

**ENGINEERING AND LAND SURVEYING EXAMINING
BOARD[193C]**

Notice of Intended Action

**Proposing rulemaking related to peer review
and providing an opportunity for public comment**

The Engineering and Land Surveying Examining Board hereby proposes to rescind Chapter 10, “Peer Review,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 542B.6.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 542B and Executive Order 10.

Purpose and Summary

These proposed revisions to Chapter 10 implement changes recommended by Executive Order 10. Chapter 10 covers peer review as it relates to disciplinary investigations.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa. No current fees are being changed, and no new fees are being imposed.

Jobs Impact

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

Waivers

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

Public Comment

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

Robert E. Lampe
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9024
Fax: 515.725.9032
Email: robert.lampe@dia.iowa.gov

Public Hearing

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

January 30, 2024
12:50 to 1:10 p.m.

6200 Park Avenue
Des Moines, Iowa
Video call link:
meet.google.com/yxd-hmkw-ppo
More phone numbers:
[tel.meet/yxd-hmkw-ppo?pin=1779851586643](tel:meet/yxd-hmkw-ppo?pin=1779851586643)

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The Department may address agenda items out of sequence to accommodate persons appearing before the Department or to aid in the efficiency or effectiveness of the meeting.

All meetings held by the Department are accessible to everyone. Any persons who need special accommodations to participate should call 515.281.0254 (TDD: 1.800.735.2942) as soon as possible in advance of the meeting to ensure sufficient time to make the appropriate accommodations.

Public attendees may make comments at the conclusion of each board director's report.

The boards reserve the right to limit the length of comments based on the number of individuals who wish to speak.

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

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

ITEM 1. Rescind 193C—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10 PEER REVIEW

193C—10.1(542B,272C) Peer review. The board may appoint a peer reviewer, or multiple peer reviewers, for the investigation of a complaint about the acts or omissions of one or more licensees.

10.1(1) Peer review. Peer reviewers are generally licensed engineers or licensed land surveyors or both, as determined by the board, who are selected for their knowledge and experience in the type of engineering or land surveying involved in the complaint.

An individual is ineligible as a peer reviewer in accordance with the standard for disqualification found at 193—subrule 7.14(1). If a peer reviewer is unable to serve after an investigation has begun, the peer reviewer will notify the board office.

10.1(2) Authority. The peer reviewer's investigation may include activities such as interviewing the complainant, the respondent, individuals with knowledge of the alleged violation, and individuals with knowledge of the respondent's practice in the community; gathering documents; conducting site visits; and performing independent analyses as deemed necessary. Although the board does not become involved in a complaint investigation, the board may give specific instructions to the peer reviewer regarding the scope of the investigation. In the course of the investigation, the peer reviewer will refrain from advising the complainant or respondent on actions that the board might take.

10.1(3) *Term of service.* The peer reviewer serves at the pleasure of the board. The board may dismiss any peer reviewer or add new peer reviewers at any time.

10.1(4) *Compensation.* The terms of payment as authorized by the peer review agreement may vary based on the nature and complexity of each assignment. The peer reviewer will be additionally entitled to reimbursement of expenses directly related to the peer review process, deposition or hearing preparation, or deposition or hearing testimony, such as mileage, meals, or out-of-pocket charges for securing copies of documents. Expenses will be reimbursed as allowed under the manuals and guidelines published by the Iowa department of administrative services, state accounting enterprise. The peer reviewer cannot hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

193C—10.2(542B,272C) Reports. Each peer reviewer will submit a written report to the board within 90 days of the peer review assignment, unless an extension is granted by the board.

10.2(1) *Components of the report.* The report will include:

- a. A statement of the charge to the peer reviewer;
- b. A description of the actions taken by the peer reviewer in the peer reviewer's investigation, including but not limited to document review, interviews and site visits;
- c. A summary of the peer reviewer's findings, including:
 - (1) The peer reviewer's opinion as to whether a violation has occurred,
 - (2) Citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and
 - (3) The peer reviewer's opinion of the seriousness of the violation; and
- d. A recommendation.

In the case of a land surveyor peer reviewer report, the report must be plat-specific as to the violations.

10.2(2) *Recommended action.* The peer reviewer report will recommend one of the following:

- a. Dismissal of the complaint,
- b. Further investigation, or
- c. Disciplinary proceedings.

If the peer reviewer recommends further investigation or disciplinary proceedings, supporting information must be submitted to the board, including citation of the specific Iowa Code section(s) and Iowa Administrative Code rule(s) violated.

10.2(3) *Disciplinary recommendations.* When recommending disciplinary proceedings, a peer reviewer will not suggest a particular form of discipline, but may provide guidance on the severity of the violations that prompted the recommendation and may identify professional areas in which the licensee needs additional education, experience or monitoring in order to safely practice.

193C—10.3(542B,272C) Confidentiality. The peer reviewer will not discuss or reveal the peer reviewer's findings and conclusions with any party other than the board (through the peer reviewer's report to the board) or board staff.

193C—10.4(542B,272C) Testimony. Peer reviewers may be required to testify in the event of formal disciplinary proceedings.

These rules are intended to implement Iowa Code section 272C.3.