

211.9101 Definitions for KRS 211.9101 to 211.9135.

As used in KRS 211.9101 to 211.9135, unless the context requires otherwise:

- (1) "Alter" means to change or modify a building or building design, or to revise, rather than repair, a mitigation system or mitigation system design;
- (2) "Analytical analysis" means the act of analyzing the radon or radon progeny concentrations with active measurement devices;
- (3) "Building" means any structure used or intended to be used for supporting or sheltering any use or occupancy;
- (4) "Cabinet" means Cabinet for Health and Family Services;
- (5) "Certified" means meeting the certification requirements of a proficiency program for radon measurement, radon mitigation, or radon laboratory analysis;
- (6) "Commercial building" means any building other than a residential building, including those buildings intended for public purposes;
- (7) "Commissioner" means the commissioner of the Department for Public Health;
- (8) "Committee" means the Kentucky Radon Program Advisory Committee;
- (9) "Compensation" means something of value given or received in exchange for radon measurement, radon mitigation, or laboratory analysis;
- (10) "Contractor" means a person or business entity that provides goods or services to another person under the terms specified in a contract or verbal agreement, and who is not an agent or employee of that person;
- (11) "Direct supervision" means constant onsite supervision by a certified person;
- (12) "General supervision" means intermittent onsite supervision by a certified person who accepts responsibility for ensuring compliance by his or her employees or subcontractors with all applicable requirements under KRS 211.9101 to 211.9135;
- (13) "Government agency" means the Commonwealth of Kentucky, a state agency, a political subdivision, or any entity of local government;
- (14) "Laboratory analysis" means the act of analyzing the radon or radon progeny concentrations with passive measurement devices, or the act of calibrating radon or radon progeny measurement devices, or the act of exposing radon or radon progeny devices to controlled concentrations of radon or radon progeny;
- (15) "Measurement" means the act of testing the air, water, or soil using an active or passive measurement device for the presence of radon or radon progeny in the indoor environment of a building;
- (16) "Measurement device" means any active or passive device approved by a proficiency program and used for the measurement of radon or radon progeny in air, water, or soil in the indoor environment of a building;
- (17) "Measurement contractor" means a person certified by a proficiency program who provides radon measurement for compensation and who meets the requirements of KRS 211.9109;
- (18) "Mitigation" means the act of installing, repairing, or altering an active or passive system, for the purpose in whole or in part of reducing the concentration of radon or

- radon progeny in the indoor environment of a building;
- (19) "Mitigation contractor" means a person certified by a proficiency program who provides radon mitigation for compensation and who meets the requirements of KRS 211.9111;
 - (20) "Mitigation system" means any active or passive system designed to reduce radon concentrations in the indoor environment of a building;
 - (21) "Person" has the same meaning as in KRS 446.010;
 - (22) "Proficiency program" means either the National Radon Proficiency Program or the National Radon Safety Board;
 - (23) "Radon" means a naturally occurring radioactive element that exists as a colorless, odorless, and tasteless inert gas;
 - (24) "Radon decay products" means the four (4) short-lived radioactive elements polonium (Po-218), lead (Pb-214), bismuth (Bi-214), and polonium (Po-214) which exist as solids and immediately follow radon (Rn-222) in the decay chain;
 - (25) "Radon laboratory" means a business entity certified by a proficiency program that provides laboratory analysis for compensation and meets the requirements of KRS 211.9115;
 - (26) "Radon progeny" means any combination of the radioactive decay products of radon;
 - (27) "Registrant" means a person or business entity registered with the cabinet as a measurement contractor, mitigation contractor, or radon laboratory;
 - (28) "Research" means cabinet-approved scientific investigation that includes radon measurement, radon mitigation, or laboratory analysis;
 - (29) "Residential building" means detached one (1) to four (4) family dwellings not more than three (3) stories in height where occupants are primarily permanent in nature; and
 - (30) "Standard operating procedure" means a written document established by an accredited American National Standards Institute development organization that describes in detail commonly accepted methods for the performance of certain tasks associated with radon measurement, mitigation, or laboratory analysis.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 1, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 1, effective June 8, 2011.

211.9103 Creation of Kentucky Radon Program Advisory Committee -- Qualifications of members -- Terms -- Vacancies -- Quorum -- Officers.

- (1) The Kentucky Radon Program Advisory Committee is hereby created and shall be attached to the Cabinet for Health and Family Services for administrative purposes. Each member of the committee shall be a citizen and resident of the Commonwealth of Kentucky. The committee shall consist of nine (9) members as follows:
 - (a) Four (4) members shall be either a radon measurement contractor, a radon mitigation contractor, or a person associated with a radon laboratory conducting laboratory analysis and shall be appointed by the Governor from a list of six (6) names submitted to the Governor by the Kentucky Association of Radon Professionals;
 - (b) One (1) member shall be a representative of the home building industry and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Home Builders Association of Kentucky;
 - (c) One (1) member shall be a real estate salesperson or broker licensed under KRS Chapter 324 and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Kentucky Association of Realtors;
 - (d) One (1) member shall be a representative of a public health organization and shall be appointed by the Governor from a list of three (3) names submitted to the Governor by the Kentucky Cancer Consortium;
 - (e) One (1) member shall be the commissioner of the Department for Public Health, Cabinet for Health and Family Services, or his or her designee; and
 - (f) One (1) member shall be a citizen at large appointed by the Governor who shall represent the public and shall not be associated with or financially interested in the practice of radon measurement, mitigation, or laboratory analysis.
- (2)
 - (a) To be eligible for initial appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of appointment to the committee.
 - (b) Upon expiration of the initial appointments, to be eligible for appointment as a member of the committee under subsection (1)(a) of this section, a person shall have been actively engaged in the practice of radon measurement, mitigation, or laboratory analysis for not less than three (3) years immediately preceding the date of the appointment to the committee and hold a valid certification as a radon measurement contractor or radon mitigation contractor, or be associated with a radon laboratory with a valid certification.
- (3) Except for the commissioner, who shall serve as long as he or she holds his or her appointment as commissioner, the Governor shall initially appoint two (2) members for a term of four (4) years, two (2) members for a term of three (3) years, two (2) members for a term of two (2) years, and two (2) members for a term of one (1)

year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, members shall be appointed for terms of four (4) years. No person shall serve more than two (2) consecutive terms. Members shall serve until their successors are appointed.

- (4) Upon recommendation of the committee, the Governor may remove any member of the committee appointed by the Governor for poor attendance, neglect of duty, misfeasance, or malfeasance in office.
- (5) Vacancies in the membership of the committee for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.
- (6) A majority of the committee shall constitute a quorum to do business. The committee shall meet at least once each calendar quarter in a location designated by the chairperson. The committee may meet upon special call by the chairperson or a majority of the committee.
- (7) The committee shall elect a chairperson and a vice chairperson. The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at all meetings in the absence of the chairperson.
- (8) If the chairperson and vice chairperson are absent from a meeting of the committee when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.

Effective: June 8, 2011

History: Created 2011 Ky. Acts ch. 74, sec. 2, effective June 8, 2011.

211.9105 Powers and responsibilities of Radon Program Advisory Committee.

The committee shall:

- (1) Advise the cabinet with the review, development, and maintenance of standard operating procedures for radon measurement, radon mitigation, laboratory analysis, and quality control;
- (2) Advise the cabinet with preparing an annual budget for the use of moneys received by the cabinet from the collection of fees and fines, receipt of grants, and all other radon-related activities;
- (3) Review and comment on relevant administrative regulations that are promulgated pursuant to KRS 211.9101 to 211.9135 and make recommendations to and otherwise advise the cabinet on these matters;
- (4) Record minutes of committee meetings and proceedings which shall be documented and maintained for the committee by the cabinet in a public forum;
- (5) Make recommendations to the cabinet provided that the final determination rests with the cabinet;
- (6) Hold the first meeting of the committee no later than October 1, 2011, to be convened by the commissioner; and
- (7) Perform any other duties and responsibilities relating to the topic of radon that may be assigned by the cabinet.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 2, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 3, effective June 8, 2011.

211.9107 Prohibition against conduct of radon measurement, mitigation, or laboratory analysis without certification -- Exceptions.

No person or business entity shall conduct radon measurement, mitigation, or laboratory analysis in this Commonwealth after January 1, 2013, without the appropriate certification pursuant to KRS 211.9101 to 211.9135. No person or business entity shall advertise or claim to be a "certified measurement contractor," "certified mitigation contractor," or "certified radon laboratory," unless certified pursuant to KRS 211.9101 to 211.9135. Certification requirements under KRS 211.9101 to 211.9135 shall apply to a radon measurement contractor, radon mitigation contractor, or radon laboratory, but shall not apply to:

- (1) A person performing measurement or mitigation on a single-family residential building that he or she owns and occupies;
- (2) A person performing measurement on a residential or commercial building that he or she owns;
- (3) A person performing measurement who assists, and is under the general supervision of, a measurement contractor;
- (4) A person performing mitigation who assists, and is under the direct supervision of, a mitigation contractor;
- (5) An agent of the federal, state, or local government agency acting within an official capacity;
- (6) A person performing measurement or mitigation as part of a scientific research project approved by the cabinet;
- (7) A retail store or any other organization that sells or distributes radon measurement devices and is not engaged in a relationship with the client for other services, such as home inspection or real estate brokerage, and that does not conduct measurement, mitigation, or laboratory analysis;
- (8) A person performing measurement or mitigation as part of radon training approved by a proficiency program; or
- (9) A building contractor installing vent pipes during the construction of a commercial building or home.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 3, effective June 27, 2019. -- Amended 2016 Ky. Acts ch. 28, sec. 1, effective July 15, 2016. -- Created 2011 Ky. Acts ch. 74, sec. 4, effective June 8, 2011.

211.9109 Registration as radon measurement contractor -- Renewal of registration certificate -- Duties of measurement contractor.

- (1) The cabinet shall issue a radon measurement contractor registration certificate to any person certified for measurement who:
 - (a) Completes a registration process prescribed by the cabinet through promulgation of an administrative regulation; and
 - (b) Furnishes evidence of a general liability insurance policy that satisfies the requirements of KRS 211.9113.
- (2) The cabinet shall renew the radon measurement contractor registration certificate of any person who:
 - (a) Presents proof of compliance with a cabinet-approved proficiency program; and
 - (b) Who furnishes evidence of a general liability insurance policy that satisfies the requirements of KRS 211.9113;
- (3) A measurement contractor shall:
 - (a) Ensure all measurements are conducted in accordance with the applicable standard operating procedures;
 - (b) Maintain a quality control program plan in accordance with the standard operating procedures for measurement quality assurance and control;
 - (c) Ensure all measurements are conducted under the general supervision of a measurement contractor;
 - (d) Use or sell only measurement devices approved by the proficiency program that certifies the person; and
 - (e) Ensure all laboratory analysis is procured through a radon laboratory.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 4, effective June 27, 2019. -- Amended 2013 Ky. Acts ch. 68, sec. 2, effective June 25, 2013. -- Created 2011 Ky. Acts ch. 74, sec. 5, effective June 8, 2011.

211.9111 Registration as mitigation contractor -- Renewal of registration certificate -- Duties of mitigation contractor.

- (1) The cabinet shall issue a mitigation contractor registration certificate to any person certified for mitigation who:
 - (a) Completes a registration process prescribed by the cabinet through promulgation of an administrative regulation; and
 - (b) Furnishes evidence of a general liability insurance policy that satisfies the requirements of KRS 211.9113.
- (2) The cabinet shall renew the mitigation contractor registration certificate of any person who:
 - (a) Presents proof of compliance with a cabinet-approved proficiency program; and
 - (b) Who furnishes evidence of a general liability insurance policy that satisfies the requirements of KRS 211.9113.
- (3) A mitigation contractor shall:
 - (a) Ensure all mitigations are conducted in accordance with the applicable mitigation standard operating procedures;
 - (b) Maintain a quality control program plan in accordance with the applicable standard operating procedures for mitigation quality assurance and control;
 - (c) Ensure all mitigation is conducted under the direct supervision of a mitigation contractor;
 - (d) Ensure all post-mitigation measurement is conducted by a measurement contractor; and
 - (e) Ensure all radon mitigation systems repaired or altered on or after January 1, 2013, meet the applicable mitigation standard operating procedures.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 5, effective June 27, 2019. -- Amended 2013 Ky. Acts ch. 68, sec. 3, effective June 25, 2013. -- Created 2011 Ky. Acts ch. 74, sec. 6, effective June 8, 2011.

211.9113 Insurance policy required for mitigation and measurement contractors.

Each mitigation or measurement contractor shall maintain an insurance policy that:

- (1) Is issued by an insurance company or other legal entity permitted to transact insurance business in the Commonwealth of Kentucky;
- (2) Provides for general liability coverage for measurement contractors in an amount of at least two hundred fifty thousand dollars (\$250,000) that is maintained in effect at all times during the registration period;
- (3) Provides for general liability coverage for mitigation contractors and radon laboratories in an amount of at least five hundred thousand dollars (\$500,000) that is maintained in effect at all times during the registration period;
- (4) Lists the cabinet as a certificate holder of any insurance policy issued under subsection (1) of this section; and
- (5) States that cancellation or nonrenewal of the underlying liability insurance policy is not effective until the cabinet receives at least ten (10) days' written notice of the cancellation or nonrenewal.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 6, effective June 27, 2019. -- Amended 2013 Ky. Acts ch. 68, sec. 4, effective June 25, 2013. -- Created 2011 Ky. Acts ch. 74, sec. 7, effective June 8, 2011.

211.9115 Registration as radon laboratory -- Renewal of registration certificate -- Requirements for radon laboratory.

- (1) The cabinet shall issue a radon laboratory registration certificate to any business entity certified for radon laboratory analysis that completes a registration process prescribed by the cabinet through promulgation of an administrative regulation.
- (2) The cabinet shall renew the radon laboratory registration certificate of any business entity that:
 - (a) Presents proof of compliance with a cabinet-approved proficiency program; and
 - (b) Who furnishes evidence of a general liability insurance policy that satisfies the requirements of KRS 211.9113;
- (3) A radon laboratory shall:
 - (a) Ensure all laboratory analysis is conducted in accordance with the applicable laboratory analysis standard operating procedures; and
 - (b) Maintain a quality control program plan in accordance with the applicable standard operating procedures for laboratory analysis quality assurance and control.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 7, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 8, effective June 8, 2011.

211.9119 When business entity may engage in radon measurement, mitigation, or laboratory analysis.

A business entity may engage in radon measurement, mitigation, or laboratory analysis if the owner or an employee associated with the business entity is a measurement or mitigation contractor, or radon laboratory, as applicable.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 8, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 10, effective June 8, 2011.

211.9125 Sanctions for misconduct -- Cabinet's powers -- Appeals.

- (1) Subject to an administrative hearing conducted in accordance with KRS Chapter 13B, the cabinet may revoke, suspend, or restrict the registration of a registrant, refuse to issue or renew registration, reprimand, censure, place on probation, or impose a fine not to exceed five hundred dollars (\$500) per occurrence on a certified person or business entity who:
 - (a) Has been convicted of a felony under the laws of the Commonwealth of any crime that involves theft or dishonesty, or is a sex crime as defined by KRS 17.500;
 - (b) Has had disciplinary action taken against a professional license, certification, registration, or permit held by the person or business entity seeking registration;
 - (c) Engaged in fraud or deceit in obtaining certification or registration;
 - (d) Attempts to transfer the authority granted by the registration to another person or business entity;
 - (e) Disregards or violates the building codes, electrical codes, or related laws of this Commonwealth or ordinances of any city, county, urban-county government, consolidated local government, charter county government, or unified local government;
 - (f) Aids or abets any person attempting to evade the provisions of KRS 211.9101 to 211.9135 or the administrative regulations promulgated thereunder by the cabinet;
 - (g) Uses unfair or deceptive trade practices; or
 - (h) Knowingly violates any of the provisions of KRS 211.9101 to 211.9135 or any administrative regulation promulgated thereunder by the cabinet.
- (2) If an application for registration or renewal of registration is denied, the person or business entity seeking registration shall not conduct radon measurement, mitigation, or laboratory analysis within the Commonwealth of Kentucky.
- (3) Notwithstanding the existence or pursuit of any other civil or criminal remedy, the cabinet may institute proceedings in the Circuit Court of the county where the person resides or the business entity is located for an order enjoining the person or business entity from engaging or attempting to engage in activities that violate any provisions of KRS 211.9101 to 211.9135 or any administrative regulation promulgated thereunder by the cabinet.
- (4) Any final order of the cabinet may be appealed to the Circuit Court of the county in which the person resides or the business entity is located after a written decision is rendered in accordance with KRS Chapter 13B.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 10, effective June 27, 2019. -- Amended 2017 Ky. Acts ch. 158, sec. 37, effective June 29, 2017. -- Created 2011 Ky. Acts ch. 74, sec. 13, effective June 8, 2011.

211.9129 Cabinet's powers to examine, inspect, and test -- Prohibition upon interfering with inspection.

- (1) The cabinet may examine records of mitigation contractors, measurement contractors, and radon laboratories, including but not limited to conducting inspections of mitigation system installations and measurement locations in order to ensure that radon measurement, mitigation, and laboratory analysis are conducted in accordance with the applicable standard operating procedures.
- (2) The cabinet may test any equipment used for measurement, mitigation, or laboratory analysis or photograph or sketch any portion of a site, building, or equipment involved in measurement, mitigation, or laboratory analysis.
- (3) No person shall use or continue to use, or permit the use or continued use of, any radon mitigation system if an agent or inspector of the cabinet finds that the radon mitigation system was not constructed, installed, or altered in accordance with the applicable mitigation standard operating procedures.
- (4) For purposes of enforcing KRS 211.9101 to 211.9135 or any administrative regulation promulgated by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis, an agent or inspector of the cabinet shall have the power to enter upon premises at all reasonable times to make an inspection, question all persons, and require the production of radon mitigation system plans, sketches, diagnostic information, and other evidence.
- (5) Agents and inspectors of the cabinet shall be empowered to issue a stop order to any owner, agent, or occupant of real property requiring that the radon mitigation system thereon cease operation if that system has been found to be in violation of KRS 211.9101 to 211.9135 or any administrative regulation promulgated thereunder by the cabinet.
- (6) A person shall not interfere with an inspection conducted by an agent or inspector of the cabinet.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 11, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 15, effective June 8, 2011.

211.9131 Duty to report noncompliance with KRS 211.9101 to 211.9135 -- Location and retention of required records.

- (1) Any certified person or business entity shall report to the cabinet the discovery of any apparent noncompliance with any provision of KRS 211.9101 to 211.9135 or any administrative regulation promulgated thereunder by the cabinet pertaining to radon measurement, mitigation, or laboratory analysis.
- (2) Records required by this chapter or administrative regulations promulgated under KRS 211.9101 to 211.9135, including but not limited to records of radon measurement, mitigation, quality control program plans, calibration certifications, laboratory analysis activities, worker health and safety plans, and equipment repairs shall be retained by registrants, as applicable, for a minimum period of five (5) years or the length of time of any warranty or guarantee, whichever is greater. Records obtained by the cabinet are exempt from the disclosure requirements of KRS 61.870 to 61.884, except that the cabinet shall make the records available upon request:
 - (a) To the owner or occupant of a building; and
 - (b) To the public aggregated at the zip code level without identifying individual homeowners or individual property locations.
- (3) Any measurement or mitigation contractor applying for registration or renewal of registration shall specify, for approval by the cabinet, the location where records required under this section shall be maintained for inspection by the cabinet. This location shall be within the Commonwealth of Kentucky.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 12, effective June 27, 2019. -- Created 2011 Ky. Acts ch. 74, sec. 16, effective June 8, 2011.

211.9133 Radon mitigation and control fund.

- (1) There is created the radon mitigation and control fund as a separate trust and agency fund in the State Treasury, to be administered by the cabinet. All fees, fines, and other moneys received by the cabinet pursuant to KRS 211.9101 to 211.9135 shall be deposited in the fund and shall be used for the implementation of KRS 211.9101 to 211.9135, and are hereby appropriated for those purposes.
- (2) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.
- (3) Any interest earnings of the fund shall become part of the fund and shall not lapse.

Effective: June 8, 2011

History: Created 2011 Ky. Acts ch. 74, sec. 17, effective June 8, 2011.

211.9135 Cabinet's role as radon control agency for Commonwealth.

- (1) The Cabinet for Health and Family Services shall be the regulatory agency for the control of radon in the Commonwealth of Kentucky.
- (2) The cabinet shall develop and conduct programs for evaluation and control of activities related to radon, including laboratory analyses, mitigation, and measurements.
- (3) The cabinet shall:
 - (a) Promulgate administrative regulations in accordance with KRS Chapter 13A to administer, coordinate, and enforce KRS 211.9101 to 211.9135, including the establishment of fees not to exceed costs to the cabinet;
 - (b) Maintain a public list of all certified persons or business entities registered by the cabinet;
 - (c) Issue a registration certificate to certified persons or business entities registered by the cabinet;
 - (d) Promote the control of radon in the Commonwealth;
 - (e) Design and administer, or participate in the design and administration of educational and research programs to ensure citizens of the Commonwealth are informed about the health risks associated with radon;
 - (f) Appoint personnel to perform duties and fix their compensation;
 - (g) Issue subpoenas, administer oaths, examine witnesses, investigate allegations of wrongdoing, and conduct administrative hearings in accordance with KRS Chapter 13B to enforce KRS 211.9101 to 211.9135; and
 - (h) Collect or receive all fees, fines, and other moneys owed pursuant to KRS 211.9101 to 211.9135, and deposit all those moneys into the radon mitigation and control fund established by KRS 211.9133.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 159, sec. 13, effective June 27, 2019. -- Amended 2011 Ky. Acts ch. 74, sec. 18, effective June 8, 2011. -- Amended 2005 Ky. Acts ch. 99, sec. 381, effective June 20, 2005. -- Amended 1998 Ky. Acts ch. 426, sec. 322, effective July 15, 1998. -- Created 1992 Ky. Acts ch. 328, sec. 1, effective July 14, 1992.

Formerly codified as KRS 211.855.