledgement notice shall affiliate by completing the affiliation form available on the Department's website at [www.njradon.org](http://www.njradon.org), and submitting**

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**the form to the Department in accordance with (f) below. The completed affiliation form shall include:**

- 1. The business's name and certification number, if the business is already certified;**
- 2. The business representative's name and signature;**
- 3. The affiliate's name, certification number, if the individual is already certified, and signature;**
- 4. The date the affiliation form is signed;**
- 5. A statement that the business has provided to the affiliate the QA plan (if applicable), the radiological safety plan, and radiation safety training; and**
- 6. A statement that the certified business and certified affiliate are both responsible for complying with this subchapter when conducting testing or mitigation.**

**(e) A certified business or a business with an acknowledgement notice shall add an affiliate or an individual with an acknowledgement notice to its initial application or amend its certification prior to the individual performing radon testing and/or mitigation activities through an arrangement with the certified business.**

**(f) A certified business or a business with an acknowledgement notice adds an affiliate to its certification by amending its certification in accordance with N.J.A.C. 7:28-27A.3(j). The business shall submit the completed affiliation form to the Department with the request for amendment and shall provide a copy of the request for amendment to the individual.**

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**(g) A certified business removes an affiliate from its certification by amending its certification in accordance with N.J.A.C. 7:28-27A.3(j). The certified business shall provide a copy of the request for amendment to the individual.**

**(h) The amendment to add or remove an affiliate from the business's certification shall be effective on the date of the Department's written confirmation to the business and affiliate that it has amended the business's certification. In the case of a business with an acknowledgement notice, the affiliation shall be effective on the date the business receives its certification credential.**

**(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.**

#### **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.**

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

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

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**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 the device, the individual shall submit the current calibration certificate to each business with which the individual is affiliated for that device type;**

**2. If a certified radon measurement business or a business with an acknowledgement notice owns the device, the business shall have the device calibrated;**

**3. The calibration shall be completed no more than 12 months prior to the submission of an initial or renewal radon measurement business application;**

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

**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 the device.**

**(c) A certified radon measurement business or a business with an acknowledgement notice adds the device model to the business's certification when an authorized proficiency test has been passed by at least one affiliate who uses the device model and the QA Plan has been approved.**

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**(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 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 in accordance with (a) above.**

**(e) To remove a device model or device, a certified radon measurement business 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 serial number, and the device owner's name.**

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

**(a) An initial certification is valid for one year following the date of issuance, unless it is suspended, revoked, or canceled.**

**(b) A radon measurement business shall submit an application for initial certification in accordance with N.J.A.C. 7:28-27A.3(e).**

**(c) A complete initial application shall include:**

**1. The business name, physical location, mailing address; primary and secondary individuals in charge of the business; contact information, which may include a telephone**

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**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 agency;**

**3. The name and address of each owner, officer, general and limited partner, director, and principal shareholder;**

**4. For a corporation, the state of domestic incorporation, and the name and principal place of business of each parent corporation of the applicant;**

**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;**

**7. 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;**

**8. A copy of the QA plan in accordance with N.J.A.C. 7:28-27A.14;**

**9. A copy of the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**

**10. A copy of the chain of custody forms in accordance with N.J.A.C. 7:28-27A.9(g);**

**11. A copy of the instruction document the business provides to individuals who are not subject to certification under this subchapter, in accordance with N.J.A.C. 7:28-27A.9(h);**

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**12. A copy of the confidentiality waiver form in accordance with N.J.A.C. 7:28-27A.9(o);**

**13. A copy of each reporting form used to report results to clients in accordance with N.J.A.C. 7:28-27A.17(c); and**

**14. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(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, and the portable device information in accordance with N.J.A.C. 7:28-27A.6. Upon approval by the Department, 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.8 Radon measurement business - certification renewal**

**(a) A renewal certification is valid for one year following the date of issuance, unless it is suspended, revoked, or canceled.**

**(b) A radon measurement business shall submit, to the Department, an application for renewal on the form that the Department provides in advance of the expiration date.**

**(c) A complete renewal application shall contain:**

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**1. All information required in an application for an initial certification as set forth at N.J.A.C. 7:28-27A.7, but only to the extent that the information differs from what is contained in the certified business's most recent certification;**

**2. A copy of the current calibration certificate for each portable device used by the certified business's affiliates in accordance with N.J.A.C. 7:28-27A.6(b);**

**3. Documentation of spike testing, if applicable, in accordance with N.J.A.C. 7:28-27A.10(f); and**

**4. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue a certification credential to an applicant who complies with the requirements of this section. 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) A certified radon measurement business shall maintain its certification by submitting an annual renewal application in accordance with N.J.A.C. 7:28-27A.8 and amending its certification, when necessary, in accordance with N.J.A.C. 7:28-27A.3(j).**

**(b) A certified radon measurement business shall affiliate with at least one certified individual, in accordance with N.J.A.C. 7:28-27A.5, and submit the affiliation form to the Department.**

**(c) A certified radon measurement business shall comply with this subchapter and ensure that its affiliates conduct radon testing in accordance with the authorized measurement**

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**protocols for each building type, this subchapter, the certified business's certification, QA plan, and radiological safety plan.**

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

- 1. The information required at N.J.A.C. 7:28-27A.6(d);**
- 2. A list of the non-portable devices to be used by the business and/or its affiliates and**

**either:**

**i. The name and certification number of the analytical laboratory certified in accordance with N.J.A.C. 7:18 that will analyze each device; or**

**ii. An indication that the certified business will analyze the non-portable devices, in which case the certified business shall provide its certification number pursuant to N.J.A.C. 7:18;**

**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:**

**i. The name of the affiliate or affiliates who will test each type of building; and**

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

**(e) The daily operation of a certified radon measurement business shall be directed by one or more certified radon measurement specialists affiliated with the business, whose responsibilities are set forth at N.J.A.C. 7:28-27A.20(j).**

**(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**

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to be used by its affiliates in order to assure 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 provided to each affiliate annually, and when the certified business revises the plan to change the procedures affiliates must follow.

(g) A certified radon measurement business shall establish a chain of custody form for each device and 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 by an affiliate, 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:

1. Test location including address, city, State, zip code, incorporated municipality, and county;
2. Client address, city, State, and zip code, if different than test location;
3. Device;
4. Device model number for portable devices;
5. Device serial number or reference number;
6. Floor where the test was conducted: zero is the basement, one is the first floor, etc.;
7. Whether closed house conditions were met;

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- 8. The type of building the test was performed in: home, large building, school, multifamily building, or child care center;**
- 9. If the building is a school, the school name, New Jersey Department of Education school code, and room number of the location tested;**
- 10. Structure type: basement, crawlspace, slab on grade, or combination;**
- 11. Test type: standard, blank, or duplicate;**
- 12. Whether the test was conducted as part of a real estate transaction;**
- 13. Whether the test was conducted after mitigation;**
- 14. The certification number of the individual who deployed the device;**
- 15. The time and date the device was deployed;**
- 16. The certification number of the individual who retrieved the device;**
- 17. The time and date the device was retrieved;**
- 18. If the device is non-portable, the certification number of the radon laboratory analyzing the device; and**
- 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:**

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**1. Specific testing requirements in accordance with the authorized measurement**

**protocols;**

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

**3. Directions for the return of the device to the business.**

**(i) Neither the certified business nor any of its affiliates shall conduct a test with a device, unless the device is identified on the certified business's certification and has a current calibration certificate. A certified business shall add a device to its certification during initial or renewal certification in accordance with N.J.A.C. 7:28-27A.7 or 27A.8, or as an amendment in accordance with N.J.A.C. 7:28-27A.3(j) and 27A.6(d).**

**(j) A certified radon measurement business shall secure the services of a laboratory certified pursuant to N.J.A.C. 7:18, Regulations Governing the Certification of Laboratories and Environmental Measurements, to analyze non-portable devices belonging to the certified business. In the alternative, the certified business may analyze the non-portable devices, provided the business is certified to analyze the devices pursuant to N.J.A.C. 7:18.**

**(k) A certified radon measurement business shall implement quality control measures in accordance with N.J.A.C. 7:28-27A.10.**

**(l) A certified radon measurement business shall invalidate a test that does not meet the requirements of the authorized measurement protocols, the QA plan, or this subchapter. If a test is invalidated:**

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**1. The reason for invalidating the test shall be clearly documented on the client report form;**

**2. The test result shall not be reported on the client report form or otherwise provided to the client; and**

**3. The test shall not be reported to the Department.**

**(m) A certified radon measurement business shall report tests performed only by an affiliate, or by an individual not subject to certification pursuant to N.J.A.C. 7:28-27A.1(c)1 and 2, and reviewed by a measurement specialist, to the Department in accordance with N.J.A.C. 7:28-27A.17(a), and in a client report form in accordance with N.J.A.C. 7:28-27A.17(c).**

**The client report form shall be submitted to the Department for approval as part of its 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.**

**(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 the Department's website at [www.njradon.org](http://www.njradon.org). In the alternative, the certified business may provide, in the report, the website address where the client may obtain the document.**

**(o) A certified radon measurement business shall establish a confidentiality waiver form and require affiliates to use the waiver form to obtain written authorization from the owner to provide an address and corresponding radon test result to an individual other than the**

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**building owner, or the buyer in the case of a prospective sale. A waiver shall not apply to individuals referenced at N.J.A.C. 7:28-27A.3(c). The waiver form shall be submitted to the Department for approval as part of the 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 waiver shall include:**

- 1. A statement in accordance with N.J.A.C. 7:28-27A.3(b) indicating that the owner or their legal representative agrees to release the information;**
- 2. The name and signature of the owner or their legal representative as provided at N.J.A.C. 7:28-27A.3(c);**
- 3. The name and signature of the affiliate; and**
- 4. The date that the owner or representative signs the document.**

**(p) A certified radon measurement business shall develop and comply with a radiological safety plan in accordance with N.J.A.C. 7:28-27A.15 in order to keep the radon exposure of affiliates as low as reasonably achievable. The plan shall be submitted to the Department for approval as part of the business's application for initial certification, and shall be provided to each affiliate annually, and when the certified business revises the plan to change the procedures affiliates must follow. If the plan is revised, the revised plan 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.**

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

- 1. An overview of radiation and radiation safety;**
- 2. An overview of radon and the risk of developing lung cancer from radon exposure;**
- 3. The radiation safety practices that each affiliate entering a building must follow for**

**radon testing, including:**

- i. Limiting the time spent in areas with potentially high radon concentrations;**
- ii. Responding to questions or concerns of clients in a low radon area;**
- iii. Setting up radon testing devices prior to entering an area with potentially high radon**

**concentrations; and**

- iv. Not smoking in buildings being tested; and**

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

- i. The passing score required on the test; and**
- ii. The measures the business will take if the affiliate does not pass the test, such as**

**additional training, re-administering the test, or terminating the affiliation.**

#### **7:28-27A.10 Quality control measures**

**(a) Authorized proficiency testing shall be conducted in accordance with N.J.A.C. 7:28-27A.6(a).**

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**(b) Each portable device on the business’s certification shall be calibrated in accordance with N.J.A.C. 7:28-27A.6(b).**

**(c) Throughout each month, a certified radon measurement business shall conduct the lesser of 10 percent duplicates or 50, distributed among affiliates and individuals not subject to certification 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 criteria for all duplicate analyses:**

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

**2. If more than five percent of the checks fall within the warning limit or more than one percent of the checks fall outside the control limit for a device, the certified business shall**

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investigate, take corrective action, and document the investigation and corrective action. If the limit continues to be exceeded, the business shall take the affected devices out of service until the problem is identified, corrected, and documented.

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

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

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

2. If blank results fall outside the control limit for a device, the certified business shall investigate, take corrective action, and document the investigation and corrective action. If the limit continues to be exceeded, the business shall take the affected device out of service until the problem is identified, corrected, and documented.

(e) 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;

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- 2. At the certified business's location;**
- 3. At the affiliate's office and storage area; and**
- 4. In the vehicles that transport the devices.**

**(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.**

- 1. Spike tests shall be conducted at a rate of three per 100 tests, with a minimum of three per year and a maximum of six per month; and**
- 2. The certified radon measurement business shall monitor the results of spike testing and shall investigate any significant deviation from the known spike concentration.**

**(g) From each shipment of electret devices from the manufacturer, the device owner shall set aside the lesser of five percent or 10, which shall be evaluated at least weekly for voltage drift and results documented.**

- 1. If a device is affiliate-owned, the certified individual shall submit the results weekly to each certified business with which the individual is affiliated for that device;**
- 2. If the voltage loss is more than one volt per week over a three-week test period for short-term electrets, or one volt per month over a three-month test period for long-term electrets, the certified business shall investigate, take corrective action, and document the investigation and corrective action; and**

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**3. If the limit continues to be exceeded, the certified business shall instruct the owner to take the affected device out of service until the problem is identified, corrected, and documented.**

**(h) Following the manufacturer's instructions, the device owner shall zero the electret reader and document results at least weekly.**

**1. If a device is affiliate-owned, the certified individual shall submit the results weekly to each certified business with which the individual is affiliated for that device; and**

**2. If the manufacturer's limits are exceeded, the certified business shall instruct the owner to take the affected device out of service until the problem is identified, corrected, and documented.**

**(i) Following the manufacturer's instructions, the device owner shall check the reference cells and document results at least weekly.**

**1. If a device is affiliate-owned, the certified individual shall submit the results weekly to each certified business with which the individual is affiliated for that device; and**

**2. If the manufacturer's limits are exceeded, the certified business shall instruct the owner to take the affected device out of service until the problem is identified, corrected, and documented.**

**(j) Each calendar quarter, a certified specialist responsible for the daily operations of the certified business shall prepare and submit to the individual who signed the application in accordance with N.J.A.C. 7:28-27A.4, a written report of the results of duplicate tests, blank**

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**tests, authorized proficiency tests, calibrations, and spike tests, voltage drift, zeroing, and reference cell checks, as applicable, and any corrective action.**

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

**(a) An initial certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) A radon mitigation business shall submit an application for initial certification in accordance with N.J.A.C. 7:28-27A.3(e).**

**(c) A complete initial application shall include:**

**1. The business name, physical location, and mailing address; primary and secondary individuals in charge of the business; contact information, which may include 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 agency;**

**3. The name and address of each owner, officer, general and limited partner, director, and principal shareholder;**

**4. For a corporation, the state of domestic incorporation, and the name and principal place of business of each parent corporation of the applicant;**

**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.**

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**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. 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 protocols to be followed for each building type, in accordance with N.J.A.C.**

**7:28-27A.13(d);**

**7. A copy of the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**

**8. A copy of the form contract for a fan installation only and the form contract for a full mitigation system installation in accordance with N.J.A.C. 7:28-27A.13(f); and**

**9. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(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. Upon approval by the Department, 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).**

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**7:28-27A.12 Radon mitigation business - certification renewal**

(a) A renewal certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.

(b) A radon mitigation business shall submit to the Department, an application for renewal on the form that the Department provides in advance of the expiration date.

(c) A complete renewal application shall contain:

1. All information required in an application for an initial certification as set forth at N.J.A.C. 7:28-27A.11, but only to the extent that the information differs from what is contained in the certified business's most recent certification; and

2. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).

(d) The Department will issue a certification credential to an applicant who complies with the requirements of this section. 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) A certified radon mitigation business shall maintain its certification by submitting an annual renewal application in accordance with N.J.A.C. 7:28-27A.12 and amending its certification, when necessary, in accordance with N.J.A.C. 7:28-27A.3(j).

(b) A certified radon mitigation business shall affiliate with at least one individual in accordance with N.J.A.C. 7:28-27A.5 and submit the affiliation form to the Department.

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**(c) A certified radon mitigation business shall comply with this subchapter and ensure that its affiliates conduct radon mitigation in accordance with the authorized mitigation protocols for each building type, this subchapter, the certified business's certification, and radiological safety plan.**

**(d) A certified radon mitigation business shall provide, to the Department, a list of the building types to be mitigated, 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, a certified radon mitigation business shall provide to the Department:**

- 1. The name of the affiliate or affiliates who will mitigate each type of building; and**
- 2. The date on which each identified affiliate took the eight-hour multifamily buildings training course and/or the schools and large buildings course, as applicable.**

**(e) The daily operation of a certified radon mitigation business shall be directed by one or more certified radon mitigation specialists affiliated with the business, whose responsibilities are set forth at N.J.A.C. 7:28-27A.26(k).**

**(f) A certified radon mitigation business shall develop and comply with a radiological safety plan in accordance with N.J.A.C. 7:28-27A.15, in order to keep the radon exposure of affiliates as low as reasonably achievable. The plan shall be submitted to the Department for approval as part of the business's application for initial certification, and shall be provided to each affiliate annually, and when the certified business revises the plan to change the procedures affiliates must follow. If the plan is revised, the revised plan must be submitted**

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**to the Department for approval as part of the certified business's application for renewal certification, or as an amendment to its certification.**

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

- 1. An overview of radiation and radiation safety;**
- 2. An overview of radon and the risk of developing lung cancer from radon exposure; and**
- 3. The radiation safety practices that each affiliate entering a building must follow for**

**radon mitigation work, including:**

- i. Knowing the pre-mitigation radon test result;**
- ii. Ventilating building areas where mitigation work is being performed;**
- iii. Limiting the time spent in areas with potentially high radon concentrations;**
- iv. Taking work breaks/lunches away from elevated radon areas;**
- v. Allowing in the building only the number of persons necessary to carry out mitigation work; and**
- vi. Not smoking in buildings being mitigated.**

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

- 1. The passing score required on the test; and**
- 2. The measures the business will take if the affiliate does not pass the test, such as**

**additional training, re-administering the test, or terminating the affiliation.**

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**(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. An explanation of the selected tracking method, including all calculations;**
- 4. Measures to be taken to ensure exposure does not exceed two working level months per year (WLM per year); and**
- 5. Measures to be taken when exposure exceeds two WLM per year.**

**(j) A certified radon mitigation business shall annually track its affiliates' exposure to radon by:**

- 1. Requiring its affiliates to wear a passive long-term radon detector while working for at least three consecutive months; or**
- 2. Estimating radon exposure by performing one calculation using the highest pre-mitigation radon test result obtained by any affiliate and the maximum total time spent by any affiliate in buildings while conducting mitigations for the past year, or if a new business, by estimating radon exposure at six months and one year during the first year of certification, using the following calculation:**

$$\text{WLM per year} = (\text{exposure (WL)} \times \text{hours exposed per year}) / 170 \text{ hours per month}$$

**(Assumes one month of work = 170 hours)**

$$\text{ER} = \underline{(\text{WL} \times 100)}$$

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**pCi/L**

**For radon mitigation, if the equilibrium ratio (ER) is not given, it is assumed to be 100 percent; which means that the ER = 1.0.**

$$1 = \frac{(WL \times 100)}{(pCi/L)}$$

$$WL = \frac{(pCi/L)}{100}$$

**(k) A certified radon mitigation business shall notify an affiliate when the affiliate's actual or estimated exposure exceeds two WLM per year.**

**(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 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. The certified radon mitigation business's name, certification number, address, and telephone number;**
- 2. The affiliate's printed name, signature, and certification number;**
- 3. The client's printed name and signature;**
- 4. The date on which the contract is effective;**
- 5. The warranty, if any, on the reduction of the radon level, shall specify:**

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**i. 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**

**ii. When no warranty is provided;**

**6. Diagnostic test results, if appropriate;**

**7. A written description of the specific radon mitigation system components to be installed;**

**8. A short-term radon test in accordance with (o) below;**

**9. Written instructions for the operation and maintenance of the mitigation equipment, including a discussion of the possible energy costs associated with operating the system;**

**10. The estimated potential cost to the client for additional work on the system if the installed 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. 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**

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most recent authorized mitigation protocol. Before performing work on an existing mitigation system, the certified business and specialist shall advise the client, in writing, 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.

(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, 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) A certified radon mitigation business shall ensure that a short-term radon test is conducted no sooner than 24 hours after a mitigation system is installed and functioning and within 30 days after the installation of the system.

(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 the Department's website at [www.njradon.org](http://www.njradon.org). In the alternative, the certified business may provide in the contract the website address where the client may obtain the document.

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

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

**1. A title page that identifies:**

**i. The title of the document;**

**ii. The name and signature of one individual designated in accordance with N.J.A.C. 7:28-27A.9(e);**

**iii. The business's name, address, and certification number; and**

**iv. The date the document was prepared;**

**2. A table of contents for the QA plan;**

**3. A description of the business's organization, including:**

**i. The title of the individual who signed the application in accordance with N.J.A.C. 7:28-27A.4;**

**ii. An acknowledgment that it is the responsibility of a certified radon measurement specialist to oversee the daily operations of the business in accordance with N.J.A.C. 7:28-27A.9(e), and to perform quality assurance and quality control functions; and**

**iii. A description of the reporting structure between the individuals at (a)3i and ii above and the business's affiliates;**

**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) through (o); and**

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**5. A description of internal quality control checks conducted by the business and its affiliates for all devices in accordance with N.J.A.C. 7:28-27A.10.**

**(b) The business shall provide a copy of the QA plan, and any revision thereto, to each affiliate in accordance with N.J.A.C. 7:28-27A.5.**

**7:28-27A.15 Radiological safety plan**

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

**1. A title page that identifies:**

**i. The title of the document;**

**ii. The name and signature of one individual designated in accordance with N.J.A.C. 7:28-27A.9(e);**

**iii. The business name, address, and certification number; and**

**iv. The date the document was prepared;**

**2. A table of contents for the radiological safety plan; and**

**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) The business shall provide a copy of the radiological safety plan, and any revision thereto, to each affiliate in accordance with N.J.A.C. 7:28-27A.5.**

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**7:28-27A.16 Recordkeeping**

**(a) A certified radon measurement business shall maintain the following for five years, in a format that is immediately available to the Department:**

- 1. The affiliation form for each affiliate;**
- 2. Initial radiation safety training records, including the test, for each affiliate;**
- 3. A copy of the annual certification credential for each affiliate;**
- 4. Calibration certificates for portable devices;**
- 5. Quality control records in accordance with N.J.A.C. 7:28-27A.10;**
- 6. A copy of the authorized measurement protocols used by the certified radon**

**measurement business and its affiliates; and**

**7. Records of all radon tests, including invalidated tests, performed by an individual, whether certified or exempt from certification, using a device on the business's certification, including the chain of custody form, the client report, and information required at N.J.A.C. 7:28-27A.9(g).**

**(b) A certified radon mitigation business shall maintain the following for five years, in a format that is immediately available to the Department:**

- 1. The affiliation form for each affiliate;**
- 2. Initial radiation safety training records, including the test, for each affiliate and uncertified individuals specified at N.J.A.C. 7:28-27A.9(q);**
- 3. A copy of the annual certification credential for each affiliate;**
- 4. Calibration certificates for portable devices used for diagnostic testing;**

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**5. Radon exposure tracking records;**

**6. A copy of the authorized mitigation protocols used by the certified radon mitigation business and its affiliates; and**

**7. Records of all mitigation work conducted, including the executed contract and information required at N.J.A.C. 7:28-27A.17(b).**

#### **7:28-27A.17 Reporting**

**(a) A certified radon measurement business shall submit, to the Department, on or before the first day of each month:**

**1. The results of all radon tests performed during the second previous month, and for those tests, the information required to be recorded on the chain of custody form in accordance with N.J.A.C. 7:28-27A.9(g). For example, the results from the May testing shall be submitted by July 1. Data shall be submitted in the format and the media required by the Department. Radon test results shall be reported in picocuries per liter (pCi/L); and**

**2. A letter signed by a certified measurement specialist that states he or she has reviewed, verified, and approved the report.**

**(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**

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**July 1. Reports shall be submitted in the format and the media required by the Department and shall include:**

**i. Mitigated location including address, city, State, zip code, incorporated municipality, and county;**

**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;**

**iv. Pre-mitigation radon concentration, including the floor where the test was conducted (zero is the basement, one is the first floor, etc.), the date the test was conducted, the device or devices used for the test, and the certified measurement business that conducted the test;**

**v. Type of mitigation system installed;**

**vi. Date of mitigation;**

**vii. Post-mitigation radon concentration, including the floor where the test was conducted (zero is the basement, one is the first floor, etc.), the date the test was conducted, the device or devices used, and the certified measurement business that conducted the test;**

**viii. Structure type (basement, crawlspace, and/or slab on grade); and**

**ix. The certification number of the individual who installed the mitigation system;**

**2. A letter signed by a certified mitigation specialist that states he or she has reviewed, verified, and approved the report; and**

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**3. Any post-mitigation radon test results that were not included with a previously submitted mitigation system.**

**(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. Business name, address, telephone number, and certification number;**
- 2. Device;**
- 3. Device calibration expiration date, for portable devices and electret readers;**
- 4. Laboratory name and certification number, for non-portable devices;**
- 5. Owner's address;**
- 6. Address tested, if different from (c)5 above;**
- 7. Test start date and time;**
- 8. Test stop date and time;**
- 9. Floor tested;**
- 10. Test results in pCi/L;**
- 11. Printed name, signature, and certification number of the measurement specialist who reviewed the report;**
- 12. Report date; and**
- 13. The statement: "This notice is provided to you by a business certified by the New Jersey Department of Environmental Protection to perform radon measurements. N.J.S.A. 26:2D-73 requires that no person shall disclose to any individual, except the Department of**

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**Environmental Protection or the Department of Health the address or owner of a nonpublic building that the person has tested or treated for the presence of radon, unless the owner of the building waives, in writing, this right of confidentiality. In the case of a prospective sale of a building which has been tested for radon, 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, and any prospective buyer who contracts for the testing shall have the right to receive the results of that testing.”**

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

**(a) An initial certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) An individual shall submit an application for initial certification in accordance with N.J.A.C. 7:28-27A.3(e).**

**(c) A complete initial application shall include:**

**1. The individual’s name, Social Security number, home mailing address, home address (no post office box), and other contact information, which may include telephone number and electronic mail address;**

**2. Documentation showing that the applicant possesses the education and radiation work experience required in accordance with N.J.A.C. 7:28-27A.20(b). Documentation of education shall consist of a certified copy of a transcript from an accredited institution showing the applicant’s name and the degree awarded. Documentation of radiation work experience**

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shall consist of a letter from either the employer with whom the applicant obtained the work experience, or an individual other than the applicant who has extensive knowledge of the applicant's work experience, listing all applicable work experience and the dates or range of dates that the applicant performed the work;

3. Documentation showing that the applicant has completed 24 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. When applicable, documentation of the training required for multifamily buildings and/or schools and large buildings, as required in accordance with N.J.A.C. 7:28-27A.20(c). 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;

5. Documentation showing that the applicant successfully passed a radon examination for radon measurement specialist or the equivalent category administered by the National Radon Proficiency Program. The documentation shall consist of a copy of the individual's examination results;

6. A list of the portable devices the applicant owns, including the manufacturer, model number, and serial number in accordance with N.J.A.C. 7:28-27A.20(h);

7. Documentation showing that the applicant completed an authorized proficiency test for each device model identified at (c)6 above in accordance with N.J.A.C. 7:28-27A.6(a); and

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**8. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue an acknowledgement notice to an applicant who complies with the requirements of this section. When the Department receives an affiliation form from a certified radon measurement business or a business with an acknowledgement notice in accordance with N.J.A.C. 7:28-27A.5, the Department will issue a certification credential. 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.19 Radon measurement specialist - certification renewal**

**(a) A renewal certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) A certified radon measurement specialist shall submit, to the Department, an application for renewal on the form that the Department provides in advance of the expiration date.**

**(c) A complete renewal application shall contain:**

**1. All of the information required in an application for an initial certification as set forth at N.J.A.C. 7:28-27A.18, but only to the extent that the information differs from what is contained in the certified measurement specialist's most recent certification;**

**2. Proof of completion of continuing education required in accordance with N.J.A.C. 7:28-27A.20(d). 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**

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credit hours, and the date of the course. Documentation from the conference organizer of the individual's attendance for two days at a national radon training conference or documentation from the training course provider showing an individual instructed eight hours of radon continuing education shall also fulfill this requirement; and

3. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).

(d) The Department will issue a certification credential to an applicant who complies with the requirements of this section. 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.20 Responsibilities of a certified radon measurement specialist**

(a) A certified radon measurement specialist shall maintain his or her certification by submitting an annual renewal application in accordance with N.J.A.C. 7:28-27A.19, and amending the certification, when necessary, in accordance with N.J.A.C. 7:28-27A.3(j).

(b) A certified radon measurement specialist shall possess the following:

1. A Bachelor of Science degree in engineering or a natural science, which includes biology, chemistry, physics, geology, or environmental science and one year of radiation work experience;

2. A Bachelor of Science or Bachelor of Arts degree in any subject other than as identified at (b)1 above and two years of radiation work experience;

3. An Associate's degree in any subject and four years of radiation work experience;

4. Five years of radiation work experience; or

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**5. A certified health physicist certification accreditation.**

**(c) A certified radon measurement specialist shall complete an eight-hour multifamily buildings training course and/or a schools and large buildings training course provided 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) A certified radon measurement specialist shall annually complete eight hours of continuing education from a nationally recognized organization, completed no more than 12 months prior to the most current certification expiration date or the renewal application submittal date, if the certification is expired.**

**(e) A certified radon measurement specialist or an individual seeking certification as a radon measurement specialist who receives an acknowledgement notice from the Department in accordance with N.J.A.C. 7:28-27A.18(d) shall affiliate with at least one business in accordance with N.J.A.C. 7:28-27A.5.**

**1. For each business, the individual shall:**

- i. Review and comply with the QA plan in accordance with N.J.A.C. 7:28-27A.14;**
- ii. Review and comply with the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**
- iii. Take radiation safety training and pass a subsequent examination in accordance with N.J.A.C. 7:28-27A.13(g); and**
- iv. Sign an affiliation form in accordance with N.J.A.C. 7:28-27A.5.**

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**2. If a certified radon measurement specialist is affiliated with more than one certified business, the certified individual shall follow the QA plan and radiological safety plan for the business through which the radon test is performed.**

**(f) A certified radon measurement specialist shall comply with this subchapter, and shall conduct radon testing only while certified and affiliated, and only in accordance with the authorized measurement protocols for each building type, this subchapter, and the certified business's QA plan and radiological safety plan.**

**(g) A certified radon measurement specialist shall pass an authorized proficiency test in accordance with N.J.A.C. 7:28-27A.6(a).**

**(h) A certified radon measurement specialist shall provide, to the Department, a list of the portable devices he or she owns, including the manufacturer, model number, and serial number.**

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

**1. Enter all information for each radon test on the chain of custody form provided by the certified business in accordance with N.J.A.C. 7:28-27A.9(g);**

**2. Perform quality control measures in accordance with N.J.A.C. 7:28-27A.10;**

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

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

**ii. The device has a current calibration certificate; and**

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**iii. 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).**

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

**1. Ensure that the certified radon measurement business and its affiliates are in compliance with the certified business's most recent certification and this subchapter;**

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

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

**4. Prepare, sign, implement, and ensure compliance with the certified business's QA plan;**

**5. Prepare, sign, implement, and ensure compliance with the certified business's radiological safety plan;**

**6. Ensure that the certified business maintains records in accordance with N.J.A.C. 7:28-27A.16; and**

**7. Prepare and submit the certified business's annual certification application, and amend the certification as needed.**

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

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**(a) An initial certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) An individual shall submit an application for initial certification in accordance with N.J.A.C. 7:28-27A.3(e).**

**(c) A complete initial application shall include:**

**1. The individual's name, Social Security number, home mailing address, home address (no post office box), and other contact information, which may include telephone number and electronic mail address;**

**2. Documentation showing that the applicant has completed 16 hours of initial training from a nationally recognized organization. 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;**

**3. When applicable, documentation of the training required for multifamily buildings and/or schools and large buildings, as required in accordance with N.J.A.C. 7:28-27A.23(b). 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. 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. Documentation shall consist of a copy of the individual's examination results;**

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**5. A list of the portable devices the applicant owns, including the manufacturer, model number, and serial number in accordance with N.J.A.C. 7:28-27A.23(g);**

**6. Documentation showing that the applicant completed an authorized proficiency test for each device model identified at (c)5 above, in accordance with N.J.A.C. 7:28-27A.6(a); and**

**7. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue an acknowledgement notice to an applicant who complies with the requirements of this section. When the Department receives an affiliation form from a certified radon measurement business or a business with an acknowledgement notice in accordance with N.J.A.C. 7:28-27A.5, the Department will issue a certification credential. The certification shall contain the information provided in the application and any subsequent amendments in accordance with N.J.A.C. 7:28-A.3(j).**

#### **7:28-27A.22 Radon measurement technician - certification renewal**

**(a) A renewal certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) A certified radon measurement technician shall submit, to the Department, an application for renewal on the form that the Department provides in advance of the expiration date.**

**(c) A complete renewal application shall contain:**

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**1. All information required in an application for an initial certification as set forth at N.J.A.C. 7:28-27A.21, but only to the extent that the information differs from what is contained in the certified radon measurement technician's most recent certification;**

**2. Proof of completion of continuing education required in accordance with N.J.A.C. 7:28-27A.23(c). 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 shall also fulfill this requirement; and**

**3. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue a certification credential to an applicant who complies with the requirements of this section. 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.23 Responsibilities of a certified radon measurement technician**

**(a) A certified radon measurement technician shall maintain his or her certification by submitting an annual renewal application in accordance with N.J.A.C. 7:28-27A.22 and amending the certification, when necessary, in accordance with N.J.A.C. 7:28-27A.3(j).**

**(b) A certified radon measurement technician shall complete an eight-hour multifamily buildings training course and/or a schools and large buildings training course provided by a**

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**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) A certified radon measurement technician shall annually complete four hours of continuing education from a nationally recognized organization, completed no more than 12 months prior to the current certification expiration date or the renewal application submittal date, if the certification is expired.**

**(d) A certified radon measurement technician or an individual seeking certification as a radon measurement specialist 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.**

**1. For each business the individual shall:**

**i. Review and comply with the QA plan in accordance with N.J.A.C. 7:28-27A.14;**

**ii. Review and comply with the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**

**iii. Take radiation safety training and pass a subsequent examination in accordance with N.J.A.C. 7:28-27A.9(q); and**

**iv. Sign an affiliation form in accordance with N.J.A.C. 7:28-27A.5; and**

**2. If a certified radon measurement technician is affiliated with more than one certified business, the certified individual shall follow the QA plan and radiological safety plan for the business through which the radon test is performed.**

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**(e) A certified radon measurement technician shall comply with this subchapter, and shall ensure that he or she conducts radon testing only while certified and affiliated, and only in accordance with the authorized measurement protocols for each building type, this subchapter, and the certified business's QA plan and radiological safety plan.**

**(f) A certified radon measurement technician shall pass an authorized proficiency test in accordance with N.J.A.C. 7:28-27A.6(a).**

**(g) A certified radon measurement technician shall provide, to the Department, a list of the portable devices he or she owns, including the manufacturer, model number, and serial number.**

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

**1. Enter all information for each radon test on the chain of custody form provided by the certified business in accordance with N.J.A.C. 7:28-27A.9(g);**

**2. Perform quality control measures in accordance with N.J.A.C. 7:28-27A.10;**

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

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

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

**iii. If 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).**

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

(a) An initial certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.

(b) An individual shall submit an application for initial certification in accordance with N.J.A.C. 7:28-27A.3(e).

(c) A complete initial application shall include:

1. The individual's name, Social Security number, home mailing address, home address (no post office box), and other contact information, which may include telephone number and electronic mail address;

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 and certificate from a heating, ventilation, and air conditioning training provider. 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. Documentation showing that the applicant has completed 24 hours of initial training from a nationally recognized organization. Documentation shall consist of the individual's

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**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. When applicable, documentation of the training required for multifamily buildings and/or schools and large buildings, as required at N.J.A.C. 7:28-27A.26(c). 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;**

**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. Documentation shall consist of a copy of the individual's examination results; and**

**6. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue an acknowledgement notice to an applicant who complies with the requirements of this section. When the Department receives an affiliation form from a certified radon mitigation business or a business with an acknowledgement notice in accordance with N.J.A.C. 7:28-27A.5, the Department will issue a certification credential. 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.25 Radon mitigation specialist - certification renewal**

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**(a) A renewal certification is valid for one year following the date of issuance, unless the certification is suspended, revoked, or canceled.**

**(b) A certified radon measurement specialist shall submit to the Department an application for renewal on the form that the Department provides in advance of the expiration date.**

**(c) A complete renewal application shall contain:**

**1. All information required in an application for an initial certification as set forth at N.J.A.C. 7:28-27A.24, but only to the extent that the information differs from what is contained in the certified radon mitigation specialist's most recent certification;**

**2. Proof of completion of continuing education required at N.J.A.C. 7:28-27A.26(d). 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 two days at a national radon training conference or documentation from the training course provider showing an individual instructed eight hours of radon continuing education shall also fulfill this requirement; and**

**3. The proper fee in accordance with N.J.A.C. 7:28-27A.27(d).**

**(d) The Department will issue a certification credential to an applicant who complies with the requirements of this section. 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).**

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

**(a) A certified radon mitigation specialist shall maintain his or her certification by submitting an annual renewal application in accordance with N.J.A.C. 7:28-27A.25 and amending the certification, when necessary, in accordance with N.J.A.C. 7:28-27A.3(j).**

**(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 relevant work experience means the design, construction, and renovation of buildings. 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 schools and large buildings training course provided 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) A certified radon mitigation specialist shall annually complete eight hours of continuing education from a nationally recognized organization, completed no more than 12 months prior to the current certification expiration date or no more than 12 months prior to the renewal application submittal date, if the certification is expired.**

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**(e) A certified radon mitigation specialist or an individual seeking certification as a radon mitigation specialist who received an acknowledgement notice from the Department in accordance with N.J.A.C. 7:28-27A.24(d), shall affiliate with at least one business in accordance with N.J.A.C. 7:28-27A.5.**

**1. For each business, the individual shall:**

**i. Review and comply with the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**

**ii. Take radiation safety training and pass a subsequent examination in accordance with N.J.A.C. 7:28-27A.13(g); and**

**iii. Sign an affiliation form in accordance with N.J.A.C. 7:28-27A.5; and**

**2. If a certified radon mitigation specialist is affiliated with more than one certified business, the certified individual shall follow the radiological safety plan for the business through which the radon mitigation is performed.**

**(f) A certified radon mitigation specialist shall conduct radon mitigation only while certified and affiliated, and only in accordance with the authorized mitigation protocols for each building type, this subchapter, and the certified business's radiological safety plan, and shall otherwise comply with this subchapter.**

**(g) Prior to the installation of a mitigation system, a certified radon mitigation specialist shall provide the client with a copy of a written contract that has been signed by the affiliate and the owner or their legal representative. The contract shall be supplied on behalf of the certified business as provided at N.J.A.C. 7:28-27A.13(l).**

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**(h) Prior to performing work on an existing mitigation system, a certified radon mitigation specialist on behalf of the certified business shall advise the client, in writing, 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.**

**(i) A certified radon mitigation specialist on behalf of the certified business shall, as provided at N.J.A.C. 7:28-27A.13(n), allow an uncertified individual to assist with only basic construction tasks during the installation of the radon mitigation system.**

**(j) A certified radon mitigation specialist shall ensure that a short-term radon test is conducted no sooner than 24 hours after a mitigation system is installed and functioning, and within 30 days after the installation of the system.**

**(k) A certified radon mitigation specialist that directs the daily operation of the certified business shall:**

**1. Ensure that the certified radon mitigation business and its affiliates are in compliance with the business's most recent certification and this subchapter;**

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

**3. Review, approve, verify, and sign the certified business's reports that are specified at N.J.A.C. 7:28-27A.17(b);**

**4. Prepare, sign, implement, and ensure compliance with the radiological safety plan;**

**5. Ensure that a contract is provided for each mitigation system in accordance with (g) above;**

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**6. Ensure that the certified business maintains records in accordance with N.J.A.C. 7:28-27A.16; and**

**7. Prepare and submit the business's annual certification application.**

**7:28-27A.27 Fees**

**(a) An individual or business seeking initial or renewal certification shall submit, to the Department, a non-refundable application fee in accordance with Certification Fee Schedule A below.**

**(b) A business shall submit to the Department an inspection fee in accordance with Fee Schedule A below.**

**(c) In addition to the fees in Fee Schedule A, a program administration fee shall be submitted semi-annually to the Department:**

**1. By a certified radon measurement business in accordance with Fee Schedule B below; and**

**2. By a certified radon mitigation business in accordance with Fee Schedule C below.**

**(d) Each year, beginning on July 1, the semi-annual fees specified at (b) above shall be adjusted by the previous 12-month inflation factor, rounded down to the next whole dollar.**

**The inflation factor is calculated from the Annual Average Consumer Price Index, for All Urban Consumers (CPI-U) for the U.S. City Average, not seasonally adjusted, published annually by the U.S. Department of Labor, Bureau of Labor Statistics.**

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1. If the inflation factor for a 12-month period is negative, the fees will remain unchanged

from the previous year; and

2. The adjusted fees shall be reflected through a notice of administrative change,

published in the New Jersey Register.

**FEE SCHEDULE A**

	<b>Initial Application and Expired Renewal Application Fee (\$)</b>	<b>Annual Renewal Certification Fee (\$)</b>	<b>Inspection Fee (\$)</b>
<b>Radon Measurement Business</b>	<b>400</b>	<b>200</b>	<b>400</b>
<b>Radon Measurement Specialist</b>	<b>150</b>	<b>75</b>	<b>N/A</b>
<b>Radon Measurement Technician</b>	<b>75</b>	<b>50</b>	<b>N/A</b>
<b>Radon Mitigation Business</b>	<b>400</b>	<b>200</b>	<b>400</b>
<b>Radon Mitigation Specialist</b>	<b>150</b>	<b>75</b>	<b>N/A</b>

**FEE SCHEDULE B**

**Program Administration Fees-  
Radon Measurement Business**

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<b>Number of Radon Tests Conducted by Affiliates and Owners and Reported by the Measurement Business Each Semi-Annual Period *</b>	<b>Program Fee (\$)</b>	<b>Activity Fee (\$)</b>	<b>Total Fee (\$)</b>
-0-	508	0	508
1-49	508	57	565
50-99	508	177	685
100-199	508	351	859
200-299	508	585	1,093
300-499	508	935	1,443
500-999	508	1,765	2,264
1000-1999	508	3,509	4,017
2000-5000	508	8,188	8,696
Greater than 5000	508	11,702	12,210

\*First Calendar Period: July 1 through December 31  
 Second Calendar Period: January 1 through June 30

**FEE SCHEDULE C**  
**Program Administration Fees-**  
**Radon Mitigation Business**

<b>Number of Radon Mitigations Systems Installed by Affiliates Each Semi-Annual Period*</b>	<b>Program Fee (\$)</b>	<b>Activity Fee (\$)</b>	<b>Total Fee (\$)</b>
0	796	0	796
1-10	796	122	918
11-24	796	445	1,241
25-49	796	909	1,705
50-74	796	1,524	2,320
75-99	796	2,139	2,935
	796	2,738	3,534

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<b>100-124</b>	<b>796</b>	<b>3,369</b>	<b>4,165</b>
<b>125-149</b>	<b>796</b>	<b>3,987</b>	<b>4,783</b>
<b>150-174</b>	<b>796</b>	<b>4,601</b>	<b>5,397</b>
<b>175-200</b>	<b>796</b>	<b>4,917</b>	<b>5,713</b>
<b>Greater than 200</b>			

**\*First Calendar Period: July  
1 through December 31  
Second Period: January 1  
through June 30**

**(e) If the Department conducts an inspection of a certified business located out-of-State, the business shall be responsible for payment of the costs incurred by the inspector including, but not limited to, motor vehicle mileage reimbursement, motor vehicle rental and insurance, airfare, hotels, parking, transportation, and allowances for meals, incidental expenses, and per diem. The costs paid by the certified business shall be only those incurred by the inspector in accordance with State and Federal travel policies. The certified business shall pay the inspector's hotel and transportation expenses directly to the hotel and transportation provider in advance of the inspection. The certified business shall reimburse the Department within 30 calendar days after the date of the Department's statement to the certified business setting forth the remaining costs.**

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#### **7:28-27A.28 Inspections**

(a) The Department and its representatives may enter, and inspect, any site, building, or equipment, or any portion thereof, owned or operated by an applicant or by the certified radon measurement or mitigation individual or business, at any time, in order to ascertain compliance with the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq., this subchapter, any certification, or any other agreement or order issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test any equipment at the facility, to sketch or photograph any portion of the site, building, or equipment, to copy, or photograph any document or records necessary to determine such compliance, and to interview any employees, affiliates, or representatives of the owner, operator, or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials, as requested, and compliance with appropriate standard safety procedures.

(b) Certified businesses or applicants, and any employees, affiliates, or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. This assistance shall include allowing the Department and its representatives to accompany an affiliate at a particular building or property for the purpose of inspecting the affiliate's activities, while the affiliate is performing any measurement, mitigation, or safeguard activity. During an inspection in which the Department is accompanying an affiliate, the affiliate shall use all sampling and measurement equipment under normal routine operating conditions or under such other

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conditions as may be requested by the Department. This assistance shall also include deploying Department sampling devices alongside the business's device and returning the Department sampling devices to a designated location. The affiliate shall, upon request, make sampling and measurement equipment available to the Department for the purpose of making comparative measurements.

(c) Upon request, a certified business shall make known to the Department's representatives, the owners, residents, and addresses of properties or buildings where radon measurement, mitigation, or safeguard activities are scheduled, in progress, or completed for the purpose of possible inspection by the Department.

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

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

(b) The Department may suspend a certification 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.

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**(c) The Department may revoke a certification if the certified individual or business:**

**1. Violates any requirements of the certification or provisions of this subchapter;**

**2. Violates any requirements of the certification or provisions of this subchapter for which there was a previous suspension, as listed at (b) above;**

**3. Violates any requirements of the certification or provisions of this subchapter while a certification is suspended as listed at (b) above;**

**4. Endangers the public health, safety, and welfare;**

**5. Operates in such a manner, so as to cause harm, injury, or damage to persons, property, or the environment or poses a significant risk of harm, injury, or damage; or**

**6. Aids, abets, combines with, or conspires with any person for any purpose that will evade, or be a violation of, the provisions of the Act, this subchapter, or the certification.**

**(d) A denial, suspension, or revocation shall be effective immediately upon receipt of the notice by the violator.**

**1. Notices under this section shall be served by way of certified mail or by personal service.**

**2. A notice under this section will:**

**i. Identify the section of the Act, rule, administrative order, suspension notice, or certification violated;**

**ii. Concisely state the facts that constitute the violation;**

**iii. Order the violation to cease; and**

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**iv. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures at N.J.A.C. 7:28-27A.31.**

**(e) The duration of a suspension is at the discretion of the Department and will be determined according to the severity of the violation. The Department will not reinstate a suspended certification until:**

- 1. The entire suspension period has expired; and**
- 2. The reasons for the suspension are eliminated and corrected.**

**(f) The Department will not withdraw a revocation until:**

- 1. The reasons for the revocation are eliminated and corrected; and**
- 2. The Department permits the individual or business to apply for certification again and issues a new certification.**

**(g) An individual or business whose certification has been suspended or revoked shall not apply for any certification authorized by this subchapter until the suspended or revoked certification is reinstated.**

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

**(i) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.**

**7:28-27A.30 Criminal penalties**

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**(a) Any business or individual that violates N.J.S.A. 26:2D-72, 73, or 74 or any rule or regulation adopted pursuant to N.J.S.A. 26:2D-72, 73, or 74 shall be guilty of a crime of the third degree.**

**(b) Use of any remedy under this section shall not preclude the use of any other remedy available to the Department.**

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

**(a) Within 20 calendar days from receipt of 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 request an adjudicatory hearing to contest such action by submitting a written request to the Department to the following two addresses:**

- 1. Office of Legal Affairs**  
**ATTENTION: Adjudicatory Hearing Requests**  
**Department of Environmental Protection**  
**Mail Code 401-04L**  
**PO Box 402**  
**401 East State Street, 7th Floor**  
**Trenton, New Jersey 08625-0402; and**
- 2. The address at N.J.A.C. 7:28-1.5(a).**

**(b) The individual or business requesting a hearing shall include with the completed Adjudicatory Hearing Request Checklist, the following information:**

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

**i. The person the Department named in the 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 certification denial or the suspension or revocation is other than an individual; and**

**iii. The person's attorney, if any;**

**2. The date the person received the certification denial or the suspension or revocation for which a hearing is sought;**

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

**4. A list of all factual and legal issues that the person is contesting, with each defense position stated in short and plain terms, and in accordance with (c) below;**

**5. Documents or information supporting the request for a hearing, and specific reference to, or copies of, other written documents relied on to support the request;**

**6. An estimate of the time required for the hearing (in days and/or hours); and**

**7. A request, if necessary, for a barrier-free hearing location for physically disabled persons.**

**(c) The individual or business requesting the hearing shall include an admission, a denial, or an averment of insufficient knowledge or information of the findings listed in the document being contested, as follows:**

**1. If the individual or business is without knowledge or information sufficient to form a**

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**belief as to the truth of a specific finding, the individual or business shall so state and this shall have the effect of a denial;**

**2. If the response to the Department allegation of noncompliance is that the individual or business has complied with some or all of the applicable requirements, a description of all such compliance, including specific citation to each applicable requirement with which the person alleges it has complied; the facts and circumstances of the compliance; and evidence of compliance and the date of compliance;**

**3. If an individual or business intends to deny any finding or portion of the finding in the document:**

**i. The individual or business shall identify the finding or portion of the finding that is denied. A general denial of some or all of the findings shall have the effect of an admission of each finding generally denied;**

**ii. For each finding or portion of a finding the individual or business denies, the individual or business shall explain the factual and legal basis of the denial. Any failure to provide a factual and legal basis for a denial shall have the effect of an admission of the finding; and**

**iii. The individual or business shall ensure that each denial fairly meets the substance of the finding or portion of the finding denied. A denial that does not meet the substance of the finding denied shall have the effect of an admission of the finding; and**

**4. If an individual or business fails to either admit or deny any specific finding or portion of a finding, this shall have the effect of an admission of that finding.**

**(d) The Department shall deny a request for a hearing, if:**

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**1. The Department does not timely receive a complete request for a hearing pursuant to (a) above; or**

**2. The individual or business fails to include in the request for a hearing, all the information required at (b) and (c) above.**

**(e) An adjudicatory hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

**7:28-27A.32 Liability of certified radon measurement or radon mitigation business for actions of affiliates**

**(a) Notwithstanding the responsibility of any other individual or business or the exemption from the provisions of any other section of this subchapter, any certified business shall be 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.**

**(b) The liability of the certified business and the affiliate shall be joint and several.**

**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), 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).**

**(b) If the certified business or individual's certification has an expiration date that is between (the effective date of the proposed new rules), and (119 days after the effective date of the proposed new rules), 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), until the Department notifies the business or individual that its initial application has been approved or rejected.**

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

**(e) 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).**

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**(f) 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). 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), shall submit to the Department a complete renewal application as specified at (c) and (d) 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).**

**(b) 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), 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). To become certified, the individual shall submit an application for renewal of an expired certification.**

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**(c) 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).**

**(d) The certified mitigation technician shall update the information contained on the form provided at (c) 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.**

**(e) A certified radon mitigation technician shall complete an eight-hour multifamily buildings training course and/or a schools and large buildings training course provided 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) 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), and cannot thereafter be renewed.**

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**(g) A certified radon mitigation technician may submit an application to be certified as a radon mitigation specialist when he or she meets the requirements at N.J.A.C. 7:28-27A.24, Radon mitigation specialist – initial application.**

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

**(i) A certified radon mitigation technician shall affiliate with at least one business in accordance with N.J.A.C. 7:28-27A.5.**

**1. For each business, the certified individual shall:**

**i. Review and comply with the radiological safety plan in accordance with N.J.A.C. 7:28-27A.15;**

**ii. Take radiation safety training and pass a subsequent examination in accordance with N.J.A.C. 7:28-27A.13(g); and**

**iii. Sign an affiliation form in accordance with N.J.A.C. 7:28-27A.5; and**

**2. If a certified radon mitigation technician is affiliated with more than one certified business, the certified individual shall follow the radiological safety plan for the business through which the radon mitigation is performed.**

**(j) A certified radon mitigation technician shall conduct radon mitigation only while certified and affiliated, and only in accordance with the authorized mitigation protocols for each building type, this subchapter, and the certified business's radiological safety plan, and shall otherwise comply with this subchapter.**

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**(k) Prior to the installation of a mitigation system, a certified radon mitigation technician shall provide the client with a copy of a written contract that has been signed by the affiliate and the client. The contract shall be supplied on behalf of the certified business, as provided at N.J.A.C. 7:28-27A.13(l).**

**(l) Prior to performing work on an existing mitigation system, a certified radon mitigation technician on behalf of the certified business shall, as provided at N.J.A.C. 7:28-27A.26(h), advise the client in writing 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.**

**(m) A certified radon mitigation technician shall, on behalf of the certified business, as provided at N.J.A.C. 7:28-27A.13(n), allow an uncertified individual to assist with only basic construction tasks during the installation of the radon mitigation system.**

**(n) A certified radon mitigation technician shall ensure that a short-term radon test is conducted no sooner than 24 hours after a mitigation system is installed and functioning, and within 30 days after the installation of the system.**