

Memorandum

From: Katie Etter, ISDH Lead and Healthy Homes Division, Program Manager

Date: July 16, 2020

Re: Emergency Radon Rule Amendment

On July 8, 2020 an emergency Radon rule amendment was passed by ISDH's Executive Board. This amendment revises the certification and standards requirements regarding radon testing, radon mitigation, and laboratory analysis in accordance with the requirements of House Enrolled Act (HEA) 1334 from the 2020 Legislative Session. The changes approved include, among other things, updates to current industry standards of practice, a modification of license terms, and requirement that the national credential upon which the Indiana license is granted be maintained as a condition of continued state licensure. ISDH firmly believes these changes continue to position Indiana as state which ensures contractors are held to the highest standard or practice, and one which protects its citizens through quality workmanship.

This amendment impacts the following:

1. Changing the requirement for certification maintenance to include requiring maintenance of the national accreditation in order to keep a valid state certification.
2. Changing the term of the license to a flat 2 years from the date of issuance. Licenses will no longer universally expire on 12/31. This will take effect upon adoption of the emergency rule by the Board. This means any license approved on 7/9/2020 will expire on 7/9/2022.
3. Self-testing can only be conducted on properties an owner occupies.
4. Requires testing and mitigation done for research purposes to be approved by ISDH.
5. Replaces the 1993 EPA "Indoor Radon and Radon Decay Product Measurement Device Protocols" with the AARST/ANSI most current standards as the performance expectation of all contractors.

Please feel free to reach out to us with any questions regarding this notice, as well as any questions you may have in the future at KEtter@ISDH.in.gov.

TITLE 410 INDIANA STATE DEPARTMENT OF HEALTH

Emergency Rule LSA Document #20- (E)

DIGEST

Temporarily amends 410 IAC 5.1-1-9 and 410 IAC 5.1-1-10 to revise definitions; 410 IAC 5.1-1-22, 410 IAC 5.1-1-23, 410 IAC 5.1-1-24, 410 IAC 5.1-1-26, 410 IAC 5.1-1-27, 410 IAC 5.1-1-28, and 410 IAC 5.1-1-29 to revise the certification and standards requirements applicable to radon testing, radon mitigation, and laboratory analysis; and, 410 IAC 5.1-1-31 to revise the documents incorporated by reference as part of this rule. Authority IC 4-22-2-37.1; IC 16-19-3-4; IC 16-41-38-2; IC 16-41-38-2.5. Effective July 8, 2020.

SECTION 1. This SECTION supersedes 410 IAC 3-5.1-1-9.

Sec. 9. As used in this rule, "laboratory" means a place equipped to manufacture and/or analyze a passive monitor.

SECTION 2. This SECTION supersedes 410 IAC 5.1-1-10.

Sec. 10. As used in this rule, "living area" means the lowest area in a building that could be adapted for human habitation. For example, a basement would be a living area if it could be converted to a den, playroom, work area, or bedroom without major structural changes.

SECTION 3. This SECTION supersedes 410 IAC 5.1-1-22.

Sec. 22. (a) No person may test, analyze, or mitigate for radon-222 in a building unless they are, or have in their employ, an individual certified to perform such services in accordance with this rule. However, a person who is testing or mitigating for radon-222 is exempt from the provisions of this rule if the person is:

- (1) performing the testing or mitigation on a building which the person owns and occupies; or**
- (2) conducting research on radon-222 testing or mitigation with consent of the owner or occupant, and the research is approved by the commissioner.**

SECTION 4. This SECTION supersedes 410 IAC 5.1-1-23.

Sec. 23. (a) A secondary radon tester must have current, active tester licenses both from the department and from one of EPA's recognized proficiency programs in order to place and/or retrieve, or represent or advertise that he or she can place and/or retrieve, passive monitors in a building for radon-222 testing. If an individual loses or relinquishes their tester license through the EPA recognized proficiency program, their Indiana license will be immediately suspended, and will remain suspended until the national accreditation is renewed or the term of the Indiana license expires, whichever comes first.

(b) The requirements for all individuals seeking certification to test as a secondary radon tester are as follows:

- (1) Submission of a sworn affidavit that the individual has read and agrees to adhere to the following standards: (1) For testing in residential buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Homes” (ANSI/AARST MAH); (2) For testing in multifamily buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings” (ANSI/AARST MAMF); (3) For testing in schools and large buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Schools and Large Buildings” (ANSI/AARST MALB);**
- (2) Proof of successful completion of a testing course and exam, and current certification by a proficiency program recognized by the EPA;**
- (3) Submission of a quality assurance program meeting the requirements of ANSI/AARST “Radon Measurement Systems Quality Assurance” (ANSI/AARST MS-QA);**
- (4) Submission of a complete and accurate application form prescribed by the commissioner along with a fee of one hundred dollars (\$100). An application will not be considered complete unless the required fee has been submitted.**

SECTION 5. This SECTION supersedes 410 IAC 5.1-1-24.

Sec. 24. (a) A primary radon tester must have current, active tester licenses both from the department and from one of EPA’s recognized proficiency programs in order to test for radon-222, or represent or advertise that he or she can test for radon-222, in a building. If an individual loses or relinquishes their tester license through the EPA recognized proficiency program, their Indiana license will be immediately suspended, and will remain suspended until the national accreditation is renewed or the term of the Indiana license expires, whichever comes first.

(b) The requirements for all individuals seeking certification to test as a primary radon tester are as follows:

- (1) Submission of a sworn affidavit that the individual has read and agrees to adhere to the following standards: (1) For testing in residential buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Homes” (ANSI/AARST MAH); (2) For testing in multifamily buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings” (ANSI/AARST MAMF); (3) For testing in schools and large buildings: ANSI/AARST “Protocol for Conducting Radon and Radon Decay Product Measurements in Schools and Large Buildings” (ANSI/AARST MALB);**
- (2) Proof of successful completion of a testing course and exam, and current certification by, a proficiency program recognized by the EPA;**
- (3) Submission of a quality assurance program meeting the requirements of ANSI/AARST “Radon Measurement Systems Quality Assurance” (ANSI/AARST MS-QA);**
- (4) Submission of a complete and accurate application form prescribed by the commissioner along with a fee of one hundred dollars (\$100). An application will not be considered complete unless the required fee has been submitted. If using an instant readout device for radon-222 detection, evidence that the calibration and accuracy tests required by ANSI/AARST “Radon Measurement Systems Quality Assurance” (ANSI/AARST MS-QA) are being met shall be provided to the commissioner yearly.**

SECTION 6. This SECTION supersedes 410 IAC 5.1-1-26.

Sec. 26. (a) A radon mitigator must have current, active mitigator licenses both from the department and from one of EPA's recognized proficiency programs before he or she can mitigate for radon-222, or represent or advertise that he or she can mitigate for radon-222, in a building. If an individual loses or relinquishes their mitigator license through the EPA recognized proficiency program, their Indiana license will be immediately suspended, and will remain suspended until the national accreditation is renewed or the term of the Indiana license expires, whichever comes first.

(b) If a person employs one (1) or more individuals to perform radon-222 mitigation, the employer shall either be certified in accordance with this section or shall employ at least one (1) individual certified in accordance with this section on a full-time basis. The certified employer or the certified employee or employees shall be responsible for the employer's radon-222 mitigation activities. If the employer is not a certified radon mitigator and the employer is no longer able to keep a certified radon mitigator in its employ, the employer shall do the following:

- (1) Notify the commissioner of the termination of the certified radon mitigator by telephone within two (2) working days of the termination.**
- (2) Notify the commissioner of the termination of the certified radon mitigator in writing within ten (10) working days of the termination.**
- (3) Immediately cease offering services as a radon mitigator until such time as a new individual, meeting the requirements of section (a) above, is employed on a full-time basis to be responsible for all the employer's radon mitigation activities.**

(c) It shall be the responsibility of the certified radon mitigator to report any diagnostic testing to the building owner or its representative prior to any mitigation performed.

(d) The requirements for all individuals seeking certification as a radon mitigator are as follows:

- (1) Submission of a sworn affidavit that the individual has read and agrees to adhere to the following standards: (1) For mitigation in residential buildings: ANSI/AARST "Soil Gas Mitigation Standards for Existing Homes" (ANSI/AARST SGM-SF); (2) For mitigation in multifamily buildings: ANSI/AARST "Radon Mitigation Standards for Multifamily Buildings" (ANSI/AARST RMS-MF); (3) For mitigation in schools and large buildings: ANSI/AARST "Radon Mitigation Standards for Schools and Large Buildings" (ANSI/AARST RMS-LB); (4) For mitigation in the new construction of residential buildings: ANSI/AARST "Reducing Radon in New Construction of 1 and 2 Family Dwellings and Townhouses" (ANSI/AARST RRNC2.0); For mitigation in the new construction of commercial buildings: ANSI/AARST "Soil Gas Control Systems in New Construction of Buildings" (ANSI/AARST CC-1000);**
- (2) Proof of successful completion of a mitigation course and exam, and current certification by, a proficiency program recognized by the EPA;**
- (3) Submission of a complete and accurate application form prescribed by the commissioner along with a fee of one hundred dollars (\$100). An application will not be considered complete unless the required fee has been submitted.**

SECTION 7. This SECTION supersedes 410 IAC 5.1-1-27.

Sec. 27. (a) Prior to recertification as a primary or secondary radon tester, radon laboratory tester, or radon mitigator, the following must occur:

- (1) All licenses issued by the department are valid for a period of two (2) years from the date of issuance;**

- (2) Proof of current certification through a proficiency program recognized by the EPA;
- (3) A complete and accurate application for recertification shall be submitted to the commissioner on a form prescribed by the commissioner and shall include the fee specified in section 23(b)(4), 24(b)(4), 25(c)(4), or 26(d)(3) of this rule, whichever is applicable. An application will not be considered complete unless the required fee has been submitted.

(b) Individuals shall satisfy the requirement for biennial reexamination of primary radon testers, secondary radon testers, radon laboratory testers, and radon mitigators established in IC 16-41-38-3 if they comply with section 23, 24, 25, or 26 of this rule, whichever is applicable.

SECTION 8. This SECTION supersedes 410 IAC 5.1-1-28.

Sec. 28. (a) No individual required to be certified in accordance with this rule may advertise or provide the service unless the individual has previously obtained a valid certificate from the commissioner to perform that service.

(b) Radon-222 mitigation activities shall be conducted in accordance with mitigation protocols set forth in the EPA National Radon Contractor Proficiency Program (Interim Radon Mitigation Standards, December 15, 1991), and the following:

- (1) Results of radon-222 tests shall be reported to the commissioner on a form prescribed by the commissioner and shall meet the requirements of subsection (f).**
- (2) Any construction undertaken to mitigate for radon-222 shall be in accordance with all applicable state and local building codes. Such construction shall be conducted or supervised by a certified radon mitigator who, at a minimum, shall be present at the start of such construction and at the conclusion of such construction.**

(c) No person may test, analyze, or mitigate radon-222 without first providing evidence that the person is certified in accordance with this rule or that the person has in its employ an individual certified in accordance with this rule.

(d) Prior to conducting any radon-222 testing or mitigation, the certified individual shall give each client a copy of a notice about radon-222 testing and mitigation prepared by the department specifically for that purpose.

(e) A secondary radon tester, primary radon tester, or radon laboratory tester may only distribute those passive monitors which have been manufactured or prepared by a person who is certified in accordance with section 25 of this rule, or who employs at least one (1) individual on a full-time basis who is certified in accordance with section 25 of this rule.

(f) All certified primary radon testers and certified laboratory testers providing radon-222 services shall submit to the commissioner, on a form approved by the commissioner, the results of all radon-222 screening measurements, follow-up measurements, and post mitigation measurements, if known. All certified radon mitigators shall submit to the commissioner, on a form approved by the commissioner, any radon-222 mitigation conducted for each calendar year. Said reports must be submitted by January 31 for the previous calendar year. For radon-222 measurements and for any mitigation conducted, the information must, at a minimum, contain the following:

- (1) The name of the certified individual providing the service.**
- (2) The complete mailing address of the building involved.**
- (3) The county in which the building is located.**
- (4) The type of radon-222 mitigation conducted, if any.**
- (5) The type of measurement conducted (screening, follow-up, or post mitigation) and the**

results in picocuries per liter.

(6) The date of last calibration of the detection instrument and the instrument serial number.

(g) Records of radon-222 tests, quality assurance programs, calibration measurements, and equipment repairs conducted by a certified secondary radon tester, primary radon tester, or radon laboratory tester shall be retained by that individual for at least three (3) years. Records of mitigation conducted by a certified radon mitigator shall be retained by that individual for at least three (3) years.

SECTION 9. This SECTION supersedes 410 IAC 5.1-1-29.

Sec. 29. (a) The radon certification of any individual may be denied, revoked, or suspended in accordance with IC 4-21.5 if it is determined that the individual:

(1) has engaged in unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the building owner or occupant or the public, including, but not limited to:

(A) intentional placement of testing devices in areas likely to bias results; or

(B) for radon-222 mitigation, performing mitigation activities in existing buildings without prior testing;

(2) does not meet the education, training, and testing requirements for certification;

(3) does not submit annual test data as required;

(4) does not provide the client with a copy of the notice prepared by the department as required by section 28(d) of this rule; or

(5) does not comply with other applicable sections of this rule.

(b) No individual may provide applicable radon-222 testing or radon-222 mitigation services after revocation, denial, suspension, or voluntary surrender of a secondary radon tester, primary radon tester, radon laboratory tester, or radon mitigator certificate.

(c) No individual whose certification for primary radon tester, secondary radon tester, radon mitigator, or radon laboratory tester has been suspended or revoked shall be eligible for reinstatement unless that person establishes, to the satisfaction of the commissioner, the following:

(1) The term of suspension prescribed in the order for suspension has elapsed.

(2) The individual has complied fully with the terms, if any, of the order for suspension or revocation.

(3) The individual can be safely recommended to the public as an individual fit to be reinstated and is able to practice its radon-222 business with reasonable skill and safety.

(d) The commissioner, his or her agents, and his or her employees shall have the right to enter, at all reasonable times, in or upon any public or private property, upon presentation of appropriate credentials, to inspect any equipment or records pertaining to radon-222 testing or mitigation, to inspect radon-222 testing laboratories, or to inspect radon-222 mitigation facilities or equipment that have been, or are to be, installed.

(e) A person accredited in another state to perform testing for, or mitigation of, radon-222 may be certified under this rule without passing an examination if:

(1) the person pays the applicable fee;

(2) the state in which the person is accredited maintains an accreditation program substantially similar to the certification program under this rule, as determined by the department; and

(3) the person can document successful completion of a course and exam, and current certification by, a proficiency program recognized by the EPA specific to the type of

certification being obtained.

SECTION 10. This SECTION supersedes 410 IAC 5.1-1-31.

Sec. 31. The following documents are incorporated by reference as part of this rule:

- (1) ANSI/AARST Protocol for Conducting Measurements of Radon and Radon Decay Products in Homes**
- (2) ANSI/AARST Soil Mitigation Standards for Existing Homes**
- (3) ANSI/AARST Protocol for Conducting Measurements of Radon and Radon Decay in Multifamily Buildings**
- (4) ANSI/AARST Radon Mitigation Standards for Multifamily Buildings**
- (5) ANSI/AARST Protocol for Conducting Measurements of Radon and Radon Decay Products In Schools and Large Buildings**
- (6) ANSI/AARST Radon Mitigation Standards for Schools and Large Buildings**
- (7) ANSI/AARST Reducing Radon in New Construction**
- (8) ANSI/AARST Soil Gas Control Systems in New Construction of Buildings**
- (9) ANSI/AARST Performance Specifications for Instrumentation Systems Designed to Measure Radon Gas in Air**
- (10) ANSI/AARST Radon Measurement Systems Quality Assurance**

Copies of these documents may be obtained through the AARST Radon Standards website at <https://standards.aarst.org/>.