

**PROFESSIONAL LICENSING AND REGULATION BUREAU[193]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 546.3 and 546.10, the Professional Licensing and Regulation Bureau hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Chapter 3, “Vendor Appeals,” Chapter 5, “Waivers and Variances from Rules,” Chapter 7, “Contested Cases,” Chapter 8, “Denial of Issuance or Renewal of License for Nonpayment of Child Support, Student Loan, or State Debt,” Chapter 9, “Petition for Rule Making,” Chapter 10, “Declaratory Orders,” and Chapter 13, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The Professional Licensing and Regulation Bureau of the Banking Division of the Department of Commerce coordinates the functions of seven professional licensing boards. In 2001, the Bureau (which was then a Division within the Department of Commerce), with the consent of the six boards then in existence, adopted a series of procedural chapters that would be applicable to all boards within the Bureau. At the same time, procedural rules were removed from the chapters of rules dedicated to individual boards. This initiative streamlined the rules and afforded stronger consistency among boards on procedural matters.

The amendments proposed herein are a result of the five-year rolling review of administrative rules as outlined in Iowa Code section 17A.7(2). Board staff, with the assistance of legal counsel, reviewed all 14 chapters of the Bureau’s rules to identify outdated or redundant references, inconsistencies with statutes, and methods of enhancing efficiencies. The proposed amendments were then shared with all seven boards and with others who may be impacted, such as the Administrative Hearings Division of the Department of Inspections and Appeals.

The amendments to Chapter 1 remove the references to specific chapters of each board’s rules, update the Bureau’s physical address, add applicant contact information, and remove newsletter advertising. Amendments in Chapters 3, 5, 9, 10, and 13 allow for e-mail and electronic notice. Amendments in Chapters 7 and 8 revise contested case rules to align with changes in procedure, including recent amendments to the Iowa Rules of Civil Procedure, and to merge rules regarding the denial or suspension of a license associated with the collection of state debt, college student loans, and child support.

Consideration will be given to all written suggestions or comments received on or before April 5, 2016. Comments should be directed to Lori SchraderBachar, Iowa Professional Licensing Bureau, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309. E-mail may be sent to [lori.schraderbachar@iowa.gov](mailto:lori.schraderbachar@iowa.gov).

A public hearing will be held on April 5, 2016, at 9 a.m. in the Bureau Office, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person’s name and address for the record and to confine remarks to the subject of the proposed amendments. Any persons who intend to attend a public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Bureau and advise of specific needs.

The proposed amendments are subject to waiver or variance pursuant to 193—Chapter 5.

The proposed amendments were approved by the Accountancy Examining Board on February 11, 2016; the Architectural Examining Board on January 12, 2016; the Engineering and Land Surveying Examining Board on January 13, 2016; the Interior Design Examining Board on February 11, 2016;

the Landscape Architectural Examining Board on January 19, 2016; the Real Estate Commission on February 4, 2016; and the Real Estate Appraiser Examining Board on February 9, 2016.

After analysis and review of this rule making, the Bureau determined that there will be no impact on jobs and no fiscal impact to the state.

These amendments are intended to implement Iowa Code section 546.10, as well as the statutes identified in each chapter, including Iowa Code chapters 17A, 252J, 272C, 272D, 542, 542B, 543B, 543D, 544A, 544B, and 544C and Iowa Code sections 261.126 and 261.127.

The following amendments are proposed.

ITEM 1. Amend rule 193—1.4(546) as follows:

**193—1.4(546) Purpose of the bureau.** The bureau exists to coordinate the administrative support for the following seven professional licensing boards:

**1.4(1)** The engineering and land surveying examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of four professional engineers, one land surveyor, and two public members. The board administers Iowa Code chapter 542B, Professional Engineers and Land Surveyors, and board rules published under agency number [193C]—~~Chapters 1 to 13,~~ in the Iowa Administrative Code.

**1.4(2)** The accountancy examining board is an eight-member board appointed by the governor and confirmed by the senate. The board is composed of five certified public accountants, two public members, and one licensed public accountant. The board administers Iowa Code chapter 542, Public Accountants, and board rules published under agency number [193A]—~~Chapters 1 to 19,~~ in the Iowa Administrative Code.

**1.4(3)** The real estate commission is a seven-member commission appointed by the governor and confirmed by the senate. It is composed of five members, one of whom must be a salesperson, licensed under Iowa Code chapter 543B and two public members. The commission administers Iowa Code chapters 543B, Real Estate Brokers and Salespersons; 543C, Sales of Subdivided Land Outside of Iowa; 557A, Time-Shares; and commission rules published under agency number [193E]—~~Chapters 1 to 21,~~ in the Iowa Administrative Code.

**1.4(4)** The architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered architects and two public members. The board administers Iowa Code chapter 544A, Registered Architects, and board rules published under agency number [193B]—~~Chapters 1 to 7,~~ in the Iowa Administrative Code.

**1.4(5)** The landscape architectural examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered landscape architects and two public members. The board administers Iowa Code chapter 544B, Landscape Architects, and board rules published under agency number [193D]—~~Chapters 1 to 4,~~ in the Iowa Administrative Code.

**1.4(6)** The real estate appraiser examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five certified real estate appraisers and two public members. The board administers Iowa Code chapter 543D, Real Estate Appraisals and Appraisers, and board rules published under agency number [193F]—~~Chapters 1 to 15,~~ in the Iowa Administrative Code.

**1.4(7)** The interior design examining board is a seven-member board appointed by the governor and confirmed by the senate. It is composed of five registered interior designers and two public members. The board administers Iowa Code chapter 544C, Registered Interior Designers, and board rules published under agency number [193G]—~~Chapters 1 and 2,~~ in the Iowa Administrative Code.

ITEM 2. Amend rule 193—1.5(546) as follows:

**193—1.5(546) Offices and communications.** Correspondence and communications with the bureau or the boards in the bureau shall be addressed or directed to their offices at ~~1920 S.E. Hulsizer Road, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. Each of the boards may be contacted through the bureau telephone number ~~(515)281-5910~~ (515)725-9022.

ITEM 3. Amend subrule 1.7(3) as follows:

**1.7(3)** To hire, allocate, develop, and supervise members of the staff employed to perform the duties assigned to the bureau and the boards in the bureau, including hiring a bureau chief to perform such administrative duties as may be assigned by the administrator and designating staff to act as the executive officer, who may be referred to as the board administrator, for and lawful custodian of the records of each board in the bureau.

ITEM 4. Renumber rule **193—1.9(272C,542,542B,543B,543D,544A,544B,544C)** as **193—1.10(272C,542,542B,543B,543D,544A,544B,544C)**.

ITEM 5. Adopt the following new rule 193—1.9(272C,542,542B,543B,543D,544A,544B,544C):

**193—1.9(272C,542,542B,543B,543D,544A,544B,544C) Applicant contact information.** In addition to the mailing address(es) that must be provided in accordance with the individual board's rules, applicants of the boards within the bureau must provide a telephone number and, if applicable, an e-mail address. The boards within the bureau will honor the "safe at home" address issued by any state's program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person's physical location.

ITEM 6. Amend renumbered rule 193—1.10(272C,542,542B,543B,543D,544A,544B,544C) as follows:

**193—1.10(272C,542,542B,543B,543D,544A,544B,544C) Newsletter.**

**1.10(1)** The administrator or administrator's designee may publish or contract with a vendor to publish a newsletter as a nonpublic forum to disseminate official information related to the regulated professions. This official information may include statutory requirements, statutory changes, rules, rule changes, proposed or pending rule changes, licensing requirements, license renewal procedures, board action, board interpretative rulings or guidelines, office procedures, disciplinary action, ethical or professional standards, education requirements, education opportunities (prelicense education, continuing education, and professional development), board business, board meetings, board news, and matters related thereto.

**1.10(2)** When boards are required or allowed to ~~mail notices~~ to notify licensees about matters such as license renewal, the boards may include such notices in the newsletter.

~~**1.10(3)** The newsletter may include vendor advertising to:~~

~~*a.* Enable the boards to communicate with licensees and other interested persons without expending moneys appropriated from the state's general fund; and~~

~~*b.* Provide a targeted opportunity for licensees to receive profession-specific information to facilitate entry into the profession and enhance professional performance.~~

~~**1.10(4)** All newsletter advertising must be consistent with the boards' missions. The primary mission of the boards in the bureau is to provide progressive, efficient and professional regulation and enforcement of the professions; to protect the public through examination, licensing and regulation of the professions; and to enhance economic growth through the responsible, competent, and ethical performance of the professions.~~

~~**1.10(5)** All newsletter advertising must be professional and respectful of the nature of the regulated professions, established as a nonpublic forum, and consistent with guidelines established by the administrator. Advertising shall be restricted to commercial offerings of goods and services directly related to the lawful practice of the professions or the regulation of the professions. Political, advocacy or issue-oriented advertising shall not be permitted.~~

~~**1.10(6)** Newsletter advertising shall be considered consistent with the boards' missions if it pertains to commercial offerings of goods or services in one or more of the following areas:~~

~~*a.* Entry into the profession, such as prelicense education or internship opportunities.~~

~~*b.* A licensee's compliance with statutes or rules, such as continuing education courses or publications containing professional standards.~~

*c.*—The lawful and competent performance of the profession, e.g., errors and omissions insurance, or goods or services uniquely used in the profession, such as land surveying equipment or seals for design professionals.

*d.*—Employment opportunities in the profession.

*e.*—A professional's marketing of professional services to other professionals, e.g., a design professional's advertising the availability of specialized design services for other design professionals.

*f.*—Education programs designed to enhance credentials of professionals, or profession-specific degrees.

~~1.10(7)~~ Newsletter advertising shall be clearly separated from the substantive sections of each newsletter. Vendors authorized to solicit newsletter advertising must do so consistent with the administrator's advertising guidelines in a manner which is viewpoint-neutral and nondiscriminatory in all respects. Goods or services advertised in a newsletter must be lawful for all possible readers of any age to view, use or buy. The front page of each newsletter containing advertising must include a prominent disclaimer notifying the reader that the boards play no role in the solicitation of advertising, and do not explicitly or implicitly endorse any advertiser or any good or service advertised in the newsletter.

~~1.10(8)~~ Commencing with the first bureau newsletter distributed on or after July 1, 2008, newsletter circulation may, at the administrator's sole discretion, include additional licensees within the division of banking, including but not limited to the following: state banks (Iowa Code chapter 524), debt management companies (Iowa Code chapter 533A), money services providers (Iowa Code chapter 533C), delayed deposit services providers (Iowa Code chapter 533D), mortgage bankers, mortgage brokers, and mortgage originators (Iowa Code chapter 535B), regulated loan companies (Iowa Code chapter 536), industrial loan companies (Iowa Code chapter 536A), and state chartered savings and loans (Iowa Code chapter 534). If the administrator expands the circulation as provided in this subrule, the newsletter may include advertising consistent with this rule on the topics listed in subrule 1.9(6) as such topics would apply to the additional types of licensees.

ITEM 7. Amend rule 193—3.1(546) as follows:

**193—3.1(546) Purpose.** This chapter outlines a uniform process for vendor appeals for all boards in the bureau. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of administrative services or the office of the chief information officer.

ITEM 8. Amend rule 193—3.2(546) as follows:

**193—3.2(546) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by ~~fax transmission to (515)281-7414~~ e-mail. The notice of appeal must be received by the board within the time frame specified to be considered timely. The notice of appeal must state the vendor's complete legal name, street address, telephone number, ~~fax number,~~ e-mail address and the specific grounds upon which the vendor challenges the board's award, including legal authority, if any. The notice of appeal commences a contested case.

ITEM 9. Amend subrule 3.3(1) as follows:

**3.3(1)** Upon receipt of a notice of vendor appeal, the board shall issue a written notice of the date, time and location of the appeal hearing to both the aggrieved vendor or vendors and the successful vendor. Service of the written notice of hearing shall be sent to the e-mail address provided by the appellant unless the appellant specifically requests that notice be mailed or sent by certified mail. Hearing shall be held within 60 days of the date the notice of appeal was received by the board.

ITEM 10. Amend rule 193—5.6(17A,546) as follows:

**193—5.6(17A,546) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, e-mail address, and telephone number of the entity or person for whom a waiver is requested and the case number of any related contested case.

2. to 6. No change.

7. The name, address, e-mail address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, e-mail address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, e-mail address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. No change.

ITEM 11. Amend rule 193—5.8(17A,546) as follows:

**193—5.8(17A,546) Notice.** The board shall acknowledge a petition upon receipt. The board shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. Notice may be provided by e-mail or similar electronic means.

ITEM 12. Amend subrule 5.10(9) as follows:

**5.10(9) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law. Service of the written notice shall be sent to the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy.

ITEM 13. Renumber rules **193—5.11(17A,546)** to **193—5.16(17A,546)** as **193—5.12(17A,546)** to **193—5.17(17A,546)**.

ITEM 14. Adopt the following new rule 193—5.11(17A):

**193—5.11(17A) Interim rulings.**

**5.11(1)** The board chair, or vice chair, if the chair is unavailable, may rule on a petition for waiver or variance if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

**5.11(2)** The board chair or vice chair may call a special telephonic meeting of the board if a ruling cannot be made under subrule 5.11(1) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

**5.11(3)** Interim rulings are effective when made, but they shall also be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

ITEM 15. Amend rule 193—7.1(17A,542,542B,543B,543D,544A,544B,544C) as follows:

**193—7.1(17A,542,542B,543B,543D,544A,544B,544C) Definitions.** Except where otherwise specifically defined by law:

“*Board*” includes the engineering and land surveying examining board (Iowa Code chapter 542B), the accountancy examining board (Iowa Code chapter 542), the real estate commission (Iowa Code chapter 543B), the real estate appraiser examining board (Iowa Code chapter 543D), the architectural

examining board (Iowa Code chapter 544A), the landscape architectural examining board (Iowa Code chapter 544B), and the interior design examining board (Iowa Code chapter 544C).

“*Contested case*” means any adversary proceeding before a board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C; an adversary proceeding requested by against a nonlicensee pursuant to Iowa Code section 542.14, 542B.27, 543B.34, 543D.21, or 544A.15; or any other proceeding designated a contested case by any provision of law, including but not limited to adversary proceedings involving license applicants and the reinstatement of a suspended, revoked or voluntarily surrendered license.

“*Issuance*” means the date of mailing of a decision or order, or date of delivery if service is by other means unless another date is specified by rule or in the order.

“*License*” means a license, registration, certificate, permit or other form of practice permission required or authorized by Iowa Code chapter 542, 542B, 543B, 543D, 544A, 544B, or 544C.

“*Party*” means the state, as represented by the assistant attorney general assigned to prosecute the case on behalf of the public interest, the respondent or applicant, or an intervenor.

“*Presiding officer*” means the board and, when applicable, a panel of board members, or an administrative law judge assigned to render a proposed decision in a nondisciplinary contested case.

“*Probable cause*” means a reasonable ground for belief in the existence of facts which would support a specified proceeding under applicable law and rules.

“*Quorum*” means a majority of the members of the board. Action may generally be taken upon a majority vote of board members present at a meeting who are not disqualified, although discipline may only be imposed by a majority vote of the members of the board who are not disqualified and, for the engineering and land surveying examining board, only upon an affirmative vote of at least five members of the board.

ITEM 16. Amend rule 193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) as follows:

**193—7.2(17A,542,542B,543B,543D,544A,544B,544C,546) Scope and applicability of the Iowa Rules of Civil Procedure.** This chapter applies to contested cases conducted by all boards in the bureau. Except as expressly provided in Iowa Code chapter 17A and these rules, the Iowa Rules of Civil Procedure do not apply to contested case proceedings. However, upon application by a party, the board may permit the use of procedures provided for in the Iowa Rules of Civil Procedure unless doing so would unreasonably complicate the proceedings or impose an undue hardship on a party.

ITEM 17. Amend rule 193—7.3(17A,272C) as follows:

**193—7.3(17A,272C) Probable Commencement of a contested case and probable cause.** ~~In the event the board finds there is probable cause for taking disciplinary action against a licensee, the board shall order a A contested case hearing in a disciplinary proceeding is commenced by the filing and service of a statement of charges and notice of hearing. A contested case in a nondisciplinary proceeding is commenced by the filing and service of a notice of hearing. A contested case may only be commenced by the board upon a finding of probable cause to do so by a quorum of the board.~~

ITEM 18. Amend subrule 7.6(1) as follows:

**7.6(1) Contents of notice of hearing.** Unless the hearing is waived, all contested cases shall commence with the service of a notice of hearing fixing the time and place for hearing. The notice, including any incorporated or attached statement of charges, shall contain those items specified in Iowa Code section 17A.12(2) and, if applicable, Iowa Code section 17A.18(3), and the following:

1. to 9. No change.
10. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193—7.9(17A,272C) within 20 days after service of the notice of hearing.
11. No change.
12. Information on who to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter.

13. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193—7.21(17A,272C).

14. The mailing address and e-mail address for filing with the board and notice of the option of e-mail service as provided in subrule 7.17(6).

ITEM 19. Amend rule 193—7.7(13,272C) as follows:

**193—7.7(13,272C) Legal representation.**

**7.7(1)** Every statement of charges and notice of hearing prepared by the board shall be reviewed and approved by the office of the attorney general, which shall be responsible for the legal representation of the public interest in all proceedings before the board. The assistant attorney general assigned to prosecute a contested case before the board shall not represent the board in that case but shall represent the public interest.

**7.7(2)** The respondent or applicant may be represented by an attorney. The attorney shall file an appearance in the contested case. If the attorney is not licensed to practice law in Iowa, the attorney shall comply with Iowa Court Rule 31.14. Business entities may be represented in a contested case by a nonlawyer partner, officer, director, shareholder, member, director, or other owner or manager.

ITEM 20. Amend subrule 7.9(1), introductory paragraph, as follows:

**7.9(1)** The ~~Unless~~ otherwise provided in the notice of hearing, the answer shall contain the following information:

ITEM 21. Amend rule 193—7.13(17A,272C) as follows:

**193—7.13(17A,272C) Telephone and electronic proceedings.** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. The presiding officer will determine the location of the parties and witnesses for telephone or other electronic hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen. Disciplinary hearings will generally not be held by telephone or electronic means in the absence of consent by all parties, but the presiding officer may permit any witness to testify by telephone or other electronic means. Parties shall disclose at or before the prehearing conference if any witness will be testifying by telephone or other electronic means. Objections, if any, shall be filed with the board and served on all parties at least three business days in advance of hearing.

ITEM 22. Amend subrule 7.14(2) as follows:

**7.14(2)** The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other board functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. A person voluntarily appearing before the board or a committee of the board waives any objection to a board member or board staff both participating in the appearance and later participating as a decision maker or aid to the decision maker in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrule 7.28(9).

ITEM 23. Amend subrule 7.14(4) as follows:

**7.14(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 7.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code ~~section~~ sections 17A.11(3) and 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

ITEM 24. Amend subrule 7.14(6) as follows:

**7.14(6)** A motion to disqualify a board member or other person shall first be directed to the affected board member or other person for determination. If the board member or other person determines that disqualification is appropriate, the board member or other person shall withdraw from further participation in the case. If the board member or other person determines that withdrawal is not required, the presiding officer shall promptly review that determination, provided that, if the person at issue is an administrative law judge, the review shall be by the board. If the presiding officer determines that disqualification is appropriate, the ~~presiding officer~~ board member or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 193—7.31(17A), if applicable, and seek a stay under rule 193—7.34(17A).

ITEM 25. Amend subrule 7.17(4) as follows:

**7.17(4)** Filing—*how and when made.* Except where otherwise provided by law, a document is deemed filed at the time it is received by the board. Parties may file documents with the board by hand delivery or mail or by electronic transmission to the e-mail address specified in the notice of hearing. If a document required to be filed within a prescribed period or on or before a particular date is received by the board after such period or such date, the document shall be deemed filed on the date it is mailed by first-class mail or state interoffice mail, so long as there is proof of mailing. Filing by electronic transmission is complete upon transmission unless the party making the filing learns that the attempted filing did not reach the board. The board will not provide a mailed file-stamped copy of documents filed by e-mail or other approved electronic means.

ITEM 26. Amend subrule 7.17(6) as follows:

**7.17(6)** Electronic service. The presiding officer may by order or a party or a party's attorney may by consent permit service or filing of particular documents by ~~facsimile~~, e-mail or similar electronic means, unless precluded by a provision of law. In the absence of such an order or consent, ~~facsimile or~~ electronic transmission shall not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is desirable. Consent to electronic service by a party or a party's attorney shall be in writing, may be accomplished through electronic transmission to the board and other parties, and shall specify the e-mail address for such service. Service by electronic transmission is complete upon transmission unless the board or party making service learns that the attempted service did not reach the party to be served.

ITEM 27. Amend rule 193—7.18(17A) as follows:

**193—7.18(17A) Discovery.**

**7.18(1)** ~~Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.~~

**7.18(2)** ~~Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 7.18(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.~~

**7.18(3)** ~~Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.~~

**7.18(1)** The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

**7.18(2)** The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties in a contested case proceeding: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and

things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

a. Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

b. Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

c. Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

d. Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in a contested case proceeding.

**7.18(3)** The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to a contested case proceeding. However, upon application by a party, the board may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceeding or impose an undue hardship. As a practical matter, the purpose of the disclosure requirements and discovery conference is served by the board's obligation to supply the information described in Iowa Code section 17A.13(2) upon request while a contested case is pending and the mutual exchange of information required in a prehearing conference under rule 193—7.22(17A).

**7.18(4)** Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

**7.18(5)** Discovery shall be served on all parties to the contested case proceeding, but shall not be filed with the board.

**7.18(6)** A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the board relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve with the opposing party the discovery issues involved. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

**7.18(7)** Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

ITEM 28. Amend rule 193—7.19(17A,272C) as follows:

**193—7.19(17A,272C) Issuance of subpoenas in a contested case.**

**7.19(1)** Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing, and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing, or each command may be issued separately. Subpoenas shall be issued by the executive officer or designee upon a written request that complies with this rule. In the case of a request for a subpoena of mental health records, the request must confirm compliance with the following conditions prior to the issuance of the subpoena:

*a. to d.* No change.

**7.19(2)** A request for a subpoena shall include the following information, as applicable:

*a.* The name, address, e-mail address, and telephone number of the person requesting the subpoena;

*b. to g.* No change.

**7.19(3)** No change.

**7.19(4)** The executive officer or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon

the subject of the subpoena. If a subpoena is requested to compel testimony or documents for rebuttal or impeachment at hearing, the person requesting the subpoena shall so state in the request and may ask that copies of the subpoena not be mailed to the parties in the contested case.

**7.19(5)** Any person who is aggrieved or adversely affected by compliance with the subpoena, or any party to the contested case who desires to challenge the subpoena, must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits. However, if a subpoena solely requests the production of books, papers, records, or other real evidence and does not also seek to compel testimony, the person who is aggrieved or adversely affected by compliance with the subpoena may alternatively serve written objection on the requesting party before the earlier of the date specified for compliance or 14 days after the subpoena is served. The serving party may then file a motion asking the presiding officer to issue an order compelling production.

**7.19(6)** Upon receipt of a timely motion to quash or modify a subpoena or motion to compel production, the board may issue a decision or may request an administrative law judge to issue a decision. The administrative law judge or the board may quash or modify the subpoena, deny or grant the motion, or issue an appropriate protective order. Prior to ruling on the motion, the board or administrative law judge may schedule oral argument or hearing by telephone or in person.

**7.19(7)** No change.

**7.19(8)** If the person contesting the subpoena is not ~~the person under investigation~~ a party to the contested case proceeding, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is ~~the person under investigation~~ a party to the contested case proceeding, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

ITEM 29. Amend subrules 7.20(4) and 7.20(5) as follows:

**7.20(4)** Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ~~five~~ seven days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the board or an order of the presiding officer.

**7.20(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure ~~237~~ 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

ITEM 30. Amend rule 193—7.21(17A,272C) as follows:

**193—7.21(17A,272C) Prehearing conference and disclosures.**

**7.21(1)** No change.

**7.21(2)** Each party shall ~~bring the following~~ disclose at or prior to the prehearing conference:

*a.* to *c.* No change.

**7.21(3)** No change.

**7.21(4)** Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference. Unless otherwise provided in the order setting a prehearing conference, the prehearing conference shall be conducted by an administrative law judge.

**7.21(5)** The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 7.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

ITEM 31. Amend rule 193—7.25(17A,272C) as follows:

**193—7.25(17A,272C) Hearings.** The presiding officer shall be in control of the proceedings and shall have the authority to administer oaths and to admit or exclude testimony or other evidence and shall rule

on all motions and objections. The board may request that an administrative law judge assist the board by performing any of these functions. Parties have the right to participate or to be represented in all hearings. Any party may be represented by an attorney at the party's expense.

**7.25(1)** No change.

**7.25(2) Public hearing.** The hearing shall be open to the public unless a licensee or licensee's attorney requests in writing that a licensee disciplinary hearing be closed to the public. At the request of a party or on the presiding officer's own motion, the presiding officer may issue a protective order to protect all or a part of a record or information which is privileged or confidential by law.

**7.25(3) to 7.25(7)** No change.

**7.25(8) Witness representation.** Witnesses are entitled to be represented by an attorney at their own expense. In a closed hearing, the attorney may be present only when the client testifies. The attorney may assert legal privileges personal to the client, but may not make other objections. The attorney may only ask questions of the client to prevent a misstatement from entering the record.

**7.25(9) Depositions.** Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

**7.25(10) Witness fees.** The parties in a contested case shall be responsible for any witness fees and expenses incurred by witnesses appearing at the contested case hearing, unless otherwise specified or allocated in an order. The costs for lay witnesses shall be determined in accordance with Iowa Code section 622.69. The costs for expert witnesses shall be determined in accordance with Iowa Code section 622.72. Witnesses are entitled to reimbursement for mileage and may be entitled to reimbursement for meals and lodging, as incurred.

ITEM 32. Amend subrule 7.26(4) as follows:

**7.26(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies should also be furnished to members of the board. All exhibits admitted into evidence shall be appropriately marked and be made part of the record. The state's exhibits shall be marked numerically, and the applicant's or respondent's exhibits shall be marked alphabetically.

ITEM 33. Amend subrule 7.27(6) as follows:

**7.27(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure ~~236~~ 1.977.

ITEM 34. Amend subrule 7.30(1) as follows:

**7.30(1) Final decision.** When a quorum of the board presides over the reception of evidence at the hearing, the decision is a final decision. The final decision of the board shall be filed with the executive officer. A copy of the final decision and order shall immediately be sent by certified mail, return receipt requested, to the licensee's or other respondent's last-known U.S. Postal Service address or may be served as in the manner of original notices. A party's attorney may waive formal service and accept service in writing for the party. Copies shall be mailed by interoffice mail or first-class mail to the prosecutor and counsel of record.

ITEM 35. Amend subrule 7.32(2) as follows:

**7.32(2) Appeal by party.** Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision. Such an appeal is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

ITEM 36. Amend paragraph **7.34(1)"b"** as follows:

*b.* Any party to a contested case proceeding may petition the board for a stay or other temporary remedies, pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy. Seeking a stay from the board is required to exhaust administrative remedies before a stay may be sought from the district court.

ITEM 37. Amend rule 193—7.38(17A,272C) as follows:

**193—7.38(17A,272C) Reinstatement.**

**7.38(1)** The term “reinstatement” as used in this rule shall include both the reinstatement of a suspended license and the issuance of a new license following the revocation or voluntary surrender of a license. Reinstating a license to active status under this rule is a two-step process:

*a.* First, the board must determine whether the suspended, revoked, or surrendered license may be reinstated under the terms of the order revoking or suspending the license or accepting the surrender of the license and under the two-part test described in subrule 7.38(5).

*b.* Second, if the board grants the application to reinstate, the licensee must complete and submit an application to demonstrate satisfaction of all administrative preconditions for reinstatement of the license to active status, including verification of completion of all continuing education and payment of reinstatement and renewal fees.

**7.38(2)** and **7.38(3)** No change.

**7.38(4)** All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement of the respondent’s license. Such application shall be docketed in the original case in which the license was revoked, suspended, or relinquished. All proceedings upon the petition for reinstatement, including the matters preliminary and ancillary thereto, shall be subject to the same rules of procedure as other cases before the board. In addition, the board may grant an applicant’s request to appear informally before the board prior to the issuance of a notice of hearing on the application if the applicant requests an informal appearance in the application and agrees not to seek to disqualify on the ground of personal investigation the board members or staff before whom the applicant appears.

**7.38(5)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis of revocation, suspension or voluntary surrender of the respondent’s license no longer exists and that it will be in the public interest for the license to be reinstated. Compliance with subrule 7.30(3) must also be established. The burden of proof to establish such facts shall be on the respondent. An order of reinstatement may include such conditions as the board deems reasonable under the circumstances. The board may grant the application without hearing, but may not deny the application in whole or part without setting the matter for hearing or providing the applicant the opportunity to request a contested case hearing if aggrieved by a term of the reinstatement order.

**7.38(6)** No change.

ITEM 38. Rescind and reserve rules **193—7.43(252J)** to **193—7.45(272D)**.

ITEM 39. Amend **193—Chapter 8** as follows:

CHAPTER 8

DENIAL OF ISSUANCE OR RENEWAL, SUSPENSION, OR REVOCATION OF LICENSE FOR NONPAYMENT OF CHILD SUPPORT, STUDENT LOAN, OR STATE DEBT

**193—8.1(252J) Nonpayment of child support.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in chapter 252J, this rule shall apply.

**8.1(1)** No change.

**8.1(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee or applicant.

**8.1(3)** and **8.1(4)** No change.

**8.1(5)** All board fees for applications, license renewal or reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license will be issued,

renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 252J.

**8.1(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 252J.8 and 252J.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.1(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, ~~or~~ renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

**193—8.2(261) Nonpayment of student loan.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code ~~chapter 261~~ section 261.126. In addition to those procedures, this rule shall apply.

**8.2(1)** No change.

**8.2(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

**8.2(3)** and **8.2(4)** No change.

**8.2(5)** All board fees required for application, license renewal or license reinstatement must be paid by applicants or licensees, and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 261.

**8.2(6)** In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code sections 261.126 and 261.127, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.2(7)** The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the applicant or licensee when the license is issued, ~~or~~ renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

**193—8.3(272D) Nonpayment of state debt.** The board shall deny the issuance or renewal of a license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures in Iowa Code chapter 272D. In addition to the procedures set forth in Iowa Code chapter 272D, this rule shall apply.

**8.3(1)** No change.

**8.3(2)** The effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, as specified in the notice required by Iowa Code section 272D.8, shall be 60 days following service of the notice upon the licensee or applicant.

**8.3(3)** and **8.3(4)** No change.

**8.3(5)** All board fees required for applications application, license renewal or reinstatement must be paid by licensees or applicants, and all continuing education requirements must be met before a license

will be issued, renewed or reinstated after the board has denied the issuance or renewal of a license or suspended or revoked a license pursuant to Iowa Code chapter 272D.

**8.3(6)** In the event a licensee or applicant files a timely district court action following service of a board notice pursuant to Iowa Code sections 272D.8 and 272D.9, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**8.3(7)** The board shall notify the licensee or applicant in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license or the suspension or revocation of a license, and shall similarly notify the licensee or applicant when the license is issued, ~~or~~ renewed or reinstated following the board’s receipt of a withdrawal of the certificate of noncompliance.

These rules are intended to implement Iowa Code chapters 252J and 272D and Iowa Code sections 261.126 and 261.127.

ITEM 40. Amend rule 193—9.1(17A) as follows:

**193—9.1(17A) Petition for rule making.** Any person, board or other state agency may file a petition for rule making with the board.

A petition is deemed filed when it is received by that office. The board must provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten, or legibly handwritten in ink, and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)	
Petition by (Name of Petitioner) for the (adoption, amendment, or repeal) of rules relating to (state subject matter).	} PETITION FOR RULE MAKING

The petition must provide the following information:

1. to 4. No change.

5. The names, ~~and~~ addresses, and e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the proposed action which is the subject of the petition.

6. No change.

**9.1(1)** The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

**9.1(2)** No change.

ITEM 41. Amend subrule 9.4(2) as follows:

**9.4(2)** Within 60 days after the filing of the petition, or within any longer period agreed to by the petitioner, the board must, in writing, deny the petition, and notify petitioner of its action and the specific grounds for the denial, or grant the petition and notify petitioner that it has instituted rule-making proceedings on the subject of the petition. Service of the written notice shall be sent to the e-mail address provided by the petitioner unless the petitioner specifically requests a mailed copy. Petitioner shall be deemed notified of the denial or granting of the petition on the date when the board ~~mails~~ e-mails or delivers the required notification to petitioner.

ITEM 42. Amend rule 193—10.1(17A) as follows:

**193—10.1(17A) Petition for declaratory order.** Any person may file a petition with the board for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the board at the board’s offices. A petition is deemed filed when it is received by that office. The board shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)		
Petition by (Name of Petitioner) for Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. to 6. No change.
7. The names, ~~and~~ addresses, ~~and~~ e-mail addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions in the petition.
8. Any request by petitioner for a meeting provided for by 193—10.7(17A). The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, e-mail address, and telephone number of the petitioner and petitioner’s representative, and a statement indicating the person to whom communications concerning the petition should be directed.

ITEM 43. Amend rule 193—10.2(17A) as follows:

**193—10.2(17A) Notice of petition.** Within ten days after receipt of a petition for a declaratory order, the board shall give notice of the petition to all persons not served by the petitioner pursuant to 193—10.6(17A) to whom notice is required by any provision of law. The board may also give notice to any other persons. Notice may be provided by e-mail or similar electronic means.

ITEM 44. Amend subrule 10.3(3) as follows:

**10.3(3)** A petition for intervention shall be filed at the board’s offices. Such a petition is deemed filed when it is received by that office. The board will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

(NAME OF EXAMINING BOARD)		
Petition by (Name of Original Petitioner) for Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. to 4. No change.
5. The names, ~~and~~ addresses, ~~and~~ e-mail addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. No change.

The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, e-mail address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed.

ITEM 45. Amend subrule 10.8(1) as follows:

**10.8(1)** Within the time allowed after receipt of a petition for a declaratory order, the board shall take action on the petition within 30 days after receipt as required by Iowa Code section 17A.9. Within 30 days after receipt of a petition for a declaratory order, an agency shall, in writing, do one of the following:

a. Issue an order declaring the applicability of the statute, rule, or order in question to the specified circumstances;

b. Set the matter for specified proceedings;

c. Agree to issue a declaratory order by a specified time; or

d. Decline to issue a declaratory order, stating the reasons for its action.

ITEM 46. Amend rule 193—10.11(17A) as follows:

**193—10.11(17A) Copies of orders.** A copy of all orders issued in response to a petition for a declaratory order shall be ~~mailed~~ e-mailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

ITEM 47. Amend subrule 13.3(1) as follows:

**13.3(1) Location of record.** A request for access to a record should be directed to the board which owns or is in physical possession of the record. The request shall be directed to the appropriate board at ~~1920 S.E. Hulsizer, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

ITEM 48. Amend subrule 13.3(3) as follows:

**13.3(3) Request for access.** Requests for access to open records may be made in writing, in person, by facsimile, e-mail, or other electronic means, or by telephone. Requests shall identify the particular record sought by name or description in order to facilitate the location of the record. Mail, electronic, or telephone requests shall include the name, address, e-mail address, and telephone number of the person requesting the information to facilitate the board's response, unless other arrangements are made to permit production to a person wishing to remain anonymous. A person shall not be required to give a reason for requesting an open record.

ITEM 49. Amend subrule 13.4(3) as follows:

**13.4(3) Notice to subject of record and opportunity to obtain injunction.** After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address, e-mail address, or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

ITEM 50. Amend subrule 13.5(2) as follows:

**13.5(2) Request.** A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, e-mail address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question with those portions deleted for which such confidential record treatment has been requested. If the original record is being submitted to the agency by the person requesting such confidential treatment

at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

ITEM 51. Amend rule 193—13.6(17A,22) as follows:

**193—13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the board at ~~1920 S.E. Hulsizer, Ankeny, Iowa 50021~~ 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

ITEM 52. Amend subrule 13.8(4) as follows:

**13.8(4)** Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services, centralized collection unit of the department of revenue for state debt, and college student aid commission for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapter 252J, sections 261.126 and 261.127 and chapter 272D.

ITEM 53. Amend subrule 13.11(1) as follows:

**13.11(1)** The subject of a confidential record may file a written request to review confidential records about that person. However, the agency need not release the following records to the subject:

*a. to c.* No change.

*d.* All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline are required to be withheld from the subject prior to the filing of formal charges and the notice of hearing in a licensee disciplinary proceeding, except those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9).

~~*e.* Confidential personnel records of licensees and examination candidates. (Iowa Code section 22.7(11))~~

~~*f. e.* As otherwise authorized by law.~~

ITEM 54. Amend subrule 13.12(2) as follows:

**13.12(2) Confidential records.** The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

*a.* Personal related information in confidential personnel records of board staff, and board members and licensees. (Iowa Code section 22.7(11))

~~*b.* Personal related information in confidential personnel records of applicants for licensure. (Iowa Code section 22.7(11))~~

~~*e. b.* All information in complaint and investigation files maintained by the board for purposes of licensee discipline is confidential in accordance with Iowa Code section 272C.6(4), except that the information may be released to the licensee once a licensee disciplinary proceeding has been initiated by the filing of formal charges and a notice of hearing or those files the board can provide to the licensee before charges are filed pursuant to rules adopted under Iowa Code section 546.10(9). Unlicensed complaint files are open to the public.~~

~~*d. c.* The record of a disciplinary hearing which is closed to the public pursuant to Iowa Code section 272C.6(1) is confidential under Iowa Code section 21.5(4). However, in the event a record is transmitted to the district court pursuant to Iowa Code section 17A.19(6) for purposes of judicial review, the record shall not be considered confidential unless the district court so orders. Unlicensed hearing files are open to the public.~~

~~e. d.~~ Information relating to the examination results other than final score, except for information about the results of an examination which is given to the person who took the examination. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

~~f. e.~~ Information relating to the contents of an examination for licensure. (Iowa Code sections 542.17, 542B.32, 543B.52, 544A.27, and 544B.8)

~~g. f.~~ Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))

~~h. g.~~ Information or records received from a restricted source and any other information or records made confidential by law, such as academic transcripts or substance abuse treatment information.

~~i. h.~~ References for examination or licensure applicants. (Iowa Code section 22.7(18))

~~j. i.~~ Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code sections section 22.7, 272C.6(4), 622.10 or 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

~~k. j.~~ Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

~~l. k.~~ Those portions of agency staff manuals, instructions or other statements issued which set forth the criteria or guidelines to be used by agency staff in auditing, making inspections, or in selecting or handling cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the board. (Iowa Code sections 17A.2 and 17A.3)

l. E-mail addresses of licensees when solicited for the purpose of mass communication. An e-mail address may be open to the public when given as part of a specific, individual e-mail correspondence.

ITEM 55. Amend rule 193—13.13(17A,22), introductory paragraph, as follows:

**193—13.13(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 193—13.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. ~~Most records~~ Records are stored on paper only, but information from paper records may also be stored and in electronic form and some records may also be stored only in electronic form. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format. Data regarding licensees is stored in a data processing system that permits the comparison of personally identifiable information in one record system with personally identifiable information in another system. Some information is may also be placed on the board's Web site or in its newsletter or shared with others to display in databases, national registries, and similar systems. The record systems maintained by the agency are:

ITEM 56. Amend rule 193—13.14(22), introductory paragraph, as follows:

**193—13.14(22) Other groups of records.** This rule describes groups of records maintained by the agency other than record systems as defined in rule 193—13.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, the records listed in rule 193—13.13(17A,22) may contain information about individuals. ~~All records~~ Records are stored on paper and electronic and may be stored and in automated data processing systems ~~unless otherwise noted.~~ The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

ITEM 57. Amend subrule 13.14(4) as follows:

**13.14(4)** Appeal decisions and advisory opinions. All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 13.12(2), paragraphs "e" "b"

and ~~“d.”~~“c.” These records may contain information about individuals collected under the authority of Iowa Code sections 542.10, 542B.21, 543B.29, 543D.17, 544A.13, 544B.15, and 544C.9.

ITEM 58. Renumber subrules **13.14(8)** to **13.14(14)** as **13.14(9)** to **13.14(15)**.

ITEM 59. Adopt the following **new** subrule 13.14(8):

**13.14(8)** Declaratory orders.

ITEM 60. Amend subrule 13.17(2) as follows:

**13.17(2)** *Home address*. License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The boards within the bureau will honor the “safe at home” address issued by any state’s program and protective orders in domestic abuse proceedings or otherwise issued to preserve confidentiality of a person’s physical location. If a license applicant or licensee has a basis to shield a home address from public disclosure, such as a domestic abuse protective order, written notification should be provided to the board office. Absent a court order, the board may not have a basis under Iowa Code chapter 22 to shield the home address from public disclosure, but the board may refrain from placing the home address on its Web site and may notify the applicant or licensee before the home address is released to the public to provide an opportunity for the applicant or licensee to seek injunction.