

CHAPTER 38**HOME ENERGY SAVINGS PROGRAM****Authority**

N.J.S.A. 52:27F-11(g).

Source and Effective Date

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Chapter 38, Home Energy Savings Program expires on April 1, 1996.

Chapter Historical Note

Chapter 38, Home Energy Savings Program, was recodified from N.J.A.C. 14A:21 and readopted as new rules pursuant to Executive Order No. 66(1978) by R.1991 d.165, effective April 1, 1991. See: Source and Effective Date. For prior chapter historical information see the Historical Note at N.J.A.C. 14A:21 and see section annotations at N.J.A.C. 14A:21, for specific prior rulemaking activity.

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SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**14:38-1.1 Scope and purpose**

(a) The following rules implement the Home Energy Savings Program (HESP) that expands upon the former Residential Conservation Service (RCS) State Plan which the former New Jersey Department of Energy submitted to the U.S. Department of Energy.

(b) The purpose of the HESP Program is to encourage the installation of energy conservation measures and renewable resource measures in new and existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers.

14:38-1.2 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Appropriate covered utility” means the electric covered utility if the customer heats with electric or a fuel other than natural gas and the gas covered utility if the customer heats with natural gas.

“BPU” means the New Jersey Board of Public Utilities.

“Caulking” means pliable materials (and includes, but is not limited to, materials commonly known as sealants, putty, or glazing compounds) used to reduce the passage of air and moisture by filling in small gaps including:

1. At fixed joints on a building;
2. Underneath baseboards inside a building;
3. In exterior walls at electric outlets;
4. Around pipes and wires entering a building;
5. Around dryer vents and exhaust fans in exterior walls; and
6. Anywhere where two different types of building material meet.

“Ceiling insulation” means a material primarily designed to resist heat flow which is installed between the conditioned area of a building and an unconditioned attic. Where the conditioned area of a building extends to the roofs, the term “ceiling insulation” also applies to such material used between the underside and upperside of the roof.

“Clock thermostat” means a device which is designed to reduce energy consumption by regulating the demand on the heating or cooling system in which it is installed, and uses:

1. A temperature control device for interior spaces incorporating more than one temperature control level; and
2. A clock or other automatic mechanism for switching from one control level to another.

“Covered utility” means an investor owned utility providing natural gas or electric energy, or both, in New Jersey and holding a certificate of public convenience and necessity from the Board of Public Utilities pursuant to N.J.S.A. 48:1 et seq.

“Department” means the former New Jersey Department of Energy, which has since been abolished. The majority of its former functions have been transferred to other State agencies, including the BPU.

“Devices associated with electric load management techniques” means customer-owned or leased devices that reduce the maximum kilowatt demand on an electric utility and which are either:

1. Part of a radio, ripple or other utility controlled load switching system on the customer’s premises;
2. Clock-controlled load switching devices;
3. Interlocks, and other load-actuated, load-limiting devices; or
4. Energy storage devices with control systems.

“Duct insulation” means a material primarily designed to resist heat flow which is installed on a heating or cooling duct in an unconditioned area of a building.

“Efficient use of shading” means using shades or drapes to:

1. Block sunlight from entering a building in the cooling season;
2. Allow sunlight to enter during the heating season; and
3. Cover windows tightly at night during the heating season;

“EIL” means the Energy Information Line.

“Eligible customer” means a person who:

1. Owns and/or occupies a residential building; and
2. Receives a fuel bill from a covered utility or a home heating supplier for fuel used in such residential building.

“Energy conservation measures” means the following measures in a residential building:

1. Caulking.
2. Weatherstripping.
3. Furnace efficiency modifications.
4. Replacement central air conditioner.
5. Ceiling insulation.
6. Wall insulation.
7. Floor insulation.
8. Rim joist insulation.
9. Duct insulation.
10. Pipe insulation.

11. Water heater insulation.
12. Storm window or door.
13. Thermal window or door.
14. Window heat gain and loss retardant materials.
15. Devices associated with electric load management techniques.
16. Clock thermostat.
17. Solar hot water systems.
18. Replacement solar swimming pool heaters.
19. Solar sunspace.
20. Any other energy conservation measure designated by the BPU, that has a payback less than or equal to its expected useful life.

“Energy conserving practices” or “program practices” means:

1. Heating unit efficiency maintenance and adjustments;
2. Optimizing the burner firing rate.
3. Nighttime temperature setback.
4. Reducing thermostat settings in winter.
5. Raising thermostat settings in summer.
6. Water flow reduction in showers and faucets.
7. Reducing hot water temperatures.
8. Reducing energy use when a home is unoccupied.
9. Plugging leaks in attics, basements, and fireplaces.
10. Sealing leaks in pipes and ducts.
11. Efficient use of shading.
12. Any other low or no-cost practice designated by the BPU which:
 - i. Saves energy; and
 - ii. Does not require the installation of any energy conservation measure.

“Floor insulation” means a material primarily designed to resist heat flow which is installed between the first level conditioned area of a building and an unconditioned basement, a crawl space, or the outside beneath it. If the first level conditioned area of a building is on a ground level concrete slab, the term “floor insulation” also means such material installed around the perimeter of or on the slab. In the case of mobile homes, the term “floor insulation” also means skirting to enclose the space between the building and the ground.

“Flue opening modification” means an automatically operated damper installed in a gas-fired heating unit (often called a vent damper) which:

1. Is installed downstream from the drafthood; and
2. Conserves energy by substantially reducing the flow of heated air through the unit when the unit is not in operation.

“Furnace efficiency modifications” means:

1. Replacement furnaces or boilers.
2. Replacement burner (oil-fired unit).
3. Flue opening modification.
4. Intermittent ignition device.

“Furnace replacement burner (oil-fired unit)” means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

“Heating unit efficiency maintenance and adjustments” means cleaning and combustion efficiency adjustment of gas or oil heating units, periodic cleaning or replacement of air filters on forced air heating or cooling systems, lowering the bonnet or plenum thermostats to 80 degrees F on a gas or oil forced-air heating unit, and turning off the pilot light on a gas heating unit during the summer.

“Home Energy Savings Program (HESP)” means the program required to be implemented under this chapter.

“Home heating supplier” means a person who sells or supplies home heating fuels (including No. 2 home heating oil, kerosene, coal, wood, butane, and propane) to an eligible customer for consumption in a residential building. The term also applies to any person who offers heating unit maintenance on a contractual or emergency basis.

“Installer’s warranty” means the written warranty by the installer for the installation of any program measure that stipulates that any defect in materials, manufacture, design, or installation found within one year from the date of installation shall be remedied without charge and within a reasonable period of time.

“Manufacturer’s warranty” means the written warranty by the manufacturer of a program measure offered under the HESP Program. The eligible customer for whom the measure is installed, at a minimum, shall be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials for those measures found within one year from the date of installation to be defective due to materials, manufacture or design.

“Master Record” means the record of qualified installers and suppliers compiled by the BPU pursuant to N.J.A.C. 14:38-7.

“Night time temperature setback” means manually lowering the thermostat control setting for the heating unit during the heating season to a maximum of 60 degrees F. during sleeping hours.

“Optimizing the burner firing rate” means decreasing the firing rate of an oil-fired heating unit.

“Participating home heating supplier” means any home heating supplier who wishes to participate in the HESP Program and complies with this chapter.

“Passive solar space heating and cooling systems” means systems that make most efficient use of, or enhance the use of, natural forces—including solar insolation, winds, night time coolness and opportunity to lose heat by radiation to the night sky—to heat or cool living space by the use of conductive, convective or radiant energy transfer. Passive solar systems include only:

1. Direct gain glazing systems;
2. Indirect gain systems;
3. Solaria/sunspace systems;
4. Window heat gain retardants.

“Payback” means the amount of time a customer would need to recover the cost of an investment in a program practice or measure from the energy saved by that measure or practice. All payback estimates will use a simple payback calculation: cost of investment/energy savings from first year. All payback estimates will be given in years.

“Pipe insulation” means a material primarily designed to resist heat flow which is installed on a heating or cooling pipe in an unconditioned area of a building.

“Plugging leaks in attics, basements, and fireplaces” means:

1. Installing scrap insulation or other pliable materials in gaps around pipes, ducts, fans, or other items which enter the attic or basement from a heated space;
2. Installing fireproof material to plug any holes around any damper in a fireplace; and
3. Adding insulation to an attic or basement door.

“Program announcement” means the information and offer of services required to be sent by each covered utility to every eligible customer in its service area pursuant to N.J.A.C. 14:38-2.

“Program audit” means an on-site evaluation of a residential dwelling by a program auditor from which the applicability of program measures is evaluated.

“Program auditor” means any individual employed by the BPU or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the BPU who meets all of the qualifications contained in N.J.A.C. 14:38-5.2 and has successfully passed a BPU auditor.

“Program inspector” means any individual employed by the BPU or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the BPU who meets all of the qualifications contained in N.J.A.C. 14:38-5.3 and has successfully passed a BPU inspector test.

“Program measures” mean energy conservation measures and energy conserving practices.

“Public utility” means any person which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

“Raising thermostat settings in summer” means setting the thermostat control for an air conditioner to 78 degrees F. or higher during the cooling season.

“Reducing energy use when a home is unoccupied” means reducing the thermostat setting to between 55 and 60 degrees F. when a home is unoccupied for four hours or longer in the heating season, turning an air conditioner off in the cooling season when the home is unoccupied, and turning a water heater off when a home is vacant for two days or longer.

“Reducing hot water temperatures” means manually setting back the water heater thermostat to 120 degrees F., and reducing the use of heater water for clothes washing.

“Reducing thermostat settings in winter” means limiting the maximum daytime thermostat control setting for the heating unit to 68 degrees F. during the heating season.

“Renewable resource measures” means the following measures in or with respect to a residential building:

1. Solar domestic hot water systems.
2. Passive solar space heating and cooling systems.
3. Wind energy devices.
4. Replacement solar swimming pool heaters.

“Replacement burner (oil-fired unit)” means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

“Replacement central air conditioner” means a central air conditioner which replaces an existing central air conditioner of the same fuel type and which reduces the amount of fuel consumed due to an increase in efficiency.

“Replacement furnaces or boilers” means a furnace or boiler, including a heat pump, which replaces an existing furnace or boiler of the same fuel type and which reduces the amount of fuel consumed due to an increase in combustion efficiency, improved heat generation or reduced heat losses.

“Replacement solar swimming pool heaters” means devices which are used solely for the purpose of using the sun’s energy to heat swimming pool water and which replace a swimming pool heater using electricity, gas and other fossil fuel.

“Residential building” means any building used for residential occupancy which:

1. On the date of the program audit request has had a certificate of occupancy for more than two years;
2. Has a system for heating, cooling or both heating and cooling living spaces; and
3. Contains at least one, but not more than four, dwelling units. Multi-family dwellings not centrally heated or cooled, mobile homes, townhouses and rowhouses in rows of more than four separate houses are included in this definition.

“Residential Conservation Service (RCS) Program” means the program required to be implemented pursuant to the New Jersey Residential Conservation Service State Plan and this chapter, which shall be known in New Jersey as the Home Energy Savings Program.

“Rim joist insulation” means a material primarily designed to resist heat flow which is installed along the foundation under the first level conditioned area of a building.

“Sealing leaks in pipes and ducts” means installing caulking in any leak in a heating or cooling duct, tightening or plugging any leaking joints in hot water or steam pipes, and replacement of washers in leaking water valves.

“Solar domestic hot water systems” means equipment designed to absorb the sun’s energy, using South-facing solar collectors (+ or – 30 degrees of True South), and to use this energy to heat water for use in a residential building other than for space heating.

“Solar sunspace system” means a structure of glass, fiberglass or similar transparent material which is South-facing (+ or – 30 degrees of True South) and is attached to the existing residence in such a way as to allow for air circulation to bring heat into the residence, and which is able to be

closed off from the residential structure during periods of low solar insolation.

“Storm window or door” means a window or door or glazing material placed outside or inside an ordinary or prime window or door, creating an air space, to provide greater resistance to heat flow than the prime windows or doors alone.

“Supplier warranty” which means the written warranty by the supplier of a program measure offered under the HESP Program, provided, at a minimum, to any person who purchases the measure from such supplier a warranty equivalent to a manufacturer’s warranty.

“Thermal window or door” means a window or door unit with improved thermal performance either through the use of two or more sheets of glazing material affixed to a window or door frame to create one or more insulated air spaces or the use of insulating material within a door.

“Wall insulation” means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

“Water flow reduction in showers and faucets” means placing a device in a shower head or faucet to limit the maximum flow to 2.75 gallons per minute at 80 pounds per square inch of water pressure, or replacing existing shower heads or faucets with those having built-in provisions for limiting the maximum flow to 2.75 gallons per minute at 80 pounds per square inch of water pressure.

“Water heater insulation” means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

“Weatherstripping” means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

“Window heat gain and loss retardant materials” means those materials which significantly reduce summer heat gain through windows and/or which significantly reduce heat loss through windows in winter by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens and films, or movable rigid insulation.

SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14:38-2.1 Scope

(a) Beginning January 26, 1991, each covered utility shall send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, 1996.

Such program announcements may be cycled by the covered utilities by route service areas. The program announcements shall be in a form provided, or approved in advance by the BPU. The BPU shall have 30 calendar days from the date of proposed form submittal by the covered utility to approve, reject or otherwise modify the form of the proposed program announcement. The BPU's failure to act within the 30 day period shall constitute automatic approval.

(b) A program announcement shall be sent with either the customer's utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the BPU. The BPU shall have 30 calendar days from the date of the proposed promotional campaign submittal by the covered utility to approve or reject the proposed promotional campaign. The BPU failure to act within the 30-day period shall constitute automatic approval. If an energy conservation plan, including the promotional efforts related to HESP program services, has been separately approved by the BPU, no separate submittal of a promotional campaign is necessary under this subchapter.

14:38-2.2 Contents and prohibitions

(a) The program announcement may include all of the following for a typical New Jersey residential building, as specified from time to time by the BPU:

1. A list and description of program measures.
2. Estimated saving expressed in ranges of dollars that result from taking advantage of individual program measures over one year's time. Such estimated savings shall be calculated by the BPU from time to time and shall be made available for use by the covered utilities.
3. A description and offer of available program services, instructions regarding how to apply for them, and the cost, if any, for each service, including instructions on how to apply for a program audit.
4. A description of the heating unit analysis as required in N.J.A.C. 14:38-3.2(e) and 3.3(b).

(b) The program announcement shall not include:

1. Any brand names or advertising for sale, installation or financing of program measures; or
2. Any information on products which are not program measures; or
3. Any solicitation, recommendation, suggestion or advice to switch from one type of fuel to another type of fuel, either in the program announcement itself nor in any printed matter included with the program announcement.

14:38-2.3 New customers

(a) Each covered utility shall identify and send a program announcement to each new eligible customer within 60 calendar days of the date service is established in the customer's name.

(b) Each covered utility shall inform each new eligible customer in writing within 60 calendar days of the date service is established in the customer's name that upon request, the customer may receive at no charge, a copy of the results of any past program audit of the customer's residence which a covered utility may have performed pursuant to this chapter.

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14:38-3.1 Program services

(a) All covered utilities shall offer and provide, upon request, the following program services to all eligible customers:

1. A program audit of all applicable program measures in a form to be prescribed or approved by the BPU;
2. Lists of participating installers and suppliers who install or sell program measures, and in a form specified or approved by the BPU;
3. A list and description of all available programs that fund program measures, including loans, grants, rebates and tax credits;
4. Conciliation procedures; and
5. Conservation literature in a form specified or approved by the BPU.

(b) All covered utilities shall designate toll-free telephone number(s) by which eligible customers may request program services.

(c) All covered utilities receiving requests for program services from eligible customers shall record the requests and the arrangements made by the covered utility for the audit in a form to be prescribed by the BPU. All such records shall contain the following information, if available, from the customer:

1. Name and address of customer;
2. Type of program services requested;
3. Dates scheduled for providing the services, and date services were completed;
4. Dwelling type;
5. Type of fuel used;
6. Time customer is home most often;
7. Media sources from which customer heard about program;
8. The name of the customer's home heating supplier;
9. The name of the customer's covered utilities;

10. Information on whether the customer qualifies for a program audit free of charge; and

11. Phone number where the customer can be reached during the daytime.

(d) The BPU shall also receive requests from eligible customers for program services and shall record the same information required by (c) above.

(e) The BPU staff shall randomly perform on-site monitoring of utility audits and/or shall randomly perform post-audit interviews or administer questionnaires in order to ensure compliance with this chapter. In order to facilitate this review, each utility shall maintain at its offices or cause to be made available at the offices of its HESP subcontractors, the following information and upon the Board's request shall provide the same:

1. A schedule of upcoming auditor visits, including address, date and time of each; and

2. A list of all audits performed, with the address, date and time of each.

14:38-3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the BPU and requests a program audit, the BPU shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with a fuel other than natural gas contacts the BPU and requests a program audit, the BPU shall refer that request, including that part which requires a heating unit analysis, to an appropriate covered utility.

(c) Upon receiving a referral from the BPU, each covered utility shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with fuel purchased from a home heating supplier the utility shall record the same information required by N.J.A.C. 14:38-3.1(c).

(e) The utility shall make an oil heat customer aware that he or she has the option to select either a home heating supplier to perform the heating unit analysis or the auditor may perform it at the time of the audit. The customer shall be informed of the purpose and scope of the test and of the potential fee involved. If the customer has had a heating unit analysis within the preceding six months, these Combustion Efficiency Test (CET) results may be used in the audit calculations.

14:38-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit, including an analysis of any oil-fired heating unit, to deter-

mine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, that utility must so notify the BPU, in writing, and contact each eligible customer requesting the services within 30 working days of the request or referral to set up an appointment and complete the program audit within 60 working days of the date of the request or referral.

(b) The covered utility shall not directly perform the analysis of any oil-fired heating unit. The utility may utilize their audit subcontractor to perform all required program services. The purpose of the analysis is solely to test the efficiency of the heating unit. The purpose of the analysis is not to identify and/or repair malfunctions in the heating unit.

(c) No covered utility or company under contract with a covered utility shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service. Nor shall such utility or company under contract with a covered utility counsel, advise, suggest or recommend one fuel type over another type of fuel.

(d) No covered utility or company under contract with covered utility shall discriminate unfairly among eligible customers participating in the program.

14:38-3.4 Applicability of program measures

(a) Every auditor shall use the program audit to determine which program measures are applicable for each residential building. The auditor shall make the final determination of the applicability of a program measure.

(b) A program measure is applicable in a residence if:

1. The measure is not presently in the residence;

2. The installation of the measure is not a violation of Federal, State or local law or regulations;

3. With respect to ceiling insulation, the difference between the effective R-value of any existing insulation and the program measure level for that residence is R-11 or more, and the building is not a mobile home;

4. With respect to solar domestic hot water systems, a site exists on or near the residence which is free of major obstructions to solar radiation;

5. With respect to flue opening modifications, the heating unit is located in a conditioned area of the house;

6. With respect to replacement central air conditioners, the residential building has a central air conditioner that is approximately five years old or older;

7. With respect to replacement furnaces or boilers, the existing unit is approximately five years old or older or is inoperable;

8. With respect to water heater insulation, the remaining useful life of the water heater appears to be three years or more and space is available around the water heater to install insulation;

9. With respect to clock thermostats, the residence currently has a thermostat or the heating or cooling unit is compatible with a clock thermostat;

10. With respect to swimming pool heaters, there is an existing heated swimming pool and a site exists near the pool which is free of major obstruction to solar radiation;

11. With respect to wall insulation, there is no insulation in a substantial portion of the exterior walls, and the building is not a mobile home;

12. With respect to floor insulation, no floor insulation is present;

13. With respect to rim joist insulation, no rim joist insulation is present;

14. With respect to solar sunspaces, an evaluation is made only if a site exists which is of sufficient size and orientation and is free of major obstruction of solar radiation during the heating season.

14:38-3.5 Cost, savings and payback estimates

(a) The auditor shall calculate costs, savings and payback estimates for all applicable program measures. These shall:

1. Be based upon calculation procedures, and estimates of cost of installation and materials, prepared and provided by the BPU; and

2. Be based upon adequate measurements taken during the audit, including actual measurements and inspections of the building shell, space heating, space cooling and water heating equipment.

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency corrected for cycling losses, pursuant to a procedure provided to the auditor by the BPU.

(c) All costs, savings and payback estimates for an oil-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency conducted pursuant to N.J.A.C. 14A:3-3 and corrected for cycling losses, pursuant to a procedure provided or approved by the BPU.

(d) All costs, savings and payback estimates for an applicable solar hot water system shall be based upon the following information which shall be disclosed to the eligible customer:

1. Square feet of collector;
2. The capacity of storage;

3. Estimated percent of the water heating load to be met by solar energy; and

4. Location of collectors.

(e) All costs, savings and payback estimates for applicable solar sunspace shall be based upon the following information:

1. The estimated percent of the heating load to be met by the system;

2. The approximate dimensions of such system; and

3. The collection storage characteristics.

14:38-3.6 Results of the program audit

(a) As part of every program audit each auditor shall provide a written list on a form provided or approved by the BPU of energy conserving practices at the time of onsite evaluation. The auditor shall:

1. Determine the applicability of each practice;

2. Explain each one of the applicable practices to the eligible customer;

3. Explain the importance of completing applicable program practices before any energy conservation measure is installed.

(b) Upon completion of the program audit, every auditor shall provide the program audit results in writing within 10 working days to each eligible customer who receives a program audit. The program audit results shall be in a form prescribed or approved by the BPU. The auditor shall provide a telephone number which the eligible customer may call to review the audit results.

(c) Program audits results shall include the following:

1. Home characteristics to include:

i. Number of occupants;

ii. Building type;

iii. Approximate age of building;

iv. Space heating fuel type;

v. Space heating efficiency, assumed or actual;

vi. Space heating system type;

vii. Water heating fuel type;

viii. Water heating system type;

ix. Approximate building square footage;

x. Approximate annual heating cost based on billing history, where feasible.

2. An estimate of the total costs (materials and labor), expressed in dollars for each applicable program measure addressed in the program audit;

3. An estimate of the total cost, expressed in dollars, of installation by the customer of each applicable program measure addressed in the program audit; however, such estimates shall not be provided for replacement central air conditioners, wall insulation, furnace efficiency modifications, devices associated with load management techniques, and thermal windows.

4. An estimate of the savings, expressed in dollars, which would occur during the first year from installation of each applicable program measure addressed in the program audit;

5. An estimate of payback expressed in years for installation of each applicable program measure addressed in the program audit;

6. The following disclosure, conspicuously placed and highlighted:

“THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY BOARD OF PUBLIC UTILITIES CRITERIA FOR RESIDENTIAL PROGRAM AUDITS. HOWEVER, ACTUAL INSTALLATION COSTS AND ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY DIFFER FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY.”

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure, which example shall be in a form provided or approved by the BPU.

8. If any tax credits are available, the possible economic benefits to the customer of existing Federal or State tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing an applicable energy conservation measure.

14:38-3.7 Additional information

(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit:

1. Lists of participating installers and suppliers who install or sell program measures, in a form specified or approved by the BPU;

2. A list and description of all available programs that fund program measures, including loans, grants, rebates and tax credits;

3. Information on participation in utility/customer conciliation procedures; and

4. Conservation literature in a form specified or approved by the BPU.

14:38-3.8 Prohibitions

(a) No program auditor shall provide costs, savings or payback estimates resulting from the installation of any product or measure which is not a program measure.

(b) No program auditor shall recommend a particular supplier, installer or lender who supplies, installs or finances the sale or installation of any program measure.

(c) No program auditor shall recommend one fuel type over another.

(d) Utilities are responsible for insuring that program auditors employed by or under contract with covered utility do not provide information regarding fuel switching.

SUBCHAPTER 4. CUSTOMER BILLING, TERMINATION OF SERVICE AND PAYMENTS

14:38-4.1 Services required

(a) When billing a customer for a program audit, each covered utility shall identify the charge and list it separately on the first bill rendered for the charge.

(b) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility shall credit the portion of the payment that exceeds the charge for utility service or fuel to program charges, unless the customer specifies otherwise.

14:38-4.2 Prohibitions

No covered utility or home heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer upon customer default for program services.

14:38-4.3 Payments

(a) All program services, except for a program audit, shall be provided at no cost to any eligible customer.

(b) No eligible customer shall be charged more than \$15.00 for a program audit including a home heating analysis. Any eligible customer who is either eligible for a “lifeline credit” pursuant to N.J.S.A. 48:2-29.16 et seq. or lives in a household where the gross annual income is less than or equal to 150 percent of the poverty level income for that household as defined by the U.S. Department of Health and Human Services guidelines shall receive a program audit at no cost.

SUBCHAPTER 5. AUDITORS, INSPECTORS, AND INSTALLERS: QUALIFICATIONS AND TESTING

14:38-5.1 General

(a) All auditors and inspectors of program measures shall be qualified by the BPU as to basic skills necessary to perform such tasks. Each auditor and inspector shall take a written test, prepared and administered by the BPU, prior to being qualified to conduct audits and/or inspections. The BPU may require that evidence of successful completion of energy auditor or inspector training be presented prior to testing. The BPU may retest any or all auditors and/or inspectors upon notice as audit procedures or installation standards change, or for good cause as determined by the BPU.

(b) Any home heating supplier who has previously passed a BPU-approved test and has been qualified by the BPU may apply for and receive a waiver of testing and qualification standards as set forth herein. Any auditor, inspector or home heating supplier may apply for and receive a waiver of testing and qualification standards if such person submits written proof which, in the opinion of the BPU, establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to heating units.

(c) All building inspectors who are properly designated by the Commissioner of Community Affairs shall be exempt from the BPU's requirement of testing and qualification of inspectors.

14:38-5.2 Qualifications of auditors

(a) Persons conducting a program audit shall have the following qualifications:

1. A general understanding of the three types of heat transfer and the effects of temperature and humidity on heat transfer;
2. A general understanding of residential construction terminology and components;
3. A general knowledge of the operation of the heating and cooling systems used in residential buildings;
4. A general knowledge of the different types of each applicable program measure, the advantages, disadvantages and applications of each; and any applicable installation standards;
5. The capability to conduct the program audit, including:

i. Familiarity with the energy conserving practices required to be audited;

ii. Ability to determine the applicability of program measures; and

iii. A proficiency in the pertinent auditing procedures for each applicable program measure.

6. Where a heating unit efficiency modification is an applicable program measure, a working ability to calculate the seasonal efficiency and steady-state efficiency of the furnace or boiler;

7. Where a solar energy measure is an applicable program measure, and understanding of the nature of solar energy and its residential applications, including:

i. Insulation;

ii. Shading;

iii. Heat capture and transport; and

iv. Where appropriate, heat transfer for hot water and space heating.

8. The ability to convey this information and the results of the program to eligible customers in easily understandable terms.

(b) Home heating suppliers may be qualified to conduct a specific part of an audit and may be tested accordingly.

14:38-5.3 Qualifications for inspectors

(a) Inspectors of program measures shall be thoroughly familiar with applicable installation standards. Inspectors shall be able to examine installations for compliance with applicable installation standards.

(b) Inspectors may be qualified to conduct inspections of one or more types of program measure installations, and shall be tested and qualified accordingly by the BPU.

14:38-5.4 Disqualification of auditors and inspectors

(a) The BPU may disqualify any auditor or inspector from participating in the program.

(b) Grounds for disqualification include, but are not limited to the following:

1. Violation, within three years prior to the date of application, of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership or other business entity, by a person who is a principal of the corporation, partnership or business entity;

3. Violation of any Federal or State anti-trust statutes, or Federal Anti-Kickback Act;

4. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

5. Any other cause affecting the responsibility of an auditor or inspector of such a serious and compelling nature as may be determined by the Department to warrant disqualification, including such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such a regulation; or

6. Failure to fully comply with all applicable requirements of this chapter.

14:38-5.5 Procedures for disqualification

(a) Any auditor or inspector whom the BPU plans to disqualify from participating in the program shall receive written notice from the BPU of the disqualification and the grounds therefor at least 30 days before such disqualification.

(b) The BPU shall allow the auditor or inspector to respond in writing to the allegations contained in the notice. All such responses must be received by the BPU no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor or inspector who has been disqualified by the BPU may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement, under oath, setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the BPU erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the BPU's previous decision, on material grounds;

3. Actual change of ownership or effective control; and

4. Elimination of the causes for which disqualification occurred.

(d) The BPU shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor or inspector of its decision whether to allow the auditor or inspector to continue to participate in the HESP Program.

14:38-5.6 Audit subcontractors

Covered utilities may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the BPU evidence of compliance with the above requirement upon request.

SUBCHAPTER 6. INSPECTION OF INSTALLATIONS

14:38-6.1 Mandatory inspections

(a) All inspections of the following installations of program measures shall be conducted pursuant to the Uniform Construction Code, N.J.A.C. 5:23-1.1 et seq.:

1. Flue opening modifications;
2. Solar water heating systems and solar sunspace systems;
3. All major heating and cooling system modifications; and
4. All types of in-wall blown or poured insulation.

(b) If a violation of the requirements of the Uniform Construction Code is found, a report shall be issued promptly by the appropriate code official to both the customer and the installer, detailing the violation and the requirements to bring the installation into compliance. Upon correction of the violation, another inspection shall be made and a report shall be issued stating whether the violation has been corrected. A copy of any such inspection report shall be made available to the BPU upon its request.

14:38-6.2 Random inspections

(a) Random inspections shall be made of all program measures installed by participating installers.

(b) At least one inspection shall be performed during the life of the program of the work of every participating installer who makes an installation of a program measure.

(c) Each audit recipient may submit to the appropriate covered utility a work order in a form prescribed by the BPU for each installation at the time of the entry of the contract for installation. The covered utility shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) The covered utility shall promptly contact the audit recipient and inform him or her of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspector, qualified by the BPU to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. In no case may an inspector inspect his or her own work or the work performed directly by the inspector's employer.

(e) Upon completion of the inspection, the inspector shall make a written report stating the following (copies of such report shall be provided to the audit recipient and the installer no later than one week from the date of the inspection. A copy shall be supplied to the BPU upon request.):

1. The nature of the installation;
2. The date, place and time of inspection;
3. Whether the installation complies with applicable installation standards;
4. If the installation is not in compliance, what violations exist; and
5. What work is necessary to bring the installation into compliance with applicable standards.

(f) Upon receipt of an inspection report stating that the installation is not in compliance, the installer shall, within 30 days return to the site and correct any and all violations found by the inspector. Upon completion of the corrections, the installer shall notify the covered utility in writing of the corrections.

(g) Upon receipt of such notification of corrections, the BPU shall promptly notify the covered utility which conducted the inspection must make a reinspection within two weeks.

(h) Upon receipt of a notice of reinspection, the utility shall contact the audit recipient to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer and the installer no later than one week from the date of reinspection. A copy of the report shall be provided to the BPU upon request.

(i) Failure by an installer to correct in a timely fashion an installation which has been determined not to be in compliance is grounds for removal from the BPU's Master Record of participating installers. The BPU may refer installation to any other state or federal agency which may have jurisdiction over such matters.

(j) The BPU may review complaints made by audit recipients of faulty or improper installations by participating installers, and may, in its discretion, notify a covered utility to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility shall comply and conduct an inspection and report the results in compliance with the requirements in this subchapter.

SUBCHAPTER 7. MASTER RECORD OF INSTALLERS AND SUPPLIERS

14:38-7.1 General requirements

(a) The BPU shall compile and maintain a Master Record of installers and suppliers of program measures who participate in the HESP Program. The BPU shall provide an application to any installer or supplier of program measures who notifies the BPU that they wish to become a participant.

(b) The BPU shall review all applications for completeness and shall, at its discretion, verify the information contained therein. The BPU shall return applications which contain incomplete or incorrect information.

(c) The BPU shall update the Master Record at least every 180 days and shall promptly notify the covered utilities of any changes in its content.

(d) The BPU shall notify the applicant in writing whether or not the applicant shall be included on the Master Record by the BPU as a participant.

(e) Each application must be accompanied by a non-refundable application fee of \$25.00 payable to the Treasurer State of New Jersey—HESP, by check or money order. The BPU at its discretion may waive all or part of the application fee.

14:38-7.2 Installers: requirements for participation

(a) To be eligible for inclusion on the Master Record an installer must submit a certified application to the BPU which shall include the following:

1. Identification of any and all State or local licenses;
2. A statement that the installer has at least six months' experience installing the program measures for which the installer is applying to be included on the Master Record;
3. An accurate record of the types of work completed in the past three years, if any, and the geographical service area by county and major city;
4. A detailed list of any liens, stop notices or claims filed against or by reason of any project undertaken or supervised by the installer within the past three years, including any administrative or judicial complaints and any claims filed with the Better Business Bureau, the New Jersey Division of Consumer Affairs or its subdivisions, or any similar State, county or municipal agency, and the disposition of same;

5. Verification that the installer carries full and complete Worker's Compensation Insurance for all employees and that all subcontractors carry similar insurance, as required by State law;

6. Verification that the installer carries comprehensive public liability insurance adequately protecting the installer from liability for bodily injury, including death, and/or property damage arising out of the installer's performance. Such insurance shall be in amount not less than \$300,000 for bodily injury for each occurrence plus \$250,000 for property damage for each occurrence or in an amount not less than \$500,000 per occurrence for bodily injury and property damage liability. The policy shall contain an endorsement for contractual liability. Every year thereafter the installer shall provide the BPU with a certification of insurance;

7. A statement that the installer agrees to comply with all applicable State and Federal laws against discrimination;

8. A statement that the installer agrees not to discriminate among audit recipients participating in the HESP Program;

9. A statement with accompanying documentation that the installer meets all applicable installer qualifications;

10. A statement that all program measures installed by the installer pursuant to the HESP Program shall be covered by a written manufacturer's and installer's warranty for one year; and

11. An agreement that the installer shall use only materials which meet applicable material standards.

(b) The installer shall agree to provide the following to any audit recipient who selects that installer from a program list:

1. A written contract detailing the installation to be done;

2. A statement that the installation shall be in compliance with all applicable material and installation standards;

3. A written provision in the contract stating a specific time period for the completion of all work, with specific penalties for failure to complete an installation on time; however the installer shall not be liable for those penalties due to acts of God or labor strikes;

4. A written guarantee that any violation in the installation of applicable material and/or installation standards shall be corrected by the installer at no additional cost to the eligible customer within one month of discovery and notice to the installer;

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to (a)10 above; and

6. Agreement to participate in customer conciliation procedures if a complaint is made by an eligible customer, the BPU, a covered utility, or any other state or Federal agency.

(c) Installers of program measures shall be thoroughly familiar with applicable installation standards.

(d) All installers shall have a minimum of six months' experience in the installation of each program measure they are applying to be listed for.

(e) Installers of vent dampers and solar systems shall provide proof that they have successfully completed the following:

1. Manufacturer's installation training;
2. Private or county vocational school training; or
3. Any other BPU-approved training program.

14:38-7.3 Suppliers: requirements for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the BPU which shall include the following:

1. An agreement to supply measures which meet applicable material standards, and which are labeled as complying with the specific standards for that product;

2. An agreement to supply measures that are covered by an applicable manufacturer's warranty, and are so labeled;

3. Comply with all applicable State and Federal laws;

4. An agreement to provide eligible customers with written information about products supplied which are program measures, which must identify the measures which have a warranty and the measures which are labeled as meeting material standards;

5. Agree to participate in conciliation procedures if a complaint is made by an eligible customer, the BPU, a covered utility or any other State or Federal agency;

6. An agreement that all program measures supplied shall be covered by a one year supplier's warranty.

14:38-7.4 Withdrawal from the HESP program

Any supplier or installer may voluntarily withdraw from the program and may be removed from the Master Record upon 30 days written notice to the BPU. However, any supplier or installer who so notifies the BPU of withdrawal must continue to abide by all requirements for participation and extend all benefits due for all eligible customers who contracted with the supplier or installer while the participant was included on the Master Record.

14:38-7.5 Exclusion

(a) The BPU shall have the power to exclude from participating and from being included on the Master Record of installers or suppliers.

(b) Grounds for exclusion include, but are not limited to, the following:

1. Violation, within three years prior to the date of application of any laws governing the conduct of occupations or professions regulated by the state(s) in which the applicant has done business;

2. Consistent failure to perform in accordance with contract specifications or within contractual time limits;

3. Violation of the Federal Organized Crime Control Act of 1970 or conviction for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice or any other offense indicating a lack of business integrity or honesty by the applicant, or if the applicant is a corporation, partnership or other business entity, by a person who is a principal of the corporation, partnership or business entity;

4. Violation of any Federal or State anti-trust statutes, or the Federal Anti-Kickback Act;

5. Violation of any laws governing hours of labor, minimum wage standards, discrimination in wages or child labor, and Equal Employment Opportunity laws;

6. Any other cause affecting the responsibility of an installer, or supplier of such a serious and compelling nature as may be determined by the BPU to warrant exclusion, including but not limited to unresolved claims, liens or stop notices or such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation; and

7. Failure to fully comply with the listing requirements contained in this subchapter; and

8. Falsification or willful omission of any information required by the BPU of any applicant and/or participant.

Amended by R.1987 d.88, effective February 2, 1987.

See: 18 N.J.R. 2001(a), 19 N.J.R. 301(a).

(b)8 added.

14:38-7.6 Removal

(a) Any person may be removed by the BPU from the Master Record of installers or suppliers.

(b) Grounds for removal may include, but are not limited to, the following:

1. Any ground which is ground for exclusion pursuant to N.J.A.C. 14:38-7.5.

2. Refusal to participate in good faith in any conciliation or redress proceeding conducted by the BPU, a covered utility, or at the BPU's request;

3. Failure to supply eligible customers with any and all program services and benefits by this chapter;

4. Financial insolvency;

5. Unresolved customer complaints; and

6. Failure to meet the requirements of participation in N.J.A.C. 14:38-7.2.

14:38-7.7 Procedures for removal or exclusion

(a) The BPU shall notify in writing any person whom the BPU plans to exclude or remove from the Master Record of the exclusion or removal and the grounds at least 30 days before such exclusion or removal. (See N.J.A.C. 14:38-11.)

(b) A person who has been excluded or removed from the Master Record by the BPU may reapply after one year.

14:38-7.8 Temporary suspension

The BPU may, in its discretion, temporarily suspend any listed installer or supplier pending removal from the Master Record, if the BPU determines that retaining that person on the Master Record would immediately harm present or potential eligible customers. The BPU shall, within five days of such decision to suspend, notify the person in writing of the suspension and the grounds. The person shall have five days within which to respond to the allegations in writing to the BPU.

14:38-7.9 Disclosure

If, at the time an eligible customer requests services pursuant to this chapter, a supplier or installer has withdrawn, has been removed or is temporarily suspended from the Master Record, the supplier or installer shall disclose such fact in writing to the eligible customer.

SUBCHAPTER 8. LISTS OF INSTALLERS AND SUPPLIERS
14:38-8.1 General contents

(a) All lists of installers and suppliers of program measures shall contain the name, address and telephone number of each supplier and installer on the Master Record who is in or contiguous to the covered utility's service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) All lists shall contain an effective date and expiration date on the first page. The expiration date shall be no more than 195 days after the effective date, and shall be plainly stated on the first page.

14:38-8.2 Installer lists

(a) All lists of installers may contain information that any eligible customer who receives an installer list and has program measures installed by an installer chosen from that list, is entitled to the following program benefits;

1. A manufacturer's and installer's one year warranty for every program measure, except caulking and weatherstripping;
2. Installations which meet applicable installation standards;
3. Enforcement of standards through a mandatory post-installation inspection or inclusion in the pool of customers from which random inspections will be made, whichever is applicable;
4. Access to program conciliation and redress procedures;
5. Assurance that a listed installer has agreed to comply with all applicable program requirements;
6. That in order to ensure program benefits, appropriate forms should be returned to the BPU;
7. That installers on this list must be informed that the work is being done under the New Jersey Home Energy Savings Program (HESP);
8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the BPU or the covered utility nor does the covered utility in providing this list guarantee or warranty the type of work or quality of the work to be performed.

14:38-8.3 Supplier lists

(a) All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

1. A supplier one-year warranty for every program measure except caulking and weatherstripping;
2. Access to program conciliation and redress procedures;
3. Assurance that listed suppliers have agreed to comply with all applicable program requirements; and

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the BPU.

Amended by R.1987 d.88, effective February 2, 1987.
See: 18 N.J.R. 2001(a), 19 N.J.R. 301(a).

Deleted text "or the customer's utility" from (a)4.

14:38-8.4 Updating lists

All covered utilities shall keep all lists of installers and suppliers current, and shall promptly place in service revised lists received from the BPU.

SUBCHAPTER 9. REPORTING AND RECORD KEEPING

14:38-9.1 Reporting: covered utilities

(a) Each covered utility shall submit the following information in writing to the BPU on May 30, 1986 and annually thereafter through May 30, 1995 for the 12 month period ending in preceding April 1:

1. The approximate number of eligible customers and the percentage of those customers for whom the utility is the primary heating fuel supplier;
2. The number of eligible customers who have requested each service and the number of requests the utility has fulfilled, including:
 - i. The number of program audits performed;
 - ii. The number of program lists requested;
 - iii. The number of loans and grants and the number of related installations arranged by the utility; and
3. The number and function of people assigned to the utility's program, including part-time employees;
4. The costs incurred by the utility in providing each service under the HESP Program including separately those costs paid by individual customers for services received, and those costs paid by all ratepayers;
5. The number of program announcements mailed;
6. The dates program announcements were mailed;
7. A description of other promotional activity;
8. The response rate to promotional activity;
9. The number and nature of customer complaints;
10. Utility's annual budget for the HESP Program including:
 - i. Salaries and wages;
 - ii. Advertising;
 - iii. Printing;

- iv. Transportation;
 - v. Postage;
 - vi. Other budget information the BPU may require.
11. Average total cost per program audit;
 12. Such other information as the BPU may require for program evaluation.

(b) Each covered utility shall submit the following information in writing and in a form provided or approved by the BPU on the 15th of each month for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility has fulfilled that may include:
 - i. The number of program audits requested by housing type and the number of program audits performed by fuel type;
 - ii. The number of eligible customers requesting or receiving each one of the following:
 - (1) Workbook II;
 - (2) Financing Guide;
 - (3) Home Energy Survey Reference Guide; and
 - (4) Program Lists.
 - iii. The number of audits completed within 1-30 days, 31-60 days and over 60 days.
2. The number of new customers who have requested a copy of the results of any past program audit of the customer's residence which the covered utility may have performed;
3. The number and type of media sources cited by eligible customers;
4. The number of post-installation inspections requested;
5. The number of post-installation inspections found to be satisfactory and the number found to be unsatisfactory;
6. The total number of service requests completed pursuant to N.J.A.C. 14:38-3.1;
7. The number of ineligible customers;
8. The number of audits cancelled;
9. The number of audits uncompleted; and
10. Such other information as the BPU may require.

Amended by R.1987 d.88, effective February 2, 1987.

See: 18 N.J.R. 2001(a), 19 N.J.R. 301(a).

(a)1 deleted; renumber (a)2-(a)13 to (a)1.-12.

14:38-9.2 Record-keeping: covered utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the BPU upon request:

1. The name and address of each eligible customer who receives a program audit and name of the program auditor, which shall be kept for five years from the date of the program audit;
2. A copy of the data collected during the audit and a copy of the estimates of costs and savings presented to the customer, which shall be kept for five years from the date of the program audit;
3. The amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each program audit for each eligible customer, which shall be kept for two years from the date of such program audit; and
4. The names of the individuals who have met the qualification criteria for auditors and inspectors. These records shall be updated within a reasonable period of time following each implementation of the qualification procedures.

14:38-9.3 (Reserved)

SUBCHAPTER 10. UTILITY SUPPLY AND INSTALLATION OF PROGRAM MEASURES

14:38-10.1 Prohibition

Except as provided in this subchapter, no covered utility shall supply or install any program measure.

14:38-10.2 General exception

(a) The prohibition contained in N.J.A.C. 14:38-10.1 shall not apply to any program measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1. Is on the Master Record of suppliers and installers referred to in N.J.A.C. 14:38-7;
2. Is not subject to the control of the utility, except as to the performance of such contract, and is not an affiliate or a subsidiary of such utility; and
3. If selected by the utility, is selected in a manner consistent with (b) below.

(b) Activities of a covered utility under (a) above:

1. May not involve unfair methods of competition;

i. Covered utilities must use certified licensed contractors where such skills are required by the nature of the work and the New Jersey Uniform Construction Code (N.J.S.A. 32:27-119 et seq.)

ii. Covered utilities cannot by way of advertising or other marketing inducements indicate that work performed by their contractor is superior to comparable work performed by any other contractor listed on the Master Record.

2. May not have a substantial adverse effect on competition in the area in which such activities are undertaken nor result in providing to any supplier or installer an unreasonably large share of contracts for the supply or installation of program measures. Substantial adverse competition will be determined on a case by case basis;

3. Shall be undertaken in a manner which provides, subject to reasonable conditions the utility may establish to insure the quality of supply and installation of program measures, that any financing by the utility of such measures shall be available for the supply or installation by any supplier or installer on the Master Record referred to in N.J.A.C. 14:38-7 or for the purchase of such measures to be installed by the customer;

4. Shall be undertaken, to the extent practicable and consistent with (b)1, (b)2 and (b)3 above, in a manner which minimizes the cost of program measures to such customers; and

5. Shall include making available upon request a current estimate of the average price of supply and installation of program measures subject to the contracts entered into by the utility under (a) above.

Amended by R.1987 d.88, effective February 2, 1987.
See: 18 N.J.R. 2001(a), 19 N.J.R. 301(a).

14:38-10.3 Exception for certain measures

(a) The prohibition contained in N.J.A.C. 14:38-10.1 shall not apply to the supply or installation of:

1. Heating unit efficiency modifications;
2. Clock thermostats; and
3. Devices associated with load management techniques.

14:38-10.4 Exception for existing supply and installation

(a) Any supply or installation of any program measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. 14:38-10.1;

1. During such time as applications for determinations with respect to such activity, filed in accordance with 10 C.F.R. 456.507, are pending; and

2. Upon a final determination that such program measure was being supplied or installed on November 9, 1978 by the utility seeking the determination.

(b) Any supply or installation of any program measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. 14:38-10.1:

1. During such time as applications for determinations with respect to such activity, filed in accordance with 10 C.F.R. 456.507, are pending; and

2. Upon a final determination that the utility had by November 9, 1978, either broadly advertised its supply or installation of such measures or had completed substantial preparations for its supplying or installing of such measures.

SUBCHAPTER 11. DISQUALIFICATION FROM HOME HEATING SUPPLIER PARTICIPATION AND MASTER RECORD

14:38-11.1 Hearing

No person shall be excluded, disqualified or removed from participation in the home heating supplier program or from the Master Record without the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1.