

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 136B.4, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 43, “Minimum Requirements for Radon Testing and Analysis,” Iowa Administrative Code.

During the 2015 Legislative Session, Iowa Code section 136B.2(1)“b” was amended to allow certified radon measurement specialists to release radon measurement results to prospective home buyers who contracted to have the testing performed during the negotiation of a home sale. Prior to this change to Iowa Code section 136B.2(1)“b,” measurement specialists were prohibited from releasing test results to anyone except the building owner without a waiver from the owner. These proposed amendments will align Chapter 43 with the language found in Iowa Code chapter 136B. There are also several other areas within Chapter 43 that need clarification, and the proposed changes are outlined as follows:

- In subrule 43.3(1), language is added to cover possible additional means for offering radon testing kits other than by mail or directly.
- Subrules 43.3(3) and 43.3(4) are rescinded as they are duplicative statements, and the requirements for certification in those subrules are also included in the requirements for application in subrule 43.4(1).
- In subrule 43.4(1), language is added to more clearly allow for electronic submission of information.
- Subparagraph 43.4(1)“a”(7) is revised to remove specific references to outdated media.
- In paragraph 43.4(6)“e,” “revoked immediately” is stricken, and “shall become inactive” is added regarding certifications that are not renewed within 30 days of expiration, and reinstatement language has also been added.
- Subrule 43.5(1) is stricken to remove duplicative statements and the remaining items are moved to subrule 43.5(2), which allows for all types of enforcement, not limited to revocation and suspension.
- In subrule 43.5(2), language is added so that probation as an enforcement action is a possibility.
- In paragraph 43.5(2)“c,” the word “licensing” is stricken, and the word “certification” is added to be consistent with the rest of the chapter.
- Rule 641—43.8(136B) is amended to clarify exemptions and make them consistent with rule 641—43.1(136B) by adding a statement referencing persons performing testing for no compensation; is amended by striking the statement exempting persons performing scientific research; and is amended by adding a reference to local officials administering local programs.
- In rule 641—43.10(136B), language is added stating that penalties set forth in this rule are “in addition to other sanctions provided in this chapter.”

Any interested person may make written suggestions or comments on these proposed amendments on or before October 18, 2016. Such written comments should be directed to Angela Leek, Bureau Chief of Bureau of Radiological Health, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [angela.leek@idph.iowa.gov](mailto:angela.leek@idph.iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 136B.

The following amendments are proposed.

ITEM 1. Amend subrule 43.3(1) as follows:

**43.3(1)** Except as provided in this chapter, no person may test for the presence of radon or radon progeny in the state of Iowa unless the person has been certified by the department of public health. This requirement also applies to persons whose place of business is located in Iowa, or in a state other than Iowa, and who offer radon testing to residents of Iowa either directly, ~~or through the mail, or by other means.~~

ITEM 2. Rescind subrules **43.3(3)** and **43.3(4)**.

ITEM 3. Renumber subrule **43.3(5)** as **43.3(3)**.

ITEM 4. Amend subrule 43.4(1), introductory paragraph, as follows:

**43.4(1)** An application for certification or renewal of certification as a radon measurement specialist or a radon measurement laboratory shall be filed on a form or other electronic document as prescribed by the department and shall contain complete and accurate information.

ITEM 5. Amend subparagraph **43.4(1)“a”(7)** as follows:

(7) A signed statement that the individual will submit radon test results every 30 days to the Iowa radon program within the department. The radon test results ~~may shall~~ be submitted ~~on a form, a diskette, or through E-mail~~ in a manner that is approved by the department.

ITEM 6. Amend paragraph **43.4(6)“e”** as follows:

*e.* If payment is not received and the certification has been expired 30 days, certification ~~will be revoked immediately~~ shall become inactive. In order to ~~regain certification~~ reinstate certification after 30 days past the expiration date, the person must reapply and pay the appropriate fees as outlined in this subrule.

ITEM 7. Amend rule 641—43.5(136B) as follows:

**641—43.5(136B) Revocation of certification Enforcement actions.**

**43.5(1)** ~~The department will consider revoking or suspending any certification, in whole or in part, for:~~

- ~~*a.* Any misstatement in the application or in any supplementary statement;~~
- ~~*b.* Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department’s refusal to grant a certification on an original application;~~
- ~~*c.* Any violation or failure to observe any of the applicable terms or provisions of certification, the public health law, or any other applicable rule, regulation, code or order;~~
- ~~*d.* Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program;~~
- ~~*e.* Not fully cooperating with the department or its agents when field evaluations are being conducted;~~
- ~~*f.* Not attending a scheduled meeting or inspection set up by the department or its agents, when the certified person was previously notified and agreed to the time and location of the inspection;~~
- ~~*g.* Not submitting radon test data as required in 641—43.6(136B).~~

**43.5(2)** The department may deny, suspend, revoke, modify the certification of a person, place on probation, impose a civil penalty, or refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code chapter 136B, or any combination thereof, when it finds that a certified person or a person who is not certified has committed any of the following acts:

- a.* and *b.* No change.
- c.* Falsifying approval records, qualifications, or other information or documentation related to licensing certification approval;
- d.* to *o.* No change.
- p.* Failing to comply with a subpoena issued by the department or failing to cooperate with a department investigation; ~~or~~
- q.* Failing to pay costs assessed in any disciplinary action; ~~or~~

r. Any condition revealed by the application, supplementary statement, report, record, or other evidence, which would warrant the department's refusal to grant a certification on an original application;

s. Being discontinued or removed from the NEHA or NRSB Radon/Radon Progeny Measurement Proficiency Program; or

t. Failing to submit radon test data as required in 641—43.6(136B).

ITEM 8. Amend paragraph **43.6(4)“c”** as follows:

c. Not disclose to any other person, except to the department, the address or owner of a nonpublic building that was tested for radon gas or radon progeny, unless the owner of the building waives this right of confidentiality in writing the results of a test or the address or the name of the owner of a nonpublic building that the person tested for the presence of radon gas and radon progeny, unless the owner of the building waives, in writing, this right of confidentiality. However, a person certified or credentialed pursuant to Iowa Code section 136B.1 may disclose the results of a test performed by the person for the presence of radon and radon progeny to a potential buyer of a nonpublic building when an offer to purchase has been presented by the buyer and if the potential buyer paid for the testing. Any test results disclosed shall be results of a test performed within the five years prior to the date of the disclosure.

ITEM 9. Amend rule **641—43.8(136B)** as follows:

**641—43.8(136B) Exemptions.** Certification requirements shall not apply to:

1. Those persons who test for radon/radon decay products in buildings that they own or who perform radon tests for no compensation.

~~2. Those persons testing for radon/radon decay products as part of scientific research approved by the department.~~

~~3. 2. State officials who are conducting radon testing as part of the state's radon testing program or local officials who are acting on behalf of the state or administering a local program, and approved by the department.~~

~~4. 3. Officials who are conducting radon testing as part of government programs in the United States or contractors working for the United States government.~~

ITEM 10. Amend rule 641—43.10(136B) as follows:

**641—43.10(136B) Penalties.** It is unlawful for an individual to function as a radon measurement specialist or radon measurement laboratory in violation of the provisions of the Iowa radon testing Act or of any rule adopted pursuant to the Act. ~~Persons~~ In addition to other sanctions provided in this chapter, persons convicted of violating the provisions of the Act or the rules adopted pursuant to the Act shall be guilty of a serious misdemeanor (Iowa Code section 136B.5).