

ACCOUNTANCY EXAMINING BOARD[193A]

Adopted and Filed

Rulemaking related to enforcement proceedings against nonlicensees

The Accountancy Examining Board hereby rescinds Chapter 17, “Enforcement Proceedings Against Nonlicensees,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 542.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 542 and Executive Order 10 (January 10, 2023).

Purpose and Summary

These amendments implement changes recommended by Executive Order 10. Chapter 17 provides useful information on the Board’s options regarding resolutions of complaints against nonlicensees practicing accountancy.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 10, 2024, as **ARC 7400C**. Public hearings were held on January 30, 2024, and January 31, 2024, at 12:30 p.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on February 15, 2024.

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.

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).

Effective Date

This rulemaking will become effective on April 10, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 193A—Chapter 17 and adopt the following **new** chapter in lieu thereof:

CHAPTER 17
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193A—17.1(542) Civil penalties against nonlicensees. The board may order compliance with Iowa Code chapter 542 and board rules, revoke a practice privilege, and impose civil penalties by order against a firm, other entity, or individual that is not licensed by the board pursuant to Iowa Code chapter 542 based on the unlawful practices specified in Iowa Code sections 542.13 and 542.20. In addition to the procedures set forth in Iowa Code section 542.14, this chapter applies.

193A—17.2(17A,542) Investigations. The board is authorized by Iowa Code section 17A.13(1) and Iowa Code section 542.11 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Such investigations will conform to the procedures outlined in 193A—Chapter 15. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

193A—17.3(17A,542) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to enforce compliance with Iowa Code chapter 542 and board rules and to impose a civil penalty will be served upon the nonlicensee by certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice will include the following:

1. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
2. Reference to the particular sections of the statutes and rules involved.
3. A short, plain statement of the alleged unlawful practices.
4. The dollar amount of the proposed civil penalty, the nature of the intended order to enforce compliance with Iowa Code chapter 542 and board rules, and whether a practice privilege will be revoked.
5. Notice of the nonlicensee's right to a hearing and the time frame in which hearing can be requested.
6. The address to send a written request for hearing.

193A—17.4(17A,542) Request for hearing.

17.4(1) Nonlicensees have 30 days to request a hearing. The 30-day time frame begins on the date the notice is mailed if served through certified mail to the last-known address, or 30 days from the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing has to be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

17.4(2) If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose civil penalty.

17.4(3) If a request for hearing is timely made, the board will issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

17.4(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty, revoking the practice privilege, and requiring compliance with Iowa Code chapter 542 and board rules at any stage of the proceeding upon mutual consent of the board.

17.4(5) The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Hearings are open to the public.

193A—17.5(542) “Safe harbor” language. Persons who do not hold a CPA certificate or LPA license, firms that do not hold a CPA or LPA firm permit to practice, or individuals or firms that are ineligible to exercise a practice privilege cannot use in any statement relating to the financial affairs of a person or entity language that is conventionally used by CPAs or LPAs in reports on financial statements. Pursuant to Iowa Code section 542.13(8), such persons or firms may use the following “safe harbor” language:

“I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners). I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them.”

193A—17.6(542) Enforcement options. The board may also pursue other enforcement as provided in Iowa Code sections 542.14(8), 542.14(9) and 542.15.

These rules are intended to implement Iowa Code chapters 17A and 542.

[Filed 2/15/24, effective 4/10/24]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/6/24.