

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Pursuant to the authority of Iowa Code section 135.105C, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Iowa Administrative Code.

This chapter implements a program to require individuals who perform renovation, remodeling, and repainting of target housing for compensation to provide an approved lead hazard information pamphlet to the owner and occupant of the housing prior to commencing the work. The Department of Public Health was required to obtain authorization from the U.S. Environmental Protection Agency (EPA) for the Department’s program to require lead hazard notification prior to renovation, remodeling, and repainting of target housing. Iowa’s program was authorized by the EPA on July 13, 1999. House File 314, as passed by the 83rd General Assembly, directs the Department of Public Health to expand the requirements of this chapter to cover child-occupied facilities since this change is required by EPA.

The proposed amendments make a number of changes to incorporate guidance issued by the Department and the federal government. In addition, the Department has made changes to its administrative enforcement procedures. The Department has added provisions to implement the mandates of House File 314. Finally, the Department has changed the name of the federal pamphlet from “Protect Your Family from Lead in Your Home” to “Renovate Right.”

The Department has added definitions for “child-occupied facility,” “compensation,” “housing for the elderly,” and “person.”

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as EPA regulations, which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before December 22, 2009. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail to rgergely@idph.state.ia.us; fax (515) 281-4529.

Also, there will be a public hearing on December 22, 2009, at 10 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views. The sites for the public hearing are as follows:

- 1) Atlantic Public Library, 507 Poplar , Atlantic
- 2) Great Prairie Area Education Agency Regional Office – Burlington, 3601 West Avenue, Burlington
- 3) DMACC - Carroll Campus, Room 144, 906 North Grant Road, Carroll
- 4) Department of Human Services, 411 3rd Street, SE, 5th Floor, Room 550, Cedar Rapids
- 5) Centerville National Guard Armory, Dewey Road, RR 1, Centerville
- 6) Chariton High School, 501 N Grand, Room 116, Chariton
- 7) Clinton Community College, 1000 Lincoln Blvd, Room 105, Clinton
- 8) Colo-Nesco Senior High School, Box 215, 919 W St, Colo
- 9) Loess Hills Area Education Agency 13, 24997 Hwy 92, Council Bluffs
- 10) Green Valley Area Education Agency 14, 1405 N Lincoln, Turner Room, Creston
- 11) Kimberly Center, 1002 W Kimberly, Room 119, Davenport

- 12) Decorah High School, 100 East Claiborne Dr, Decorah
- 13) Department of Public Health, Lucas State Office Building, 321 E 12th St, 6th Floor,
Des Moines
- 14) Keystone Area Education Agency 1 – Dubuque, 2310 Chaney RD, Room #2,
Dubuque
- 15) Fort Dodge Public Library, 424 Central Avenue, Fort Dodge
- 16) Area Education Agency 267 Regional Office – Marshalltown, 909 S 12th St,
Marshalltown
- 17) North Iowa Area Community College – 1, 500 College Dr, Activity Center, Room
106, Mason City
- 18) Muscatine Community College, 152 Colorado Street, Larson Hall, Room 60,
Muscatine
- 19) Onawa-West Monona Jr.-Sr. High School, 1314 15th St., Onawa
- 20) Orange City Public Library, 112 Albany Ave SE, Rieckhoff Room, Orange City
- 21) Great Prairie Area Education Agency – 1, 2814 N Court Street, Ottumwa IA
- 22) Southwestern Community College – 1, 2300 N 4th St, Red Oak Center, Room 116,
Red Oak
- 23) Northwest Area Education Agency, 1520 Morningside Ave, Room 206, Sioux City
- 24) Iowa Lakes Community College, 1900 N. Grand Avenue, Spencer Attendance
Center; Fiber Optic Room #118, Spencer
- 25) Hawkeye Community College – 1, 1501 E. Orange Road, Tama Hall, Room 110,
Waterloo

These amendments are intended to implement Iowa Code section 135.105C and House File 314, 83rd General Assembly.

The following amendments are proposed.

ITEM 1. Amend rule 641—69.1(135) as follows:

641—69.1(135) Applicability. This chapter applies to all persons who perform renovation, remodeling, and repainting for compensation in target housing or a child-occupied facility.

ITEM 2. Amend rule 641—69.2(135) by amending the definition of “emergency renovation, remodeling, and repainting” as follows:

“Emergency renovation, remodeling, and repainting” means renovation, remodeling, and repainting activities necessitated by nonroutine failures of equipment or a structure that were not planned but resulted from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage.

ITEM 3. Further amend rule 641—69.2(135) by adopting the following **new** definitions in alphabetical sequence as follows:

“Child-occupied facility” means a building, or portion of a building, constructed prior to 1978, that is described by all of the following: (1) The building is visited on a regular basis by the same child, who is less than six years of age, on at least two different days within any week. For purposes of this chapter, a week is a Sunday through Saturday period. (2) Each day's visit by the child lasts at least three hours, and the combined annual visits total at least sixty hours. A child-occupied facility may include, but is not limited to a child care center, preschool, or kindergarten classroom. A child occupied facility also includes common areas that are routinely used by children who are less than six years of age, such as restrooms and cafeterias, and the

exterior walls and adjoining space of the building that are immediately adjacent to the child occupied facility or the common areas routinely used by children under the age of six years. Child-occupied facility also includes any building where lead-based paint activities are conducted immediately prior to or during the conversion of the building to a child-occupied facility.

“Compensation” means payment or reimbursement for services performed.

Compensation is not limited to monetary considerations, and includes payment of rent for rental units, receiving a salary from the owner or manager of target housing, and receiving a salary from the owner or operator of a child-occupied facility.

“Housing for the elderly” means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific federal housing assistance program.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

ITEM 4. Amend rule 641—69.3(135) as follows:

641—69.3(135) Notification required in target housing. ~~Beginning on June 1, 1999,~~
~~individuals~~ A person who ~~perform~~ performs renovation, remodeling, and repainting of target housing for compensation, except for emergency renovation, remodeling, and repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following ~~no more than 60 days~~ prior to commencing the work:

69.3(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner and adult occupant of each dwelling unit where renovation, remodeling, and repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

69.3(2) Obtain a signed, dated acknowledgment from the owner and known adult occupant of each dwelling unit where renovation, remodeling, and repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint. The acknowledgement shall be obtained no more than 60 days prior to commencing the work.

a. No change.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. No change.

d. If a signature cannot be obtained from an adult occupant, the ~~individual~~ person must certify in writing that the pamphlet has been delivered to the dwelling and that a written acknowledgment could not be obtained from an adult occupant. Such certification must include the address of the unit to be remodeled, renovated, or repainted, the date and method of delivery

of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. through g. No change.

69.3(3) No change.

69.3(4) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the ~~individual~~ person conducting the renovation, remodeling, and repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the ~~individual~~ person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

ITEM 5. Amend rule 641—69.4(135) as follows:

641—69.4(135) Notification required in multifamily housing. ~~Beginning on June 1, 1999,~~
~~individuals~~ A person who ~~perform~~ performs renovation, remodeling, and repainting of common areas for compensation, except for emergency renovation, remodeling, and repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following ~~no more than 60 days~~ prior to commencing the work:

69.4(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner of the multifamily target housing where renovation, remodeling, and repainting will be

performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

69.4(2) Obtain a signed, dated acknowledgment from the owner of the multifamily target housing where renovation, remodeling, and repainting will be performed affirming that the owner has received the pamphlet prior to the start of renovation, remodeling, or repainting and is aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint. The acknowledgement shall be obtained no more than 60 days prior to commencing the work.

a. No change.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. through f. No change.

g. Notify each occupant of the multifamily housing, in writing, of the intended remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each occupant of the target housing. The notice shall describe:

(1) and (2). No change.

(3) A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge from the ~~individual~~ person conducting the renovation, remodeling, and repainting activity.

h. These activities shall be conducted by the ~~individual~~ person planning to perform the renovation, remodeling, and repainting, or by the owner on behalf of this ~~individual~~ person.

i. The ~~individual~~ person planning to perform the renovation, remodeling, and repainting must prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, and repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge upon request. Regardless of who performs the notification activities required in this subrule, the ~~individual~~ person planning to conduct the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this subrule and shall be liable for any failures to comply with the notification requirements in this subrule.

69.4(3) No change.

69.4(4) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the ~~individual~~ person conducting the renovation, remodeling, and repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the ~~individual~~ person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

ITEM 6. Amend rule 641—69.5(135) as follows:

641—69.5(135) Emergency renovation, remodeling, and repainting in target housing.

~~Beginning on June 1, 1999, individuals~~ A person who ~~perform~~ performs emergency renovation, remodeling, and repainting of target housing for compensation, except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following as soon as reasonably possible:

69.5(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner of the target housing where renovation, remodeling, and repainting are performed.

69.5(2) Notify each owner and occupant of the target housing, in writing, of the remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each owner and occupant of the target housing. The notice shall describe:

a. and b. No change.

c. A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge from the ~~individual~~ person conducting the renovation, remodeling, and repainting activity.

69.5(3) These activities shall be conducted by the ~~individual~~ person performing the renovation, remodeling, and repainting, or by the owner on behalf of this ~~individual~~ person. The ~~individual~~ person planning to perform the renovation, remodeling, and repainting must prepare,

sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, and repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge upon request. Regardless of who performs the notification activities required in this subrule, the ~~individual~~ person conducting the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

ITEM 7. Amend rule 641—69.6(135) as follows:

641—69.6(135) Certification of attempted delivery in target housing. When an adult occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the ~~individual~~ person conducting the renovating, remodeling, or repainting is permitted by subrule 69.3(2) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, remodeling, or repainting, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the individual conducting the renovation, remodeling, and repainting, and the date of signature.

69.6(1) Unavailable for signature.

a. If an adult occupant is unavailable for signature, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the unit listed below at the dates and times indicated, and

that an adult occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

b. Below the statement, the certification shall require the printed name and signature of the ~~individual~~ person conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, and the date of signature.

69.6(2) Refused to sign.

a. If the occupant refuses to sign the acknowledgment, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit.

b. Below the statement, the certification shall require the printed name and signature of the ~~individual~~ person conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, the location where the pamphlet was left at the unit (e.g., taped to the door, slipped under the door), and the date of signature.

ITEM 8. Renumber rule 641—69.7(135) as 641—69.11(135); rule 641—69.8(135) as 641—69.12(135); rule 641—69.9(135) as 641—69.13(135); rule 641—69.10(135) as 641—641—59.14(135); and rule 641—69.11(135) as 641—69.15(135).

ITEM 9. Adopt the following **new** rules, 641—69.7(135), 641—69.8(135), 641—69.9(135), and 641—69.10(135):

641—69.7(135) Notification required in child-occupied facilities. A person who performs renovation, remodeling, and repainting of child-occupied facilities for compensation, except for emergency renovation, remodeling, and repainting of child-occupied facilities, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet of painted surface, must do the following prior to commencing the work:

69.7(1) Provide the pamphlet, *Lead Poisoning: How to Protect Iowa Families*, or the federal pamphlet, *Renovate Right*, to the owner of the building where renovation, remodeling, and repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

69.7(2) Obtain a signed, dated acknowledgment from the owner of the building where renovation, remodeling, and repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting buildings containing lead-based paint. The acknowledgement shall be obtained no more than 60 days prior to commencing the work.

a. The acknowledgment shall include the owner's names and the address of the child-occupied facility undergoing renovation, remodeling, or repainting.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled *Lead Poisoning: How to Protect Iowa Families* or the federal pamphlet, *Renovate Right*, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting buildings containing lead-based paint or lead-based paint hazards.

c. Below the statement, the acknowledgment shall require the signature of the owners along with their dates of signature.

d. If a signature cannot be obtained from the owners, the person must certify in writing that the pamphlet has been delivered to the building and that a written acknowledgment could not be obtained from an owner. Such certification must include the address of the building to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., owner refuses to sign, owner not available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. The type shall be clear and legible.

f. The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

g. If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

69.7(3) In lieu of delivering the pamphlet and written acknowledgment, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment to the owner at least seven days prior to beginning the work.

69.7(4) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, and repainting shall provide

further notification to the owners providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

69.7(5) If the operator of the child-occupied facility is not the owner of the building, provide the pamphlet, *Lead Poisoning: How to Protect Iowa Families*, or the federal pamphlet, *Renovate Right*, to the operator of the child-occupied facility where renovation, remodeling, and repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

69.7(6) If the operator of the child-occupied facility is not the owner of the building, obtain a signed, dated acknowledgment from the operator of the child-occupied facility where renovation, remodeling, and repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting buildings containing lead-based paint. The acknowledgement shall be obtained no more than 60 days prior to commencing the work.

a. The acknowledgment shall include the name of the operator of the child-occupied facility and the address of the child-occupied facility undergoing renovation, remodeling, or repainting.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled *Lead Poisoning: How to Protect Iowa Families* or the federal pamphlet, *Renovate Right*, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling,

renovating, or repainting buildings containing lead-based paint or lead-based paint hazards.

c. Below the statement, the acknowledgment shall require the signature of the operator of the child-occupied facility along with their dates of signature.

d. If a signature cannot be obtained from the operator of the child-occupied facility, the person must certify in writing that the pamphlet has been delivered to the building and that a written acknowledgment could not be obtained from the operator of the child-occupied facility. Such certification must include the address of the building to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., operator of the child-occupied facility refuses to sign, operator of the child-occupied facility not available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. The type shall be clear and legible.

f. The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

g. If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

69.7(7) In lieu of delivering the pamphlet and written acknowledgment, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment to the operator of the child-occupied facility at least seven days prior to beginning the work.

69.7(8) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, and repainting shall provide further notification to the operator of the child-occupied facility providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

69.7(9) Provide the pamphlet, *Lead Poisoning: How to Protect Iowa Families*, or the federal pamphlet, *Renovate Right*, and information regarding the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date to the parents and guardians of children using the child-occupied facility where renovation, remodeling, and repainting will be performed. The pamphlet and information shall be provided no more than 60 days prior to commencing the work. The person conducting the renovating, remodeling, or repainting shall provide this information using one of the following methods:

a. Mail or hand-deliver the pamphlet and information to each parent or guardian of a child using the child-occupied facility (the pamphlet and information may not be sent home with the child); or

b. While the renovation, remodeling, and repainting is ongoing, post informational signs describing the general nature and locations of the renovation, remodeling, and repainting and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can

review a copy of the pamphlet or obtain a copy from the person conducting the renovation, remodeling, and repainting at no cost to the parents or guardians.

69.7(10) The activities in 69.7(9) shall be conducted by the person planning to perform the renovation, remodeling, and repainting, or by the owner or operator of the child-occupied facility on behalf of this person. Regardless of who performs the notification activities required in this subrule 69.7(9), the person conducting the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

69.7(11) The person conducting the renovation, remodeling, and repainting shall prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation, remodeling, or repainting and to provide the pamphlet to them.

69.7(12) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, and repainting shall provide revised information on the ongoing or planned activities to the the parents and guardians of children frequenting the child-occupied facility providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

641—69. 8(135) Emergency renovation, remodeling, and repainting in child-occupied facilities. A person who performs emergency renovation, remodeling, and repainting of child-occupied facilities for compensation, except for minor repair and maintenance activities that

disrupt less than 0.1 square feet or less of painted surface, must do the following as soon as reasonably possible:

69.8(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the owner of the building where renovation, remodeling, and repainting are performed.

69.8(2) Notify each owner and, if different, the operator of the child-occupied facility, in writing, of the remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each owner and, if different, operator of the child-occupied facility. The notice shall describe:

- a. The general nature and location of the renovation, remodeling, and repainting activity.
- b. The starting and ending dates of the renovation, remodeling, and repainting activity.
- c. A statement of how the owners, and if different, the operator of the child-occupied facility can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, at no charge from the person conducting the renovation, remodeling, and repainting activity.

69.8(3) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, and information regarding the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date to the parents and guardians of children using the child-occupied facility where renovation, remodeling, and repainting will be performed. The person conducting the renovating, remodeling, or repainting shall provide this information using one of the following methods:

a. Mail or hand-deliver the pamphlet and information to each parent or guardian of a child using the child-occupied facility (the pamphlet and information may not be sent home with the child); or

b. While the renovation, remodeling, and repainting is ongoing, post informational signs describing the general nature and locations of the renovation, remodeling, and repainting and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the person conducting the renovation, remodeling, and repainting at no cost to the parents or guardians.

69.8(4) The activities in 69.8(3) shall be conducted by the person planning to perform the renovation, remodeling, and repainting, or by the owner or operator of the child-occupied facility on behalf of this person. Regardless of who performs the notification activities required in this subrule 69.8(3), the person conducting the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

641—69.9(135) Certification of attempted delivery for child-occupied facilities. When the owner and, if different, operator of a child-occupied facility is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the person conducting the renovating, remodeling, or repainting is permitted by subrule 69.3(2) to certify delivery for each instance. The certification shall include the address of the child-occupied facility undergoing renovation, remodeling, or repainting, the date and method of delivery of the pamphlet, name of the person delivering the pamphlet, reason for lack of acknowledgment (e.g., owner, and if

different, operator refuses to sign), the signature of the individual conducting the renovation, remodeling, and repainting, and the date of signature.

69.9(1) Unavailable for signature.

a. If the owner and if different, operator of the child-occupied facility is unavailable for signature, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the child-occupied facility listed below at the dates and times indicated, and that the owner and if different, operator of the child-occupied facility was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the child-occupied facility with the owner and if different, operator.

b. Below the statement, the certification shall require the printed name and signature of the person conducting the renovating, remodeling, or repainting, the address of the child-occupied facility, the attempted delivery dates and times, and the date of signature.

69.9(2) Refused to sign.

a. If the owner and if different, refuses to sign the acknowledgment, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the child-occupied facility listed below at the dates and times indicated, and that the owner and if different, operator refused to sign the acknowledgment.

I further certify that I have left a copy of the pamphlet at the child-occupied facility.

b. Below the statement, the certification shall require the printed name and signature of the person conducting the renovating, remodeling, or repainting, the address of the child-occupied facility, the attempted delivery dates and times, the location where the pamphlet was left at the child-occupied facility (e.g., taped to the door, slipped under the door), and the date of signature.

641—69.10(135) Subcontracts. In cases where renovation, remodeling, and repainting activities involve subcontracts, it is the responsibility of the person receiving the compensation from the property owner, or other party on behalf of the property owner, to provide the notification(s) described in 69.3(135), 69.4(135), 69.5(135), and 69.6(135) of this chapter.

ITEM 10. Amend renumbered rule 641—69.11(135) as follows:

641—69.11(135) Exemption. Renovation, remodeling, and repainting in target housing or a child-occupied facility in which a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint and where the person conducting the renovation, remodeling, or repainting has obtained a copy of the written determination are exempt from the provisions of 641—Chapter 69.

ITEM 11. Amend renumbered rule 641—69.12(135) as follows:

641—69.12(135) Record-keeping requirements. ~~Beginning on June 1, 1999, individuals~~ A person who conduct ~~conducts~~ renovation, remodeling, and repainting for compensation in target housing or child-occupied facility shall retain all records necessary to demonstrate compliance

with this chapter for a minimum of three years following completion of the renovation, remodeling, and repainting. The records shall include:

69.12(1) The address or location of the target housing or child-occupied facility where remodeling, renovation, or repainting was conducted.

69.12(2) through **69.12(4)** No change.

69.12(5) Copies of all signed, dated statements of notification, as well as copies of all notification materials given to all owners and occupants and acknowledgments as required by subrule 69.4(2) from each owner and occupant of multifamily target housing where renovation, remodeling, or repainting was conducted in common areas.

69.12(6) Copies of signed, dated acknowledgements as required by rule 69.7 from the owner and if different, operator of a child-occupied facility where renovation, remodeling, or repainting was conducted.

69.12(7) Copies of all notification materials given to the parents or guardian of children using a child-occupied facility or the signs posted in areas where they can be seen by the parents or guardian of children using the child-occupied facility as required by subrule 69.7(9)

69.12 (6) (8) Reports showing that a lead inspector/risk assessor or elevated blood level (EBL) inspector/risk assessor certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint.

69.12(7) (9) Certifications of attempted delivery as described in 641—69.6(135).

69.12(8) (10) Certificates of mailing as described in subrules 69.3(3) and 69.4(3).

ITEM 13. Amend renumbered rule 641—69.13(135) as follows:

641—69.13(135) Compliance inspections.

69.13(1) The department may enter the place of business of ~~an individual~~ a person who conducts renovation, remodeling, and repainting for the purpose of enforcing the notification required by this chapter.

~~**69.13(2)** Rescinded IAB 3/31/04, effective 5/5/04.~~

ITEM 14. Amend renumbered rule 641—69.14(135) as follows:

641—69.14(135) Enforcement.

69.14 (1) The department may impose a civil penalty pursuant to Iowa Code section 135.105C and this rule ~~or~~ and may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that a person has committed any of the following acts:

- a. through b. No change.
- c. Failed or refused to permit entry or inspection as described in subrule 69.14(1).
- d. through e. No change.
- f. Failed to respond within ~~30~~ 20 days of receipt of communication sent by the department by registered or certified mail.
- g. through i. No change.

69.14(2) Complaints and other requests for action under this rule. Complaints regarding a person who performs renovation, remodeling, or repainting for compensation in target housing or a child-occupied facility shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide the name of the person who performs renovation, remodeling, or repainting for compensation in target housing or a child-occupied facility and the specific details of the person's action(s) that did not comply with the rules.

69.14(3) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 135.105A, the department shall serve a written notice of violation upon the person charged. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, ~~certification, approval~~, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105A.

b. No change.

c. If the person charged with a violation fails to answer within the time specified in paragraph ~~69.14~~ 14 (3)“b,” an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph ~~69.14~~ 14 (3)“a.”

d. through f. No change.

g. The department may compromise any civil penalty. If the civil penalty is not compromised or is not remitted by the presiding officer or the department or if the time for requesting a hearing described in paragraph ~~69.14~~ 14 (3)“d” has expired, the department may refer the matter to the attorney general for collection.

h. No change.

69.14(4) Appeals.

a. Notice of the civil penalty shall be sent to the affected person by certified mail, return receipt requested, or by personal service. The affected person shall have a right to appeal the civil penalty.

b. An appeal of a civil penalty shall be submitted by certified mail, return receipt requested, to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075, within 20 days of the receipt of the department's notice. If such a request is made within the 20- day time period, the notice of civil penalty 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 civil penalty 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 civil penalty. If no appeal is submitted within 20 days, the civil penalty 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 civil penalty is based shall be provided to the department of inspections and appeals.

d. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

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 69.14 (4)“f.”

f. Any appeal to the director 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 or submission to the director. The record shall include the following:

(1) All pleadings, motions, and rulings.

(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, objection, 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, or by personal service.

æ-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.

h. j. Any petition for judicial review of a decision and order shall be filed in the district court within ~~30~~ 20 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 Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.

e. 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.