

State of Kansas
Department of Health and Environment
Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Public Health, Bureau of Community Health Systems, Radiation Control, will conduct a public hearing at 10:00 a.m. Tuesday, September 12, 2023, in Room 530, Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas, to consider the adoption of proposed amended radon regulations KAR 28-35-603, 28-35-604, and 28-35-605.

A summary of the proposed regulations and estimated economic impact follows:

Summary of Regulations:

K.A.R. 28-35-603. Requirements for radon measurement technician. Updates the requirements for radon measurement technicians that apply to any individual or organization that wishes to become certified by the state of Kansas for radon measurement activities. Adopts by reference the latest revisions of professional documents that apply to Kansas radon measurement technicians.

K.A.R. 28-35-604. Requirements for radon mitigation technician. Updates the requirements for radon mitigation technicians that apply to any individual or organization that wishes to become certified by the state of Kansas for radon mitigation activities. Adopts by reference the latest revisions of professional documents that apply to Kansas radon mitigation technicians. Applies the professional documents adopted in K.A.R. 28-35-603 to Kansas radon mitigation technicians.

K.A.R. 28-35-605. Continuing education. Specifies continuing education requirements for radon measurement technicians and radon mitigation technicians that must be completed annually.

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Economic Impact:

Cost to the agency: The proposed regulations will not result in increased costs to the agency.

Cost to the public and regulated community: The new safety requirement in the standard that mandates the use of an active radon system monitor will add additional cost to each new radon mitigation system installation of approximately \$25 for each system. The additional cost is a fraction of the overall system cost of approximately \$1,200 to \$1,500. It is expected that this additional cost will be passed to members of the public.

Costs to other governmental agencies or units: There will be no costs related to the proposed regulations that are reasonably expected to be incurred by other governmental agencies or units.

A detailed economic impact is provided in the economic impact statement that is available from the designated KDHE contact staff person or at the Radiation Control Program website, as listed below.

The time period between the publication of this notice and the scheduled public hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5:00 p.m. on the day of the hearing to Mark Ungerer, Kansas Department of Health and Environment, Bureau of Community Health Systems, Radiation Control, Curtis State Office Bldg., 1000 SW Jackson, Suite 330, Topeka, KS 66612 or by email to Mark.Ungerer@ks.gov . Interested parties are encouraged to participate in the public hearing by submitting written comments.

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During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. It is requested that each individual giving oral comments also provide a written copy of the comments for the record. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding economic impact statement may be obtained from the Radiation Control Program website at <https://www.kdhe.ks.gov/1061/Kansas-Radon> or by contacting Mark Ungerer at Mark.Ungerer@ks.gov or 785-296-1568. Questions pertaining to the proposed regulations should be directed to Mark Ungerer at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Mark Ungerer.

Janet Stanek
Secretary

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28-35-603. Requirements for radon measurement technician. (a) Each applicant for initial certification as a radon measurement technician shall meet the requirements of K.S.A. 48-16a05, and amendments thereto, and the following additional requirements:

- (1) Be at least 18 years of age;
- (2) complete and show proof of completion to the department of a radon measurement training course with at least 16 hours of classroom instruction approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto;
- (3) pass attain a passing score of at least 70 percent on a closed-book examination on radon measurement approved by the department pursuant to K.S.A. 48-16a05, and amendments thereto, ~~with a score of at least 70 percent;~~ and
- (4) provide any additional relevant information requested by the department.

(b) Each radon measurement technician shall meet the following requirements:

- (1) Conduct radon measurement activities in accordance with the requirements of the following:

- (A) K.S.A. 48-16a05, and amendments thereto;
- (B) ~~"protocols for radon and radon decay product measurements in homes," EPA 402-R-92-003, including appendices, published by the environmental protection agency and dated June 1993,~~ "protocol for conducting measurements of radon and radon decay products in homes," ANSI/AARST MAH 2019, published by the American national standards institute and the American association of radon scientists and technologists, dated 2019, which is hereby adopted by reference, except for the introduction, table of contents, and exhibits;

- (C) ~~"indoor radon and radon decay product measurement device protocols," EPA 402-R-~~

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92-004, published by the environmental protection agency and dated July 1992, "performance specifications for instrumentation systems designed to measure radon gas in air,"

ANSI/AARST MS-PC 2022, published by the American national standards institute and the American association of radon scientists and technologists, dated 2022, which is hereby adopted by reference, except for the introduction, table of contents, references, bibliography, and acknowledgments; and

(D) "protocol for conducting measurements of radon and radon decay products in multifamily buildings," MAMF 2017 with 1/21 revisions, published by the American national standards institute and the American association of radon scientists and technologists, dated 2021, which is hereby adopted by reference, except for the introduction, table of contents, exhibits, acknowledgments, and companion guidance;

(E) "protocol for conducting measurements of radon and radon decay products in schools and large buildings," MALB 2014 with 1/21 revisions, published by the American national standards institute and the American association of radon scientists and technologists, dated 2021, which is hereby adopted by reference, except for the introduction, indices, acknowledgments, exhibits, and companion guidance; and

~~(D)~~ (F) all applicable municipal, county, state, and federal laws and regulations;

(2) upon request from the department, provide documentation of proficiency, including continuing education requirements specified in K.A.R. 28-35-605;

(3) notify the department of any name or address changes within 30 days; and

(4) maintain and adhere to a quality assurance and quality control plan. (Authorized by

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K.A.R. 28-35-603, page 3

K.S.A. ~~2010~~ 2022 Supp. 48-16a03; implementing K.S.A. ~~2010~~ 2022 Supp. 48-16a03 and 48-16a05; effective Feb. 3, 2012; amended P-_____.)

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28-35-604. Requirements for radon mitigation technician. (a) Each applicant for initial certification as a radon mitigation technician shall meet the requirements of K.S.A. 48-16a06, and amendments thereto, and the following additional requirements:

(1) Be at least 18 years of age;

(2) complete and submit proof of completion to the department of a radon mitigation training course with at least 24 hours of classroom instruction that includes active participation in radon mitigation techniques approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto;

(3) pass attain a passing score of at least 70 percent on a closed-book examination on radon mitigation approved by the department pursuant to K.S.A. 48-16a06, and amendments thereto, ~~with a score of at least 70 percent;~~ and

(4) provide any additional relevant information requested by the department.

(b) Each radon mitigation technician shall meet the following requirements:

(1) Conduct radon mitigation activities in accordance with the requirements of the following:

(A) K.S.A. 48-16a06, and amendments thereto;

(B) ~~“protocols for radon and radon decay product measurements in homes”~~ “protocol for conducting measurements of radon and radon decay product in homes,” which is adopted by reference in K.A.R. 28-35-603;

(C) ~~“indoor radon and radon decay product measurement device protocols,”~~ “performance specifications for instrumentation systems designed to measure radon gas in air,” which is adopted by reference in K.A.R. 28-35-603;

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(D) “radon mitigation standards,” EPA 402-R-93-078, including the appendix, published by the environmental protection agency, dated October 1993, and revised April 1994, which is adopted by reference; and “protocol for conducting measurements of radon and radon decay products in multifamily buildings,” which is adopted by reference in K.A.R. 28-35-603;

(E) “protocol for conducting measurements of radon and radon decay products in schools and large buildings,” which is adopted by reference in K.A.R. 28-35-603;

(F) “soil gas mitigation standards for existing homes,” SGM-SF 2017 with 12/2020 revisions, published by the American national standards institute and the American association of radon scientists and technologists, dated 2020, which is hereby adopted by reference, except for the introduction, table of contents, exhibits, appendices, and companion guidance;

(G) “radon mitigation standards for multifamily buildings,” ANSI/AARST RMS-MF 2018 with 12/2020 revisions, published by the American national standards institute and the American association of radon scientists and technologists, dated 2020, which is hereby adopted by reference, except for the introduction, table of contents, exhibits, appendices, and companion guidance;

(H) “radon mitigation standards for schools and large buildings,” ANSI/AARST RMS-LB 2018 with 12/2020 revisions, published by the American national standards institute and the American association of radon scientists and technologists, dated 2020, which is hereby adopted by reference, except for the introduction, table of contents, exhibits, appendices, and companion guidance; and

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- (~~E~~) (I) all applicable municipal, county, state, and federal laws and regulations;
- (2) upon request from the department, provide documentation of proficiency including continuing education requirements specified in K.A.R. 28-35-605; and
- (3) notify the department of any name or address changes within 30 days. (Authorized by K.S.A. 2010 2022 Supp. 48-16a03; implementing K.S.A. 2010 2022 Supp. 48-16a03 and 48-16a06; effective Feb. 3, 2012; amended P-_____.)

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28-35-605. Continuing education. (a) Before certification renewal, each radon measurement technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least 16 hours of department-approved continuing education; and

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(b) Before certification renewal, each radon mitigation technician shall meet the following continuing education requirements:

(1) Complete and submit proof of completion to the department of at least ~~24~~ 16 hours of department-approved continuing education;

(2) maintain documentation, pursuant to K.A.R. 28-35-601(h), that the continuing education was successfully completed within the prior 24-month certification period.

(c) If a person is certified as both a radon measurement technician and a radon mitigation technician, continuing education credit shall be granted for both certifications if the person completes at least 24 hours of department-approved continuing education credits for radon services during the 24-month period that the certificates are valid.

(d) Continuing education credit shall be accepted only for the completion of each different continuing education training course during a current certification period. Training courses for continuing education credit that are repeated shall be accepted only for the initial successful completion of the course during a current certification period. (Authorized by K.S.A. ~~2010~~ 2022 Supp. 48-16a03; implementing K.S.A. ~~2010~~ 2022 Supp. 48-16a03, 48-16a05, and 48-16a06; effective Feb. 3, 2012; amended P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas Department of Health and Environment
Agency

Susan Vogel
Agency Contact

296-1291
Contact Phone Number

28-35-603, 28-35-604, 28-35-605
K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

K.A.R. 28-35-603. Requirements for radon measurement technicians applies to any individual or organization that seeks to become certified by the state for radon measurement activities. This regulation is being amended to apply the latest revisions of adopted documents to Kansas technicians, including standards from the American National Standards Institute (ANSI) and the American Association of Radon Scientists and Technicians (AARST) for instrumentation systems and protocols for conducting measurements of radon and decay products in homes, multifamily buildings, schools, and large buildings.

Updates to adopted documents include:

- Harmonization of structure and recent revisions with other ANSI documents
- Improved clarity on the difference between guidance and mandatory requirements
- Improved clarity for test duration and locations, how to handle test results that disagree, and professional requirements for qualifications, onsite documentation and reporting.

K.A.R. 28-35-604. Requirements for radon mitigation technicians applies to any individual or organization that seeks to become certified by the state for radon mitigation activities and is being amended for the same reasons.

Updates to adopted documents include:

- Harmonization of structure and recent revisions with other ANSI documents
- Improved clarity for guidance on active soil depressurization

K.A.R. 28-35-605. Continuing education requirements for measurement and mitigation technicians to be completed annually. The number of hours of continuing education for mitigation technicians is proposed to be reduced from 24 hours to 16.

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

There is no federal law requiring these standards, but they are recommended by the Environmental Protection Agency (EPA). Additionally, the EPA has proposed regulations (EPA-HQ-OAR-2017-0430) that seek to tie receipt of state indoor radon grant funding to the adoption of these standards, among other requirements.

Contiguous states have a variety of implementations of this or similar regulations. Nebraska licenses radon professionals under Title 180, Chapter 11 of the Nebraska Revised Administration Code, current as of July 2015. Missouri and Oklahoma do not regulate radon professionals. Colorado (in Colorado Revised Statutes 12-165-101 et al.) has issued statutory authority to license and regulate radon professionals as of September 7, 2021, and is currently in the process of revising regulations to support that authority. The statutes require radon professionals to adhere to the latest ANSI/AARST standards approved by the program director.

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Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

Current radon measurement and mitigation standards are used by businesses to garner an expectation of a minimum level of service for radon technicians in the state of Kansas that increases the trust consumers have in Kansas businesses. This update is from the same organization that issued currently adopted documents. An update to the latest standards fits the mission statement of the Kansas Department of Health and Environment: to protect and improve the health and environment of all Kansans.

Radon is a common, naturally-occurring gas. It is also believed to be the second-leading cause of lung cancer. The most common route of entry to an indoor space is through cracks in the foundation or basement, leading to trapped pockets of radon inside homes, schools, or businesses. Radon mitigation systems can reduce radon buildup by shunting the gas to areas above human habitation where it can safely disperse.

The rate of formation of radon gas is directly associated with concentrations of uranium in the soil. These locations are closely correlated with shale formations and oil and natural gas deposits, including those found in Kansas.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

Local governments would not be affected by the proposed regulations nor would public utility ratepayers. The businesses most impacted are radon measurement and mitigation services. Most of the differences in the new adopted documents are clarifications rather than substantive changes, meaning that no significant cost is expected. The standards are available free on the AARST website (<https://standards.aarst.org/>). The new safety requirement in the standard that mandates the use of an active radon system monitor will add some cost to each new radon mitigation system installation of approximately \$25 additional per system. The average system costs approximately \$1,200 to \$1,500. So the additional cost is a fraction of the overall system cost. It is expected that this cost will be passed to customers/public.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Kansas certified Radon Measurement Technicians, Radon Mitigation Technicians, and Radon Laboratories are directly affected. There are 170 Kansas Certified Measurement Technicians, 72 Kansas Certified Mitigation Technicians, and 14 Radon Measurement Laboratories currently operating in Kansas. These businesses would be required to update procedures to new standards.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

There is a reduction in continuing education time required for Radon Mitigation Technicians in proposed K.A.R. 28-35-605. This reduction of eight hours corresponds to a potential full day of additional work accomplished and associated cost savings due to less expense for attending continuing education classes. There are no significant associated costs with registrants' compliance with new standards.

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The EPA recommends the latest standards and has stopped recommending the standards that the state of Kansas has currently adopted.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The agency has sent out a notification to all registrants informing them of the upcoming changes. This notification directed them to the AARST website, which hosts copies of the proposed standards. The agency has also hosted webinars, presented at regional stakeholder workshops, and sent newsletters to the regulated community informing them of the upcoming changes and seeking feedback on the process.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$87,500

Total Annual Costs – \$87,500

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

Over the last ten years, there has been an average of 3,500 radon mitigation system installations annually. Calculating \$25 per system multiplied by 3,500 systems equates to \$87,500 additional dollars expected to be passed to the public. This is a small percentage (2.1%) of the overall cost of annual radon mitigation system installations of \$4.2M (3,500 systems multiplied by \$1,200 average system cost).

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

There are no expected changes to aggregate state revenues and expenditures for the implementation of the proposed rules and regulations. The cost to the state to register information about radon measurement and mitigation specialists would remain the same.

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Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

Currently, there are no uncertified radon measurement or mitigation specialists allowed to work in the state of Kansas. There is a reduction in continuing education time required for radon mitigation technicians in proposed regulation. This reduction of eight hours corresponds to a potential full day of additional work accomplished.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

The proposed amended regulations do not significantly change the revenues of cities, counties or school districts and do not impose functions or responsibilities to increase expenditures. However, when the notice of hearing for these regulations is published in the *Kansas Register*, standard agency procedure will be followed, and the three organizations will be contacted electronically for comment with attached copies of the regulations, economic impact statement, and published notice of hearing.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

The agency posted an Information Notice on the KDHE/Radon website informing about the proposed regulations. The Information Notice referenced the contact person and number for comments or questions and that there will be a notification of a public hearing. Additionally, an e-mail with the Information Notice has been sent to all current radon measurement and inspection registrants.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

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- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

[Click here to enter agency response.](#)

- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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