Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 193G—Chapter 5 "Grounds for Discipline, Disciplinary Investigations, and Disciplinary Proceedings"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 544C.3
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 544C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 22, 2024 3 p.m.	6200 Park Avenue Des Moines, Iowa Virtual: us02web.zoom.us/j/87157328415?pwd=MUJIuarfeYpA4aEog7FSkQfzHyXifN.1

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Interior Design Examining Board (Board) no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Lori SchraderBachar
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.725.9030
Email: lori.schraderbachar@dia.iowa.gov

Purpose and Summary

The purpose of proposed Chapter 5 is to provide Iowans, registrants, and their employers with information about the disciplinary process and possible actions against registered interior designers. The public knows that the Board can impose discipline for violations of the Board's rules. The public has the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board has the ability to seek discipline against the registrant, ensuring that the public is protected.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Costs are not generally incurred by the public. Registrants are responsible for costs associated with disciplinary actions. Civil penalties are capped at $1,000 per instance.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this chapter is to ensure public safety and maintain a high level of service for Iowans. The Board rarely receives complaints and takes few disciplinary actions. In fiscal year 2024, the Board did not receive any complaints.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Because complaints are rare, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior design, especially having the ability to stamp/seal drawings, is a profession that requires knowledge, training, and skill.

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on registrants when requirements are not met ensures safety for the registrant and the consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a registrant who violates professional standards.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

A cost to the agency is the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a registrant violates applicable rules or laws. Shared staff at approximately 0.25 of a full-time equivalent position support the entirety of the work of the Board. Staff salaries are covered by the Licensing and Regulation Fund. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual registrants, not the State. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. Disciplinary fees collected under this authority go to the General Fund.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

Because there is only a small number of complaints submitted, costs are extremely low. The Board believes that the benefits achieved justify the low cost because interior designers have been able to stamp/seal for only one year. This profession requires knowledge, training, and skill. While a low number of complaints can call into question the extent to which a profession needs to be regulated, the new law allowing registered interior designers to stamp/seal documents can impact public safety. The Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure the safety of Iowans in the built environment.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Board has not identified any alternatives to these disciplinary rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

The Board has not identified any alternatives to these disciplinary rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed chapter relates to public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for registered interior designers. While some registered interior designers likely are running a small business of their own, some work for large organizations. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from those small businesses. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 193G—Chapter 5 and adopt the following **new** chapter in lieu thereof:

CHAPTER 5
GROUNDS FOR DISCIPLINE, DISCIPLINARY INVESTIGATIONS, AND DISCIPLINARY PROCEEDINGS

193G—5.1(17A,272C,544C) Grounds for discipline. The board may initiate disciplinary action against a registered interior designer on any of the following grounds:

1. A violation of any of the rules of professional conduct set forth in 193G—Chapter 4.
2. A violation of Iowa Code section 272C.9(2) or 272C.9(3).
3. Failure to comply with an order of the board imposing discipline.
4. Continuing to practice as a registered interior designer without satisfying the continuing education requirement, absent express waiver granted by the board.
5. Failure to fully cooperate with a registrant disciplinary investigation or investigation against a nonregistrant, including failure to respond to a board inquiry within 30 calendar days of the date of mailing by certified mail of a written communication directed to the registrant's last address on file at the board office.
6. A violation of Iowa Code section 544C.9 or 272C.10.

193G—5.2(17A,272C,544C) Initiation of disciplinary investigations. The board may initiate a registrant disciplinary investigation upon the board's receipt of information suggesting that a registrant may have violated a law or rule enforced by the board which violation, if true, would constitute grounds for registrant discipline. The board may also review the publicly available work product of a registrant on a general or random basis to determine whether reasonable grounds exist to initiate disciplinary proceedings or to conduct a more specific investigation.

193G—5.3(17A,272C,544C) Conflict of interest. If the subject of a complaint is a member of the board, or if a member of the board has a conflict of interest in any disciplinary matter before the board, that member will abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193G—5.4(272C,544C) Complaints. Written complaints may be submitted to the board office by mail, email, website portal, or personal delivery.

5.4(1) *Contents of a written complaint.* Written complaints may be submitted on forms provided by the board that are available from the board's website. Written complaints should include as much of the following information as possible:

a. The full name, address and telephone number of the complainant (person filing the complaint).

b. The full name, address and telephone number of the respondent (registrant against whom the complaint is filed).

c. A statement of the facts and circumstances giving rise to the complaint, including a description of the alleged acts or omissions that the complainant believes demonstrate that the respondent has violated or is violating laws or rules enforced by the board.

d. If known, citations to the laws or rules allegedly violated by the respondent.

e. Evidentiary supporting documentation.

f. Steps, if any, taken by the complainant to resolve the dispute with the respondent prior to filing a complaint.

5.4(2) *Immunity.* As provided by Iowa Code section 272C.8, a person will not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor will an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

5.4(3) *Role of complainant.* The role of the complainant in the disciplinary process is limited to providing the board with factual information relative to the complaint. A complainant is not party to any disciplinary proceeding that may be initiated by the board based in whole or in part on information provided by the complainant.

5.4(4) *Role of the board.* The board does not act as an arbiter of disputes between private parties, nor does the board initiate disciplinary proceedings to advance the private interest of any person or party. The role of the board in the disciplinary process is to protect the public by investigating complaints and initiating disciplinary proceedings in appropriate cases. The board possesses sole decision-making authority throughout the disciplinary process, including the authority to determine whether a case will be investigated, the manner of the investigation, whether a disciplinary proceeding will be initiated, and the appropriate registrant discipline to be imposed, if any.

5.4(5) *Initial complaint screening.* All written complaints received by the board are initially screened to determine whether the allegations of the complaint fall within the board's investigatory jurisdiction and whether the facts presented, if true, would constitute a basis for disciplinary action against a registrant. Complaints that are clearly outside the board's jurisdiction, that clearly do not allege facts upon which disciplinary action would be based, or that are frivolous are referred to the board for closure at the next scheduled board meeting. All other complaints are referred to the board's disciplinary committee for committee review as described in rule 193G—5.6(17A,272C,544C).

193G—5.5(272C,544C) Case numbers. Whether based on a written complaint received by the board or a complaint initiated by the board, all complaint files are tracked by a case numbering system. The board administrator maintains a case file log noting the date each case file was opened, whether disciplinary proceedings were initiated in the case, and the final disposition of the case. Once a case file number is assigned to a complaint, all persons communicating with the board regarding that complaint are encouraged to include the case file number to facilitate accurate recordkeeping and a prompt response.

193G—5.6(17A,272C,544C) Investigation procedures.

5.6(1) *Disciplinary committee.* The board chairperson may annually appoint, as needed, two to three members of the board to serve on the board's disciplinary committee to review and process disciplinary complaints. The disciplinary committee is a purely advisory body that reviews complaint

files referred by the board administrator, generally supervises the investigation of complaints, and makes recommendations to the full board on the disposition of complaints. Members of the committee may not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

5.6(2) *Committee screening of complaints.* Upon the referral of a complaint from the board administrator or from the full board, the committee determines whether the complaint presents facts that, if true, suggest that a registrant may have violated a law or rule enforced by the board. If the committee concludes that the complaint does not present facts that suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee will refer the complaint to the full board with the recommendation that the complaint be closed with no further action. If the committee determines that the complaint does present a credible basis for disciplinary action, the committee may either immediately refer the complaint to the full board recommending that a disciplinary proceeding be commenced or initiate a disciplinary investigation.

5.6(3) *Committee procedures.* If the committee determines that additional information is necessary or desirable to evaluate the merits of a complaint, the committee may assign an investigator or expert consultant, appoint a peer-review committee, provide the registrant an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193G—6.9(17A,272C,544C) or request that board staff conduct further investigation. Upon completion of an investigation, the investigator, expert consultant and peer-review committee or board staff will present a report to the committee. The committee will review the report and determine what further action is necessary. The committee may do any of the following:

a. Request further investigation.

b. Determine there is not probable cause to believe a disciplinary violation has occurred and refer the case to the full board with the recommendation of closure.

c. Determine there is probable cause to believe that a law or rule enforced by the board has been violated but that disciplinary action is unwarranted on other grounds and refer the case to the full board with the recommendation of closure. The committee may also recommend that the registrant be informally cautioned or educated about matters which could form the basis for disciplinary action in the future.

d. Determine there is probable cause to believe a disciplinary violation has occurred and refer the case to the full board with the recommendation that the board initiate a disciplinary proceeding (contested case).

5.6(4) *Subpoena authority.* Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board is authorized in connection with a disciplinary investigation to issue subpoenas to compel witnesses to testify or persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, that the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision of whether to initiate a disciplinary proceeding. Board procedures concerning investigatory subpoenas are set forth in rule 481—503.5(17A,272C).

193G—5.7(17A,272C,544C) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected registrant, the committee may grant the registrant an opportunity to appear before the committee for a voluntary informal discussion of the facts and circumstances of an alleged violation, subject to the provisions of this rule.

5.7(1) An informal discussion is intended to provide a registrant an opportunity to share the registrant's account of a complaint in an informal setting before the board determines whether probable cause exists to initiate a disciplinary proceeding. A registrant is not required to attend an informal discussion. Because disciplinary investigations are confidential, the registrant may not bring other persons to an informal discussion, but registrants may be represented by legal counsel.

5.7(2) Unless disqualification is waived by the registrant, board members or staff who personally investigate a disciplinary complaint are disqualified from making decisions or assisting the decision makers at a later formal hearing. An informal discussion is a form of investigation because it is

conducted in a question-and-answer format. In order to preserve the ability of all board members to participate in board decision making and to receive the advice of staff, a registrant who desires to attend an informal discussion must therefore waive the right to seek disqualification of a board member or staff based solely on the board member's or staff's participation in an informal discussion. A registrant would not waive the right to seek disqualification on any other ground. By electing to attend an informal discussion, a registrant accordingly agrees that none of the participating board members or staff is disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision-maker.

5.7(3) Because an informal discussion constitutes a part of the board's investigation of a pending disciplinary case, the facts discussed at the informal discussion may be considered by the board in the event the matter proceeds to a contested case hearing and those facts are independently introduced into evidence.

5.7(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the registrant agrees to a consent order, a statement of charges will be filed simultaneously with the consent order, as provided in rule 193—7.4(17A,272C).

193G—5.8(17A,272C,544C) Closing complaint files.

5.8(1) *Grounds for closing.* Upon the recommendation of the board's executive officer pursuant to subrule 5.4(5), the recommendation of the disciplinary committee pursuant to rule 193G—5.6(17A,272C,544C), or on its own motion, the board may close a complaint file, with or without prior investigation. The board's decision is final and not eligible for judicial review.

5.8(2) *Cautionary letters.* The board may issue a confidential letter of caution to a registrant when a complaint file is closed that informally cautions or educates the registrant about matters that could form the basis for disciplinary action in the future if corrective action is not taken by the registrant. Cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a registrant continues a practice about which the registrant has been cautioned.

5.8(3) *Reopening closed complaint files.* The board may reopen a closed complaint file if additional information arises after closure that provides a basis to reassess the merits of the initial complaint.

193G—5.9(17A,272C,544C) Initiation of disciplinary proceedings. Disciplinary proceedings may be initiated only by the affirmative vote of a quorum of the board at a public meeting. Board members who are disqualified shall not be included in determining whether a quorum exists. If, for example, two members of the board are disqualified, four members of the board constitute a quorum of the remaining six board members for purposes of voting on the case in which the two members are disqualified. When three or more members of the board are disqualified or otherwise unavailable for any reason, the board's executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11(5).

193G—5.10(17A,272C,544C) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in 193—Chapter 7 apply to disciplinary contested cases initiated by the board.

193G—5.11(272C,544C) Disciplinary sanctions.

5.11(1) *Types of sanctions.* The board has authority to impose the following disciplinary sanctions:

a. Revoke a registration issued by the board.

b. Suspend a registration issued by the board.

c. Revoke or suspend the privilege to engage in one or more areas of registered interior design.

d. Impose a period of probation, either with or without conditions.

e. Impose requirements regarding continuing education. The board may specify that a designated amount of continuing education be taken in specific subjects and may specify the time period for completing these courses. The board may also specify whether that continuing education be in addition to the continuing education routinely required for registration renewal. The board may also specify that additional continuing education be a condition for the termination of any suspension or reinstatement of a registration. The board may also specify that current reference materials be obtained and maintained.

f. Require reexamination, using one or more parts of the NCIDQ examination given to candidates for the registered interior design registration.

g. Impose civil penalties in an amount set by the board but not to exceed $1,000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in rule 193G—5.2(17A,272C,544C).

h. Issue a reprimand.

5.11(2) *Imposing discipline.* Discipline may be imposed against a registrant only by the affirmative vote of a majority of the members of the board who are not disqualified.

5.11(3) *Voluntary surrender.* The board may accept the voluntary surrender of a registration to resolve a pending disciplinary investigation or contested case. The board shall not accept a voluntary surrender of a registration to resolve a pending disciplinary investigation unless a statement of charges will be filed along with the order accepting the voluntary surrender. Such a voluntary surrender is considered disciplinary action and will be published in the same manner as other disciplinary orders.

5.11(4) *Notification requirements.* Whenever a registration is revoked, suspended, restricted, or voluntarily surrendered under this chapter, the registrant shall:

a. Within 15 days of receipt of the board's final order, notify in writing all clients of the fact that the registration has been revoked, suspended or voluntarily surrendered or that the practice of the registrant has been restricted. Such notice shall advise the client to obtain alternative professional services unless the restriction at issue would not impact the registered interior design services provided for that client;

b. Within 30 days of receipt of the board's final order, file with the board copies of the notices sent pursuant to paragraph 5.11(4)*"a."* Compliance with this requirement is a condition for an application for reinstatement.

5.11(5) *Civil penalties.* Factors the board may consider when determining whether to assess the amount of civil penalties include:

a. Whether other forms of discipline are being imposed for the same violation.

b. Whether the amount imposed will be a substantial deterrent to the violation.

c. The circumstances leading to the violation.

d. The severity of the violation and the risk of harm to the public.

e. The economic benefits gained by the registrant as a result of the violation.

f. The interest of the public.

g. Evidence of reform or remedial action.

h. Time lapsed since the violation occurred.

i. Whether the violation is a repeat offense following a prior cautionary letter, disciplinary order, or other notice of the nature of the infraction.

j. The clarity of the issues involved.

k. Whether the violation was willful and intentional.

l. Whether the registrant acted in bad faith.

m. The extent to which the registrant cooperated with the board.

193G—5.12(272C,544C) Publication of decisions.

5.12(1) The board will publish the name of each registrant disciplined by the board, along with a brief description of the underlying circumstances, regardless of the nature of the violation.

5.12(2) The board will issue a formal press release in those instances in which a registration has been suspended or revoked.

5.12(3) The board will notify other state interior design boards that have issued a similar license to an Iowa registrant of disciplinary action taken against the Iowa registrant. The board will also notify the CIDQ of disciplinary action taken against an Iowa registrant.

193G—5.13(272C,544C) Reinstatement.

5.13(1) The term "reinstatement," as used in this rule and in rule 193—7.38(17A,272C), includes the reinstatement of a suspended registration, the modification or removal of a practice restriction, the issuance of a registration following the denial of an application to renew a registration, and the issuance of a new registration following the revocation or voluntary surrender of a registration.

5.13(2) Any person whose registration has been revoked, suspended or restricted by the board or who has voluntarily surrendered a registration to conclude a disciplinary investigation or proceeding or whose application to renew a registration has been denied may apply to the board to modify or terminate the suspension, issue or reissue the registration, or modify or remove the restriction in accordance with the provisions of this rule and the terms of the order of revocation, suspension or restriction, denial of registration renewal, or acceptance of voluntary surrender of a registration.

5.13(3) If the applicable order did not establish terms upon which the registrant may apply for reinstatement, an initial application for reinstatement may not be made until one year has elapsed from the date of the order that revoked, suspended or restricted the registration, denied registration renewal, or accepted a voluntary surrender.

5.13(4) All proceedings for reinstatement will be initiated by the respondent and are subject to the procedures set forth in rule 193—7.38(17A,272C). 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 grounds of personal investigation the board members or staff before whom the applicant appears.

5.13(5) An order granting an application for reinstatement may impose such terms and conditions as the board deems desirable, which may include one or more of the types of disciplinary sanctions described in rule 193G—5.11(272C,544C).

5.13(6) The board will not grant an application for reinstatement when the initial order that revoked, suspended or restricted the registration, denied registration renewal, or accepted a voluntary surrender was based on a criminal conviction and the applicant cannot demonstrate to the board's satisfaction that:

a. All terms of the sentencing or other criminal order have been fully satisfied;

b. The applicant has been released from confinement and any applicable probation or parole; and

c. Restitution has been made or is reasonably in the process of being made to any victims of the crime.

These rules are intended to implement Iowa Code chapters 17A, 272C, and 544C.