

**641—14.5(714) Third-party testing agencies.** The department shall review and approve the facilities and capabilities of an agency before the agency is authorized as a third-party testing agency for the purposes of these rules.

**14.5(1) Submission of information.** An agency applying for authorization as a third-party testing agency shall submit to the department information including, but not necessarily limited to, the following:

- a. The name, address, telephone number, and E-mail address of the agency representative.
- b. Verification that the agency is not owned, fully or partially, or managed by a company engaged in the manufacture or sales of water treatment systems.
- c. A copy of the agency's laboratory certification under the Safe Drinking Water Act for the contaminants for which the agency will do performance testing (if the analyses are performed by another agency, a copy of that agency's certificate and documentation of the business relationship between the applicant and the agency shall be submitted); or
- d. Written verification to the department that the agency has the capability to perform the USEPA-approved methods of analysis for the contaminants for which the agency will do performance testing.
- e. A copy of the agency laboratory quality assurance plan.
- f. A detailed description of the agency's testing facilities and equipment.
- g. Résumés of the management, scientific, and technical personnel responsible for conducting the performance testing.
- h. The number of water treatment systems tested by the agency, if applicable, listed by the standards used as the basis for testing and including the contaminants for which testing was done.
- i. A copy of a test protocol that the agency has developed for a client or a copy of the report of the test of a water treatment system prepared for a client, if applicable.
- j. A nonrefundable \$200 review fee.
- k. If product testing is subcontracted to another testing agency, the name of the agency and the name, address, telephone number, and E-mail address of an authorized representative of the agency; the standard(s) used; and the contaminant(s) tested by the agency.
- l. An agency that is accredited by ANSI for product testing and certification in accordance with one or more of the standards in Table 1 shall submit the following:
  - (1) The information required in 14.5(1) "a" and "b" and the fee required in 14.5(1) "j."
  - (2) The ANSI certificate and scope of accreditation.
  - (3) The method by which the department can access information about a water treatment system tested and certified by the agency. The information shall include:
    1. Manufacturer's name.
    2. Model number of the water treatment system.
    3. Replacement element(s) designation.
    4. Rated capacity, if applicable.
    5. Service flow rate, if applicable.
    6. Daily production rate, if applicable.
    7. List of the contaminants for which the water treatment system has been tested.

**14.5(2) Testing auditor.** An agency applying for authorization to audit a manufacturer's data and facilities shall submit to the department information including, but not necessarily limited to, the following:

- a. The information and fee required by 14.5(1).
- b. A written description of the agency's qualifications and experience in performing laboratory audits and laboratory analysis.
- c. Written verification that USEPA or equivalent procedures for auditing quality control of laboratories are followed in performing an audit of a manufacturer's testing of a water treatment system.

**14.5(3) Approval of third-party testing agencies.** The department shall review the information submitted by an agency applying for third-party testing agency status.

- a. The department shall consider:

- (1) The independence of the agency ownership and management.
- (2) The adequacy of the agency's facilities and equipment for water treatment system testing.
- (3) The experience and training of the management, scientific, and technical staff directly responsible for testing water treatment systems.
- (4) The adequacy of the equipment, facilities and personnel for analysis of the contaminants for which the agency will do performance testing.
- (5) The adequacy of quality assurance systems at the testing facility.

*b.* The department shall transmit a letter of approval, conditional approval, or disapproval to the agency representative. The conditions of approval or the reasons for disapproval shall be in writing and shall be provided to the agency representative.

*c.* An appeal of disapproval or a condition of approval shall be submitted by the agency to the department by certified mail, return receipt requested, within 30 days of receipt of the department's letter. The address is Iowa Department of Public Health, Water Treatment System Registration, 321 E. 12th Street, Des Moines, Iowa 50319-0075. If no appeal is received within the 30 days, the disapproval or conditional approval becomes the department's final agency action. An appeal shall be forwarded to the department of inspections and appeals within 5 working days of its receipt. The department shall provide the information upon which the disapproval or conditional approval was based and any additional information provided by the agency to the department of inspections and appeals.

**14.5(4) Resubmission.** The department may require that an agency resubmit the information required in 14.5(1) and 14.5(2) if:

- a.* The testing facilities are relocated.
- b.* The corporate identity of the agency changes.
- c.* The agency has not tested a water treatment system submitted to the department for registration or has not audited a manufacturer for a period of three years or longer.

**14.5(5) Revocation of authorization.** The department may revoke authorization for an agency to be a third-party testing agency or a test auditor if:

- a.* The agency loses ANSI accreditation.
- b.* The agency submits false information in support of the registration of a product.
- c.* Information submitted to support authorization is found to be false.
- d.* The agency, in the judgment of the department, is incompetent to conduct or incapable of conducting testing in accordance with the standards in Table 1 or in accordance with approved protocols.

**14.5(6) Notice of revocation.** Notice of revocation shall be sent to the agency by restricted certified mail, return receipt requested, or by personal service. The agency shall have a right to appeal the revocation.

*a.* An appeal of a revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to the Iowa Department of Public Health, Division of Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the revocation upon satisfaction that the reason for the revocation has been or will be removed. After the hearing, or upon default of the agency, the administrative law judge shall affirm, modify or set aside the revocation. If no appeal is submitted within 30 days, the revocation shall become the department's final agency action.

*b.* Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within five working days of receipt pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the revocation is based shall be provided to the department of inspections and appeals.

*c.* The hearing shall be conducted in accordance with 481—Chapter 10.

*d.* When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the agency unless an appeal to the director is taken as provided in paragraph "e."

*e.* Any appeal to the director of the department for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reason for appeal.

*f.* Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- (1) All pleadings, motions and rules.
- (2) All evidence received or considered and all other submissions by recording or transcript.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objections, and rulings thereon.
- (5) All proposed findings and exceptions.
- (6) The proposed findings and order of the administrative law judge.

*g.* The decision and order of the director becomes the department's final agency action upon receipt by the agency and shall be delivered by restricted certified mail, return receipt requested.

*h.* It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The agency may petition for judicial review pursuant to Iowa Code chapter 17A.

*i.* Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

*j.* An agency that appeals a final department action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.