



Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Jennifer Opila, Manager, Colorado Radiation Control Program
Chrystine Kelley, Radon Program
Hazardous Materials and Waste Management Division

Through: Gary W. Baughman, Director, Hazardous Materials and Waste Management
Division *GWB*

Date: July 21, 2016

Subject: **Request for Rulemaking Hearing**
Proposed new rule 6 CCR 1007-1, Part 21, Colorado Low Income Radon
Mitigation Assistance (LIRMA) Program, with a request for the rulemaking
hearing to occur in October of 2016

The Division is proposing a new regulation Part 21, titled *Colorado Low Income Radon Mitigation Assistance (LIRMA) Program*. Part 21 is a rule which applies specifically to the department's implementation of a monetary assistance program used to pay for the installation of radon mitigation systems in qualified owner-occupied low income homes.

Radon is a naturally occurring radioactive gas that comes from the breakdown of uranium in the soil. Radon is known to cause lung cancer and it can seep into our homes and workplaces through cracks and openings in floors and crawlspaces. When this happens, radon becomes part of the air we breathe. Radon has no color, odor or taste. Each year, about 21,000 deaths in the United States are attributed to radon-caused lung cancer. It's the second leading cause of lung cancer in the United States after smoking.

High radon levels have been found in all 50 states and in all parts of Colorado. In Colorado, about half the homes have radon levels higher than the U.S. Environmental Protection Agency recommended action level of 4 picoCuries per liter (pCi/L).

The regulatory part is being proposed as a result of House Bill 16-1141 which was passed during the 2016 legislative session. The proposed rule will outline the general criteria for qualified owner-occupied homeowners to apply for assistance to pay for the installation of radon mitigation systems, the selection process used by the department in selecting applicants, and to specify reporting requirements for the program.

Further details of the proposed rule are listed in a Statement of Basis and Purpose and Specific Statutory Authority for the proposed rule, which, along with a Regulatory Analysis and supporting information, is available at: <https://www.colorado.gov/cdphe/radregs>

In early June, 2016, approximately 900 stakeholders were notified of the proposed rule and were provided the opportunity to comment. Additionally, a stakeholder meeting was scheduled in late June to present and discuss the new mitigation assistance program and the proposed new rule, but no stakeholders attended the meeting. During the comment period,

one written comment letter was received which focused on the program documents (procedures and forms) but which did not impact the proposed rule.

At the August 2016 request for rulemaking, the Radiation Program requests that the Board of Health set a rulemaking hearing for October 19 of 2016 in order to meet a January 1, 2017 statutorily driven deadline to have the rule in place.

cc: Deborah Nelson, Administrator, State Board of Health

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**STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY**

for proposed rule

6 CCR 1007-1, Part 21,

Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

Basis and Purpose.

The Colorado Radiation Control Act, Title 25, Article 11, Colorado Revised Statutes (the Act), requires the State Board of Health to formulate, adopt and promulgate rules and regulations pertaining to radiation control.

Section 25-11-104(2) of the Act specifies that Colorado's radiation regulations be consistent with U.S. Nuclear Regulatory Commission (NRC) requirements necessary to maintain compatibility (and status as an Agreement State), and the Suggested State Regulations for Control of Radiation (SSRCR) of the Conference of Radiation Control Program Directors, Inc., except when the Board of Health concludes, on the basis of detailed findings, that a substantial deviation from the SSRCR is warranted. There are currently no federal regulations or model regulations available which address radon mitigation assistance programs.

The Department is proposing the Part 21 rule to meet the intent and requirements for establishing a low income mitigation assistance program as specified in HB 16-1141. HB 16-1141 requires the Board of Health to set the program requirements, including the eligibility requirements for financial assistance. The proposed rule includes: definitions, eligibility requirements, application processing standards, criteria for awarding funds to homeowners, the process and criteria for becoming a LIRMA eligible certified radon mitigation contractor, and reporting requirements. Funds will be paid directly to the LIRMA eligible certified radon mitigation contractor that is selected by the homeowner. This approach allows for homeowner lead decision-making but minimizes the administrative burden to homeowners and the Department.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statutory provisions: 25-1-108, 25-1.5-101(1)(I), 25-11-104, 25-11-114, 25-16-104.5, and 25-16-104.6, C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

Yes, the bill number is HB 16-1141; rules are ___ authorized required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

Yes
 No

Does this rule incorporate materials by reference?

Yes
 No

Does this rule create or modify fines or fees?

Yes
 No

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REGULATORY ANALYSIS

for proposed rule

6 CCR 1007-1, Part 21,

Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

1. **A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

Currently, there are no state based programs in Colorado available to fund the installation of radon mitigation systems in low-income households.

As specified by statute and based upon funding of \$100K annually, an estimated 100 qualified low-income owner-occupied homeowners will benefit from the program and proposed rule by having radon mitigation systems installed in their homes. Such homeowners may not otherwise be able to afford a radon mitigation system. The installation of a mitigation system in these low income homes is intended to help reduce the risk from radon induced lung cancer.

No persons are expected to bear the costs of the proposed rule.

Entities using radioactive materials or radiation producing (x-ray) machines are not impacted by or regulated under the rule. Entities, such as radon mitigation contractors who provide mitigation system installation and services to households that are not under the LIRMA Program would not be impacted by or regulated under the rule.

2. **To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.**

The quantitative impact of the proposed rule on homeowners is to allow them to save an estimated out-of-pocket expense of \$800-1,500 per home to pay for the installation of a radon mitigation system.

The qualitative impact of the proposed rule will be to meet the requirements of state statute. The proposed rule is also expected to improve indoor air quality due to the reduction in radon levels entering the home.

3. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

The department received 0.8 FTE to implement the requirements of HB 16-1141. For the portion of the bill that concerns the LIRMA program, the expected cost to the department is approximately \$15,000 in the first year (-0.15 FTE). This estimate is based upon 2 hours spent for each homeowner application review and processing and is based on receipt of an estimated 100 applications per year (assuming an assumed hourly rate of \$50 per hour). The cost of review and processing for mitigation

contractor applications is \$5,000 in the first year, based upon a 1 hour application review period and an assumed hourly rate of \$50 per hour. It is anticipated that the cost will decline significantly after the first year of the program following the initial registration of contractors.

Since this program is non-regulatory in nature, it is expected that there would be no time spent on enforcement related activities.

4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

Exposure to radon is considered the second leading cause of lung cancer after smoking. The Environmental Protection Agency (EPA) estimates that residential radon causes approximately 21,000 lung cancer deaths in the United States each year.¹

The benefits of the proposed rule will be to allow for a balanced implementation of a statutorily driven requirement for a radon mitigation assistance program for low income homeowners. The installation of radon mitigation systems in low income owner-occupied homes is expected to help to reduce the risk from radon induced lung cancers in these households.

The EPA estimates that approximately 650 lung cancer deaths per year are averted because of radon mitigation and prevention efforts in the U.S.¹ Extrapolating this to Colorado's entire population indicates that potentially 10 lung cancer deaths per year could potentially be avoided in all Colorado homes as a result of mitigation and prevention activities, a portion of which would be low income households.

The probable costs of implementing the program will primarily be the staff time involved in managing the LIRMA program and review and processing of contractor and homeowner applications. The funding for staff time is however accounted for in the fiscal note associated with the legislation which establishes and provides funding for the LIRMA program. Since this program is non-regulatory in nature, it is expected that there would be no time spent on enforcement related activities.

The benefit of the proposed rule is expected to outweigh the cost of the rule.

Inaction on the proposed new rule would potentially result in not meeting the requirements of state law.

¹ Environmental Protection Agency EPA Assessment of Risks From Radon in Homes. Washington, DC: Office of Radiation and Indoor Air; June 2003.

5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

The purpose of the proposed rule is to have a clear and specific process for implementing the requirements of state law for a low-income mitigation assistance program. Currently, there are limited funding resources available to assist low income homeowners with mitigation system costs in Colorado. In addition to meeting the requirements of state law, the establishment of this rule and the LIRMA Program will provide a method for state funding of mitigation system installations in qualified low-income households and thereby help to reduce the risk of radon induced lung cancers in Colorado.

There are believed to be no less costly or intrusive methods to implement this statutorily driven program.

6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

The proposed rule is mandated by state law through HB 16-1141. There are no other state programs that facilitate radon mitigation assistance. The program evaluated a number of different ways to distribute the funds to the low-income individuals and/or the radon mitigation contractors and has determined that the method in the proposed rule is the most effective and efficient.

7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

The annual income table in the proposed rule is based upon the most recent U.S. Housing and Urban Development (HUD) criteria for low income households.² This table is subject to change at the discretion and frequency determined by the federal government. Updates to the low income table typically occur one or more times each year. The LIRMA Program will periodically update the table contained within the regulation as needed.

The short and long term consequences of not implementing the proposed requirements will be inconsistency with state statute.

The average cost for the installation of a radon mitigation system typically ranges from \$800 to \$1,500 per installation. By current state statute, funding for the program is capped at \$100K annually.

² https://www.huduser.gov/portal/datasets/il/il16/index_il2016.html

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STAKEHOLDER COMMENTS

for proposed rule

6 CCR 1007-1, Part 21,

Colorado Low Income Radon Mitigation Assistance (LIRMA) Program

Early Stakeholder Engagement: The following individuals and/or entities were included in the development of these proposed rules:

On June 9, and June 20, 2016, approximately 900 stakeholders were notified of the opportunity to comment on the proposed draft rule. The entities notified represented:

- Approximately 100 environmental and public health directors and staff;
- Approximately 160 certified radon measurement and mitigation contractors;
- Approximately 40 radon State Indoor Radon Grant (SIRG) grantees;
- Approximately 200 local public and environmental health officials via the CDPHE office of planning and partnerships, the Colorado healthy housing coalition, and the Health and Environmental Justice (HEEJ) Collaborative;
- Approximately 20 organizations representing or otherwise communicating with low income persons;
- Approximately 371 "other stakeholders" who have specifically signed up to receive notification of proposed radiation regulations and who represent a wide variety of interests.

Although a stakeholder meeting was scheduled, no stakeholders attended the meeting in person or via telephone.

The Colorado Radiation Advisory Committee reviewed and discussed the proposed regulation during the June 2, 2016 regular meeting. The committee provided a few minor suggested comments and did not express any specific concerns or issues regarding the proposed rule.

This rulemaking does not include a local government mandate. The burden of regulatory conformity to this rule primarily applies to the department in implementing the LIRMA program as well as to the homeowner or mitigation contractor applicants to the program. Executive Order 5 (EO5) does not apply.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

In addition to the notice of opportunity to comment on the proposed rule discussed above, stakeholders were provided with the anticipated rulemaking schedule for both the request for rulemaking and the rulemaking hearing dates. This rulemaking timeline information is also posted on the Department website area specific to the proposed new rule. If approved by the Colorado Board of Health, a formal rulemaking hearing notice will be sent prior to the rulemaking hearing date currently scheduled for October 2016.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

There are no major factual and policy issues identified as a result of the proposed new rule. No stakeholders attended the scheduled stakeholder meeting. One stakeholder provided minor technical comments in written form on the program documents (procedures and policy manual and forms) some of which were incorporated into the documents. No comments were provided on the proposed rule.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

The proposed rule will positively impact (benefit) and advance health equity and environmental justice activities in Colorado. The rule and the LIRMA program will benefit those Coloradoans who have elevated radon levels in their home but may not otherwise be able to afford the cost of installing a mitigation system due to income limitations. The installation of mitigation systems in low income owner-occupied households is expected to help reduce the risk of radon induced lung cancer in lower income households who apply for assistance.

NOTE: The governor signed this measure on 4/21/2016.



HOUSE BILL 16-1141

BY REPRESENTATIVE(S) Becker K. and Coram, Arndt, Court, Duran, Esgar, Garnett, Ginal, Hamner, Kraft-Tharp, Lontine, Mitsch Bush, Moreno, Winter, Hullinghorst;
also SENATOR(S) Jahn and Roberts, Guzman, Heath, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Todd.

CONCERNING THE PROTECTION OF COLORADO RESIDENTS FROM THE HAZARDS ASSOCIATED WITH NATURALLY OCCURRING RADIOACTIVE MATERIALS IN BUILDINGS, AND IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 25-11-114 as follows:

25-11-114. Legislative declaration - public education regarding radon gas - assistance to low-income individuals for radon mitigation in their homes. (1) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT:

(a) RADON, AN ODORLESS, COLORLESS, RADIOACTIVE GAS, IS THE LEADING CAUSE OF LUNG CANCER DEATHS AMONG NONSMOKERS IN THE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

NATION AND IS THE SECOND LEADING CAUSE OF LUNG CANCER DEATHS OVERALL;

(b) RADON ORIGINATES FROM THE DECAY OF NATURALLY OCCURRING URANIUM IN COLORADO GRANITE, SOIL, AND BEDROCK AND CAN ACCUMULATE IN STRUCTURES AT DANGEROUS RISK LEVELS TO HUMANS;

(c) INDOOR RADON RANKS AMONG THE MOST SERIOUS ENVIRONMENTAL HEALTH PROBLEMS;

(d) COLORADO RANKS SEVENTH IN THE NATION FOR HIGHEST POTENTIAL RADON RISK;

(e) ALL OF COLORADO'S COUNTIES ARE AT HIGH RISK FOR RADON AND FIFTY PERCENT OF COLORADO HOMES HAVE RADON LEVELS THAT SHOULD BE MITIGATED;

(f) AN ESTIMATED FIVE HUNDRED COLORADANS DIE FROM RADON-INDUCED LUNG CANCER ANNUALLY, CAUSING MORE DEATHS THAN DRUNK DRIVING, HOUSE FIRES, CARBON MONOXIDE, AND DROWNING COMBINED; AND

(g) INCREASED EDUCATION AND AWARENESS OF THE HARMFUL EFFECTS OF RADON EXPOSURE WILL HELP SAVE THE LIVES OF COLORADANS AND REDUCE THE BURDEN OF HEALTH CARE COSTS FROM RADON-INDUCED LUNG CANCER.

(2) THE DEPARTMENT SHALL ESTABLISH A RADON EDUCATION AND AWARENESS PROGRAM. AS A PART OF THE PROGRAM, THE DEPARTMENT SHALL:

(a) PROVIDE RADON INFORMATION AND EDUCATION STATEWIDE TO CITIZENS, BUSINESSES, AND OTHERS IN NEED OF INFORMATION;

(b) WORK COLLABORATIVELY WITH RADON CONTRACTORS AND CITIZENS TO RESOLVE QUESTIONS AND CONCERNS REGARDING THE INSTALLATION OF SAFE, HEALTHY, AND EFFICIENT RADON MITIGATION SYSTEMS; AND

(c) COLLABORATE WITH LOCAL GOVERNMENTS TO PROVIDE INFORMATION ON BEST PRACTICES FOR RADON MITIGATION STRATEGIES.

(3) EFFECTIVE JANUARY 1, 2017, THE DEPARTMENT SHALL ESTABLISH A RADON MITIGATION ASSISTANCE PROGRAM TO PROVIDE FINANCIAL ASSISTANCE TO LOW-INCOME INDIVIDUALS FOR RADON MITIGATION IN THEIR HOMES. THE STATE BOARD OF HEALTH SHALL SET THE PROGRAM REQUIREMENTS, INCLUDING ELIGIBILITY REQUIREMENTS FOR FINANCIAL ASSISTANCE.

(4) THE DEPARTMENT SHALL USE MONEY IN THE HAZARDOUS SUBSTANCE RESPONSE FUND, ESTABLISHED IN SECTION 25-16-104.6, TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM AND THE RADON MITIGATION ASSISTANCE PROGRAM.

SECTION 2. In Colorado Revised Statutes, 25-16-104.5, **amend** (1.7) (b) (II) as follows:

25-16-104.5. Solid waste user fee - imposed - rate - direction - legislative declaration - repeal. (1.7) (b) (II) The portions of the fee imposed under this subsection (1.7) that are collected for the costs described in subparagraphs (II) and (III) of paragraph (a) of this subsection (1.7) shall be transmitted to the department for deposit into the hazardous substance response fund created in section 25-16-104.6. The department may expend ~~moneys~~-MONEY from the portion of the fee collected under subparagraph (III) of paragraph (a) of this subsection (1.7) to compensate the department of law for all or a portion of the expenses incurred for services rendered under the federal act, as billed to the department by the department of law. THE DEPARTMENT MAY EXPEND MONEY FROM THE FEES COLLECTED UNDER THIS SUBSECTION (1.7) TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM, ESTABLISHED IN SECTION 25-11-114 (2), AND THE RADON MITIGATION ASSISTANCE PROGRAM, ESTABLISHED IN SECTION 25-11-114 (3).

SECTION 3. In Colorado Revised Statutes, 39-29-116, **amend** (3) (a) and (6); and **repeal** (4) as follows:

39-29-116. Uranium mill tailings remedial action program fund - **creation - oversight committee - repeal.** (3) (a) The state treasurer may accept and credit to the uranium mill tailings remedial action program fund

any donations received by the state for the express purpose of projects for the cleanup of uranium mill tailings. The donations may include any amounts made available from the local government severance tax fund and the local government mineral impact fund as directed by the executive director of the department of local affairs pursuant to section 39-29-110 and section 34-63-102, C.R.S. ~~and with the approval of the oversight committee as created in subsection (4) of this section.~~ It is the intent of the general assembly that a minimum of six million dollars be retained in the local government severance tax fund and the local government mineral impact fund for grants and loans to local communities.

~~(4) (a) There is hereby created a uranium mill tailings remedial action oversight committee, referred to in this subsection (4) as the "oversight committee". The oversight committee shall consist of five members as set forth in paragraph (a.5) of this subsection (4). The department of public health and environment shall annually report on or before September 15 of each year to the oversight committee at a meeting called by the chairperson of the oversight committee on the progress of the cleanup of uranium mill tailing sites pursuant to the uranium mill tailings remedial action program, the proposed and final transfers or disposition of the land of any of the sites, the proposed program activities, any direct and indirect costs associated with the monitoring, notification, and handling of designated uranium mill tailings that are authorized in section 25-11-303, C.R.S., and financing requested for the next fiscal year. The oversight committee shall review such report and obtain any additional information it needs in order to prepare a recommendation to the joint budget committee on the proposed funding amounts and sources for the next fiscal year. The recommendation shall be made within forty five days of the oversight committee meeting at which the department of public health and environment presents its annual report.~~

~~(a.5) (I) Repealed.~~

~~(II) On and after July 1, 2007, the oversight committee shall consist of the executive director of the department of local affairs and one member appointed by the speaker of the house of representatives, by the minority leader of the house of representatives, by the president of the senate, and by the minority leader of the senate. All of the legislative members shall be from districts that include uranium mill tailing sites designated for cleanup under the federal "Uranium Mill Tailings Radiation Control Act of 1978",~~

~~42 U.S.C. sec. 7901 et seq., as amended. During odd-numbered years, the member appointed by the president of the senate shall be the chairperson of the oversight committee and the member appointed by the speaker of the house of representatives shall be the vice chairperson of the oversight committee, and, during even-numbered years, the member appointed by the speaker of the house of representatives shall be the chairperson of the oversight committee and the member appointed by the president of the senate shall be the vice chairperson of the oversight committee.~~

~~(b)The terms of the members appointed by the speaker of the house of representatives, the president of the senate, the minority leader of the house, and the minority leader of the senate and who are appointed pursuant to subparagraph (II) of paragraph (a.5) of this subsection (4) shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker, the president, the minority leader of the house, and the minority leader of the senate shall appoint or reappoint members in the same manner as provided in paragraph (a.5) of this subsection (4). Thereafter, the terms of the members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. Oversight committee members appointed or reappointed by the speaker, the president, the minority leader of the house, and the minority leader of the senate shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.~~

~~(c)The legislative members of the oversight committee shall be reimbursed for necessary expenses in connection with the performance of their duties, including attendance at a meeting of the joint budget committee to present the oversight committee's recommendations, and shall be paid the same per diem as other members of interim committees in attendance at meetings.~~

(6) This section is repealed, effective July 1, 2017-2027.

SECTION 4. In Colorado Revised Statutes, 25-16-104.6, **amend** (2) introductory portion; and **add** (2) (h) as follows:

25-16-104.6. Fund established - administration - revenue sources - use. (2) The general assembly may appropriate up to two and one-half percent of the ~~moneys~~-MONEY in the hazardous substance response fund for the department's costs of administration and its costs of collection of fees or civil penalties pursuant to section 25-16-104.5. In addition, the department is authorized, subject to appropriation by the general assembly, to use the ~~moneys~~-MONEY in the fund for the following purposes:

(h) TO FINANCE THE RADON EDUCATION AND AWARENESS PROGRAM, ESTABLISHED IN SECTION 25-11-114 (2), AND THE RADON MITIGATION ASSISTANCE PROGRAM, ESTABLISHED IN SECTION 25-11-114 (3).

SECTION 5. Appropriation. (1) For the 2016-17 state fiscal year, \$199,456 is appropriated to the department of public health and environment for use by the hazardous materials and waste management division. This appropriation is from the hazardous substance response fund created in section 25-16-104.6 (1) (a), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$48,803 for personal services related to radiation management, which amount is based on an assumption that the division will require an additional 0.8 FTE; and

(b) \$150,653 for operating expenses related to radiation management.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2016 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
REPRESENTATIVES

Bill L. Cadman
PRESIDENT OF OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
REPRESENTATIVES

Effie Ameen
SECRETARY OF OF
THE SENATE

APPROVED

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

1 **DRAFT 1 07/21/16**

2 **DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**

3 **Hazardous Materials and Waste Management Division**

4 **RADIATION CONTROL - COLORADO LOW INCOME RADON MITIGATION ASSISTANCE (LIRMA)**
5 **PROGRAM**

6 **6 CCR 1007-1 Part 21**

7 *[Editor's Notes follow the text of the rules at the end of this CCR Document.]*

8

9 **Adopted by the Board of Health October 19, 2016**

10 **Part 21: COLORADO LOW INCOME RADON MITIGATION ASSISTANCE (LIRMA) PROGRAM**

11 **21.1 Definitions**

12 A. "Certified test kit" means a radon test kit (and analysis) that is certified by the National Radon
13 Proficiency Program (NRPP) or the National Radon Safety Board (NSRB).

14 B. "Certified radon measurement contractor" means a contractor that is certified to conduct testing
15 by the National Radon Proficiency Program (NRPP) or the National Radon Safety Board (NSRB).

16 C. "Colorado Low Income Radon Mitigation Assistance Program" (LIRMA) means the assistance
17 program created to address local community needs through an assistance process established
18 pursuant to Section 25-11-114, C.R.S. administered by the Hazardous Materials and Waste
19 Management Division (HMWMD) at the Colorado Department of Public Health and Environment
20 (CDPHE).

21 D. "Conflict of Interest" consists of one or more the following conditions:

22 1. Any individual who has a personal or financial interest that could reasonably be perceived
23 as an interest that may influence an individual in his or her official duties.

24 E. "Department" means the Colorado Department of Public Health and Environment or CDPHE.

25 F. "Division" means the Hazardous Materials and Waste Management Division (HMWMD).

26 G. "Financial interest" means an interest held by an individual which is an ownership or vested
27 interest in an entity or employment, or investment interests, or a prospective employment for
28 which negotiations have begun, or a directorship or officership in an entity, or immediate family
29 members.

30 H. "Fiscal year" means the period commencing July 1 of a calendar year and concluding June 30 of
31 the following calendar year.

32 I. "Homeowner" means, for purposes of this regulation, a Colorado resident who owns a dwelling as
33 demonstrated by that person's name appearing on a warranty deed or deed of trust, and who
34 lives in the home as their primary residence.

35 J. "LIRMA eligible certified radon mitigation contractor" means a company that has applied for
 36 eligibility to the LIRMA Program in accordance with the LIRMA Program policies and procedure
 37 manual and has been approved to participate in the program.

38 **21.2 Program goal**

39 The assistance program is created to address local community needs by funding the installation of radon
 40 mitigation systems and post-installation radon testing in low income homes showing elevated levels of
 41 radon. The program is intended to reduce the incidence of lung cancer caused by radon in qualified
 42 homeowner-occupied homes in Colorado.

43 **21.3 Homeowner eligibility for mitigation system assistance**

44 The following contains the criteria under which homeowners may receive assistance (funding) for the
 45 installation of radon mitigation systems under the Colorado LIRMA Program:

46 A. The home must be a homeowner-occupied home located within the State of Colorado. The
 47 following types of homes are eligible for the LIRMA Program:

- 48 1. Single family dwelling unit;
- 49 2. One-to four unit buildings. The unit occupied by the owner is eligible for mitigation
 50 assistance under the program;
- 51 3. Condominium or cooperative unit; or
- 52 4. Manufactured homes.

53 Rental units and/or properties listed for sale are not eligible for the LIRMA Program.

54 B. The homeowner applicant must be:

- 55 1. A resident of Colorado. Proof of residency must be established at the time of application;
 56 and
- 57 2. Be considered a low-income household and meet the low income limits specified in Table
 58 21-1 below.

59 **Table 21-1.** Table of annual income limits based on total Adjusted Gross Income from prior years federal
 60 income taxes.

Statewide Income Limits For Colorado								
Family Household Size								
# of Persons in Household:	1	2	3	4	5	6	7	8
Low Income	\$41,400	\$47,300	\$53,200	\$59,100	\$63,850	\$68,600	\$73,300	\$78,050

61 C. Assistance with mitigation system installation will be provided for qualified homes with radon
 62 levels exceeding 4 picocuries per liter (4 pCi/L) as tested using a certified test kit or certified
 63 radon measurement contractor. Initial radon testing will not be paid for or reimbursed under this
 64 program.
 65

66 D. Homes with mitigation systems currently installed are not eligible for mitigation assistance funding
 67 or reimbursement under this program.

68 E. Following mitigation system installation:

- 69 1. The LIRMA eligible certified radon mitigation contractor will provide the homeowner with
70 a certified test kit; and
- 71 2. The homeowner shall conduct the provided radon test no sooner than 24 hours and
72 within 7 days of the mitigation system installation. The homeowner must submit the radon
73 test results to the LIRMA Program within 30 days of the test.
- 74 F. Homes under the governance or requirements of a home owners association (HOA) must have
75 approval of the mitigation plan from the HOA.

76 **21.4 Homeowner applications for assistance**

- 77 A. Applicants (homeowners) seeking funding to pay for radon mitigation and post-mitigation radon
78 testing shall complete the LIRMA Homeowners Application as provided by the LIRMA Program.
- 79 B. In addition to any other penalty imposed by law, any applicant who knowingly or intentionally
80 provides false information to the department when applying for assistance may be denied funding
81 and shall be ineligible to receive any future funds under these rules.
- 82 C. Within 30 days of receiving a homeowner application for assistance, the LIRMA Program will
83 review the application and will:
- 84 1. Approve the application; or
- 85 2. Deny the application; or
- 86 3. Request additional information from the applicant.
- 87 D. Applicants who submit an incomplete application or who submit incomplete information or
88 documents in the application process will be given 30 days to correct or submit the necessary
89 information. Applicants who fail to provide the necessary information within 30 days of the LIRMA
90 Program request will result in the application being abandoned and no mitigation system funding
91 will be provided except where the applicant resubmits a full application with all necessary
92 information and documents. The LIRMA Program will make all reasonable efforts to contact the
93 applicant to request the additional information or documentation.
- 94 E. Timeline for assistance applications
- 95 1. Applications for assistance may be submitted throughout the year as funds remain
96 available. Once funding is no longer available, the LIRMA Program will cease to process
97 applications until additional funding becomes available. If funding is not available at the
98 time of application, the applicant may request that the LIRMA Program hold the
99 application (for up to 45 days) while the program awaits additional funding. Unless
100 otherwise indicated, the LIRMA Program will not hold applications for longer than 45 days
101 while waiting for funding.
- 102 If it has been longer than 45 days since the application was received by the LIRMA
103 Program, the applicant will be required to reapply and resubmit all necessary
104 documentation.
- 105 F. Request for application forms
- 106 1. Upon request the LIRMA Program will mail or email blank application forms to any
107 person(s) requesting such forms. A maximum of 10 application forms will be mailed at
108 any time. Application forms are also posted on the department website.

110 **21.5 Criteria for selecting awards to homeowners**

111 A. The LIRMA Program shall receive and review applications and select applicants on a first-come,
112 first-served basis and will be evaluated based upon the following criteria:

113 1. The funds are available during the current state fiscal year/funding cycle to fund the
114 radon mitigation system and post mitigation testing at the time the application is received;

115 2. The radon test results indicate that radon levels in the livable areas of the home exceed
116 the EPA recommended radon action level of 4 picocuries per liter (4 pCi/L) for radon as
117 tested by one of the following accepted testing methods:

118 a. A short term radon test using a certified test kit;

119 b. A long term radon test using a certified test kit; or

120 c. A test or measurement performed by a certified radon measurement contractor ;

121 All radon testing must be completed within a 12 month period prior to receipt of the
122 LIRMA Program homeowner application.

123 3. The applicant has provided documentation that they own and occupy the home as their
124 primary residence;

125 4. The applicant meets the low income criteria in accordance with Table 21-1.

126 B. The LIRMA Program shall have final authority to approve or deny the funding awards based upon
127 the documentation submitted or otherwise obtained by the department.

128 **21.6 Homeowner assistance limits**

129 A. Assistance amounts shall be limited to a maximum of \$1,500.00 per homeowner applicant unless
130 otherwise approved in advance by the LIRMA Program. All funds will be paid directly to the
131 LIRMA eligible certified radon mitigation contractor.

132 B. A person may not apply for assistance more than one time in a calendar year.

133 **21.7 Awarding of assistance monies and appeals**

134 A. The LIRMA Program shall award funds and will specify the amount of the assistance based upon
135 the contractor's mitigation plan and the LIRMA Program statement of work requirements for
136 LIRMA eligible certified radon mitigation contractors.

137 B. For the current application year, all award decisions by the LIRMA Program are final and not
138 subject to appeal or further review. However, any applicant may provide feedback on the LIRMA
139 Program implementation and processes at any time in order to facilitate continuous improvement,
140 efficiency, and effectiveness of the program.

141 **21.8 Application process to become a LIRMA eligible certified radon mitigation contractor**

142 A. Radon mitigation contractors seeking to become a LIRMA eligible certified radon mitigation
143 contractor shall:

144 1. Follow the requirements of the LIRMA Program as prescribed by the department;

145 2. Complete the Radon Contractor's LIRMA Application form as prescribed by the
146 department;

- 147 B. In addition to any other penalty imposed by law, any contractor applicant who knowingly or
148 intentionally provides false information to the department when applying to become a LIRMA
149 eligible certified radon mitigation contractor may be restricted from participating in the LIRMA
150 Program or from receiving mitigation funds under the LIRMA Program.
- 151 C. Within 30 days of receiving a contractor application, the LIRMA Program will review the
152 application and will:
- 153 1. Approve the application; or
- 154 2. Deny the application; or
- 155 3. Request additional information from the contractor applicant.
- 156 D. Contractor applicants who submit an incomplete application or who submit incomplete information
157 or documents in the application process will be given 30 days to correct or submit the necessary
158 information. Applicants who fail to provide the necessary information within 30 days of the LIRMA
159 Program request will result in the application being abandoned and the contractor will not be
160 added to the LIRMA eligible contractor list except where the applicant resubmits a full application
161 with all necessary information and documents. The LIRMA Program will make all reasonable
162 efforts to contact the contractor applicant to request the needed additional information or
163 documentation.
- 164 E. Timeline for contractor applications
- 165 1. Contractor applications may be submitted throughout the year. Approved applicants will
166 be added to the eligibility list within 30 days of the approval.
- 167 F. Delisting of contractors from approved list
- 168 1. At the discretion of the LIRMA Program, a mitigation contractor may be delisted
169 (removed) from the LIRMA eligible certified radon mitigation contractor list.
- 170 G. Mitigation contractor responsibilities
- 171 1. In addition to requirements specified by the LIRMA Program, contractors shall adhere to
172 the following requirements:
- 173 a. Installation of mitigation systems shall be completed in accordance with the
174 signed statement of work, completed in a timely manner within 60 days of the
175 approval of the mitigation plan;
- 176 b. Following mitigation system installation, a post-mitigation test showing levels
177 have been reduced below 4 pCi/L will be required for reimbursement to the
178 mitigation contractor.
- 179 c. Any mitigation contractor who knowingly or intentionally provides false
180 information to the department as part of a mitigation system installation may be
181 restricted from participating in the LIRMA Program or from receiving mitigation
182 funds under the LIRMA Program.
- 183 H. Request for application forms
- 184 1. Upon request the LIRMA Program will mail or email contractor application forms to any
185 person(s) requesting such forms. A maximum of 10 application forms will be mailed per
186 request. Application forms are also posted on the department website.

188 **21.9 Reporting requirements**

189 The LIRMA Program will make information about the LIRMA Program impact available on an annual
190 basis.

191 **21.10 Conflict of interest**

192 A. Any CDPHE Staff involved in reviewing or approving applications must disclose any potential or
193 actual conflict of interest, as defined in section 21.1, to the Radiation Program Manager. If the
194 Radiation Program Manager determines that the person has a potential conflict of interest, the
195 Radiation Program Manager shall assign an alternate person to review, or assist in the review, of
196 any application for which a conflict of interest may exist.

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