

CHAPTER 26
BACKFLOW PREVENTION ASSEMBLY TESTER REGISTRATION

641—26.1(135K) Applicability. This chapter applies to all persons who test or repair backflow prevention assemblies in Iowa.

641—26.2(135K) Definitions.

“*ABPA*” means the American Backflow Prevention Association, P.O. Box 3051, Bryan, Texas 77805-3051.

“*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 that is 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 that is designed to train individuals to test and repair backflow prevention assemblies.

“*ASSE*” means the American Society of Sanitary Engineering, 901 Canterbury Road, Suite A, Westlake, Ohio 44145.

“*AWWA*” means the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

“*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 of Cross-Connection Control and Hydraulic Research at the University of Southern California.

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 1015-2009, AWWA C510-07
Double Check Detector Assembly	ASSE 1048-2009
Pressure Vacuum Breaker	ASSE 1020-2004
Reduced Pressure Principle Backflow Preventer	ASSE 1013-2009, AWWA 511-07
Reduced Pressure Detector Assembly	ASSE 1047-2009
Spill Resistant Pressure Vacuum Breaker	ASSE 1056-2001

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

“*Department*” means the Iowa department of public health.

“*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 a person who has successfully completed an approved training course, or who is certified, and who has registered with the department in accordance with 641—26.5(135K).

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

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641—26.3(135K) Registration required. No person shall test or repair a backflow prevention assembly unless the person is a registered backflow prevention assembly tester.

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. If a training course was approved before September 15, 2010, the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1) “c.” The application shall include:

- (1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address and telephone number.
- (2) Course dates and times, if a course has been scheduled.
- (3) Course location, including street address, if a course has been scheduled.
- (4) Course outline, including the approximate time allotted to each training segment.
- (5) A list of reference materials, texts and audio-visual materials used in the course.
- (6) A copy of the written examination for the course and a written description of the elements and standards of proficiency for the practical examination.
- (7) The name(s) and qualifications of the instructor(s).
- (8) A list of the backflow prevention assemblies available for classwork and the number of test stations available for the students.
- (9) The maximum class size.
- (10) A \$200 nonrefundable fee.

b. The department shall review the application and respond to the applicant within 10 business days after the department receives the application.

c. For a course approved after September 15, 2010, the person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1) “a” within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. For training courses approved prior to September 15, 2010, the person or organization responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1) “a” within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.

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

- (1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail 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 be at least 32 instructional hours and shall cover at least the following 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.

The course shall 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 shall be in addition to the required instructional hours. To have successfully completed the course, the student must achieve a passing mark of at least 70 percent on the written examination and demonstrate proficiency in testing and troubleshooting procedures.

ABPA or other approved third-party certification agency testing may be substituted for the course test.

f. The lead course instructor shall:

(1) Have successfully completed an approved training course, document the successful completion of a course that meets the requirements of an approved training course, or be certified.

(2) Have at least three years of experience in cross connection control.

g. Backflow prevention assembly testing instruction laboratory.

(1) The testing laboratory for a training course shall be equipped with 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 shall be provided. At least one double check valve assembly and one reduced pressure principle assembly larger than two inches shall be provided.

(2) The testing laboratory shall provide 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. The application shall include:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(2) Course date and time.

(3) Course location, including street address.

(4) Course outline, including the approximate time allotted to each training segment.

(5) A list of reference materials, texts and audio-visual materials used in the course.

(6) A list of backflow prevention assemblies that will be used for the course (if applicable).

(7) The name(s) and qualifications of the instructor(s).

(8) A \$50 nonrefundable fee.

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

c. A continuing education course shall be on 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. An agency that wishes to be a third-party certification agency in Iowa shall submit to the department a request for approval in writing on agency letterhead, signed by an authorized representative of the agency. The request shall include at least the following information:

(1) Agency name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(2) A description of the written examination and 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 the performance on the practical examination.

(5) Proctor qualifications and training.

(6) Procedures and criteria for renewing the certification. The renewal of certification shall be done at least every five years and shall 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 shall not certify an individual who was trained by the agency. An individual proctor shall not certify individuals who have taken a course at which the proctor was an instructor.

c. A third-party certification agency approved before September 15, 2010, shall submit to the department the information required in paragraph 26.4(3)“a” on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after September 15, 2010, shall submit to the department the information in paragraph 26.4(3)“a” on or within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.

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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 the 12 months after the date of course completion. A person who is certified may register with the department. The applicant must submit:

- (1) A completed application form (form provided by the department).
 - (2) Documentation of successful completion of an approved training course or documentation that the person is certified.
 - (3) A nonrefundable fee in accordance with Table 1.
- The registration shall expire as shown in Table 1.

Table 1
Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	\$66	October 31 + one year	\$30	October 31
March - April	\$60	October 31 + one year	\$24	October 31
May - June	\$54	October 31 + one year	\$18	October 31
July - August	\$48	October 31 + one year	\$84	October 31 + two years
September - October	\$42	October 31 + one year	\$78	October 31 + two years
November - December	\$36	October 31	\$72	October 31 + one year

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

- (1) A completed Iowa application form (form provided by the department).
- (2) Documentation that:
 1. The person has successfully completed a training course that meets 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, the person shall document 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 does the state of Iowa.
- (3) A nonrefundable fee in accordance with Table 1.

The registration shall expire as shown in Table 1.

26.5(2) Renewal registration.

a. Except as provided in subrule 26.5(1), each registered tester shall renew the registration between July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

- (1) A completed registration renewal application form (form provided by the department).
- (2) Documentation that the registered tester has completed at least five hours of training in approved continuing education courses after October 31 of the previous odd-numbered year or documentation that

the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of \$72.

(4) Registration renewal applications received after October 1 shall include a \$10 penalty per month or fraction thereof that the application is received after October 1 to a maximum of a \$50 penalty.

b. Before a renewal may be issued for a registration that has lapsed for more than 24 months, the person applying for renewal of the registration shall document that one of the following conditions 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.

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641—26.6(135K) Standards of conduct.

26.6(1) A registered tester shall comply with these rules and with the ordinances, rules and policies of the administrative authority in each jurisdiction in which 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. Where required by ordinance, the registered tester shall submit to the administrative authority a completed test report on a form approved by the administrative authority. The record may be reviewed during normal business hours by an authorized representative of the department or by an authorized representative of the administrative authority of the jurisdiction in which the assembly is located. The assembly record shall 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.

641—26.7(135K) Penalty. A person who violates a provision of this chapter shall be guilty of a simple misdemeanor pursuant to the authority of Iowa Code section 135K.5.

641—26.8(135K) Denial, suspension or revocation. This rule pertains to denial, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

26.8(1) The department may deny an application for registration or renewal, may suspend or revoke a registration, or may 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 required by subrule 26.6(2).

e. Failure to comply with these rules and with the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.

f. Failure to pay a required registration, renewal or late fee.

g. Habitual intoxication or addiction to drugs.

h. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates 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. Having the authorization to test backflow prevention assemblies suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. 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 which may constitute unethical conduct include, but are not be limited to:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual contact with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

26.8(2) 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. That 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 required by 26.4(1)“*d.*” and 26.4(2)“*a.*” or fails to pay the required fee.

26.8(3) 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.*”

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. The name of the registered tester, the person or organization sponsoring an approved course, or the third-party certification agency, as applicable; and

b. The specific details of the action(s) by the registered tester that did not comply with the rules;
or

c. The specific way(s) that an approved course did not comply with the rules, including the date(s) and location(s) of the alleged violation(s); or

d. The specific way(s) that a third-party certification agency or its representative failed to comply with the rules, including date(s) and location(s) of the alleged failure to comply.

26.8(5) Appeals.

a. Notice of denial, suspension or revocation of registration; denial or revocation of course approval; or denial or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, suspension or revocation.

b. An appeal of a denial, suspension or 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 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 notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

c. 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 denial, suspension or revocation is based shall be provided to the department of inspections and appeals.

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

e. 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 aggrieved party unless an appeal to the director is taken as provided in paragraph 26.8(5) "f."

f. 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.

g. 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.

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

i. 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 aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

j. 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.

k. The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

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