

2010 Rationale

Part R Radon

Introduction

This Part is intended to assist States in developing regulations governing radon service providers operating in their jurisdiction. This includes but is not limited to the laboratories that analyze test devices, testing contractors who consult or go to structures to test for radon, and mitigation contractors who consult or go to structures to reduce radon concentrations.

This Part is also intended to apply to both radon service providers working with radon in air and radon in water. The language in this Part is intended to be broad enough so it covers radon in either medium (or another that may be appropriate in the future).

This Part is not overly specific on how to approach regulatory activities, but does delineate the areas that must be addressed. For example, the application section specifies the information to be included on the application, but not how the Agency will evaluate this information. It is recognized that each state has its own needs and administrative procedures that will determine how the information will be evaluated. Another example is giving the Agency authority to determine performance criteria and/or standards without specifying particular guidance documents or standards. Any guidance or standards selected for incorporation must be technically sound and protective of the public health, and meet state needs. Language can be crafted into a state's rules to also include the adoption of future standards.

States will have the opportunity to decide if they want to develop their own certification programs, or accept third-party certifications that are acceptable to the state. This Part is crafted to allow for either option.

Another feature of this Part is separate minimum requirements, application, and renewal sections for each service provider type. These sections have parallel structures, for example, the application requirements for Measurement Specialist, Mitigation Specialist, Measurement Technician, and Residential Mitigator, and could be combined into one section. It is recognized that some states' administrative procedures may require each service provider type to be specified. The section on termination is an example of how to combine requirements for all service provider types.

Specific Provisions

Sec. R.1 - Purpose and Scope.

This section specifies that the regulations are applicable to manufacturers and distributors of devices as well as testers and mitigators. This is to ensure that home owners who purchase mail-order services will get devices that are approved in some way. Without these provisions, homeowners could receive devices that are ineffective and unreliable. Concerns about regulating distributors of passive devices (such as hardware stores) are addressed in the exemptions, as are issues on

manufacturers as necessary. Part R applies to any and all radon service providers operating or offering to operate in the state, regardless of their base of operations.

Sec. R.2 - Definitions.

Definitions specific to these regulations are included here. Whenever possible, they are based on definitions found in existing standards, guidance or protocols. Several were crafted specifically to delineate limits of activity for specific sectors of the regulated community, or to fill a gap where technology has outpaced technical guidance. In those instances, the definition is often broad to allow for continued change.

The language in this regulation was crafted to allow a state to either operate its own certification program, or operate a licensing program that accepts a third-party certification. This regulation defaults to "certify" because most existing state regulations use this term and always implies a level of training in the subject matter. The term "license" means "giving permission" but does not always imply a level of training. However, many existing state "certifications" would meet the definition of a license because their basis is acceptance of a third-party certification.

Sec. R.3 - Exemptions.

This section was created because some aspects of radon services are not best or most appropriately regulated by Part R. For example, a licensed electrician may be required to perform activities subject to the electrical code. It is unreasonable to require all electricians to also become certified or licensed radon mitigators. Also, some radon-related support activities can be performed by an uncertified/unlicensed individual under the supervision of a certified or licensed radon service provider.

This is also where it is made clear that these regulations do not apply to some retail sales of radon measurement devices.

An item found useful when considering public health protection, is installing radon control features during new construction or addition to existing structures. It is preferable to have trained radon service providers involved in this, but reality is such that it often does not happen. For years, varied guidance has been provided for builders who intend to include radon control features during construction. This section allows an Agency to determine the appropriate guidance or standards for builders to use, and permits builders to install the appropriate features without violating these regulations. However, the implied alternate is that a builder installing his own features would need to become a regulated service provider. This is acceptable due to the possible health consequences of a builder installing ineffective radon control features and giving their clients a false sense of safety.

Finally, it is sometimes necessary for the state Agency overseeing these regulations to have staff or other consultants perform activities covered in these regulations. To this end, the Agency staff or those they deem appropriate may be exempted from the terms of the regulation. However, it is expected that these individuals would be trained and qualified to do the activities they would be asked to perform.

Sec. R.4 - Requirements for Radon Records Retention and Confidentiality. This section is an attempt to permit appropriate use of radon testing and mitigation data, without creating conflicts for

the Agency by allowing inappropriate use of the data. It is expected that this section will vary from state to state.

Sec. R.5 - Agency Certification [License]. This section provides a broad listing of regulated activities.

Sec. R.6 - Requirements for Measurement Device Manufacturers. Because radon test devices range from simple devices that can be purchased through the mail to complex devices that require an enhanced level of training to use, this section is intended to make sure that all radon testing device models and types in use have demonstrated effectiveness and reliability in measuring radon.

Sec. R.7 - Requirements for Calibration Facilities. This section sets basic requirements for those facilities that calibrate radon test devices.

Sec. R.8 - Agency Certification [Licensing] Requirements for Measurement Laboratories. This section sets the basic criteria for facilities that analyze radon test devices.

Sec. R.9 - Application Requirements for Measurement Laboratories. Self explanatory. ~~An option for a two-year certification/license is offered here, and is also offered for all other types of regulated entity.~~

Sec. R.10 - Agency Certification [License] Renewal Requirements for Measurement Laboratories. Self explanatory. Emphasis was placed on making sure the laboratory looks over its QA/QC plan prior to requesting renewal, because states with current regulatory programs find that laboratories do not always review and update their plans when necessary.

Sec. R.11 - Agency Certification [License] Requirements for Radon Measurement Businesses. This section sets the requirements for a business that sends people out to perform radon testing in structures. This requires the business to demonstrate that employees are trained to perform the necessary activities. It also sets requirements for staff members who will have oversight authority and responsibility.

Sec. R.12 - Application Requirements for Radon Measurement Businesses. This section requires information on who is trained to do the work, and who will receive the enforcement letters if business/staff fail to comply with any requirement. It also requires information on trained/regulated individuals who are affiliated with the company but are not actually employees of the company (for example, home inspectors who subcontract for the business).

The section also asks for the radiological safety plan followed by the business.

Sec. R.13 - Agency Certification [License] Renewal Requirements for Radon Measurement Businesses. This section is self explanatory. The ability to reference previously submitted documents in the application is analogous to sections of other Suggested State Regulations (SSR's).

Sec. R.14 - Agency Certification [License] Requirements for Radon Mitigation Businesses. This section sets the requirements for a business that sends people out to perform radon mitigation in structures. This requires the business to demonstrate that employees are trained to perform necessary activities. It also sets requirements for staff members who will have oversight authority and responsibility.

Sec. R.15 - Application Requirements for Radon Mitigation Businesses. This section requires information on who is trained to do the work, and who will receive the enforcement letters if business/staff fail to comply with any requirement. It also requires information on trained/regulated individuals who are affiliated with the company but are not actually employees of the company (for example, home inspectors who subcontract for the business to do post-mitigation testing, etc.).

The section also asks for the radiological safety plan followed by the business.

Application requirements for all businesses are similar.

Sec. R.16 - Agency Certification [License] Renewal Requirements for Radon Mitigation Businesses. This section is self explanatory. The ability to reference previously submitted documents in the application is analogous to sections of other Suggested State Regulations (SSR's).

Sec. R.17 - Agency Certification [Licensing] Requirements for a Radon Measurement Specialist. This section specifies the minimum requirements for each individual seeking certification [license] in this individual service provider type. Criteria are provided for both an Agency that accepts a third-party certification as evidence of minimum training and an Agency that develops its own certification program. For those that accept certification by a third-party that would not necessarily train service providers on State-specific information, this section includes language that requires training or examinations on state-specific material (statutes and regulations).

Sec. R.18 - Application Requirements for Radon Measurement Specialists. This section contains the minimum elements required by the Agency such as personal information that allows the Agency to contact the person when necessary, evidence of meeting the minimum requirements, and the certified businesses for which the individual will provide services.

Sec. R.19 - Agency Certification [License] Renewal Requirements for Radon Measurement Specialists. This section sets time frames and criteria for renewal (including evidence of continuing education). Part of the evidence for renewal is providing updates on all the information required for initial application. The procedure allowing reference to previously filed reports, applications, etc. is consistent with other SSRs.

Sec. R.20 - Agency Certification [Licensing] Requirements for a Radon Mitigation Specialist. This section specifies the minimum requirements for each individual seeking certification [license] in this individual service provider type. Criteria are provided for both an Agency that accepts a third-party certification as evidence of minimum training and an Agency that develops its own certification program. For those that accept certification by a third-party that would not necessarily train service providers on State-specific information, this section includes language that requires training or examinations on state-specific material (statutes and regulations).

Sec. R.21 - Application Requirements for Radon Mitigation Specialists. This section contains the minimum elements required by the Agency such as personal information that allows the Agency to contact the person when necessary, evidence of meeting the minimum requirements, and the certified businesses for which the individual will provide services.

Sec. R.22 - Agency Certification [License] Renewal Requirements for Radon Mitigation Specialists. This section sets time frames and criteria for renewal (including evidence of continuing

education). Part of the evidence for renewal is providing updates on all the information required for initial application. The procedure allowing reference to previously filed reports, applications, etc. is consistent with other SSRs.

Sec. R.23 - Measurement Services and Duties of a Radon Measurement Technician. This section is included because it is the only individual service provider type that does not have duties prescribed in one of the criteria for businesses. Where the duties are of limited scope, including this section to specify them was seen as necessary. For those not familiar with a measurement technician, the slang term used for them in the industry is a "can dropper," which is a rough description of their primary duty of placing a passive detector that has to be analyzed by a laboratory, in simple (not complicated) structures. All complex measurement duties, including interpretation of test results, would be done by the measurement specialist affiliated with the business.

Sec. R.24 - Agency Certification [Licensing] Requirements for a Radon Measurement Technician. This section specifies the minimum requirements for each individual seeking certification [license] in this individual service provider type. Criteria are provided for both an Agency that accepts a third-party certification as evidence of minimum training, and an Agency that develops its own certification program. For those that accept certification by a third-party that would not necessarily train service providers on State-specific information, this section includes language that requires training or examinations on state-specific material (statutes and regulations).

Sec. R.25 - Application Requirements for Radon Measurement Technicians. This section contains the minimum elements required by the Agency such as personal information that allows the Agency to contact the person when necessary, evidence of meeting the minimum requirements, and the certified businesses for which the individual will provide services.

Sec. R.26 - Agency Certification [License] Renewal Requirements for Radon Measurement Technicians. This section sets time frames and criteria for renewal (including evidence of continuing education). Part of the evidence for renewal is providing updates on all the information required for initial application. The procedure allowing reference to previously filed reports, applications, etc. is consistent with other SSRs.

Sec. R.27 - Agency Certification [Licensing] Requirements for a Residential Radon Mitigator. This section specifies the minimum requirements for each individual seeking certification [license] in this individual service provider type. It addresses criteria for both an Agency that accepts a third-party certification as evidence of minimum training and an Agency that develops its own certification program. For those that accept certification by a third-party that would not necessarily train service providers on State-specific information, this section includes language that requires training or examinations on state-specific material (statutes and regulations).

Sec. R.28 - Application Requirements for Residential Radon Mitigators. This section contains the minimum elements required by the Agency such as personal information that allows the Agency to contact the person when necessary, evidence of meeting the minimum requirements, and the certified businesses for which the individual will provide services.

Sec. R.29 - Agency Certification [License] Renewal Requirements for Residential Radon Mitigator. This section sets time frames and criteria for renewal (including evidence of continuing education). Part of the evidence for renewal is providing updates on all the information required for initial

application. The procedure allowing reference to previously filed reports, applications, etc. is consistent with other SSRs.

Sec. R.30 - Change in Agency Certification [Licensing] Status. This section sets the requirements when a regulated entity moves location, phone number or other contact information changes, or a change in regulated staff occurs.

Sec. R.31 - Termination of Agency Certification [Licensing]. This section is a combined section covering all regulated entities. Termination information for measurement and mitigation businesses is the same. Termination information for all individual certifications is the same.

This section also serves as a model for states that have the ability to combine application, renewal, etc. sections for the individual and/or business sections, since individual application and renewal sections have parallel structures between service provider types.

Sec. R.32 - Reporting Requirements. This section addresses the different reports (laboratory reports to clients, laboratory reports to the Agency, mitigator reports to the Agency, etc.) These requirements reflect the authority granted to the differing levels of business and individual service providers, and specify a large number of items to be reported. An agency may have a reason to require all the information specified, or may choose to require a lesser amount of information. All the items specified have been found useful in one or more states that currently have regulations.

Sec. R.33 - Inspections. This section gives the Agency ability to go out and look at the work being done by the radon service providers and radon businesses. This is necessary to ensure at least an acceptable level of health protection is the end result. Without inspection ability, individual service providers are often pressured to put economic interest above public health protection.

Sec. R.34 - Agency Denial of Application for Agency Certification [License]. This section is self-explanatory.

Sec. R.35 - Suspension or Revocation of an Agency Certification [License]. Ability to hold a radon service provider to the applicable standards and practices is necessary. This section gives the Agency tools for this. This is the stick, and is also the carrot (end of suspension) when the service provider comes back into compliance.

The long list of issues that can result in suspension or revocation have been found appropriate by states with current regulations.

Sec. R.36 - Requirements for Radon Control Service Providers in New Construction.

Radon control in new construction is important to recognize in Part R. This section gives the boundaries for regulated service providers who are involved during the construction process, and gives such providers direction in guiding builders who install radon control features during new construction.

Sec. R.37 - Requirements for Radon Measurement Service Providers in Real Estate Transactions.

Radon measurements during real estate transactions are important to recognize in Part R. Regulated service providers involved in real estate transactions are governed by this section.

Sec. R.38 - Minimum Performance Standards. Minimum standards are necessary to ensure public health protection. This section authorizes the Agency to determine appropriate general, measurement, and mitigation standards and guidance.

Sec. R.39 - Enforcement Actions And Procedures. This section provides the framework for enforcement actions (suspension, revocation, etc.). Recommended specifics are provided in Appendix B, but the state administrative procedures will likely take precedence.

Matters for Future Consideration.

1. An appendix will be added to specify elements of QA/QC program.
2. More reference to radon in water standards or guidance could be added as they become available.
3. An appendix specifying continuing education requirements could be added, including how much is needed, the time frame, and the suggested curriculum.
4. Reciprocal Recognition of Agency Certifications [Licenses]. A state needs to determine that the certification (licensing) requirements of another state are acceptable to the Agency. Without an independent third party doing a review of all state regulatory programs, or having the Agency do a complete review of any state radon regulatory program whenever someone wanted reciprocity, it is difficult to determine how to specify terms for granting reciprocity. This will require considerable discussion.
5. Requirements for commercial calibration facilities could be added.
6. The relationships between Parts D, O, R and U need to be elucidated.