

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to backflow prevention assembly tester registration and providing an opportunity for public comment

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 26, “Backflow Prevention Assembly Tester Registration,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 135K.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 135K; 2023 Iowa Acts, Senate File 514; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 26. This rulemaking implements Iowa Code chapter 135K and 2023 Iowa Acts, Senate File 514, in accordance with the goals and directives of Executive Order 10.

Iowa Code section 135K.3 provides that a “person shall not test or repair backflow prevention assemblies without first having registered with and having been approved by the department.” The Department is required to adopt rules providing for the establishment of minimum qualifications for registered backflow prevention assembly testers, minimum standards for approved courses, establishment and collection of fees to defray the cost of administering Iowa Code chapter 135K, provision of a listing of registered backflow prevention assembly testers to local health officials, and the administration and enforcement of Iowa Code chapter 135K.

The proposed rules establish pertinent definitions related to backflow prevention assembly testing; standards related to training, including procedures and for the approval of tester training courses, continuing education requirements, and approval of third-party certification agencies; general provisions related to initial and renewal registrations, including setting fees; standards of conduct for registered testers, including record retention and the verification of equipment accuracy; and penalties and standards for denial, probation, suspension, or revocation of registration, training course approval, or third-party certification approval.

Public comments were received from the International Association of Plumbing and Mechanical Officials (IAPMO) in response to the published Regulatory Analysis (IAB 11/1/23). IAPMO requested that the definition of “ASSE” be updated to mean “ASSE International”; the definition of “certified” be updated to include “ASSE”; and the definition of “backflow prevention assembly” be updated to include “ASSE” and that product standard references in the backflow prevention assembly table be updated. These proposed revisions have been incorporated.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 9:40 a.m.	6200 Park Avenue Des Moines, Iowa
January 31, 2024 9:40 a.m.	6200 Park Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 26 and adopt the following **new** chapter in lieu thereof:

CHAPTER 26
BACKFLOW PREVENTION ASSEMBLY TESTER REGISTRATION

641—26.1(135K) Definitions.

“*ABPA*” means the American Backflow Prevention Association.

“*Administrative authority*” means an individual, board, department, or agency employed by a city, county or other political subdivision of the state and authorized by local ordinance to administer and enforce the provisions of the plumbing code.

“*Approved continuing education course*” means a department-approved course designed to supplement or refresh the knowledge of a registered tester and to meet the requirements of subparagraph 26.5(2) “a”(2).

“*Approved training course*” means a department-approved course designed to train individuals to test and repair backflow prevention assemblies.

“*ASSE*” means ASSE International.

“*AWWA*” means the American Water Works Association.

“*Backflow prevention assembly*,” for the purposes of this chapter, means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation for Cross-Connection Control and Hydraulic Research at the University of Southern California or by ASSE.

NOTE: The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE 1015-2021, AWWA C510-07
Double Check Detector Assembly	ASSE 1048-2021
Pressure Vacuum Breaker	ASSE 1020-2021
Reduced Pressure Principle Backflow Preventer	ASSE 1013-2021, AWWA 511-07
Reduced Pressure Detector Assembly	ASSE 1047-2021
Spill Resistant Pressure Vacuum Breaker	ASSE 1056-2013-R2021

“*Certified*” means certified as a backflow prevention assembly tester under the requirements of ABPA, ASSE, or another third-party certification agency.

“*Department*” means the same as defined in Iowa Code section 135K.1(3).

“*Proctor*” means an individual designated by a third-party certification agency to conduct certification examinations of backflow prevention assembly testers.

“*Registered backflow prevention assembly tester*” or “*registered tester*” means the same as defined in Iowa Code section 135K.1(4).

“*Third-party certification agency*” means ABPA, ASSE or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

641—26.2(135K) Registration. No person shall test or repair a backflow prevention assembly unless the person is a registered backflow prevention assembly tester.

641—26.3(135K) Returned checks. Any person who submits a check to the department that is returned for insufficient funds will incur a \$15 fee.

641—26.4(135K) Backflow prevention assembly tester training.

26.4(1) Tester training.

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held, using an application form provided by the department and submitting a \$200 nonrefundable fee.

b. The department will review the application and respond to the applicant within ten business days after receipt.

c. The person or organization responsible for the course content shall submit to the department any changes in the information set forth in paragraph 26.4(1)“a” every five years, no later than 30 calendar days before the end of the fifth year.

d. The course sponsor shall notify the department at least 15 days before an approved training course begins. The notification will include:

(1) Sponsoring organization name and website, contact person, mailing address, email address, and telephone number.

(2) Course dates and times.

- (3) Course location, including street address.
- (4) A \$50 nonrefundable fee.
- e. A training course shall:
 - (1) Be at least 32 instructional hours and cover the following minimum subjects:
 - 1. Backflow definitions, causes and examples.
 - 2. Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.
 - 3. Description and operational characteristics of test equipment.
 - 4. Techniques for testing backflow prevention assemblies.
 - 5. Troubleshooting of backflow prevention assemblies.
 - 6. Record keeping and the responsibilities of regulatory agencies and the registered tester.
 - (2) Conclude with a written examination of at least 100 questions and a practical examination of testing techniques on all types of testable backflow prevention assemblies. The time for testing is in addition to the instructional hours. A score of at least 70 percent on the written examination and demonstration of proficiency in testing and troubleshooting procedures constitutes successful completion of the course. Approved third-party certification agency testing may be substituted for the course test.
- f. The lead course instructor shall have documentation of successfully completing an approved training course or be certified, and have at least three years of experience in cross connection control.
- g. The testing laboratory for a training course shall be equipped with the following:
 - (1) Examples of each of the backflow prevention assemblies from at least three different manufacturers. If fewer than three manufacturers make a type of backflow prevention assembly, at least one example of that type of backflow prevention assembly.
 - (2) At least one double check valve assembly and one reduced pressure principle assembly larger than two inches.
 - (3) At least one test station per three students.

26.4(2) Continuing education training.

- a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin, using an application form provided by the department and submitted with a \$50 nonrefundable fee.
- b. The department will review the application and respond to the applicant within ten business days after receipt.
- c. A continuing education course will address cross connection control theory and practice; backflow prevention devices and methods; backflow prevention assembly installation, testing, troubleshooting and repair; codes and rules affecting cross connection control; safety issues related to installation and testing of backflow prevention assemblies; or related subjects approved by the department.

26.4(3) Third-party certification agencies.

- a. Third-party certification agencies seeking approval in Iowa shall submit a written request to the department, on agency letterhead and signed by an authorized representative of the agency, that includes at least the following:
 - (1) Agency name and website, contact person, mailing address, email address, and telephone number.
 - (2) A description of the written examination, whether it is open- or closed-book, and information about the arrangements for administration of the examination.
 - (3) A copy of the testing procedures that are the basis for the practical examination.
 - (4) A description of the procedures for the practical examination and the criteria for evaluating performance.
 - (5) Proctor qualifications and training.
 - (6) Procedures and criteria for renewing the certification. The renewal of certification will be completed at least every five years and include knowledge and skills testing.
 - (7) A history of the development and implementation of the program, as applicable.

(8) A list of other jurisdictions where the certification is allowed and regulatory contacts in those jurisdictions.

(9) A nonrefundable fee of \$200.

b. A third-party certification agency will not certify an individual who was trained by the agency. An individual proctor will not certify individuals who have taken a course at which the proctor was an instructor.

c. A third-party certification agency shall submit to the department any changes to the information set forth in paragraph 26.4(3) "a" every five years, no later than 30 days before the end of the fifth year.

641—26.5(135K) Registration.

26.5(1) Initial registration.

a. A person who has successfully completed an approved training course may register with the department within one year of course completion. A person who is certified may register with the department. The applicant must submit:

- (1) A completed application form provided by the department.
- (2) Documentation of successful completion of an approved training course or certification.
- (3) A nonrefundable fee of \$72.

b. A person who has completed a course of training in another state may be registered in Iowa.

The person will submit:

- (1) A completed Iowa application form provided by the department.
- (2) Documentation that:

1. The person has successfully completed a training course meeting the hour and subject requirements for an approved training course (if the person completed the training course more than 12 months before the date of the application, provide documentation that the person has attended an average of at least 2.5 hours of continuing education training per year since completing the course), or

2. The person is certified, or

3. The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than Iowa.

- (3) A nonrefundable fee of \$72.

c. Registration expires two years after it is issued.

26.5(2) Renewal registration.

a. Registered testers may renew 60 days prior to registration expiration and include:

- (1) A completed registration renewal application form provided by the department.

- (2) Documentation that the registered tester has completed at least five hours of approved continuing education courses during the registration period or documentation that the registered tester is certified.

- (3) A nonrefundable fee of \$72.

- (4) Registration renewal applications received after expiration will incur a \$10 penalty per month, to a maximum \$50 penalty.

b. If a registration has lapsed greater than 24 months, the person applying for renewal shall demonstrate that one of the following is true:

- (1) The person has successfully completed an approved training course within the 12 months before applying for registration renewal, or

- (2) The person is certified, or

- (3) The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than does the state of Iowa.

641—26.6(135K) Standards of conduct.

26.6(1) A registered tester shall comply with these rules and any ordinances, rules and policies of the administrative authority in jurisdictions where the registered tester tests or repairs a backflow prevention assembly.

26.6(2) A registered tester shall maintain a record for each backflow prevention assembly tested for at least five years after the date on which the assembly was tested. Registered testers will complete an administrative authority's test report form if required by ordinance. Records may be reviewed during normal business hours by an authorized representative of the department or administrative authority of the jurisdiction in which the assembly is located. The assembly record will include at least:

- a. The name, address and telephone number of the assembly owner.
- b. The location of the facility in which the assembly is located.
- c. The location of the assembly within the facility.
- d. The type, brand, model, size, and serial number of the assembly.
- e. The date and time of the test.
- f. Results of the test.
- g. Any assembly repairs or maintenance.

26.6(3) To field test a backflow prevention assembly, a registered tester shall use a differential pressure gauge, the accuracy of which is verified no less than every 13 months with results traceable to the National Institute of Standards and Technology (NIST). Any differential pressure gauge with an error of more than plus or minus 0.2 psi cannot be used to test a backflow prevention assembly. Methods of testing that use other types of equipment, including dual pressure gauges, water columns, or single pressure gauges, are not acceptable. For every test report record retained in accordance with subrule 26.6(2), the prior most recent accuracy verification for the differential pressure gauge shall be retained and made available to an authorized representative of the department or administrative authority of the jurisdiction in which the assembly is located.

641—26.7(135K) Penalty. In addition to other sanctions provided herein, a person who violates a provision of this chapter is guilty of a simple misdemeanor pursuant to Iowa Code section 135K.5.

641—26.8(135K) Denial, probation, suspension or revocation.

26.8(1) *Denial, probation, suspension or revocation of registration.* The department may deny an application for registration or renewal, place a registration on probation, suspend or revoke a registration, or order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

- a. Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.
- b. Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.
- c. Fraud in obtaining registration or renewal including, but not limited to:
 - (1) Intentionally submitting false information on an application for registration or renewal;
 - (2) Submitting a false or forged certificate or other record of training or certification.
- d. Falsification of the assembly records set forth in subrule 26.6(2).
- e. Failure to comply with these rules or the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.
- f. Failure to pay registration, renewal or late fees.
- g. Habitual intoxication or addiction to drugs.
- h. Violating a statute of this state or another jurisdiction relating to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.
- i. Suspension, revocation, or other disciplinary action pertaining to backflow prevention assembly testing in another jurisdiction. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.
- j. Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful

or detrimental to the public. Proof of actual injury need not be established. Acts that may constitute unethical conduct include:

- (1) Verbally or physically abusing a client or coworker.
- (2) Improper sexual contact with, sexual harassment of, or improper sexual advances upon a client or coworker. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
 - k. Failing to cooperate with an investigation or engaging in conduct attempting to subvert an investigation.
 - l. Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.
 - m. Knowingly aiding, assisting or advising a person to unlawfully practice as a backflow prevention assembly tester.
 - n. Representing oneself as a registered backflow prevention assembly tester when one's registration has been suspended, revoked, lapsed, or placed on inactive status.
 - o. Acceptance of any fee by fraud or misrepresentation.
 - p. Failure to appropriately respond to written communication from the department sent by registered or certified mail.

26.8(2) Denial or revocation of training course approval. The department may deny or revoke the approval for a training course or a continuing education course when it finds:

- a. The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1) "f."
- b. The training course did not comply with paragraph 26.4(1) "e."
- c. The training course testing laboratory did not comply with paragraph 26.4(1) "g."
- d. The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.
- e. The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.
- f. The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- g. The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as set forth in paragraphs 26.4(1) "d" and 26.4(2) "a," or fails to pay its fees.
- h. Failure to comply with these rules.

26.8(3) Denial or revocation of approval as a third-party certification agency. The department may deny or revoke the approval for a third-party certification agency when it finds:

- a. The application for approval contains material misinformation regarding the conduct and standards of the certification program or its acceptance in other jurisdictions.
- b. Failure to adhere to the standards and procedures stated in the application for approval in the process of certifying or renewing the certification of testers.
- c. Violations of paragraph 26.4(3) "b" or other failure to comply with these rules.

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course, or a third-party certification agency may be sent to the department. The complainant should provide as much pertinent and specific information as to a potential violation as they are able to.

26.8(5) Appeals. Notice of denial, probation, suspension or revocation of registration; denial, probation or revocation of course approval; or denial, probation or revocation of third-party certification agency approval will be sent to the affected individual or organization by certified mail, return receipt requested, or by personal service. The affected individual or organization may appeal the denial, probation, suspension or revocation by requesting a contested case hearing within 20 days of receipt of the department's order. The notice of denial, probation, suspension or revocation is deemed to be

suspended during the appeal. Prior to or at the contested case hearing, the department may rescind the notice upon satisfaction that the reason for the denial, probation, suspension or revocation has been or will be removed. 481—Chapters 9 and 10 are applicable to contested case appeals.

These rules are intended to implement Iowa Code chapter 135K.