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GENERAL PROVISIONS

SECTION 1. SCOPE.

Except as otherwise specifically provided, these regulations apply to all air or water radon testing conducted, or that will be conducted, in residential rental properties in Maine.

SECTION 2. DEFINITIONS.

As used in these rules, unless the context otherwise indicates, the following terms have the definitions set forth below:

“Act” means An Act to Reduce Lung Cancer in Maine (Sec. 1 14 MRSA §6030-D)

"Authorized radon testing device" means a device that collects radon or its decay products, requires analysis by an independent measuring facility or is a continuous monitoring device and,

- a. for air radon- Has successfully completed a device approval process operated by the US EPA, the AARST National Radon Proficiency Program (NRPP), or the National Radon Safety Board (NRSB); and is on the list of approved devices maintained by the NRPP or the NRSB.
- b. for water radon- sampling containers required for radon water analysis by an approved standard method; or a device which has successfully completed a device approval process operated by the US EPA, the AARST National Radon Proficiency Program (NRPP), or the National Radon Safety Board (NRSB); and is on the list of approved devices maintained by the NRPP or the NRSB.

“Department” means the Department of Health and Human Services, Division of Environmental Health, Radiation Control Program, Radon Section; or successor agency.

“Device Protocols” means the EPA Indoor Radon And Radon Decay Product Measurement Device Protocols (EPA 402-R-92-004, July 1992) or equivalent practices as determined by the Department.

“Environmental Protection Agency” or “EPA” means the United States Environmental Protection Agency (EPA).

“Falsification of a radon test” means knowingly conducting a radon test under conditions contrary to the conditions specified in the Device Protocols, the Homes Protocols, and/or the Multifamily Protocols; or knowingly setting a radon test device in a location contrary to the device placement criteria specified in the Device Protocols, the Homes Protocols, and/or the Multifamily Protocols; or knowingly taking other actions or inactions to alter or influence radon test results.

“Falsification of radon test results” means knowingly providing false results; or manufacturing results; or knowingly taking actions or inactions which will result in a

tenant receiving notification of radon results other than those obtained from correctly conducted radon tests which took place in their unit; or in another unit if their unit was not tested.

“Homes Protocols” means the EPA Protocols for Radon And Radon Decay Product Measurements In Homes (EPA 402-R-93-003, June 1993) or equivalent practices as determined by the Department.

"Landlord" means a landlord or other person who on behalf of a landlord enters into a lease or tenancy at will agreement for a residential building or residential rental unit in a residential or mixed use building

“Lowest livable level” means:

1. The basement for structures with a basement, unless
 - a. the basement is less than six feet high from the floor to the bottom of the rafters; or
 - b. the basement continually has standing water sufficient to prevent a furnace or other similar equipment from being housed in it, or
 - c. the basement is incomplete or damaged such that it allows uncontrolled entry for wind, rain, snow and vermin.
 - d. if the basement meets the conditions stated in a, b or c but is still used as a laundry room, workshop, playroom, living space, or exercise room, the basement shall be considered livable for the purposes of radon testing.
2. For structures without a basement, the lowest level containing residential space. This includes but is not limited to:
 - a. for slab-on-grade residences, the residences on the slab.
 - b. for residences above a parking garage, the lowest level of residences above the parking garage.
 - c. for residences above retail or commercial space, the lowest level of residences above the retail or commercial space.

"Mitigate" means to install systems and/or materials to prevent entry of radon into the indoor environment or to reduce radon concentrations in the indoor environment.

“Mitigation Standard” means ASTM E 2121-03, “Standard Practice for Radon Mitigation Systems in Existing Low-Rise Residential Buildings” or equivalent practices as determined by the department.

"Mitigation system" means any system or interventions designed to reduce radon concentrations in the indoor environment of a building, including but not limited to, active soil depressurization techniques, sealing techniques, and natural and forced air ventilation techniques.

“Mitigator” means an individual or a company registered to provide radon mitigation services under the Radon Registration Act. .

"Multifamily Protocols" means the ANSI/AARST Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings (MAMF-2010) or equivalent practices as determined by the department.

"Person" or "Persons" means any individual, corporation, partnership, firm, institution, group, agency, or political subdivision of this or any other state or the Federal government, municipal or quasi-municipal organization but not including the Department.

"On-site" means in the structure the client has requested radon services for.

"Quality Assurance" or "(QA)" means insuring accuracy and reproducibility in analysis and or mitigation methods in accordance with written standards as set forth in the quality assurance guidance accepted by the Department.

"Radon" means the radioactive gaseous element and its decay products produced by the disintegration of the element radium in air, water, soil, or other media.

"Radon mitigation" or "Radon mitigation services" means taking measures to reduce the concentration of radon in air or water. The measures may include but are not limited to installation of equipment or systems intended to reduce or remove radon.

"Radon Registration Act" or "Radon Act" means the Maine Radon Registration Act (Sec 1. 22 MRSA c. 165, §771 et seq.)

"Radon Registration Rules" or "Radon Rules" means the Maine Air and Water Radon Service Provider Registration Rules (CMR 224).

"Radon Service Providers" means persons registered under the Radon Registration Act to provide radon services.

"Residential Rental Building" or "Residential Building" means, for the purpose of these rules, any residential property offered for rent, lease, or other tenancy at will; including but not limited to apartments, rental housing, seasonal rentals of more than 100 days, college dormitories, nursing homes and assisted living facilities. This does not include transient rentals or rehabilitation facilities where the patients are not permanent residents.

"Residential Rental Radon Testing Law" or "Rental Law" means Sec. 1, 14 MRSA §6030-D as amended.

"Tampering" means altering or modifying radon test conditions before or during a radon test. Actions considered as tampering include but are not limited to: altering test conditions by opening windows during short term tests or by opening doors unnecessarily or for more than one minute at a time; altering test conditions by operating ventilation equipment other than air exchangers intended and set for continuous operation ;

moving, covering, or otherwise interfering with the radon test device; or performing temporary radon mitigation measures before or during the initial or follow up radon test.

“Temporary radon mitigation measures” means taking non-permanent action to reduce or alter the radon concentrations in a structure. Temporary radon mitigation measures include but are not limited to covering sumps or holes; sealing cracks or gaps around penetrations; operating ventilation equipment in a manner or at a setting outside of its normal operation; or installing non-permanent equipment for the purposes of determining if a radon mitigation method might be successful. Temporary radon mitigation measures undertaken before or during an initial or follow up radon test shall be considered tampering with the test. Temporary radon mitigation measures shall only be undertaken by a currently registered radon mitigator after the need for radon mitigation has already been determined.

“Tester” means an individual or a company registered under the Radon Registration Act to provide radon testing services.

“Transient Rentals” means, for the purpose of these rules, any residential rental unit or facility where the normal rental period is measured in days, such as a hotel or motel that does not routinely rent rooms for weeks, months, or years.

"Unit" or "rental unit" means an apartment or other segment of a residential building which is rented for residential occupancy

“Water radon” means radon found in water.

SECTION 3. SEVERABILITY.

The provisions of these rules are severable. If any provision of these rules is found to be invalid, or if the application of any provision of these rules to any person or circumstance is invalid, such invalidity shall not affect other provisions or applications.

SECTION 4. RESIDENTIAL RENTAL PROPERTY RADON TESTING REQUIREMENTS

A. Pursuant to 14 MRSA Section 6030-D, the air in all residential rental buildings in the State of Maine which are not short-term rentals shall be tested for the presence of radon gas by March 1, 2014, and again every ten years thereafter when requested by a tenant unless a mitigation system has been installed in that residential building. .

1. Radon testing conducted in residential rental buildings after September 12, 2009 and before November 1, 2013 can be used to meet this requirement only if the testing was conducted

- a. in accordance with the requirements and quality assurance guidance specified in the multifamily protocols for buildings containing three or more units; or specified in the Homes protocols for buildings containing two or fewer units; and
- b. by a registered tester and reported to the Department on appropriate forms.

2. Radon testing conducted on or after November 1, 2013 and before the enactment of these regulations can be used to meet this requirement only if the testing was conducted
 - a. in accordance with the requirements and quality assurance guidance in the multifamily protocols for buildings containing three or more units; or in the Homes protocols for buildings containing two or fewer units; and
 - b. by a registered tester and reported to the Department on appropriate forms; or
 - c. by a landlord
 - i. in a residential building that contains none of features or confounding factors identified in Chapter 324 and clarified in these rules; and
 - ii. using passive devices that must be submitted to a laboratory for analysis; and
 - iii. was reported to the department in a timely manner and on appropriate forms.

- B. For a residential rental building constructed or beginning rental operation after March 1, 2014, the building shall have the air tested for the presence of radon within 12 months of the occupancy of the building by a tenant.

- C. Radon testing in rental buildings shall be conducted by a Tester holding a current registration as specified under the Radon Registration Act. Exceptions:
 - 1) A landlord may conduct radon testing:
 - i. in accordance with 14 MRS Sec 6030-D and these rules; and
 - ii. in buildings that do not contain the features identified in Chapter 324 and clarified in these rules; and
 - iii. using passive devices that must be submitted to a laboratory for analysis.
 - 2) Another person acting on behalf of a landlord may test under the same restrictions as a landlord when that person:
 - i. is an employee of the landlord or owner who routinely acts on behalf of the landlord; and
 - ii. is not a contractor obtained specifically for the purpose of radon testing; and
 - iii. is not a contracted building management service; and
 - iv. is not a person with whom the landlord contracts routinely to provide general or professional services.

- D. Radon testing shall:
 1. Follow the protocols as identified in these regulations; specifically all radon measurement devices shall be used according to the Device Protocols; and testing strategy and testing locations shall be in accordance with:
 - a. for single family or duplex residential rental structures, the Homes Protocols, real estate guidelines except where Maine radon regulations take precedence; or

- b. for residential rental structures containing more than two residences, the Multifamily Protocols except where Maine radon regulations take precedence; and
2. Include quality assurance as required in the protocols specified in Section 4.D.1 and in these regulations; and
 3. Be conducted
 - a. in the lowest livable level of the structure as defined in these rules, except when the tester, in consultation with the landlord, determines it is appropriate to test all units in the lowest living level of the structure; and
 - b. in other levels of the structure as determined by the protocols specified in these rules; and
 4. Be reported to the Department by the person conducting the testing using approved forms or in an approved electronic reporting format; and
 5. Be completed by March 1, 2014 unless:
 - a. a follow up test being conducted in accordance with the protocols and which began before March 1, 2014 is in progress and the registered tester or landlord conducting the follow up test so informs the Department; or
 - b. a written request for extension has been approved by the Department before February 1, 2014; and
 6. Be repeated at ten (10) years after the testing was completed, when requested by a tenant.

E. Radon Testing by Tenants in units they occupy and common areas.

1. Tenants may conduct or have a tester conduct radon testing in a unit or unit(s) they occupy and in common areas to which they have access. All testing conducted by tenants shall:
 - a. be conducted in accordance with the Device protocols; and
 - b. follow test kit placement requirements as shown in the Homes protocols and Device protocols.
 - c. be reported in writing to the landlord within 30 days of receiving the results, unless a follow up test is initiated within 30 days of receiving results, in which case the initial and follow up radon test results shall be reported in writing within 30 days of receipt to the landlord. Copies of the test results reports can constitute written reporting to the landlord.
2. When a tenant provides to a landlord a written report indicating radon at or over 4.0 pCi/l, the landlord shall:
 - a. disclose those results as required in Part A, Section 6.B and report those results to the department as required in Section 6; or

b. have a Tester conduct a follow up test and disclose the results of the follow up test as required in Part A, Section 6.B and have the Tester report those results as required in the Radon Registration Act.

Section 5. Landlord radon testing limitations.

- A. Landlords may conduct radon testing in residential rental buildings that do not contain the following features or contaminants:
1. One or more elevators shafts; or
 2. One or more unsealed utility shaft; or
 3. One more more open pathways for radon to follow from the ground to the occupied space; or
 4. A forced hot air heating system; or
 5. A central air heating or cooling system; or
 6. Other heating or cooling system which would be classified as Group 2 or Group 3 in table 3.6 of the multifamily protocol; or
 7. Two or more foundations under the building; or
 8. One or more additions on a different foundation from the original building; or
 9. A private well supplying the water (exception: when the well water has been tested by a registered tester and found to have radon lower than the Maximum Exposure Guideline of 4,000 pCi/l); or
 10. When the number of units in a building to be tested is 10 or greater (this is the point at which all radon testing protocols require quality assurance measurements);
- B. Landlord radon testing may be conducted with authorized radon test devices as defined in these rules when those devices:
1. are passive devices which require analysis by an independent measuring facility; and
 2. are obtained from a radon laboratory holding a current Maine radon registration as an analysis lab.
- C. Landlord radon testing shall not be conducted using continuous monitoring devices.

Section 6. Landlord reporting of radon testing to the Department.

- A. All landlords conducting radon testing in a residential rental building shall submit a report to the Department within 30 calendar days of receiving results of testing for that building. These reports shall:
1. be on approved forms or in an electronic format provided by the Department; and
 2. legibly include all information specified on the forms; and
 3. be submitted by mail, email, or fax to the address specified on the forms.

Section 7. Radon mitigation

- A. Any residential rental property where radon testing has been completed and all or part of the structure has radon test results of 4.0 pCi/l or higher may receive

radon mitigation as necessary to reduce radon in all parts of the building where radon test results were 4.0 pCi/l or higher.

- B. Any radon mitigation work that occurs at any residential rental property shall be performed by a Radon Mitigator holding a current registration as specified under the Radon Registration Act.
- C. All radon mitigation that occurs at any residential rental property shall follow standards, procedures, or guidelines determined by the Department.
- D. Post mitigation testing shall occur at each residential rental property where radon mitigation occurs.
 - 1. Post mitigation testing shall be performed by a Tester holding a current registration as specified under the Radon Registration Act or a landlord when the building does not contain the features specified in Section 5.
 - 2. Post mitigation testing shall be performed according to the protocols identified in these rules.
 - 3. Post mitigation testing shall be conducted in those areas where pre-mitigation testing determined high radon levels to exist. Post mitigation testing may occur in other areas of the building.
- E. Biennial testing to determine continued proper operation of the radon mitigation system may occur at two year intervals in keeping with Department recommendations for all structures containing radon mitigation systems.
 - 1. Notwithstanding the requirements in Sections 1, 2, 3, 4, and 5, biennial radon mitigation system check testing may be performed by the landlord, lessor, or their designee.
 - 2. Biennial radon mitigation system check test placement, duration, and conditions shall follow the protocols specified in these rules.
 - 3. In residential rental structures without a basement, biennial radon mitigation system check testing may take place in representative units which are affected by the mitigation system on the lowest occupied level of the structure, rather than in every unit on the lowest occupied level of the structure.
 - 4. The results of biennial radon mitigation system check testing may be disclosed to each tenant in the structure.
 - 5. The results of biennial radon mitigation system check testing may be kept on file in the structure or the management offices on the same property or other central location normally used for compliance records storage, for inspection or review by the Department or any tenant of the structure upon request.

Section 8. Radon Results and Radon Hazard Disclosure requirements.

- A. Notification to Tenants by Landlords. Within 30 days of receiving radon test results for a residential rental building, a landlord or other lessor of a residential building shall provide written notice to a current or future tenant regarding the presence of radon in the building, including the test date and results. The written notice shall:

1. Be provided, on a form or in a format determined by the Department, to every current tenant and to each future tenant at time of lease signing by the landlord, lessor, or their designee; and
 2. Be provided verbally or otherwise made generally available to any and all potential future tenants. For purposes of this section, a potential future tenant is a person who has expressed interest in occupying all or part of the residential rental property; and
 3. Include radon test results relevant to each individual rental unit as follows:
 - a. For residential rental units where radon testing occurred, the most recent results of radon testing in that unit. If radon mitigation has been performed, the most recent results are post-mitigation testing results for that unit.
 - b. for residential rental units where radon testing occurred in other units or in the basement, the unit shall be provided with the most recent, highest radon test result in any unit of the structure where the unit is located; or with the radon test results for the basement if the basement was tested. [For example, Building 2 has four units, 1, 2, 3, and 4. The units tested were 1 (result 2.5 pCi/l) and 3 (result 4.5 pCi/l). Unit 1 is provided the results of testing in Unit 1, Unit 3 is provided the results of testing in Unit 3, and Units 2 and 4 are each provided the results of testing in Unit 3]; and
 4. Include notice regarding the risk associated with radon; and
 5. Include acknowledgement that the tenant has received the required radon test results and radon risk notice, with one copy of the acknowledgement for the tenant, and one copy of the acknowledgement for the landlord or lessor.
- C. The forms for radon test result disclosure, radon hazard disclosure, and acknowledgement of receiving these disclosures can be downloaded from the Radon Section website.
- D. . A copy of all radon test results held by the landlords shall be transferred to each future owner of the structure at the time the future owner takes possession of the structure or takes possession of ownership documentation, whichever comes first.

Section 9. Exemptions to the residential rental building testing requirement.

All residential rental buildings offered for rent in Maine shall be tested for radon in air except:

- A. Transient rentals such as hotels, motels, boarding houses, or other similar facilities that are regulated under Title 30-A, §3801 et seq. unless the facility routinely rents residential lodging space to the same renter for a period of 100 or more consecutive days and it can be considered a residence.
- B. Mobile homes unless they have;
 1. permanent and durable weather proof or insulated skirting. For purposes of this regulation, seasonally applied bales of hay, bags of leaves, and light framing wrapped with plastic that are removed at the end of the heating season and are

- not re-installed until the beginning of the next heating season are not considered permanent, durable, weather proof, or insulated skirting; or
2. a concrete or concrete masonry unit foundation walls, with or without an access door or hatch, completely surrounding the base of the home.

- C. Seasonal use cottages rented for more than 100 days which are supported on posts or blocks; and
 1. have a minimum two foot clearance under the entire structure; and
 2. have no protection of any kind which would impede the elements, animals, or the free flow of air from accessing the entire space under the structure; or
 3. do not have a private well as a water supply.

Section 10. Radon in Water.

- A. If radon in water testing is conducted in a residential rental property, the testing shall:

1. Be conducted by a Tester holding a current registration as specified under the Radon Registration Act; and
2. Follow the protocols specified in the Radon Registration Rules; and
3. Include quality assurance as required in the protocols specified in the Radon Registration Rules; and
4. Be reported to the Department by the Tester using approved forms or in an approved electronic reporting format; and
5. Be used to determine the need for follow up radon testing or radon concentration reduction work (called mitigation) at the structure,

- B. If radon in water mitigation will be conducted because radon in water test results are over the Maine Radon In Water Maximum Exposure Guideline (MEG) of 4,000 pCi/l or other appropriate guideline concentration:

1. Any radon mitigation work that occurs at any residential rental property shall be performed by a Mitigator holding a current registration as specified under the Radon Registration Act.
2. All radon mitigation that occurs at any residential rental property shall follow standards, procedures, or guidelines determined by the Department.
3. Post mitigation testing shall occur at each residential rental property where radon mitigation occurs.
 - a. Post mitigation testing shall be performed by a Tester holding a current registration as specified under the Radon Registration Act
 - b. Post mitigation testing shall be performed according to protocols, standards or guidelines determined by the Department.

- c. Post mitigation testing for radon in water shall consist of a radon water test collected at a spigot or other fixture which receives only water from the radon water mitigation system.
 - d. Post mitigation test results shall replace the radon test results provided to tenants and potential future tenants on the forms identified in Section 4.
4. Biennial testing to determine continued proper operation of the radon mitigation system may occur at two year intervals in keeping with Department recommendations for all structures containing radon mitigation systems.
- a. Notwithstanding the requirements in Sections 1, 2, 3, 4, and 5, biennial radon mitigation system check testing may be performed by the landlord, lessor, or their designee.
 - b. Biennial radon water mitigation system check testing shall follow protocols, standards, or guidelines determined by the Department.
 - c. Biennial radon water mitigation system check testing may take place at one water source in the building, including but not limited to any spigot or other fixture which receives only water from the radon in water mitigation system.
 - d. The results of biennial radon mitigation system check testing may be disclosed to each tenant in the structure.
 - e. The results of biennial radon mitigation system check testing may be kept on file in the structure or the management offices on the same property or other central location normally used for compliance records storage, for inspection or review by the Department or any tenant of the structure upon request.
- C. Radon in water results. In those instances where radon in water testing occurs in a residential rental property:
- 1. A landlord or other lessor of a residential building shall provide written notice to a tenant or potential tenant regarding the presence of radon in water, including the date and results. The written notice shall:
 - a. Be provided, on a form or in a format determined by the Department, to every current tenant and to each future tenant at time of lease signing of a unit which is served by the water source tested for radon in water, by the landlord, lessor, or their designee; and
 - b. Be posted with other disclosures or otherwise made generally available to any and all potential future tenants. For purposes of this section, a potential future tenant is a person who has expressed interest in occupying all or part of the residential rental property; and
 - c. The results disclosure shall include radon test results relevant to each individual rental unit as follows:
 - i. For residential rental units served by the water source tested for radon in water, the most recent results of radon in water testing for that water source. If radon in water mitigation has been performed, the most recent results are post-mitigation testing results for that water source.
 - ii. for residential rental units served by a water source which has not been tested for radon in water, no radon in water results disclosure shall occur; and

- d. The disclosure shall include acknowledgement that the tenant has received the required radon test results, with one copy of the acknowledgement for the tenant, and one copy of the acknowledgement for the landlord or lessor.
2. The forms for radon in water test result disclosure and acknowledgement of receiving this disclosure can be downloaded from the Radon Section website.
 3. . All radon test results held by the landlords shall be transferred, in original form, to each future owner of the structure at the time the future owner takes possession of the structure or takes possession of ownership documentation, whichever comes first.

Section 11. Penalty.

- A. A person who violates any section of the Rental Law or these rules commits a civil violation for which a fine of not more than \$250 per violation may be assessed.
- B. Failure to provide notice by a landlord or person acting on their behalf as required in the Rental Law or these rules is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
- C. Falsification of a radon test or radon test results by a landlord or person acting on their behalf is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
- D. Alleged violations of the Rental Law or these rules shall be referred to the Attorney General's Office for any further proceedings.
- E. Violations of the Rental law or these rules may also be violations of the Radon Registration Act and Unfair Trades Practices Act.

Section 12. Termination of a lease or tenancy at will.

- A. When a radon test in a residential rental building reveals a level of radon of 4.0 picocuries per liter of air (pCi/l) or higher:
 1. The landlord may terminate the lease or tenancy at will with a minimum of 60 days notice; or
 2. The tenant may terminate the lease or tenancy at will with a minimum of 60 days notice.
- B. When a lease or tenancy at will is terminated by the landlord or tenant in response to radon levels of 4.0 pCi/l or higher, the landlord may not retain all or part of a security deposit except as provided in Section 6033.
- C. When a landlord terminates a lease or tenancy at will in response to high radon, they will not offer it for rent again until radon levels have been lowered to below 4.0 pCi/l. This requirement is to ensure that radon levels are not used as a means to circumvent the normal eviction process.

Section 13. Maine Radiation Act.

The Maine Radiation Act (22 MRSA §661 et seq.) may also pertain to activities regulated by these rules.

