

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

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CHAPTER 1
ORGANIZATION AND ADMINISTRATION

[Prior to 2/20/02, see 193F—Chapters 2, 9 and 11]

193F—1.1(543D) Description.

1.1(1) The purpose of the real estate appraiser examining board is to administer and enforce the provisions of Iowa Code chapter 543D (Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989) with regard to the appraisal of real property in the state of Iowa, including the examination of candidates and issuance of certificates and registrations; investigation of alleged violations and infractions of the appraisal standards and appraiser certification law; and the disciplining of appraisers. The importance of the role of the appraiser places ethical and professional standards on those who serve in this capacity. To this end, the board has promulgated these rules and has adopted the Uniform Standards of Professional Appraisal Practice (USPAP) to clarify the board's intent and procedures and to promote and maintain a high level of public trust in professional appraisal practice.

1.1(2) All official communications, including submissions and requests, should be addressed to the board at its official address, 200 E. Grand Avenue, Suite 350, Des Moines, Iowa 50309.

1.1(3) All board action under Iowa Code chapter 543D and 193F—Chapter 17 shall be taken under the supervision of the superintendent, as provided in Iowa Code section 543D.23 and the implementing rules set forth herein.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—1.2(543D) Administrative authority.

1.2(1) The superintendent is vested with authority to review, approve, modify, or reject all board action pursuant to Iowa Code chapter 543D and 193F—Chapter 17. The superintendent may exercise all authority conferred upon the board and shall have access to all records and information to which the board has access. In supervising the board, the superintendent shall independently evaluate the substantive merits of recommended or proposed board actions which may be anticompetitive.

1.2(2) In performing its duties and in exercising its authority under Iowa Code chapter 543D and 193F—Chapter 17, the board may take action without preclearance by the superintendent if the action is ministerial or nondiscretionary. As used in this chapter, “ministerial or nondiscretionary” shall include any action expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. The board may, for example, grant or deny an application for initial or reciprocal certification as a real estate appraiser, an application for registration as an associate real estate appraiser, or an application for a temporary practice permit by an out-of-state appraiser, on any ground expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

1.2(3) Prior to taking discretionary action under Iowa Code chapter 543D and 193F—Chapter 17, the board shall secure approval of the superintendent if the proposed action is or may be anticompetitive, as provided in 193F—Chapter 17. As used in this chapter, “discretionary” shall include any action that is authorized but not expressly required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee. Examples of discretionary action include orders in response to petitions for rule making, declaratory orders, or waivers from rules, rule making, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

1.2(4) Determining whether any particular action is or may be anticompetitive is necessarily a fact-based inquiry dependent on a number of factors, including potential impact on the market or restraint of trade. With respect to disciplinary actions, for instance, a proceeding against a single licensee for violating appraisal standards would not have an impact on the broader market and would accordingly not be an anticompetitive action. Commencement of disciplinary proceedings which affect all or a substantial subset of appraisers may have a significant market impact. When in doubt as to whether a proposed discretionary action is or may be anticompetitive, the board may submit the proposed action through the preclearance procedures outlined in 193F—Chapter 17.

1.2(5) A person aggrieved by any final action of the board taken under Iowa Code chapter 543D or 193F—Chapter 17 may appeal that action to the superintendent within 20 days of the date the board issues the action.

a. The appeal process applies whether the board action at issue was ministerial or nondiscretionary, or discretionary, and whether the proposed action was or was not submitted through a preclearance process before the superintendent.

b. No person aggrieved by a final action of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in 193F—Chapter 17.

c. Records, filings, and requests for public information. Final board action, regardless of whether such board action is ministerial, nondiscretionary, or discretionary, shall be immediately effective when issued by the board but is subject to review or appeal to the superintendent as permitted by and in accordance with 193F—Chapter 17. If a timely review is initiated or a timely appeal is taken, the effectiveness of such final board action shall be delayed during the pendency of such review or appeal. [ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—1.3(543D) Annual meeting. The annual meeting of the board shall be the first meeting scheduled after April 30. At this time, the chairperson and vice chairperson shall be elected to serve until their successors are elected.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.4(543D) Other meetings. In addition to the annual meeting, and in addition to other meetings, the time and place of which may be fixed by resolution of the board, any meeting may be called by the chairperson of the board or by joint call of a majority of its members.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.5(543D) Executive officer's duties.

1.5(1) The executive officer shall cause complete records to be kept of applications for examination and registration, certificates and permits granted, and all necessary information in regard thereto.

1.5(2) The executive officer shall determine when the legal requirements for certification and registration have been satisfied with regard to issuance of certificates or registrations, and the executive officer shall submit to the board any questionable application.

1.5(3) The executive officer shall keep accurate minutes of the meetings of the board. The executive officer shall keep a list of the names of persons issued certificates as certified general real property appraisers, certified residential real property appraisers and associate real property appraisers.

193F—1.6(543D) Records, filings, and requests for public information. Unless otherwise specified by the rules of the department of commerce, the board is the principal custodian of its own agency orders, statements of law or policy issued by the board, legal documents, and other public documents on file with the board.

1.6(1) Any person may examine public records promulgated or maintained by the board at its office during regular business hours as specified in 193F—Chapter 25.

1.6(2) Records, documents and other information may be gathered, stored, and available in electronic format. Information, various forms, documents, and the law and rules may be reviewed or obtained anytime by the public from the board's Internet website located at idob.state.ia.us/reap.

1.6(3) Deadlines. Unless the context requires otherwise, any deadline for filing a document shall be extended to the next working day when the deadline falls on a Saturday, Sunday, or official state holiday. [ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—1.7(543D) Adoption, amendment or repeal of administrative rules.

1.7(1) The board shall adopt, amend or repeal its administrative rules in accordance with the provisions of Iowa Code section 17A.4. Prior to the adoption, amendment or repeal of any rule of the board, any interested person, as described in Iowa Code section 17A.4(1)“b,” may submit any data, views, or arguments in writing concerning such rule or may request to make an oral presentation

concerning such rule. Such written comments or requests to make oral presentations shall be filed with the board at its official address and shall clearly state:

a. The name, address, and telephone number of the person or agency authoring the comment or request;

b. The number and title of the proposed rule, which is the subject of the comment or request as given in the Notice of Intended Action;

c. The general content of the oral presentation. A separate comment or request to make an oral presentation shall be made for each proposed rule to which remarks are to be asserted.

1.7(2) The receipt and acceptance for consideration of written comments and requests to make oral presentations shall be acknowledged by the board.

1.7(3) Written comments received after the deadline set forth in the Notice of Intended Action may be accepted by the board although their consideration is not assured. Requests to make an oral presentation received after the deadline shall not be accepted and shall be returned to the requester.

193F—1.8(22) Public records and fair information practices. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.9(68B) Sales of goods and services. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.10(17A) Petitions for rule making. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.11(17A) Declaratory orders. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.12(252J,261) Denial of issuance or renewal of license for nonpayment of child support or student loan. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.13(17A) Waivers and variances. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.14(543D,17A,272C) Investigations and investigatory subpoenas. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.15(543D,17A,272C) Contested case procedures. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.16(272C) Impaired licensees. Rescinded **ARC 4379C**, IAB 3/27/19, effective 5/1/19.

193F—1.17(543D) Types of appraiser classifications. There are three types of appraiser classifications:

1. Associate real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 4.

2. Certified residential real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 5.

3. Certified general real property appraiser. This classification consists of those persons who meet the requirements of 193F—Chapter 6.

[**ARC 7774B**, IAB 5/20/09, effective 6/24/09]

193F—1.18(543D) Qualified state appraiser certifying agency.

1.18(1) The real estate appraiser examining board is a state appraiser certifying agency in compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). As a result, persons who are issued certificates by the board to practice as certified real estate appraisers are authorized under federal law to perform appraisal services for federally related transactions and are identified as such in the National Registry maintained by the Appraisal Subcommittee (ASC).

1.18(2) The board must adhere to the criteria established by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation when registering associate appraisers or certifying certified appraisers under Iowa Code chapter 543D.

[ARC 1467C, IAB 5/28/14, effective 7/2/14]

193F—1.19(543D) May 1, 2018, criteria.

1.19(1) Effective on and after May 1, 2018, the AQB has changed the criteria for eligibility for certification as a certified appraiser. No person may be certified as a certified appraiser on or after May 1, 2018, unless the person is eligible under the most recent criteria.

1.19(2) The May 1, 2018, criteria were adopted by the AQB in 2018 and have been widely disseminated, including on the board's website at: idob.state.ia.us/reap/. The May 1, 2018, criteria modify the conditions under which applicants for certification are eligible to take the required examinations.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—1.20(543D) Application and work product deadlines.

1.20(1) *Summary of registration requirements for registration as an associate.* The associate appraiser and supervisory appraiser provisions are more fully set out in 193F—Chapters 4 and 15, respectively. Before submitting an application for registration with the board, a person seeking registration as an associate appraiser must complete 75 hours of appraisal education and secure a qualified supervisory appraiser. An associate appraiser applicant who submits an application to the board office must have completed all required qualifying education and the supervisory appraiser/associate coursework prior to submitting an application for registration.

1.20(2) *Summary of certification requirements.* As more fully set out in 193F—Chapters 3, 5, and 6, a person who is in the process of completing the education, experience, and examination required for certification as a certified appraiser may not submit an application for certification to the board until all prerequisites have been satisfactorily completed. The prerequisites include the following: qualifying college and core criteria appraiser education, qualifying examination, 1,500 hours of qualifying experience in a minimum of 12 months for residential appraisers or 3,000 hours of qualifying experience in a minimum of 18 months for general appraisers, and work product review. Work product review requires numerous steps, as provided in 193F—5.6(543D) and 193F—6.6(543D). The work product review process includes the applicant's submission of a work product experience log to the board; the board's selection of three appraisals to review; communication of the selected appraisals to the applicant; the applicant's submission of the three appraisals and associated work files to the board in electronic and paper formats; review of the appraisals and work files by a reviewer retained by the board; the reviewer's submission of review reports to the board; a meeting between the applicant, the applicant's supervisor, and the board's work product review committee; a formal board vote at a board meeting; and communication of approval, denial, or deferral to the applicant. All of these steps must be completed before an applicant with approved work product can submit an application for certification to the board office. If the applicant's supervisor is unable to attend the work product review meeting, the applicant, or the applicant's supervisor, must submit the circumstances surrounding the absence to the executive officer so that it may be determined if the work product review meeting should be rescheduled.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4707C, IAB 10/9/19, effective 11/13/19; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—1.21(543D) National criminal history check. All applicants for any of the classifications listed in 193F—1.17(543D), including an applicant seeking to upgrade from a certified residential credential to a certified general credential, must satisfactorily complete a state and national criminal history check as a condition of registration as an associate real property appraiser, certification as a residential, or certification as or upgrade to a general real property appraiser. The applicant shall authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may

perform a new state and national criminal history check or may reject and return the application to the applicant.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 3084C, IAB 5/24/17, effective 6/28/17; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—1.22(272C,543D) Process for board review of eligibility.

As more fully set forth in, as described in, and in accordance with 193F—Chapter 13, before applying for registration as an associate appraiser or certification as a certified appraiser, a person with a criminal history that may impair registration or certification may request that the board evaluate the prospective applicant’s criminal history.

[ARC 1467C, IAB 5/28/14, effective 7/2/14; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—1.23(272C,543D) Applications. Unless otherwise provided by rule of the board, abandoned applications shall be deemed withdrawn. An application is abandoned if the applicant has not accessed or modified the application through the board’s electronic licensing database within the preceding six months, or when approved by the board but the applicant has failed to pay any required fees within 30 calendar days of the date approved by the board. For purposes of this rule, “application” means any request, application, registration, or petition submitted to the board through the licensing database, including but not limited to the following:

1. Add supervisor appraiser;
2. Associate appraiser registration;
3. Conversion application;
4. Course application;
5. Course instructor application;
6. Course provider application;
7. Examination and experience application;
8. Formal wall certificate request;
9. Pre-/post-course approval request;
10. Reactivation application;
11. Reciprocity application;
12. Reinstatement application;
13. Removal of associate from supervisor;
14. Removal of supervisor from associate;
15. Renewal application;
16. Temporary practice permit application;
17. General application to apply military service to an experience or educational requirement for licensure;
18. Background packet request;
19. Petition for waiver from administrative rules;
20. Request for change of legal name;
21. Request for verification (license and/or examination history); or
22. Request to change license address.

[ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

These rules are intended to implement Iowa Code sections 543D.4, 543D.5, 543D.7, 543D.17, 543D.20 and 543D.22 and chapter 272C.

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CHAPTER 2
DEFINITIONS

[Prior to 2/20/02, see 193F—Chapter 1]

193F—2.1(543D) Applicability. The following definitions shall be applicable to the rules of the real estate appraiser examining board.

“*Appraisal Foundation*” means the Appraisal Foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987.

“*Appraisal subcommittee*” means the appraisal subcommittee of the Federal Financial Institutions Examination Council.

“*AQB*” means the Appraiser Qualifications Board of the Appraisal Foundation.

“*ASB*” means the Appraisal Standards Board of the Appraisal Foundation.

“*Associate real property appraiser*” or “*associate appraiser*” means an individual who has registered with the board as an associate real property appraiser, as defined in Iowa Code section 543D.2(5), and who is training to become a certified residential or certified general real property appraiser.

“*Certified appraiser*” means an individual who has been certified in one of the following two classifications:

1. The certified residential real property appraiser classification, which is limited to the appraisal of one to four residential units without regard to transaction value.

2. The certified general real property appraiser classification, which applies to the appraisal of all types of real property.

“*FIRREA*” means the Financial Institutions Reform Recovery and Enforcement Act of 1989.

“*Knowingly*” means done with awareness and deliberateness.

“*Law*” means the “Iowa Voluntary Appraisal Standards and Appraiser Certification Law of 1989,” Iowa Code chapter 543D.

“*Superintendent*” means the superintendent of banking or the superintendent’s designee. The designee shall not be a certified or licensed real estate appraiser, a registered associate real estate appraiser, or a trainee real estate appraiser in any jurisdiction.

“*USPAP*” means the Uniform Standards of Professional Appraisal Practice published by the Appraisal Foundation.

This rule is intended to implement Iowa Code section 543D.2.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 2808C, IAB 11/9/16, effective 1/1/17]

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CHAPTER 3
GENERAL PROVISIONS FOR EXAMINATIONS

193F—3.1(543D) Types of appraiser certificates. Rescinded IAB 5/20/09, effective 6/24/09.

193F—3.2(543D) Examinations. Examinations for certified residential real property appraisers and certified general real property appraisers shall be AQB-endorsed and administered by the board or its authorized representative as often as the board deems necessary, but not less than one time per year. Successful completion of the examination is valid for a period of 24 months.

3.2(1) Disclosure of confidential information. Members of the board shall not disclose a final examination score to any person other than the person who took the examination. Persons who take the examination may consent to the publication of their names on a list of passing candidates.

Other information relating to the examination results, including the specific grades by subject matter, shall be given only to the person who took the examination, except that the board may:

a. Disclose the specific grades by subject matter to the regulatory authority of any other state or foreign country in connection with the candidate's application for a reciprocal certificate or license from the other state or foreign country, but only if requested by the candidate.

b. Disclose the specific grades by subject matter to educational institutions, professional organizations, or others who have a legitimate interest in the information provided in conjunction with the scores.

3.2(2) The board shall enter into a contractual relationship with a qualified testing service to develop and administer AQB-approved examinations and shall maintain control over the examination process.

3.2(3) and 3.2(4) Rescinded IAB 5/20/09, effective 6/24/09.

3.2(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months of passing the examination, that examination result loses its validity to support the issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading to the certified general classification.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—3.3(543D) Conduct of applicant.

3.3(1) Any individual who subverts or attempts to subvert the examination process may, at the discretion of the board, have the individual's examination scores declared invalid for the purpose of certification in Iowa, be barred from the appraisal certification examinations in Iowa, or be subject to the imposition of other sanctions that the board deems appropriate.

3.3(2) Conduct that subverts or attempts to subvert the examination process includes, but is not limited to:

a. Conduct that violates the security of the examination materials, such as removing from the examination room any of the examination materials; reproducing or reconstructing any portion of the examination; aiding by any means in the reproduction or reconstruction of any portion of the examination; selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered examination.

b. Conduct that violates the standard of test administration, such as communicating with any other examination candidate during the administration of the examination; copying answers from another candidate or permitting one's answers to be copied by another candidate during the examination; referencing any books, notes, written or printed materials or data of any kind, other than the examination materials distributed.

c. Conduct that violates the examination process, such as falsifying or misrepresenting educational credentials or other information required for admission to the examination; impersonating an examination candidate or having an impersonator take the examination on one's behalf.

3.3(3) Any examination candidate who challenges a decision of the board under this rule may request a contested case hearing pursuant to rule 193F—20.39(546,543D,272C). The request for hearing shall

be in writing, shall briefly describe the basis for the challenge, and shall be filed in the board's office within 30 days of the date of the board decision that is being challenged.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—3.4(543D) Application for certification or registration. Applicants for certification or registration must successfully complete the appropriate examination.

3.4(1) All initial applications for certification or associate registration shall be made on forms provided by the board. The board may deny an application as described in Iowa Code sections 543D.12 and 543D.17. Specific examples of grounds for denial include knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for certification, or participating in any form of fraud or misrepresentation; the revocation of another professional license; or, subject to the limitations and processes set forth in Iowa Code section 272C.15 and corresponding implementing rules located at 193F—Chapter 13, a conviction, including a conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions and duties of a person developing real estate appraisals and communicating real estate appraisals to others. The board may also deny an application based on disciplinary action pending or taken against an applicant consistent with Iowa Code section 272C.12.

3.4(2) A certificate or associate registration shall contain the applicant's name, appraiser classification, Iowa certificate number and the signature of the board chairperson.

3.4(3) An initial certificate shall not be issued until the applicant has demonstrated compliance with all required appraiser qualifications for certification, which include examination, core criteria, collegiate education, and real property appraiser experience pursuant to Iowa Code section 543D.9 and 193F—Chapter 5 or 6.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5484C, IAB 2/24/21, effective 3/31/21; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—3.5(543D) Work product review. Rescinded IAB 5/20/09, effective 6/24/09.

These rules are intended to implement Iowa Code section 543D.8.

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CHAPTER 4
ASSOCIATE REAL PROPERTY APPRAISER
[Prior to 2/20/02, see rule 193F—3.6(543D)]

193F—4.1(543D) Qualifications to register as an associate appraiser.

4.1(1) Education.

a. A person applying for registration as an associate appraiser shall, at a minimum, satisfactorily complete all AQB-approved, qualifying education courses required under the current AQB criteria specifying educational standards applicable for registration as an associate residential appraiser or associate general appraiser. Each required course must be completed before the person can obtain an associate credential.

b. The initial qualifying education must be completed no more than five years prior to the date of application. Credit toward all or part of the core criteria qualifying education requirements in this rule may also be obtained via the completion of a degree in real estate from an accredited degree-granting college or university, provided that the college or university has had its curriculum reviewed and approved by the AQB and so long as the degree was granted no more than five years prior to the date of application.

4.1(2) Training. Prior to registration as an associate, a person must complete a course that complies with the specifications for course content established by the AQB specifically oriented to the requirements and responsibilities of supervisory appraisers and associate appraisers. The course must be completed before the person can obtain an associate credential. This course cannot be applied toward the required hours of qualifying or continuing education.

4.1(3) Background check. A state and national criminal history check shall be performed on any new associate appraiser. The applicant shall authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may perform a new state and national criminal history check or may reject and return the application to the applicant.

4.1(4) Supervision. An applicant must obtain the services of a certified appraiser who meets the supervisor qualification criteria in rule 193F—15.3(543D).

4.1(5) Application form. After completing the education, training, background check, and obtainment of a supervisor outlined in subrules 4.1(1) to 4.1(4), a person applying for registration as an associate appraiser shall apply for registration. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- a.* Be on a form and in the manner prescribed by the board;
- b.* Be signed by the applicant and supervisor(s), be certified as accurate, or display an electronic signature by the applicant and supervisor(s) if submitted electronically;
- c.* Be fully completed;
- d.* Reflect, on its face, full compliance with all applicable qualifying education requirements including the supervisory appraiser/trainee appraiser course;
- e.* Be accompanied by the fee as identified in 193F—Chapter 12.

4.1(6) Registration denial. The board may deny an application for registration as an associate appraiser on any ground identified in 193F—subrule 3.4(1) or on any ground upon which the board may impose discipline against an associate appraiser, as provided in 193F—Chapter 7.

[ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 3084C, IAB 5/24/17, effective 6/28/17; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5484C, IAB 2/24/21, effective 3/31/21; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—4.2(543D) Supervision of associate appraisers.

4.2(1) Direct supervision. An associate appraiser is subject to the direct supervision of a certified real property appraiser. Qualifications for a supervisory appraiser are outlined in 193F—Chapter 15. An associate appraiser may be supervised by more than one supervisory appraiser.

4.2(2) Supervisor registration. An associate appraiser shall identify all supervisors by whom the associate will be supervised on forms provided by the board and shall promptly notify the board in the

event of an addition of a, or change in, supervisor or if the associate will no longer be supervised by a previously identified supervisor. An associate appraiser who does not have at least one approved active supervisor meeting the requirements of 193F—Chapter 15 will be placed in inactive status until such time as the associate finds a supervisor meeting the requirements of 193F—Chapter 15. Associate appraisers wishing to maintain an inactive license must continue to renew on a biennial basis in accordance with rule 193F—4.3(543D).

4.2(3) *Scope of practice.* The scope of practice of an associate appraiser is the same as the scope of practice of the supervisory appraiser. An associate appraiser supervised by a certified residential appraiser shall accordingly be restricted to the scope of practice of a certified residential appraiser, while an associate appraiser supervised by a certified general appraiser shall be subject to the same scope of practice as a certified general appraiser.

4.2(4) *Logs.* An associate appraiser shall maintain an appraisal experience log that includes all information required by the AQB and the board as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. Every log page shall have the names and signatures of the associate appraiser and supervisory appraiser, the state certification number of the supervisory appraiser, and the date of signatures. Required log entries shall, at a minimum, include the following for each appraisal:

- a. Type of property;
- b. Date of report;
- c. Complete address of appraised property or full legal description;
- d. A specific description of work performed by the associate appraiser, scope of review, and supervision of the supervisory appraiser;
- e. Number of actual work hours by the associate on the assignment; and
- f. The approach(es) to value utilized in the report.

4.2(5) *Monitoring of logs.* The associate appraiser shall have the appraisal log reviewed and signed by the supervisory appraiser at least monthly. Upon written request by the board, the associate appraiser and the supervisory appraiser shall submit a copy of the associate appraiser's log by letter or email within ten calendar days. The failure of an associate appraiser or supervisory appraiser to submit the requested log is a ground for disciplinary action. A separate appraisal log shall be maintained for each supervisory appraiser.

[ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—4.3(543D) Renewal of associate appraiser registration. An associate appraiser registration must be renewed on a biennial basis as more fully described in 193F—Chapter 9. An associate appraiser is subject to the same continuing education requirements as are applicable to a certified appraiser as a precondition for renewal. Continuing education requirements are outlined in 193F—Chapter 11.

193F—4.4(543D) Progress toward certification as a certified residential appraiser or certified general appraiser.

4.4(1) *Associate classification.* The associate appraiser classification is intended for those persons training to become certified appraisers and is not intended as a long-term method of performing appraisal services under the supervision of a certified appraiser in the absence of progress toward certification. As a result, the board may impose deadlines for achieving certification, or for satisfying certain prerequisites toward certification, for those persons who apply to renew an associate appraiser registration more than two times. Deadlines, if any, would be imposed as a condition for the third or subsequent renewal.

4.4(2) *Factors to consider.*

a. The board may consider the following noninclusive list of factors when deciding whether to impose a deadline for achieving certification:

- (1) An associate appraiser's access to the educational courses required for certification;
- (2) Whether the associate appraiser had completed the college requirement for certification in advance of registering as an associate appraiser or whether college coursework is in progress;

(3) The associate appraiser's access to supervisory appraisers, the volume of the supervisory appraiser's practice, and the type of certification the associate is training to achieve; and

(4) Such additional factors as may be relevant to the board's determination as to whether the associate appraiser is making good-faith progress toward certification.

b. While the board's policy is to work with associate appraisers and their supervisors in a cooperative manner, an associate appraiser who does not demonstrate good-faith progress toward certification shall be subject to the imposition of deadlines as described in subrule 4.4(1).

4.4(3) Progress reports. In order to assess an associate appraiser's progress toward certification, the board may request periodic progress reports from the associate appraiser and from the associate appraiser's supervisory appraiser or appraisers. Progress reports on the steps an associate appraiser has taken toward certification and the associate appraiser's plans for completing certification prerequisites shall be submitted to the board within ten calendar days of the board's written request. The failure of an associate appraiser or supervisory appraiser to submit the requested progress report is a ground for disciplinary action.

[ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—4.5(543D) Applying for certification as a certified residential appraiser or certified general appraiser. An associate appraiser may apply for certification as a certified residential real property appraiser by satisfying the requirements of 193F—Chapter 5, or as a certified general real property appraiser by satisfying the requirements of 193F—Chapter 6. The requirements for each type of certification include education, examination, and experience, which includes work product review.

[ARC 7774B, IAB 5/20/09, effective 6/24/09]

193F—4.6(272C,543D) Reinstating or reactivating an associate registration.

4.6(1) In order to reinstate or reactivate an associate registration that has lapsed or been placed in inactive or retired status, the applicant must complete all continuing education required for reinstatement pursuant to 193F—subrule 11.2(5). For purposes of this rule, in addition to the most recent edition of a seven-hour USPAP course, the board shall allow for continuing education only those courses that have been AQB-approved as qualifying education required for certification, as outlined in rules 193F—5.2(543D) and 193F—6.2(543D). The purpose of this requirement is to ensure that those associates reinstating a lapsed, retired, or inactive registration are progressing toward certification. Any qualifying education course taken under this rule as continuing education shall also apply as qualifying education toward certification. If the applicant has completed all qualifying education prior to applying to reinstate a lapsed, retired, or inactive associate registration, the applicant may use any approved continuing education course as provided in 193F—Chapter 11, in addition to the required seven-hour USPAP update course, toward the continuing education required for reinstatement.

4.6(2) If an appraiser's registration is placed in inactive status as a result of the appraiser's failure to maintain at least one approved active supervisor meeting the requirements of 193F—Chapter 15 pursuant to subrule 4.2(2), the applicant must complete the continuing education required by subrule 4.6(1) in order to reinstate the associate registration but is not required to pay any fee that would otherwise be required in connection with such reinstatement so long as the associate has not renewed the registration to inactive status or allowed the registration to lapse prior to reinstating or reactivating the registration.

[ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

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CHAPTER 5
CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

[Prior to 2/20/02, see rule 193F—3.4(543D) and 193F—Chapter 4]

193F—5.1(543D) General.

5.1(1) The certified residential real property appraiser classification qualifies the appraiser to appraise one- to four-unit residential properties without regard to value or complexity. The classification includes the appraisal of vacant or unimproved land that is utilized for one- to four-unit residential properties or for which the highest and best use is for one- to four-unit residential properties. The classification does not include the appraisal of subdivisions for which a development analysis/appraisal is necessary.

5.1(2) Certification is composed of three parts: education, examination, and experience, which includes work product review.

5.1(3) All certified residential real property appraisers must comply with USPAP.
[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—5.2(543D) Education. Education requirements for an applicant to obtain a certificate as a certified residential real property appraiser shall be in compliance with the criteria as set forth by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. If an accredited college or university (accredited by the Commission on Colleges, by a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education) accepts the College-Level Examination Program© (CLEP) examination(s) and issues a transcript for the examination(s) showing the college's or university's approval, the CLEP credit will be considered as credit for the college course.

5.2(1) Collegiate education. There are five options toward certification as a certified residential real property appraiser. An applicant must meet at least one of the five options identified in paragraphs 5.2(1) "a" through 5.2(1) "e," below, in order to be eligible for certification as a residential real property appraiser.

a. An applicant holds a bachelor's degree in any field of study from an accredited college or university.

b. An applicant holds an associate's degree in a field of study from an accredited college, junior college, community college, or university that relates to:

- (1) Business administration;
- (2) Accounting;
- (3) Finance;
- (4) Economics; or
- (5) Real estate.

c. Successful completion of 30 semester hours of college-level courses from an accredited college, junior college, community college, or university that cover each of the following specific areas and hours:

- (1) English composition (3 hours);
- (2) Microeconomics (3 hours);
- (3) Macroeconomics (3 hours);
- (4) Finance (3 hours);
- (5) Algebra, geometry, or higher math (3 hours);
- (6) Statistics (3 hours);
- (7) Computer science (3 hours);
- (8) Business law or real estate law (3 hours);
- (9) Two electives in any of the above topics or in accounting, geography, agriculture, economics, business management, or real estate (3 hours each).

d. Successful completion of at least 30 semester hours of College-Level Examination Program© (CLEP) examinations that cover each of the following specific areas and hours:

- (1) College algebra (3 semester hours);
- (2) College composition (6 semester hours);

- (3) College composition modular (3 semester hours);
- (4) College mathematics (6 semester hours);
- (5) Principles of macroeconomics (3 semester hours);
- (6) Principles of microeconomics (3 semester hours);
- (7) Introductory business law (3 semester hours); and
- (8) Information systems (3 semester hours).

e. Any combination of paragraphs 5.2(1) “*c*” and 5.2(1) “*d*,” above, that ensures coverage of all of the topics and hours identified in paragraph 5.2(1) “*c*.” For purposes of determining whether coverage of the topics and hours identified in paragraph 5.2(1) “*c*” has occurred:

- (1) The college algebra CLEP examination may be considered for satisfying the algebra, geometry, or higher math requirement of paragraph 5.2(1) “*c*.”
- (2) The college composition CLEP examination may be considered for satisfying the English composition requirement of paragraph 5.2(1) “*c*.”
- (3) The college composition modular CLEP examination may be considered for satisfying the English composition requirement of paragraph 5.2(1) “*c*.”
- (4) The college mathematics CLEP examination may be considered for satisfying the algebra, geometry, or higher math requirement of paragraph 5.2(1) “*c*.”
- (5) The principles of macroeconomics CLEP examination may be considered for satisfying the macroeconomics or finance requirement of paragraph 5.2(1) “*c*.”
- (6) The principles of microeconomics CLEP examination may be considered for satisfying the microeconomics or finance requirement of paragraph 5.2(1) “*c*.”
- (7) The introductory business law CLEP examination may be considered for satisfying the business law or real estate law requirement of paragraph 5.2(1) “*c*.”
- (8) The information systems CLEP examination may be considered for satisfying the computer science requirement of paragraph 5.2(1) “*c*.”

5.2(2) Core criteria. In addition to the formal education in subrule 5.2(1), an applicant must complete 200 creditable class hours before taking the AQB-approved examination. All courses must be AQB-approved current core criteria to be considered creditable. The required courses and 200 hours consist of the following:

<i>a.</i>	Basic appraisal principles	30 hours
<i>b.</i>	Basic appraisal procedures	30 hours
<i>c.</i>	The 15-hour USPAP course or equivalent	15 hours
<i>d.</i>	Residential market analysis and highest and best use	15 hours
<i>e.</i>	Residential appraiser site valuation and cost approach	15 hours
<i>f.</i>	Residential sales comparison and income approaches	30 hours
<i>g.</i>	Residential report writing and case studies	15 hours
<i>h.</i>	Statistics, modeling and finance	15 hours
<i>i.</i>	Advanced residential applications and case studies	15 hours
<i>j.</i>	Appraisal subject matter electives	20 hours

5.2(3) Degree program. Credit toward core criteria qualifying education requirements may also be obtained via the completion of a degree in real estate from an accredited degree-granting college or university, provided that the college or university has had its curriculum reviewed and approved by the AQB.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—5.3(543D) Examination. The prerequisite for taking the AQB-approved examination is completion of 200 creditable course hours as specified in subrule 5.2(2). The 200 creditable course hours, collegiate education, and all experience must be completed as specified in subrules 5.2(1) and 5.2(2) and rule 193F—5.4(543D) prior to the examination. For 5.2(2) “*c*,” equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education shall be awarded only when the class is instructed by at least

one AQB-certified USPAP instructor who holds a state-issued certified residential or certified general appraiser credential in active status and good standing.

5.3(1) In order to qualify to sit for the certified residential real property appraiser examination, the applicant must complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

a. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

- (1) Be on a form and in the manner prescribed by the board;
- (2) Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
- (3) Be fully completed;
- (4) Reflect, on its face, full compliance with all applicable continuing education requirements; and
- (5) Be accompanied by the fee specified in 193F—Chapter 12.

b. The core criteria, collegiate education, and experience must be completed and the documentation submitted to the board at the time of application to sit for the examination.

5.3(2) The board may verify educational credits claimed. Undocumented credits will be sufficient cause to invalidate the examination results pursuant to 193F—paragraph 3.3(2) "c."

5.3(3) Responsibility for documenting the educational credits claimed rests with the applicant.

5.3(4) An applicant must supply the original examination scores when applying for certification. Copies of the scores will not be accepted.

5.3(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months after passing the examination, that examination result loses its validity to support issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading from an associate credential.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—5.4(543D) Supervised experience required for initial certification. Except as otherwise permitted herein, all experience required for initial certification pursuant to Iowa Code section 543D.9 shall be performed as a registered associate real property appraiser under the direct supervision of a certified residential or general real property appraiser pursuant to the provisions of 193F—Chapter 15.

5.4(1) Acceptable experience. The board will accept as qualifying experience the documented experience attained while the applicant for initial certification was in an educational program recognized by the Appraiser Qualifications Board and Appraisal Subcommittee as providing qualifying experience for initial certification, whether or not the applicant was registered as an associate real property appraiser at the time the educational program was completed. Such programs, if approved by federal authorities, will incorporate direct supervision by a certified real property appraiser and such additional program features as to satisfy the purpose of requiring that qualifying experience be attained by the applicant as an associate real property appraiser.

5.4(2) Exceptions. Applicants for certified residential real property certification in Iowa may utilize experience obtained in the absence of registration as an associate real property appraiser under the following circumstances:

a. Subject to any requirements or limitations established by applicable federal authorities, including the AQB and ASC, or applicable federal law, rule, or policy, hours qualifying for experience in any jurisdiction, including in a bordering state, will be considered qualifying hours for experience in Iowa without board approval or authorization, as long as the applicant is able to establish by clear and convincing evidence all of the following:

(1) A majority of the applicant's total qualifying experience hours are completed in Iowa under the direct supervision of a certified real property appraiser pursuant to the provisions of 193F—Chapter 15.

(2) The qualifying hours obtained in another jurisdiction and claimed as experience hours in Iowa were completed in a jurisdiction under the direct supervision of an active certified real estate appraiser in that jurisdiction as required by the AQB and the jurisdiction's laws, rules, or policies.

(3) The nature of the experience attained in another jurisdiction is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

b. Requests for experience performed in the absence of registration as an associate real property appraiser shall be made on forms prescribed by the board.

(1) The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

1. The experience is qualifying experience under the substantive and documentation standards of the AQB and ASC.

2. Denial of the application would impose an undue hardship on the applicant.

3. The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

4. Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

5. A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant as an associate real property appraiser under the direct supervision of a certified real property appraiser.

(2) Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

1. The experience was attained before receiving an associate credential in Iowa in a jurisdiction that, at the time, did not register associate real property appraisers or otherwise offer an associate, trainee or equivalent category of certification.

2. The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—5.5(543D) Demonstration of experience. The experience necessary for certification pursuant to Iowa Code section 543D.9 must meet the requirements of this rule. The objective of the demonstration of experience is to ensure that, before the applicant is issued a certificate, the applicant has obtained sufficient diversified experience to perform an appraisal.

5.5(1) The applicant shall provide to the board an appraisal log that includes all information required by the AQB as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. The appraisal log shall, at a minimum, include all information as described in 193F—subrule 4.2(4).

5.5(2) The applicant shall accumulate a total of 1,500 hours of residential appraisal experience in no fewer than 12 months while in active status. While the hours may be cumulative, the 12 months must have elapsed before the applicant can apply to take the examination. Experience claimed must have been performed in compliance with USPAP in which the appraiser demonstrates proficiency in appraisal principles methodology, procedures and reporting conclusions. Acceptable appraisal experience includes, but is not limited to, the following:

- a.* Fee and staff appraisal;
- b.* Ad valorem tax appraisal;
- c.* Review appraisal;
- d.* Appraisal analysis;
- e.* Appraisal consulting;
- f.* Highest and best use analysis;
- g.* Feasibility analysis/study; and
- h.* Mass appraisal.

5.5(3) The types of experience set out in 5.5(2) are intended neither to exclude other sorts of appraisal experience nor to prescribe a specified minimum array of experience. However, an applicant who cannot demonstrate a background of experience of the diversity manifested by this rule shall bear the burden of showing that the applicant's experience is of sufficient quality and diversity to fulfill the objective of the demonstration of experience. A diversity of experience includes, but is not limited to, the following:

- a. Performing all approaches to value (i.e., cost, income, sales);
- b. Various reporting types;
- c. Appropriate use of various forms (e.g., gPAR, 1004) and formats;
- d. Various property types (e.g., vacant land, condominium, manufactured home, and rental);
- e. Various assignments that include varying scopes of work (e.g., as is, as completed or proposed, foreclosure, rural properties, estates, use of extraordinary assumption or hypothetical conditions); and
- f. Diversity in value ranges.

5.5(4) An applicant may be required to appear before the board or its representative to supplement or verify evidence of experience, which shall be in the form of written reports or file memoranda.

5.5(5) The board may require inspection, by the board itself or by its representatives, of documentation relating to an applicant's claimed experience. Such inspection may be made at the board's offices or such other place as the board may designate.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—5.6(543D) Work product review.

5.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will select three appraisals that demonstrate a diversity of experience and approaches to value over various time frames for work product review and request that the applicant submit, both electronically and on paper, one copy of each report and work file for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 5.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

5.6(2) The board shall treat all appraisals received as public records unless the applicant notifies the board at the time of submission that a submitted appraisal is subject to the confidentiality provisions of appraisal standards or is otherwise confidential under state or federal law. While applicants are encouraged to submit appraisals actually performed for clients, applicants may submit one or more demonstration appraisals if the appraisals are prepared based on factual information in the same manner as applicable to actual appraisal assignments and are clearly marked as demonstration appraisals. Experience gained for work without a traditional client (i.e., a client hiring an appraiser for a business purpose), for example a demonstration appraisal, cannot exceed 50 percent of the total experience requirement.

5.6(3) An applicant seeking to upgrade to a certified residential real property appraiser shall submit three residential appraisals for review.

5.6(4) The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

5.6(5) The work product review process is not intended as an endorsement of an applicant's work product. No applicant or appraiser shall represent the results of work product review in communications with a client or in marketing to potential clients in a manner which falsely portrays the board's work product review as an endorsement of the appraiser or the appraiser's work product. Failure to comply with this prohibition may be grounds for discipline as a practice harmful or detrimental to the public.

5.6(6) The board views work product review, in part, as an educational process. While the board may deny an application based on an applicant's failure to adhere to appraisal standards or otherwise demonstrate a level of competency upon which the public interest can be protected, the board will attempt to work with applicants deemed in need of assistance to arrive at a mutually agreeable remedial plan. A remedial plan may include additional education, desk review, a mentoring program, or additional precertification experience.

5.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

5.6(8) If probable cause exists, the board may open a disciplinary investigation against a certificate holder based on the work product review of an applicant. A potential disciplinary action could arise, for example, if the applicant is a certified residential real property appraiser seeking an upgrade to a certified general real property appraiser, or where the applicant is uncertified and is working under the supervision of a certified real property appraiser who cosigned the appraisal report.

5.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review does not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

5.6(10) The board will retain the appraisals for as long as needed as documentation of the board's actions for the Appraisal Subcommittee or as needed in a pending proceeding involving the work product of the applicant or the applicant's supervisor. When no longer needed for such purposes, the work product may be retained or destroyed at the board's discretion.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 4707C, IAB 10/9/19, effective 11/13/19; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—5.7(543D) Upgrade to a certified general real property appraiser. To upgrade from a certified residential real property appraiser to a certified general real property appraiser, an applicant must complete the following additional education, examination, supervision, and experience requirements and a state and national criminal history check as provided in Iowa Code section 543D.22. For all intents and purposes, a certified residential appraiser seeking to upgrade to a certified general status will be considered an associate appraiser as it relates to differences between the scope of practice of the two licensure categories, and the upgrade process will generally follow the same registration requirements, supervisory identification and maintenance requirements, and processes and procedures generally applicable to associate appraisers set forth in 193F—Chapter 4.

5.7(1) Education.

a. Collegiate education. Certified residential real property appraisers must satisfy the college-level education requirements as specified in rule 193F—6.2(543D).

b. Core criteria. In addition to the formal education and core criteria educational requirements originally required to obtain a certified residential credential, an applicant must complete the following additional 100 creditable, core criteria class hours before taking the AQB-approved examination. All courses must be AQB-approved under current core criteria to be considered creditable. The required courses and 100 hours consist of the following:

- | | |
|--|----------|
| (1) General appraiser market analysis and highest and best use | 15 hours |
| (2) General appraiser sales comparison approach | 15 hours |
| (3) General appraiser site valuation and cost approach | 15 hours |
| (4) General appraiser income approach | 45 hours |

(5) General appraiser report writing and case studies 10 hours

5.7(2) Examination. An applicant must satisfy the examination requirements as specified in rule 193F—6.3(543D).

5.7(3) Supervision and experience.

a. Experience. An applicant must satisfy all of the experience requirements as specified in rules 193F—6.4(543D) and 193F—6.5(543D). In obtaining and documenting the 3,000 total experience hours required by 193F—subrule 6.5(2), as is the case for initial licensure, such hours must be accumulated in no fewer than 18 months while in active status as, in effect, a registered associate appraiser pursuing an upgrade pursuant to this rule and subject to the supervision of an Iowa-certified appraiser. Notwithstanding the foregoing:

(1) To the extent residential appraisal experience may be counted towards licensure in accordance with 193F—subrule 6.5(2), residential appraisal experience obtained as a certified residential appraiser prior to initiating the upgrade process may be included on the appraisal log and, subject to the work product review process, counted towards the experience-hours requirement for purposes of upgrading from a certified real property appraiser to a certified general real property appraiser; provided that such residential appraisal experience obtained prior to initiating the upgrade process shall not apply toward the 18-month requirement.

(2) Applicants may request that the board approve experience hours performed in the absence of registration as an associate real property appraiser by filing an application for approval on a form provided by the board, which application will be subject to and governed by the same processes and standards set forth in rule 193F—6.4(543D).

b. Supervision. Subject to applicable exceptions, all nonresidential experience obtained and applied toward obtaining a certified general credential as part of the upgrade process shall be performed under the direct supervision of a certified general real property appraiser pursuant to the provisions of 193F—Chapter 15 and shall be subject to the identification, notification, maintenance, approval, scope-of-practice, log, and monitoring requirements set forth in 193F—Chapter 4. Both the applicant and the applicant's supervisor(s) must complete a supervisor/trainee course within the five years prior to the board's receipt of the associate registration application identifying a supervisor with the board or prior to the applicant's obtaining or claiming any experience hours under the supervision of that supervisor.

5.7(4) Work product review. An applicant must satisfy the work product review requirements as specified in rule 193F—6.5(543D).

5.7(5) Background check. A state and national criminal history check shall be performed on any appraiser upgrading to a certified general real property appraiser. The applicant shall authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may perform a new state and national criminal history check or may reject and return the application to the applicant.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 3084C, IAB 5/24/17, effective 6/28/17; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5237C, IAB 10/21/20, effective 11/25/20]

These rules are intended to implement Iowa Code sections 543D.5, 543D.8, and 543D.9.

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CHAPTER 6
 CERTIFIED GENERAL REAL PROPERTY APPRAISER
 [Prior to 2/20/02, see rule 193F—3.3(543D) and 193F—Chapter 4]

193F—6.1(543D) General.

6.1(1) The certified general real property appraiser classification qualifies the appraiser to appraise all types of real property.

6.1(2) All certified general real property appraisers must comply with USPAP.

6.1(3) Certification is composed of three parts: education, examination, and experience, which includes work product review.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14]

193F—6.2(543D) Education. Education requirements for an applicant to obtain a certificate as a certified general real property appraiser shall be in compliance with the criteria as set forth by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

6.2(1) Collegiate education. Applicants must hold a bachelor's degree or higher from an accredited college, junior college, community college, or university. If an accredited college or university (accredited by the Commission on Colleges, by a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education) accepts the College-Level Examination Program© (CLEP) examination(s) and issues a transcript for the examination(s) showing the college's or university's approval, the CLEP credit will be considered as credit for the college course. An applicant who submits a master's degree or higher as proof of the applicant's bachelor's degree must include an affidavit or a copy of the bachelor's degree attesting that the bachelor's degree is from an accredited college or university.

6.2(2) Core criteria. In addition to the formal education in 6.2(1), an applicant must complete 300 creditable class hours before taking the AQB-approved examination. All courses must be AQB-approved under current core criteria to be considered creditable. The required courses and 300 hours consist of the following:

a. Basic appraisal principles	30 hours
b. Basic appraisal procedures	30 hours
c. The 15-hour USPAP course or equivalent	15 hours
d. General appraiser market analysis and highest and best use	30 hours
e. General appraiser site valuation and cost approach	30 hours
f. General appraiser sales comparison approach	30 hours
g. General appraiser income approach	60 hours
h. General appraiser report writing and case studies	30 hours
i. Statistics, modeling and finance	15 hours
j. Appraisal subject matter electives	30 hours

6.2(3) Degree program. Credit toward core criteria qualifying education requirements may also be obtained via the completion of a degree in real estate from an accredited degree-granting college or university, provided that the college or university has had its curriculum reviewed and approved by the AQB.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19]

193F—6.3(543D) Examination. The prerequisite for taking the AQB-approved examination is completion of 300 creditable course hours as specified in subrule 6.2(2). The 300 core criteria hours, collegiate education, and all experience must be completed as specified in subrules 6.2(1) and 6.2(2) and rule 193F—6.4(543D) prior to the examination. For 6.2(2) "c," equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP qualifying education shall be awarded only when the class is instructed by at least one AQB-certified USPAP instructor who holds a state-issued certified residential or certified general appraiser credential in active status and good standing.

6.3(1) In order to qualify to sit for the certified general real property appraiser examination, the applicant must complete the board's application form and provide copies of documentation of completion of all courses claimed that qualify the applicant to sit for the examination.

a. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

(1) Be on a form and in the manner prescribed by the board;

(2) Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;

(3) Be fully completed;

(4) Reflect, on its face, full compliance with all applicable continuing education requirements; and

(5) Be accompanied by the fee specified in 193F—Chapter 12.

b. The core criteria, collegiate education, and experience must be completed and documentation submitted to the board at the time of application to sit for the examination.

6.3(2) The board may verify educational credits claimed. Undocumented credits will be sufficient cause to invalidate the examination results pursuant to 193F—paragraph 3.3(2) “c.”

6.3(3) Responsibility for documenting the educational credits claimed rests with the applicant.

6.3(4) An applicant must supply the original examination scores when applying for certification. Copies of the scores will not be accepted.

6.3(5) If an applicant who has passed an examination does not obtain the related appraiser credential within 24 months after passing the examination, that examination result loses its validity to support issuance of an appraiser credential. To regain eligibility for the credential, the applicant must retake and pass the examination. This requirement applies to individuals obtaining an initial certified credential or upgrading from an associate credential.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—6.4(543D) Supervised experience required for initial certification. Except as otherwise permitted herein, all experience required to obtain certification as a certified general real property appraiser pursuant to Iowa Code section 543D.9 shall be performed under the direct supervision of a certified general real property appraiser pursuant to the provisions of 193F—Chapter 15.

6.4(1) Acceptable experience. The board will accept as qualifying experience the documented experience attained while the applicant for initial certification was in an educational program recognized by the Appraiser Qualifications Board and Appraisal Subcommittee as providing qualifying experience for certification, whether or not the applicant was registered as an associate real property appraiser at the time the educational program was completed. Such programs, if approved by federal authorities, will incorporate direct supervision by a certified real property appraiser and such additional program features as to satisfy the purpose of requiring that qualifying experience be attained by the applicant as a real property appraiser.

6.4(2) Exceptions. Applicants for certified general real property certification in Iowa may utilize experience obtained in the absence of registration as an associate real property appraiser under the following circumstances.

a. Subject to any requirements or limitations established by applicable federal authorities, including the AQB and ASC, or applicable federal law, rule, or policy, hours qualifying for experience in any jurisdiction, including a bordering state, will be considered qualifying hours for experience in Iowa without board approval or authorization, as long as the applicant is able to establish by clear and convincing evidence all of the following:

(1) A majority of the applicant's total qualifying experience hours are completed in Iowa under the direct supervision of a certified real property appraiser pursuant to the provisions of 193F—Chapter 15.

(2) The qualifying hours obtained in the jurisdiction and claimed as experience hours in Iowa were completed in another jurisdiction under the direct supervision of an active certified real estate appraiser in that jurisdiction as required by the AQB and the jurisdiction's laws, rules, or policies.

(3) The nature of the experience attained in another jurisdiction is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct

supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

b. Requests for experience performed in the absence of registration as an associate real property appraiser shall be made on forms prescribed by the board.

(1) The burden shall be on the applicant to establish by clear and convincing evidence all of the following:

1. The experience is qualifying experience under the substantive and documentation standards of the AQB and ASC.

2. Denial of the application would impose an undue hardship on the applicant.

3. The nature of the experience attained is qualitatively and substantially equivalent to the experience an associate real property appraiser would receive under the direct supervision of a certified real property appraiser pursuant to the standards established in 193F—Chapter 15.

4. Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

5. A basis exists beyond the individual control of the applicant to explain why the experience at issue could not have been attained by the applicant under the direct supervision of a certified general real property appraiser.

(2) Among the circumstances the board may consider favorably in ruling on an application for approval of unsupervised experience or experience attained by the applicant in the absence of registration as an associate real property appraiser are:

1. The experience was attained before receiving an associate credential in Iowa in a jurisdiction that, at the time, did not require direct supervision or register associate real property appraisers or otherwise offer a category of certification.

2. The applicant attained the experience while employed in a county assessor's office engaged in mass appraisals, and the experience would otherwise qualify under applicable federal standards.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—6.5(543D) Demonstration of experience. The experience necessary for certification pursuant to Iowa Code section 543D.9 must meet the requirements of this rule. The objective of the demonstration of experience is to ensure that, before the applicant is issued a certificate, the applicant has obtained sufficient diversified experience to perform an appraisal.

6.5(1) The applicant shall provide to the board an appraisal log that includes all information required by the AQB as a precondition for certification and shall maintain the log contemporaneously with the performance of supervised real property appraisal services. The appraisal log shall, at a minimum, include all information as described in 193F—subrule 4.2(4).

6.5(2) The applicant shall accumulate a total of 3,000 hours of appraisal experience in no fewer than 18 months while in active status, of which 1,500 hours must consist of nonresidential appraisal experience. While the hours may be cumulative, the 18 months must have elapsed before an applicant can be certified. Experience claimed must have been performed in compliance with USPAP where the appraiser demonstrates proficiency in appraisal principles methodology, procedures and reporting conclusions. Acceptable appraisal experience includes, but is not limited to, the following:

- a.* Fee and staff appraisal;
- b.* Ad valorem tax appraisal;
- c.* Review appraisal;
- d.* Appraisal analysis;
- e.* Appraisal consulting;
- f.* Highest and best use analysis;
- g.* Feasibility analysis/study; and
- h.* Mass appraisal.

6.5(3) The types of experience set out in 6.5(2) are intended neither to exclude other sorts of appraisal experience nor to prescribe a specified minimum array of experience. However, an applicant who cannot

demonstrate a background of experience of the diversity manifested by this rule shall bear the burden of showing that the applicant's experience is of sufficient quality and diversity to fulfill the objective of the demonstration of experience. A diversity of experience includes, but is not limited to, the following:

- a. Performing all approaches to value (i.e., cost, income, sales);
- b. Various reporting types;
- c. Appropriate use of various forms (e.g., gPAR, 1004) and formats;
- d. Various property types (e.g., vacant land, single-family, multifamily, agricultural, retail, industrial, and special purpose);
- e. Various assignments that include varying scopes of work (e.g., as is, as completed or proposed, foreclosure, rural properties, acreages, estates, eminent domain, use of extraordinary assumption or hypothetical conditions); and
- f. Diversity in value ranges.

6.5(4) An applicant may be required to appear before the board or its representative to supplement or verify evidence of experience, which shall be in the form of written reports or file memoranda.

6.5(5) The board may require inspection, by the board itself or by its representatives, of documentation relating to an applicant's claimed experience. Such inspection may be made at the board's offices or such other place as the board may designate.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—6.6(543D) Work product review.

6.6(1) An applicant shall submit a complete appraisal log at the time of application for examination and work product review. The board will then select three appraisals that demonstrate a diversity of experience and approaches to value over various time frames for work product review and request that the applicant submit, both electronically and on paper, one copy of each report and work file for each of the selected appraisals along with the appropriate form and fee. The work product submission shall not be redacted by the applicant; however, the applicant may request the reports remain confidential as specified in subrule 6.6(2). The fee for work product review of the appraisals is provided in 193F—Chapter 12. The board may select the appraisals at random from the entire log or within certain types of appraisals. The board reserves the right to request one or more additional appraisals if those submitted by the applicant raise issues concerning the applicant's competency or compliance with applicable appraisal standards or the degree to which the submitted appraisals are representative of the applicant's work product. Such additional appraisals may be selected at random from the applicant's log or may be selected specifically to provide an example of the applicant's work product regarding a particular type of appraisal.

6.6(2) The board shall treat all appraisals received as public records unless the applicant notifies the board at the time of submission that a submitted appraisal is subject to the confidentiality provisions of appraisal standards or is otherwise confidential under state or federal law. While applicants are encouraged to submit appraisals actually performed for clients, applicants may submit one or more demonstration appraisals if the appraisals are prepared based on factual information in the same manner as applicable to actual appraisal assignments and are clearly marked as demonstration appraisals. Experience gained for work without a traditional client (i.e., a client hiring an appraiser for a business purpose), for example a demonstration appraisal, cannot exceed 50 percent of the total experience requirement.

6.6(3) An applicant seeking original or upgrade certification as a certified general real property appraiser shall submit one residential appraisal and two nonresidential appraisals for review.

6.6(4) The board will submit the appraisals to a peer review consultant for an opinion on the appraiser's compliance with applicable appraisal standards.

6.6(5) The work product review process is not intended as an endorsement of an applicant's work product. No applicant or appraiser shall represent the results of work product review in communications with a client or in marketing to potential clients in a manner which falsely portrays the board's work

product review as an endorsement of the appraiser or the appraiser's work product. Failure to comply with this prohibition may be grounds for discipline as a practice harmful or detrimental to the public.

6.6(6) The board views work product review, in part, as an educational process. While the board may deny an application based on an applicant's failure to adhere to appraisal standards or otherwise demonstrate a level of competency upon which the public interest can be protected, the board will attempt to work with applicants deemed in need of assistance to arrive at a mutually agreeable remedial plan. A remedial plan may include additional education, desk review, a mentoring program, or additional precertification experience.

6.6(7) An applicant who is denied certification based on the work product review described in this rule, or on any other ground, shall be entitled to a contested case hearing as provided in rule 193F—20.39(546,543D,272C). Notice of denial shall specify the grounds for denial, which may include any of the work performance-related grounds for discipline against a certified appraiser.

6.6(8) If probable cause exists, the board may open a disciplinary investigation against a certificate holder based on the work product review of an applicant. A potential disciplinary action could arise, for example, if the applicant is a certified residential real property appraiser seeking an upgrade to a certified general real property appraiser, or where the applicant is uncertified and is working under the supervision of a certified real property appraiser who cosigned the appraisal report.

6.6(9) After accumulating a minimum of 500 hours of appraisal experience, an applicant may voluntarily submit work product to the board to be reviewed by a peer reviewer for educational purposes only. A maximum of three reports may be submitted for review during the experience portion of the certification process. Work product submitted for educational purposes only will not result in disciplinary action on either the associate appraiser or the associate appraiser's supervisor so long as the appraisal review did not reveal negligent or egregious errors or omissions. The fee for voluntary submissions of work product for review is provided in 193F—Chapter 12.

6.6(10) The board will retain the appraisals for as long as needed as documentation of the board's actions for the Appraisal Subcommittee or as needed in a pending proceeding involving the work product of the applicant or the applicant's supervisor. When no longer needed for such purposes, the work product may be retained or destroyed at the board's discretion.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 4707C, IAB 10/9/19, effective 11/13/19; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—6.7(543D) Background check. A state and national criminal history check shall be performed on any appraiser upgrading to a new credential. The applicant shall authorize release of the results of the criminal history check to the board. If the criminal history check was not completed within 180 calendar days prior to the date the license application is received by the board, the board may perform a new state and national criminal history check or may reject and return the application to the applicant.

[ARC 1731C, IAB 11/12/14, effective 12/17/14; ARC 3084C, IAB 5/24/17, effective 6/28/17; ARC 5237C, IAB 10/21/20, effective 11/25/20]

These rules are intended to implement Iowa Code sections 543D.5, 543D.8, 543D.9, and 543D.22.

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CHAPTER 7
DISCIPLINARY ACTIONS AGAINST CERTIFIED AND
ASSOCIATE APPRAISERS

193F—7.1(17A,272C,543D) Disciplinary authority. The board is empowered to administer Iowa Code chapters 17A, 272C, and 543D and related administrative rules for the protection and well-being of those persons who may rely upon registered associate appraisers or certified real property appraisers for the performance of real property appraisal services within this state and for clients in this state. To perform these functions, the board is broadly vested with authority to review and investigate alleged acts or omissions of registered associate appraisers and certified real property appraisers to determine whether disciplinary proceedings are warranted, to initiate and prosecute disciplinary proceedings, to establish standards of professional conduct, and to impose discipline pursuant to Iowa Code sections 17A.13, 272C.3 to 272C.6 and 272C.10, and Iowa Code chapter 543D.

193F—7.2(543D) Standards of practice. The standards of practice governing all real property appraisal activities shall be the Uniform Standards of Professional Appraisal Practice, including Provisions, Rules, Comments, and Statements, as promulgated by the Appraisal Standards Board of the Appraisal Foundation. All registered associate appraisers and certified real property appraisers shall comply with the USPAP edition applicable to each appraisal assignment.

193F—7.3(17A,272C,543D) Grounds for discipline. The board may initiate disciplinary action against a registered associate appraiser or a certified real property appraiser based on any one or more of the following grounds:

7.3(1) *Fraud in procuring a registration or certificate.* Fraud in procuring or attempting to procure a registration or certificate includes an intentional perversion of the truth when making application for an initial, renewal, reciprocal, or temporary registration or certificate to practice in this state, including:

- a. False representation of a material fact, whether by word or by conduct, by false or misleading allegation, or by concealment of that which should have been disclosed;
- b. Attempting to file or filing with the board any false or forged diploma, course certificate, identification, credential, license, registration, certification, examination report, affidavit, or other record;
- c. Failing or refusing to provide complete information in response to a question on an application for initial or renewal registration or certification; or
- d. Otherwise participating in any form of fraud or misrepresentation by act or omission.

7.3(2) *Professional incompetence.* Professional incompetence includes, but is not limited to:

- a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.
- b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.
- c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.
- d. Failure to conform to the minimal standards of acceptable and prevailing practice of registered associate appraisers or certified real property appraisers in this state.
- e. A willful, repeated, or material deviation from USPAP standards, or other act or omission that demonstrates an inability to safely practice in a manner protective of the public's interest, including any violation of USPAP's COMPETENCY RULE.

7.3(3) *Deceptive practices.* Deceptive practices are grounds for discipline, whether or not actual injury is established, and include:

- a. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of real property appraising.
- b. Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a registrant or certificate holder

in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

c. Acceptance of any fee by fraud or misrepresentation, or in violation of Iowa Code section 543D.18(2).

d. Falsification of business records or appraisal logs through false or deceptive representations or omissions.

e. Submission of false or misleading reports or information to the board including information supplied in an audit of continuing education, reports submitted as a condition of probation, or any reports identified in this rule.

f. Making any false or misleading statement in support of an application for registration or certification submitted by another.

g. Knowingly presenting as one's own a certificate or registration, certificate or registration number, or signature of another or of a fictitious registrant or certificate holder, or otherwise falsely impersonating a certified appraiser or registered associate appraiser.

h. Representing oneself as a registered associate appraiser or certified appraiser when one's registration or certificate has been suspended, revoked, surrendered, or placed on inactive or retired status, or has lapsed.

i. Permitting another person to use the registrant's or certificate holder's registration or certificate for any purposes.

j. Fraud in representations as to skill or ability.

k. Misrepresenting a specialized service as an appraisal assignment in violation of Iowa Code section 543D.18(3) or (5).

7.3(4) *Unethical, harmful or detrimental conduct.* Registrants and certificate holders engaging in unethical conduct or practices harmful or detrimental to the public may be disciplined whether or not injury is established. Behaviors and conduct which are unethical, harmful or detrimental to the public may include, but are not limited to, the following actions:

a. A violation of 2007 Iowa Acts, Senate File 137, section 5 (improper influence of an appraisal assignment).

b. Verbal or physical abuse, improper sexual contact, or making suggestive, lewd, lascivious, offensive or improper remarks or advances, if such behavior occurs within the practice of real property appraising or if such behavior otherwise provides a reasonable basis for the board to conclude that such behavior within the practice of real estate appraising would place the public at risk.

c. Engaging in a professional conflict of interest, or otherwise violating the public trust, as provided in Iowa Code section 543D.18(1) as amended by 2007 Iowa Acts, Senate File 137, section 3, and in USPAP's ETHICS RULE.

d. Aiding or abetting any unlawful activity for which a civil penalty can be imposed under 193F—16.2(543D).

7.3(5) *Lack of proper qualifications.*

a. Continuing to practice as a registered associate appraiser or certified real property appraiser without satisfying the continuing education required for registration or certificate renewal.

b. Acting as a supervisor without proper qualification, as provided in 193F—15.3(543D).

c. Habitual intoxication or addiction to the use of drugs, or impairment which adversely affects the registrant's or certificate holder's ability to practice in a safe and competent manner.

d. Any act, conduct, or condition, including lack of education or experience and careless or intentional acts or omissions, that demonstrates a lack of qualifications which are necessary to ensure a high standard of professional care as provided in Iowa Code section 272C.3(2) "b," or that impairs a practitioner's ability to safely and skillfully practice the profession.

e. Failure to meet the minimum qualifications for registration as an associate appraiser or certification as a certified real property appraiser.

f. Practicing outside the scope of a residential certification, or outside the scope of a supervisor's residential certification.

7.3(6) *Negligence by the registrant or certificate holder in the practice of the profession.* Negligence by the registrant or certificate holder in the practice of the profession includes:

a. Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

b. A failure to exercise due care including negligent delegation of duties to or supervision of associate appraisers, or other employees, agents, or persons, in developing an appraisal, preparing an appraisal report, or communicating an appraisal, whether or not injury results.

c. Neglect of contractual or other duties to a client.

7.3(7) *Professional misconduct.*

a. A violation of any of the standards applicable to the development or communication of real estate appraisals as provided in 193F—7.2(543D).

b. Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of real estate appraising.

c. Engaging in any conduct that subverts or attempts to subvert a board investigation, or failure to fully cooperate with a disciplinary investigation of the registrant or certificate holder or with a disciplinary investigation of persons who are not registrants or certificate holders, including failure to comply with a subpoena issued by the board or 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 or certificate holder's last address on file at the board office.

d. Revocation, suspension, or other disciplinary action taken by a licensing authority of this state or another state, territory, or country. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, discipline by the board based solely on such action shall be vacated.

e. A violation of Iowa Code section 543D.18 as amended by 2007 Iowa Acts, Senate File 137, section 4 (disclosure of significant real property appraisal assistance), or Iowa Code section 543D.18(6).

f. A violation of 2007 Iowa Acts, Senate File 137, section 6 (restrictions on persons assisting in the development or reporting of a certified appraisal).

g. Failure to retain records as provided in Iowa Code section 543D.19.

h. Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

7.3(8) *Willful or repeated violations.* The willful or repeated violation or disregard of any provision of Iowa Code chapter 272C or 543D, or any administrative rule adopted by the board in the administration or enforcement of such chapters.

7.3(9) *Failure to report.*

a. Failure by a registrant or certificate holder or an applicant for a registration or certificate to report in writing to the board any revocation, suspension, or other disciplinary action taken by a licensing authority, in Iowa or any other jurisdiction, within 30 calendar days of the final action.

b. Failure of a registrant or certificate holder or an applicant for a registration or certificate to report, within 30 calendar days of the action, any voluntary surrender of a professional license to resolve a pending disciplinary investigation or action, in Iowa or any other jurisdiction.

c. Failure to notify the board of a criminal conviction within 30 calendar days of the action, regardless of the jurisdiction where it occurred.

d. Failure to notify the board within 30 calendar days after occurrence of any adverse judgment in a professional or occupational malpractice action, or settlement of any claim involving malpractice, regardless of the jurisdiction where it occurred.

e. Failure to report another registrant or certificate holder to the board for any violation listed in these rules, pursuant to Iowa Code section 272C.9(2), promptly after the registrant or certificate holder becomes aware that a reportable violation has occurred.

f. Failure to report to the board the appraiser’s principal place of business and any change in the appraiser’s principal place of business within 30 calendar days of such change; or failure to report to the board all other addresses at which the appraiser engages in the business of preparing real estate appraisal reports, or any change in such information, within 30 calendar days of such occurrence or change.

g. Failure of an associate appraiser or supervisor to timely respond to board requests for information, as provided in 193F—Chapter 4.

7.3(10) *Failure to comply with board order.* Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order, or other decision of the board imposing discipline.

7.3(11) *Conviction of a crime.*

a. Conviction, in this state or any other jurisdiction, of any felony offense that directly relates to the profession, or of any crime which is substantially related to the qualifications, functions, duties or practice of a person developing or communicating real estate appraisals to others. Any crime involving deception, dishonesty or disregard for the safety of others shall be deemed directly related to the practice of real property appraising. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another jurisdiction shall be conclusive evidence of the conviction. “Conviction” shall include any plea of guilty or nolo contendere, including Alford pleas, or finding of guilt whether or not judgment or sentence is deferred, withheld, or not entered, and whether or not the conviction is on appeal. If such conviction is overturned or reversed by a court of last resort, discipline by the board based solely on the conviction shall be vacated. A conviction qualifies as a felony offense if the offense is designated as a felony in the jurisdiction in which the conviction occurred, or if the offense is committed in this state, the offense would be a felony, without regard to its designation elsewhere. An offense directly relates to the profession if either:

(1) The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of the profession, or

(2) The circumstances under which an offense was committed are circumstances customary to the profession.

b. Notwithstanding the foregoing, a conviction may be grounds for revocation or suspension only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession.

[ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5484C, IAB 2/24/21, effective 3/31/21; ARC 5785C, IAB 7/28/21, effective 9/1/21]

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CHAPTER 8
INVESTIGATIONS AND DISCIPLINARY PROCEDURES

193F—8.1(272C,543D) Disciplinary action. The real estate appraiser examining board has authority pursuant to Iowa Code chapters 543D, 17A and 272C to impose discipline for violations of these Iowa Code chapters and the rules promulgated thereunder.

193F—8.2(17A,272C,543D) Initiation of disciplinary investigations. The board may initiate a licensee disciplinary investigation upon the board's receipt of information suggesting that a licensee may have violated a law or rule enforced by the board which, if true, would constitute grounds for licensee discipline.

193F—8.3(272C,543D) Sources of information. Without limitation, the following nonexclusive list of information sources may form the basis for the initiation of a disciplinary investigation or proceeding:

1. News articles or other media sources.
2. General or random review of publicly available work product.
3. Reports filed with the board by the commissioner of insurance pursuant to Iowa Code subsection 272C.4(9).
4. Complaints filed with the board by any member of the public.
5. License applications or other documents submitted to the board, including appraisal logs and appraisal reports.
6. Reports to the board from any regulatory or law enforcement agency from any jurisdiction.
7. Board audits of licensee compliance with conditions for licensure, such as continuing education or qualifying experience.

193F—8.4(17A,272C,543D) 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 shall abstain from participation in any consideration of the complaint and from participation in any disciplinary hearing that may result from the complaint.

193F—8.5(272C,543D) Complaints. Written complaints may be submitted to the board office by mail, email, facsimile or personal delivery by members of the public, including clients, business organizations, lenders, governmental bodies, licensees, or other individuals or entities with knowledge of possible law or rule violations by licensees.

8.5(1) Contents of a written complaint. Written complaints may be submitted on forms provided by the board that are available from the board office and on the board's website. Written complaints, whether submitted on a board complaint form or in other written media, shall contain the following information:

- a. The full name, address, and telephone number of the complainant (person complaining).
- b. The full name, address, and telephone number of the respondent (licensee 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.

8.5(2) Immunity. As provided by Iowa Code section 272C.8, a person shall not be civilly liable as a result of filing a report or complaint with the board unless such act is done with malice, nor shall an employee be dismissed from employment or discriminated against by an employer for filing such a report or complaint.

8.5(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 which may be initiated by the board based in whole or in part on information provided by the complainant.

8.5(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 licensee discipline to be imposed, if any.

8.5(5) *Initial complaint screening.* All written complaints received by the board shall be initially screened by the board's executive officer 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 licensee. Complaints which are clearly outside the board's jurisdiction, which clearly do not allege facts upon which disciplinary action would be based, or which are frivolous shall be referred by the board's executive officer to the board for closure at the next scheduled board meeting. All other complaints shall be referred by the board's executive officer to the board's disciplinary committee for committee review as described in subrule 8.8(1).

193F—8.6(272C,543D) Case numbers. Whether based on written complaint received by the board or complaint initiated by the board, all complaint files shall be tracked by a case numbering system. Complaints are assigned case numbers in chronological order with the first two digits representing the year in which the complaint was received or initiated, and the second two digits representing the order in which the case file was opened (e.g., 01-01, 01-02, 01-03, etc.). The board's executive officer shall maintain 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 records and prompt response.

193F—8.7(272C,543D,546) Confidentiality of complaint and investigative information.

8.7(1) All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code subsection 272C.6(4). Such information shall not be released to any person except as provided in that section and in this rule.

8.7(2) Disclosure to the subject of the investigation.

a. Legal authority. Pursuant to Iowa Code section 546.10(9), the board may, prior to the initiation of a disciplinary proceeding, supply to a licensee who is the subject of a disciplinary complaint or investigation all or such parts of a disciplinary complaint, disciplinary or investigatory file, report, or other information as the board in its sole discretion believes would aid the investigation or resolution of the matter.

b. General rule. As a matter of general policy, the board shall not disclose confidential complaint and investigative information to a licensee except as permitted by Iowa Code section 272C.6(4). Disclosure of a complainant's identity in advance of the filing of formal disciplinary charges, for instance, may adversely affect a complainant's willingness to file a complaint with the board.

c. Exceptions to general rule. The board may exercise its discretion to release to a licensee information that would otherwise be confidential under Iowa Code section 272C.6(4) under narrow circumstances, including but not limited to the following:

(1) Following a board determination that probable cause exists to file disciplinary charges against a licensee but prior to the issuance of the notice of hearing, the board may provide the licensee with a peer review report or investigative report or with expert opinions, as reasonably needed for the licensee to assess the merits of a settlement proposal.

(2) The board may release to a licensee who is the subject of a board-initiated investigation, including investigations initiated following the board's receipt of an anonymous complaint, such records or information as may aid the investigation or resolution of the matter.

(3) The board may disclose information from a peer review report or consultant's report when soliciting the licensee's position will aid in making the probable cause determination or when providing the information would be educational to the licensee, and such disclosure can be made to the licensee without revealing identifying information regarding the complainant, peer reviewer or consultant.

[ARC 0412C, IAB 10/31/12, effective 12/5/12]

193F—8.8(17A,272C,543D) Investigation procedures.

8.8(1) *Disciplinary committee.* The board chairperson shall annually appoint two to three members of the board to serve on the board's disciplinary committee. The disciplinary committee is a purely advisory body which shall review complaint files referred by the board's executive officer, generally supervise the investigation of complaints, and make recommendations to the full board on the disposition of complaints. Members of the committee shall not personally investigate complaints, but they may review the investigative work product of others in formulating recommendations to the board.

8.8(2) *Committee screening of complaints.* Upon the referral of a complaint from the board's executive officer or from the full board, the committee shall determine whether the complaint presents facts which, if true, suggest that a licensee may have violated a law or rule enforced by the board. If the committee concludes that the complaint does not present facts which suggest such a violation or that the complaint does not otherwise constitute an appropriate basis for disciplinary action, the committee shall 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.

8.8(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 licensee an opportunity to appear before the disciplinary committee for an informal discussion as described in rule 193F—8.9(17A,272C,543D) or request board staff to conduct further investigation. Upon completion of an investigation, the investigator, expert consultant, peer review committee or board staff shall present a report to the committee. The committee shall review the report and determine what further action is necessary. The committee may:

- 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 licensee 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).

8.8(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, which the board deems necessary as evidence in connection with a disciplinary proceeding or relevant to the decision about whether to initiate a disciplinary proceeding. Board procedures concerning investigative subpoenas are set forth in 193F—Chapter 19.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.9(17A,272C,543D) Informal discussion. If the disciplinary committee considers it advisable, or if requested by the affected licensee, the committee may grant the licensee any 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.

8.9(1) An informal discussion is intended to provide a licensee an opportunity to share in an informal setting the licensee's side of a complaint before the board determines whether probable cause exists to initiate a disciplinary proceeding. Licensees are not required to attend an informal discussion. Because disciplinary investigations are confidential, licensees may not bring other persons with them to an informal discussion, but licensees may be represented by legal counsel.

8.9(2) Unless disqualification is waived by the licensee, 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. Because board members generally rely upon investigators, peer review committees, or expert consultants to conduct investigations, the issue rarely arises. An informal discussion, however, 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, licensees who desire to attend an informal discussion must therefore waive their 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. Licensees would not be waiving their right to seek disqualification on any other ground. By electing to attend an informal discussion, a licensee accordingly agrees that participating board members or staff are not disqualified from acting as a presiding officer in a later contested case proceeding or from advising the decision maker.

8.9(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.

8.9(4) The disciplinary committee, subject to board approval, may propose a consent order at the time of the informal discussion. If the licensee agrees to a consent order, a statement of charges shall be filed simultaneously with the consent order, as provided in rule 193F—20.4(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.10(272C,543D) Peer review committee (PRC). A peer review committee may be appointed by the board to investigate a complaint. The committee may consist of one or more certified general or certified residential real property appraisers registered to practice in Iowa. The board may appoint a single peer review consultant to perform the functions of a PRC when, in the board's opinion, appointing a committee with more members would be impractical, unnecessary or undesirable given the nature of the expertise required, the need for prompt action or the circumstances of the complaint. An individual shall be ineligible as a PRC member in accordance with the standard for disqualification found in rule 193F—20.14(17A).

8.10(1) Authority. The PRC investigation may include activities such as interviewing the complainant, the respondent, and individuals with knowledge of the respondent's practice in the community; gathering documents; and performing independent analyses as deemed necessary. The board may give specific instructions to the PRC regarding the scope of the investigation. In the course of the investigation, PRC members shall refrain from advising the complainant or respondent on actions that the board might take.

8.10(2) Term of service. The PRC serves at the pleasure of the board. The board may dismiss any or all members of a PRC or add new members at any time.

8.10(3) Compensation. PRC members may receive compensation as the board may provide by contract. Within established budget limitations, PRC members may be reimbursed for reasonable and necessary expenses that are incurred for travel, meals and lodging while performing committee duties. The PRC shall not hire legal counsel, investigators, secretarial help or any other assistance without written authorization from the board.

8.10(4) Reports. Each PRC shall submit a written report to the board within a reasonable period of time.

8.10(5) Components of the report. The report shall include:

- a. Statement of the charge to the PRC;

b. Description of the actions taken by the PRC in its investigation, including but not limited to appraisal review(s) and interviews with the respondent or complainant;

c. Summary of the PRC's findings, including the PRC's opinion as to whether a violation occurred, citation of the specific USPAP violation(s), citation of the Iowa Code section(s) and Iowa Administrative Code rule(s) violated, and the PRC's opinion of the seriousness of the violation;

d. Recommendation.

8.10(6) Recommended action. The PRC report shall recommend one of the following:

a. Dismissal of the complaint;

b. Further investigation;

c. Disciplinary proceedings;

d. Allowing the appraiser who is the subject of the complaint an opportunity to appear before the board for an informal discussion regarding the circumstances of the alleged violation.

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

8.10(7) Disciplinary recommendations. When recommending disciplinary proceedings, a PRC shall refrain from suggesting 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 appraiser needs additional education or supervision in order to safely practice.

8.10(8) Confidentiality. The PRC shall not discuss its findings and conclusions with any party to the complaint other than the board (through its report to the board) or board staff. PRC findings including the name of the complainant shall be kept confidential at all times. PRC findings shall be used only for the purposes of the board's possible disciplinary action and not for any other court case, lawsuit, or investigation.

8.10(9) Testimony. In the event of formal disciplinary proceedings, PRC members may be required to testify.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.11(17A,272C,543D) Closing complaint files.

8.11(1) Grounds for closing. Upon the recommendation of the executive officer, the recommendation of the disciplinary committee, or on its own motion, the board may close a complaint file, with or without prior investigation. Given the broad scope of matters about which members of the public may complain, it is not possible to catalog all possible reasons why the board may close a complaint file. The following nonexclusive list is, however, illustrative of the grounds upon which the board may close a complaint file:

a. The complaint alleges matters outside the board's jurisdiction.

b. The complaint does not allege a reasonable or credible basis to believe that the subject of the complaint violated a law or rule enforced by the board.

c. The complaint is frivolous or trivial.

d. The complaint alleges matters more appropriately resolved in a different forum, such as civil litigation to resolve a contract dispute, or more appropriately addressed by alternative procedures, such as outreach education or rule making.

e. The matters raised in the complaint are situational, isolated, or unrepresentative of a licensee's typical practice, and the licensee has taken appropriate steps to ensure future compliance and prevent public injury.

f. Resources are unavailable or better directed to other complaints or board initiatives in light of the board's overall budget and mission.

g. While the evidence may reveal one or more appraisal standards about which the appraiser should be more vigilant in the future, the issues appear correctable, are not likely to recur with proper diligence in the development and reporting of future appraisals, and do not reveal impediments to competent practice in the future.

h. Other extenuating factors exist which weigh against the imposition of public discipline when considered in the context of the board's purpose and mission.

8.11(2) Closing orders. The board's executive officer may enter an order stating the basis for the board's decision to close a complaint file. If entered, the order shall not contain the identity of the complainant or the respondent and shall not disclose confidential complaint or investigative information.

If entered, a closing order will be indexed by case number and shall be a public record pursuant to Iowa Code subsection 17.3(1) "d." A copy of the order may be mailed to the complainant, if any, and to the respondent. The board's decision whether or not to pursue an investigation, to institute disciplinary proceedings, or to close a file is not subject to judicial review.

8.11(3) Cautionary letters. The board may issue a confidential letter of caution to a licensee when a complaint file is closed which informally cautions or educates the licensee about matters which could form the basis for disciplinary action in the future if corrective action is not taken by the licensee. Informal cautionary letters do not constitute disciplinary action, but the board may take such letters into consideration in the future if a licensee continues a practice about which the licensee has been cautioned.

8.11(4) Reopening closed complaint files. The board may reopen a closed complaint file if additional information arises after closure which provides a basis to reassess the merits of the initial complaint.

193F—8.12(17A,272C,543D) Initiation of disciplinary proceedings. Disciplinary proceedings may only be initiated by the affirmative vote of a majority 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, three members of the board shall constitute a quorum of the remaining five 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 executive officer may request the special appointment of one or more substitute board members pursuant to Iowa Code section 17A.11, subsection 5. Discipline may only be imposed against a licensee by the affirmative vote of a majority of the members of the board who are not disqualified.

193F—8.13(17A,272C,543D) Disciplinary contested case procedures. Unless in conflict with a provision of board rules in this chapter, all of the procedures set forth in 193F—Chapter 20 shall apply to disciplinary contested cases initiated by the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—8.14(543D) Decisions. The board shall make findings of fact and conclusions of law, and set forth the board's decision, order, or both in the case. The board's decision may include, without limitation, any of the following outcomes, either individually or in combination:

1. Dismiss the charges;
2. Suspend or revoke the appraiser's certification or associate's registration as authorized by law;
3. Impose civil penalties, the amount which shall be set at the discretion of the board, but which shall not exceed \$1000 per violation. Civil penalties may be imposed for any of the disciplinary violations specified in Iowa Code section 543D.17 and chapter 272C or for any repeat offenses;
4. Impose a period of probation, either with or without conditions;
5. Require reexamination;
6. Require additional professional education, reeducation, or continuing education;
7. Issue a citation and a warning;
8. Require desk review of the appraiser's work product;
9. Issue a consent order either with or without conditions;
10. Require consultation with one or more peer reviewers;
11. Revoke an appraiser's eligibility to supervise;
12. Require submission of monthly logs;
13. Impose any other form of discipline authorized by a provision of law that the board, in its discretion, believes is warranted under the circumstances of the case.

[ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—8.15(272C,543D) Mitigating and aggravating factors. Factors the board may consider when determining whether to impose discipline and what type of discipline to impose include:

8.15(1) History and background of respondent.

a. Whether the respondent was a registered associate appraiser or a certified appraiser at the time of the violation.

b. Prior disciplinary history or cautionary letters.

c. Length of certification or registration at the time of the violation.

d. Disciplinary history of current or prior supervisor.

e. Degree of cooperation with investigation.

f. Extent of self-initiated reform or remedial action after the date of the violation.

g. Whether the volume or geographic range of the respondent's practice is, or was at the time of the violation, reasonable under the circumstances.

h. Whether the respondent practiced with a lapsed, inactive, retired, suspended, revoked, or surrendered certificate or registration.

8.15(2) Nature of violation.

a. Length of time since the date of the violation.

b. Whether the violation is isolated or recurring.

c. Whether there are multiple violations or appraisals involved.

d. Whether the violation is in the nature of an error or situational carelessness or neglect, or reflects a more fundamental lack of familiarity with applicable appraisal methodology or standards.

e. Indicia of bad faith, false statements, deceptive practices, or willful and intentional acts, whether within the circumstances of the violation or in the course of the board's investigation or disciplinary proceeding.

f. Evidence of improper advocacy or other violation of the USPAP ethics rule or of Iowa Code section 543D.18 or 543D.18A(1).

g. The clarity of the issue or standard involved.

h. Whether the respondent practiced outside the scope of practice authorized by respondent's certification or registration.

i. Whether the violation relates to the respondent's supervisory role, the respondent's individual appraisal practice, or both.

8.15(3) Interest of the public.

a. Degree of financial or other harm to a client, consumer, lending institution, or others.

b. Risk of harm, whether or not the violation caused actual harm.

c. Economic or other benefit gained by respondent or by others as a result of the violation.

d. Deterrent impact of discipline.

e. Whether the respondent issued a corrected appraisal report when warranted.

[ARC 0412C, IAB 10/31/12, effective 12/5/12; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—8.16(272C,543D) Voluntary surrender. The board may accept the voluntary surrender of a license to resolve a pending disciplinary contested case or pending disciplinary investigation. The board shall not accept a voluntary surrender of a license to resolve a pending disciplinary investigation unless a statement of charges is filed along with the order accepting the voluntary surrender. Such voluntary surrender is considered disciplinary action and shall be published in the same manner as is applicable to any other form of disciplinary order.

193F—8.17(272C,543D) Reinstatement. In addition to the provisions of rule 193F—20.38(17A,272C), the following provisions shall apply to license reinstatement proceedings:

8.17(1) The board may grant an applicant's request to appear informally before the board prior to the issuance of a notice of hearing on an application to reinstate if the applicant requests an informal appearance in the application and agrees not to seek to disqualify, on the ground of personal investigation, board members or staff before whom the applicant appears.

8.17(2) 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 193F—8.14(543D).

8.17(3) The board shall not grant an application for reinstatement when the initial order which revoked, suspended or restricted the license, denied license 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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code sections 543D.5, 543D.17 and 543D.18 and chapters 17A and 272C.

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CHAPTER 9
RENEWAL, EXPIRATION AND REINSTATEMENT OF
CERTIFICATES AND REGISTRATIONS, RETIRED STATUS, AND INACTIVE STATUS
[Prior to 2/20/02, see rules 193F—4.2(543D) and 193F—4.5(543D)]

193F—9.1(272C,543D) Biennial renewal.

9.1(1) Certificates and associate registrations must be renewed on a biennial basis or they shall lapse.

9.1(2) Persons whose last names begin with A to K shall renew in even-numbered years. Persons whose last names begin with L to Z shall renew in odd-numbered years. Certificates and registrations shall expire biennially on June 30.

9.1(3) An application to renew a certificate or registration shall be submitted on a form obtained from the board office or on the board's website. Applicants may renew electronically through a board-established electronic process, as available.

9.1(4) With the exception of continuing education obtained during the 30-day grace period authorized by and subject to and in accordance with subrule 9.4(2), all continuing education claimed on a biennial renewal must have been acquired during the renewal period. In addition, all continuing education claimed on a biennial renewal must have been actually taken and completed prior to the renewal application being submitted to the board.

[ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—9.2(272C,543D) Notices.

9.2(1) It is the policy of the board to mail or send electronic renewal notices to certified and associate appraisers at the last address or email address on file with the board in the May preceding certificate or registration expiration. Neither the failure of the board to send such a notice nor the licensee's failure to receive such a notice shall excuse the requirement to timely renew and pay the renewal fee.

9.2(2) Certified and associate appraisers must ensure that their contact information on file with the board office is current and that the board is notified within 30 days of any address change, and report to the board all other addresses at which the appraiser engages in the business of preparing real estate appraisal reports, or any change in such information, within 30 calendar days of any addition or change thereto.

[ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—9.3(272C,543D) Renewal procedures.

9.3(1) *Date of filing.* Certified and associate appraisers shall file a timely and sufficient renewal application with the board by the June 30 deadline in the biennial renewal year. An application shall be deemed filed on the date received by the board, the date of electronic submission or, if mailed, the date postmarked, but not the date metered. Applications to renew that are not timely received by the board shall be treated as applications to reinstate, as provided in rule 193F—9.4(272C,543D).

9.3(2) *Continuing education.* An applicant for renewal shall report the applicant's compliance with the continuing education requirements provided in 193F—Chapter 11. Full compliance with applicable continuing education requirements is a condition of renewal in active status. Applications to renew certificates or registrations in active status that do not, on their face, demonstrate full compliance with all applicable continuing education requirements shall be rejected as insufficient, as provided in subrule 9.3(4).

9.3(3) *Background disclosures.* An applicant for renewal shall disclose such background and character information as the board requests, which may include disciplinary action taken by any jurisdiction regarding a professional license of any type, the denial of an application for a professional license of any type by any jurisdiction, and the conviction of any crime.

9.3(4) *Insufficient applications.* The board shall reject applications that are insufficient. A sufficient application within the meaning of Iowa Code section 17A.18(2) must:

a. Be on a form prescribed by the board or, in the event there are no paper forms, be submitted through the state's database;

- b. Be signed by the applicant, be certified as accurate, or display an electronic signature by the applicant if submitted electronically;
- c. Be fully completed;
- d. Reflect, on its face, full compliance with all applicable continuing education requirements; and
- e. Be accompanied by the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds or written on a closed account.

9.3(5) *Resubmission of rejected applications.* The board shall promptly notify an applicant of the basis for rejecting an insufficient renewal application, and shall return or refund any fees received. Applicants for certificate or registration renewal may remedy the insufficiency and resubmit applications that were rejected as insufficient. Resubmitted applications shall be deemed received when personally delivered to the board office, on the date of electronic submission or, if mailed, the date postmarked, but not the date metered. Resubmitted applications to renew that are not timely received by the board shall be treated as applications to reinstate, as provided in rule 193F—9.4(272C,543D).

9.3(6) *Administrative processing not determinative.* The administrative processing of an application to renew a certificate or registration shall not prevent the board from subsequently commencing a contested case to challenge the applicant's qualifications for continued licensure or to assert disciplinary charges if grounds exist to do so. The board may take such an action, for example, if an application to renew reflects full compliance with continuing education, but the licensee is unable to document compliance in a subsequent audit.

9.3(7) *Denial of timely and sufficient application to renew.* If grounds exist to deny a timely and sufficient application to renew, the board shall send written notification to the applicant stating the grounds for denial. The procedures described in rule 193F—20.40(546,543D,272C) shall apply.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—9.4(272C,543D) Failure to renew.

9.4(1) The certificate or registration of a certified or associate appraiser shall lapse unless the appraiser submits a timely and sufficient renewal application by the expiration date.

9.4(2) A certified or associate appraiser may renew a certificate or registration after the expiration date by submitting a sufficient renewal application and biennial renewal fee, accompanied by the late renewal fee as provided in 193F—Chapter 12, within 30 calendar days of the expiration date. The board will allow the reinstatement of a lapsed certificate or registration during the 30-day period following expiration for an appraiser who did not complete all required continuing education during the prior biennium but who will have sufficient continuing education if courses completed during the 30-day period following lapse are included. The continuing education completed between July 1 and July 30 that fulfills a shortage of continuing education in the prior biennium shall not be counted toward the continuing education required in a subsequent renewal.

9.4(3) If a certified or associate appraiser fails to renew within the 30-day grace period provided for in subrule 9.4(2), the appraiser shall be required to reinstate in accordance with subrule 9.4(5).

9.4(4) Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is lapsed, including during the 30-day grace period following the lapse. Any violation of this subrule shall be grounds for discipline.

9.4(5) Reinstatement. The board may reinstate a lapsed certificate or registration upon the applicant's submission of an application to reinstate and completion of all of the following:

- a. Paying a penalty as provided in rule 193F—12.1(543D); and
- b. Paying the current renewal fee as provided in rule 193F—12.1(543D); and
- c. Paying the ASC National Registry fee as provided in rule 193F—12.1(543D); and

d. Providing evidence of completed continuing education outlined in rule 193F—11.2(272C,543D), as modified for associate appraisers in subrule 9.4(6), if the licensee wishes to reinstate to active status; and

e. Providing a written statement outlining the professional activities of the applicant in the state of Iowa during the period in which the applicant's certificate or registration was lapsed. The statement shall describe all appraisal services performed, with or without the use of the titles described in Iowa Code section 543D.15, for all appraisal assignments that are required by federal or state law, rule, or policy to be performed by a certified real estate appraiser.

9.4(6) Special continuing education requirements for reinstating associate appraisers. The board seeks to ensure that associate appraisers make progress toward full completion of all qualifying education required for eventual certification, as provided in rules 193F—5.2(543D) and 193F—6.2(543D). As a result, an associate appraiser applying to reinstate a registration that has been lapsed for 12 months or longer shall apply, in addition to the most recent 7-hour USPAP course, only qualifying education toward the continuing education required for reinstatement, until all qualifying education has been completed. All qualifying education taken as continuing education may also be applied as qualifying education toward certification. If the applicant has already completed all qualifying education or is required to have continuing education hours beyond those needed to fully complete all qualifying education, the applicant may use any approved continuing education course in addition to the mandatory 7-hour USPAP course. [ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—9.5(272C,543D) Inactive status.

9.5(1) General purpose. This rule establishes a procedure under which a person issued a certificate or associate registration may apply to the board to register in inactive status. Registration under this rule is available to a certificate holder or associate registrant residing within or outside the state of Iowa who is not engaged in Iowa in any practice for which a certificate or associate registration is required. A person eligible to register as inactive may, as an alternative to such registration, allow a certificate or associate registration to lapse. The board will continue to maintain a data base on persons registered as inactive, including information which may not routinely be maintained after a certificate or associate registration has lapsed through failure to renew. A person who registers as inactive will accordingly receive renewal applications, board newsletters and other mass communications from the board. Because a person registered in inactive status may not practice in Iowa or hold oneself out to the public as authorized to practice as a certified appraiser or registered associate appraiser, such person is not required to complete continuing education.

9.5(2) Eligibility. A person holding a lapsed or active certificate as a real property appraiser, or a lapsed or active registration as a registered associate, which has not been revoked or suspended may apply on forms provided by the board to register as inactive if the person is not engaged in the state of Iowa in any practice for which a certificate or associate registration is required. Such a person may be actively engaged in the practice of real estate appraising in another jurisdiction. Such a person may also engage in such appraisal practices as may be performed in Iowa by persons who do not hold a certificate as a real property appraiser or associate registration as long as the person does not hold oneself out to the public as a certified or associate real estate appraiser.

9.5(3) Affirmation. The application form shall contain a statement in which the applicant affirms that the applicant will not engage in any practice prohibited by subrule 9.5(2) in Iowa without first complying with all rules governing reactivation to active status. A person in inactive status may reactivate to active status at any time pursuant to subrule 9.5(6).

9.5(4) Renewal. A person registered as inactive may renew the person's certificate or associate registration to inactive status on the biennial schedule described in 193F—9.1(272C,543D). Such person is exempt from the continuing education requirements for renewal and will be charged a reduced rate, as provided in 193F—Chapter 12. An inactive certificate or associate registration shall lapse if not timely renewed. An active certificate holder or associate registrant may renew as inactive if such person has not completed all continuing education requirements and may thereafter apply for active status, through the reactivation process as provided in subrule 9.6(6), when the deficiency has been remedied.

9.5(5) *Grounds for discipline.* Certified and associate appraisers are not authorized to practice or to hold themselves out to the public as certified or registered appraisers during the period of time that the certificate or registration is in retired or inactive status. Any violation of this subrule shall be grounds for discipline.

9.5(6) *Reactivation.* A person registered as inactive shall apply to reactivate to active status prior to engaging in any practice in Iowa that requires certification or associate registration. An application to reactivate to active status shall be on a form provided by the board, shall demonstrate full compliance with all applicable continuing education requirements, and shall be accompanied by a fee to reactivate an inactive license and the biennial fee for active status as provided in rule 193F—12.1(543D). Prior to reactivation to active status, the applicant must complete all education that would have been required had the applicant been on active status, including the most recent seven-hour USPAP update course. All such continuing education must be verified whether or not the applicant has been in active practice in another jurisdiction. Additionally, the special continuing education requirements that apply to associate appraisers reinstating a lapsed registration, as provided in subrule 9.4(6), shall apply to associate appraisers reactivating to active status following a period of inactive status of 12 months or longer. Such an applicant shall be given credit for the most recent renewal fees previously paid if the applicant applies to reactivate in the same biennium at other than the applicant's regular renewal date. An applicant changing from active to inactive status during a biennial renewal period shall not, however, be entitled to a refund of any of the fees previously paid to attain active status.

[ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—9.6(272C,543D) Retired status. An associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status. For purposes of this rule, the term "retired" means the person has retired from working as an associate or certified appraiser in all jurisdictions and has requested to be placed in retired status on forms provided by the board. An associate or certified appraiser in retired status may request that the registration or certification be placed into active status so long as the associate or certified appraiser has not renewed the registration or certification in inactive status or allowed the registration or certification to lapse prior to the request to return to active status. The board will not provide a refund of biennial registration and certification fees when an application for retired status is granted in a biennium in which the applicant has previously paid the biennial fees for either active or inactive status. Associate and certified appraisers in retired status are exempt from the renewal requirement. While in retired status, appraisers may not hold themselves out to the public as being registered or certified appraisers during the period of time that the registration or certification is in retired status. For all intents and purposes, retired status is similar to lapsed status with the exceptions that:

9.6(1) The associate or certified appraiser may place the associate or certified appraiser's registration or certification in retired status at any point;

9.6(2) Until such time as the registration or certification expires, the applicant will not be subject to the reactivation or reinstatement criteria;

9.6(3) If the associate or certified appraiser places the registration or certification into inactive status at the time of renewal, or the applicant lets the registration or certification lapse, the applicant will be required to reactivate or reinstate pursuant to rule 193F—4.6(272C,543D), or subrule 9.4(5) or 9.5(6) as applicable.

[ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—9.7(272C,543D) Property of the board. Every certificate or associate registration issued by the board shall, while it remains in the possession of the holder, be preserved by the holder but shall, nevertheless, always remain the property of the board. In the event that a certificate or associate registration is revoked or suspended, is not renewed, is registered in inactive status, or is placed in retired status, it shall, on demand, be delivered by the holder to the board. The board shall generally not request return of a certificate or associate registration if it has not been revoked, suspended or voluntarily surrendered in a disciplinary action, but may do so if the board reasonably determines

that grounds exist to believe that a person holding a lapsed, retired, or inactive certificate or associate registration has engaged in a practice for which active certification or registration is required.

[ARC 5785C, IAB 7/28/21, effective 9/1/21]

These rules are intended to implement Iowa Code section 543D.5.

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[Filed ARC 5785C (Notice ARC 5611C, IAB 5/5/21), IAB 7/28/21, effective 9/1/21]

CHAPTER 10
RECIPROCITY

[Prior to 2/20/02, see 193F—Chapter 5]

193F—10.1(543D) Nonresident certification by reciprocity.

10.1(1) A nonresident of Iowa seeking certification in this state shall apply on forms provided by the board and pay the appropriate fee required in rule 193F—12.1(543D).

10.1(2) The board may issue a reciprocal certificate to a nonresident individual who is certified and demonstrates good standing in another state. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website.

10.1(3) A reciprocal certified appraiser shall comply with all provisions of Iowa law and rules.

10.1(4) Reciprocal certified appraisers shall be required to pay the federal registry fee as required in rule 193F—12.3(543D).

[ARC 1197C, IAB 11/27/13, effective 1/1/14; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—10.2(543D) Nonresident temporary practice.

10.2(1) The board will recognize, on a temporary basis, the certification of an appraiser issued by another state for a period of six months, unless the applicant requests, and is approved for, a one-time extension, of which the one-time extension will not exceed six months, prior to the expiration of the original issued temporary practice permit.

10.2(2) The appraiser must register with the board and identify the property(ies) to be appraised and the name and address of the client. The appraiser must demonstrate good standing to be considered for a temporary practice permit. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the ASC's website. Registration shall be on a form provided by the board and submitted to the board office prior to the performance of the appraisal. The appraiser shall pay the appropriate fee as required in rule 193F—12.1(543D).

10.2(3) An appraiser holding an inactive, retired, or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

10.2(4) An appraiser who was previously a registered associate or certified appraiser in Iowa whose Iowa registration or certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is ineligible to apply for a temporary practice permit in Iowa.

10.2(5) The board may deny an application for a temporary practice permit if the applicant has been disciplined in Iowa or another jurisdiction, a disciplinary investigation or proceeding is pending in Iowa, the person has been convicted of a crime that is a ground for discipline in Iowa, or it appears the applicant is applying for a temporary permit because the applicant would not qualify to renew or reinstate in active status in Iowa and the application for a temporary permit is made primarily to compromise compliance with Iowa laws and rules.

10.2(6) An appraiser holding an inactive, retired, or lapsed Iowa certificate who applies to reinstate to active status in Iowa shall not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

10.2(7) An appraiser holding a license to practice as a real estate appraiser in another jurisdiction may practice in Iowa without applying for a temporary practice permit or paying any fees as long as the appraiser does not perform appraisal services in Iowa for which certification is required by state or federal law, rule or policy.

10.2(8) The board must receive and approve an application for a temporary practice permit before the applicant is eligible to practice in Iowa under a temporary practice permit. Applicants are encouraged to submit applications by email or facsimile to avoid the possible delays of mail service, because the board will not approve an application with a retroactive start date. The board shall grant or deny all applications for temporary practice permits as quickly as reasonably feasible and no later than five days of receipt of a completed application. Applicants shall use the form prescribed by the board. Applicants disclosing discipline or criminal convictions shall attach documentation from which the board can determine if the discipline or criminal history would be a ground to deny the application. Falsification of information or failure to disclose material information shall be a ground to deny the application and may form the basis to deny any subsequent application or an application to reinstate a lapsed or inactive Iowa certificate.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

These rules are intended to implement Iowa Code sections 543D.10 and 543D.11.

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[Filed ARC 5785C (Notice ARC 5611C, IAB 5/5/21), IAB 7/28/21, effective 9/1/21]

CHAPTER 11
CONTINUING EDUCATION
[Prior to 2/20/02, see 193F—Chapter 6]

193F—11.1(272C,543D) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Approved program*” means a continuing education program, course, or activity that satisfies the standards set forth in these rules and has received advance approval of the board pursuant to these rules.

“*Approved provider*” means a person or an organization that has been approved by the board to conduct continuing education programs pursuant to these rules.

“*Board*” means the Iowa real estate appraiser examining board.

“*Continuing education*” means education which is obtained by a person certified to practice real estate appraising in order to maintain, improve, or expand skills and knowledge obtained prior to initial certification or registration, or to develop new and relevant skills and knowledge, all as a condition of renewal.

“*Credit hour*” means the value assigned by the board to a continuing education program.

“*Distance education*” means any education process based on the geographical separation of student and instructor. “Distance education” includes computer-generated programs and webinars.

“*Guest speaker*” means an individual who teaches an appraisal education program on a one-time-only or very limited basis and who possesses a unique depth of knowledge and experience in the subject matter.

“*Hour*” means 50 minutes of instruction.

“*Live instruction*” means an educational program delivered in a classroom setting where both the student and the instructor are present in the same room.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.2(272C,543D) Continuing education requirements.

11.2(1) Certified residential, certified general and associate appraisers must demonstrate compliance with the following continuing education requirements as a condition of biennial renewal:

a. A minimum of 28 credit hours in approved continuing education programs must be acquired during the two-year renewal period. Carryover hours from a previous renewal period are not allowed.

b. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases the appraiser’s skill, knowledge and competency in real estate appraising. Credit may be granted for educational offerings that are consistent with the purpose of continuing education. A minimum of 21 of the required 28 credit hours must involve courses that address one or more of the subject areas listed in subrule 11.4(2).

c. Appraisers must successfully complete the seven-hour National USPAP Update Course, or its equivalent, each two-year renewal cycle. Equivalency shall be determined through the AQB Course Approval Program or by an alternate method established by the AQB. USPAP continuing education credit shall be awarded only when the class is instructed by an AQB-certified instructor(s) and when the class is instructed by at least one state-certified residential or state-certified general appraiser. Individuals who are credentialed in more than one jurisdiction shall not have to take more than one seven-hour National USPAP Update Course within a two-calendar-year period for the purposes of meeting AQB criteria.

d. With the exception of continuing education obtained during the 30-day grace period authorized by and subject to and in accordance with 193F—subrule 9.4(2), all continuing education claimed on a biennial renewal must have been acquired during the renewal period. In addition, all continuing education claimed on a biennial renewal must have been actually taken and completed prior to the renewal application being submitted to the board.

11.2(2) All continuing education credit hours may be acquired in approved classroom or distance education programs.

11.2(3) A maximum of 14 of the required 28 credit hours may be claimed by an instructor for teaching one or more approved continuing education programs in an amount equal to the credit hours

approved for attendees. Instructors claiming such credit must teach the appraisal course during the renewal cycle in which credit is claimed and may not claim the course more than once in the renewal cycle. The board may request supportive documentation to ascertain course content and to verify the date(s), time, place and hours taught.

11.2(4) An applicant seeking to renew an initial certificate or registration issued less than 185 days prior to renewal is not required to report any continuing education. An applicant seeking to renew an initial certificate or registration issued for 185 days to 365 days prior to renewal must demonstrate completion of at least 14 credit hours, including 7 credit hours of the most recent National USPAP Update. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more must demonstrate completion of at least 28 credit hours, including 7 credit hours of the most recent National USPAP Update.

11.2(5) Prior to reinstatement or reactivation of a certified general registration or a certified residential registration, a certified credential holder in inactive, retired, or lapsed status must complete all required continuing education hours that would have been required if the certified credential holder was in active status. The required hours must also include the most recent edition of a seven-hour National USPAP Update Course. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements.

11.2(6) During each two-year renewal period, a continuing education program may be taken for credit only once, except USPAP courses as long as it is not the same USPAP course (e.g., an appraiser may take the 2018-2019 USPAP and the 2020-2021 USPAP update course but may not take two 2018-2019 USPAP update courses).

11.2(7) Successful completion of a continuing education program requires that at least 50 minutes of every class hour be attended by the student. Continuing education credits shall not be granted to attendees who are present for less than 50 minutes of every class hour.

11.2(8) An applicant may claim continuing education credits that have been approved by another jurisdiction that has a continuing education requirement for renewal of a real estate appraisal certificate if the applicable program was approved by the other jurisdiction's appraisal regulatory body or the AQB for continuing education purposes at the time the applicant completed the course. The burden of proof is on the applicant to demonstrate that a claimed course was approved by either the other jurisdiction or the AQB for continuing education purposes at the time the applicant completed the course. All other programs must be approved upon application to the board pursuant to rules 193F—11.4(272C,543D), 193F—11.5(272C,543D) and 193F—11.6(272C,543D).

11.2(9) A person certified or registered to practice real estate appraising in Iowa shall be deemed to have complied with Iowa's continuing education requirements for periods in which the person is a resident of another state or district having continuing education requirements for real estate appraising and meets all requirements of that state or district. Waivers may not be granted to credential holders who have failed to meet the continuing education requirements. Deferrals may not be granted to credential holders, except in the case of persons returning from active military duty. Credential holders returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements. To qualify, the credential holder must submit a request in writing and provide a copy of the military orders.

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 0412C, IAB 10/31/12, effective 12/5/12; ARC 0635C, IAB 3/6/13, effective 4/10/13; ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—11.3(272C,543D) Hardship and disability provisions. Rescinded IAB 5/20/09, effective 6/24/09.

193F—11.4(272C,543D) Minimum program qualifications.

11.4(1) Continuing education programs, as a condition of board approval, must provide a formal program of learning that contributes to the growth in the professional knowledge and professional competence of real estate appraisers.

11.4(2) Continuing education programs dealing with the following subject areas that are integrally related to appraisal topics and that will generally be acceptable include, but are not limited to:

- a. Ad valorem taxation;
- b. Agriculture production and economics;
- c. Agronomy/soil;
- d. Approaches to value;
- e. Arbitrations, dispute resolution;
- f. Courses related to the practice of real estate appraisal or consulting;
- g. Construction cost or development cost estimating;
- h. Ethics and standards of professional practice, USPAP;
- i. Land use planning or zoning;
- j. Management, leasing, time sharing;
- k. Property development, partial interests;
- l. Real estate appraisal law and rules;
- m. Real estate appraisal (valuations/evaluations);
- n. Real estate law, easements, and legal interests;
- o. Real estate litigation, damages, condemnation;
- p. Real estate financing and investment;
- q. Real estate appraisal-related computer applications;
- r. Real estate securities and syndication;
- s. Developing opinions of real property value in appraisals that also include personal property or business value, or both;
- t. Seller concessions and impact on value;
- u. Energy efficient items and “green building” appraisals; and
- v. Real estate appraisal technology (e.g., drones).

11.4(3) The following programs will not be acceptable:

- a. Sales promotion meetings held in conjunction with the appraiser’s general business;
- b. Time devoted to breakfast, lunch or dinner;
- c. A program certified by the use of a challenge examination. The required number of hours must be completed to receive credit hours;
- d. Programs that do not provide at least two credit hours.

11.4(4) Continuing education credit will be granted only for whole hours, with a minimum of 50 minutes constituting one hour. For example, 100 minutes of continuous instruction would count as two credit hours; however, more than 50 minutes but less than 100 minutes of continuous instruction would only count as one hour.

11.4(5) Continuing education credit may be approved for university or college courses in qualifying topics according to the following formula: Each semester hour of credit shall equal 15 credit hours and each quarter hour of credit shall equal 10 credit hours.

[ARC 9865B, IAB 11/30/11, effective 1/4/12; ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—11.5(272C,543D) Standards for provider and program approval. Providers and programs must satisfy the following minimum standards in order to be preapproved in accordance with the procedures established in rule 193F—11.4(272C,543D) and in order to maintain approved status.

11.5(1) The program must be taught or developed by individuals who have the education, training and experience to be considered experts in the subject matter of the program and competent in the use of teaching methods appropriate to the program.

11.5(2) Live instruction programs must be taught by instructors who have successfully completed an instructor development workshop within 24 months preceding board approval of the program. Certified USPAP instructors shall be considered to have met this requirement.

11.5(3) In determining whether an instructor is qualified to teach a particular program, the board will consider whether the instructor has an ability to teach and an in-depth knowledge of the subject matter.

11.5(4) An instructor may demonstrate the ability to teach by meeting one or more of the following criteria:

- a.* Hold a bachelor's degree or higher in education from an accredited college (attach a copy of transcripts);
- b.* Hold a current teaching credential or certificate in any real estate or real estate-related fields (attach copy);
- c.* Hold a certificate of completion in the area of instruction from an instructor institute, workshop or school that is sponsored by a member of the Appraisal Foundation (detail specific teaching experiences);
- d.* Hold a full-time current appointment to the faculty of an accredited college;
- e.* Other, as the board may determine.

11.5(5) An instructor may demonstrate in-depth knowledge of the program's subject matter by meeting one or more of the following criteria:

- a.* Hold a bachelor's degree or higher from an accredited college with a major in a field of study directly related to the subject matter of the course the instructor proposes to teach, such as business, economics, accounting, real estate or finance (attach copy of transcript);
- b.* Hold a bachelor's degree or higher from an accredited college and have five years of appraisal experience related to the subject matter of the course the instructor proposes to teach (attach copy of transcript and document how the instructor's experience is related to the subject matter the instructor proposes to teach);
- c.* Hold a generally recognized professional real property appraisal designation or be a sponsor member of the Appraisal Foundation;
- d.* Other, as the board may determine.

11.5(6) Only AQB-certified USPAP instructors, listed on the website of the Appraisal Foundation may teach the national USPAP courses including the 15-hour tested course and the 7-hour continuing education course.

11.5(7) Course content and materials must be accurate, consistent with currently accepted standards relating to the program's subject matter and updated no later than 30 days after the effective date of a change in standards, laws or rules.

11.5(8) Programs must have an appropriate means of written evaluation by participants. Evaluations shall include the relevance of the materials, effectiveness of presentation, content, facilities, and such additional features as are appropriate to the nature of the program.

11.5(9) No part of any course shall be used to solicit memberships in organizations, recruit appraisers for affiliation with any organization or advertise the merits of any organization or sell any product or service.

11.5(10) Providers must clearly inform prospective participants of the number of credit hours preapproved by the board for each program and all applicable policies concerning registration, payment, refunds, attendance requirements and examination grading.

11.5(11) Procedures must be in place to monitor whether the person receiving credit hours is the person who attended or completed the program.

11.5(12) Providers must be accessible to students during normal business hours to answer questions and provide assistance as necessary.

11.5(13) Providers must comply with or demonstrate exemption from the provisions of Iowa Code sections 714.14 to 714.25.

11.5(14) Providers must designate a coordinator in charge of each program who will act as the board's contact on all compliance issues.

11.5(15) Programs shall not offer more than eight credit hours in a single day.

11.5(16) Providers shall not provide any information to the board, the public or prospective students which is misleading in nature. For example, providers may not refer to themselves as a "college" or "university" unless qualified as such under Iowa law.

11.5(17) Providers must establish and maintain for a period of five years complete and detailed records on the programs successfully attended by each Iowa participant.

11.5(18) Providers must issue an individual certificate of attendance to each participant upon successful completion of the program. The certificate must be no larger than 8½" × 11" and must include the provider name and number, program name and number, name of attendee, date program was completed, number of approved credit hours, and the signature of the coordinator or other person authorized by the board.

11.5(19) Program providers and instructors are solely responsible for the accuracy of all program materials, instruction and examinations. Board approval of a provider or program is not an assurance or warranty of accuracy and shall not be explicitly or implicitly marketed or advertised as such.

11.5(20) Providers must apply for approval using forms prescribed by the board.
[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.6(272C,543D) Acceptable distance education courses. Distance education is an education process based on the geographical separation of student and instructor. A distance education course is acceptable to meet class hour requirements if:

11.6(1) The course provides interaction. Interaction is a reciprocal environment in which the student has verbal or written communication with the instructor; and

11.6(2) Content approval is obtained from the AQB, a state licensing jurisdiction, or an accredited college, community college, or university that offers distance education programs and is approved or accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. Nonacademic credit college courses provided by a college shall be approved by the AQB or the state licensing jurisdiction; and

11.6(3) Course delivery mechanism approval is obtained from one of the following sources:

- a. AQB-approved organizations providing approval of course design and delivery; or
- b. A college or university that qualifies for content approval pursuant to subrule 11.6(2) that awards academic credit for the distance education course; or
- c. A qualifying college or university for content approval with a distance education delivery program that approves the course design and delivery that incorporate interactivity.

11.6(4) Distance education courses must include at least one of the following:

- a. A written examination proctored by an official approved by the college or university, or by the sponsoring organization. The term "written" in this subrule refers to an examination that may be written on paper or administered electronically on a computer or other device. Oral examinations are not acceptable.
- b. Successful completion of prescribed course mechanisms required to demonstrate knowledge of the subject matter.

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.7(272C,543D) Applications for approval of programs. Applications for approval of programs must be submitted on forms prescribed by the board. All non-AQB courses are approved for 24 months, including the month of approval. AQB-approved courses are approved through the AQB expiration date, which may be longer than 24 months from the date of approval.

11.7(1) Approval must be obtained for each program separately.

11.7(2) A nonrefundable fee of \$50 must be submitted for each program except for programs that are submitted for approval by the primary provider and that have been approved by the Appraiser Qualifications Board through the Course Approval Program (CAP).

11.7(3) All required forms and attachments must be submitted for approval at least 30 days prior to the first offering of each program. The board will approve or deny each program, in whole or part, within 15 days of the date the board receives a fully completed application. Payments for course program applications must be made within 30 calendar days of the date the application is approved by the board or the application approval may be reversed.

11.7(4) Application forms for non-AQB CAP courses will request information including, but not limited to, the following:

- a. Program description;
- b. Program purpose;

- c.* Learning objectives that specify the level of knowledge or competency the student should demonstrate upon completing the program;
- d.* Description of the instructional methods utilized to accomplish the learning objective;
- e.* Identifying information for all guest speakers or instructors and such documentation as is necessary to verify compliance with the instructor qualifications described in subrule 11.5(5);
- f.* Copies of all instructor and student program materials;
- g.* Copies of all examinations and a description of all grading procedures;
- h.* A description of the diagnostic assessment method(s) used when examinations are not given;
- i.* Such information as needed to verify compliance with board rules;
- j.* The name, address, telephone number, and email address for the program's coordinator;
- k.* Such other information as the board deems reasonably needed for informed decision making.

11.7(5) Application forms for courses that are AQB CAP-approved shall include information as deemed necessary for accurate documentation but may be more limited than information required in subrule 11.7(4).

11.7(6) The board shall assign each provider and program a number. This number shall be placed on all correspondence with the board, all subsequent applications by the same provider, and all certificates of attendance issued to participants.

[ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—11.8(272C,543D) Waiver of application fees. Application fees may be waived for approved programs sponsored by a federal, state, or local governmental agency when the program is offered at no cost or at a nominal cost to participants. A request for waiver of application fees should be made by the provider or certificate holder at the time the application is filed with the board.

193F—11.9(272C,543D) Authority to approve education. The executive officer has the authority to approve or deny education applications subject to the applicant's right to a hearing as provided for in rule 193F—11.13(272C,543D).

[ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—11.10(272C,543D) Appraiser request for preapproval of continuing education programs. An appraiser seeking credit for attendance and participation in a program which is to be conducted by a provider not accredited or otherwise approved by the board shall apply for approval to the board at least 15 days in advance of the commencement of the activity. The board shall approve or deny the application in writing. Application for prior approval of a continuing education activity shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;
3. Location of the program;
4. Title and hour-by-hour outline of the program, course or activity;
5. Credit hours requested for approval;
6. Date of program; and
7. Principal instructor(s).

193F—11.11(272C,543D) Appraiser request for postapproval of continuing education program. An appraiser seeking credit for attendance and participation in a program that was not conducted by an approved provider or approved by the licensing authority in another state or otherwise approved by the board shall submit to the board a request for credit for the program. Within 15 days after receipt of the request, the board shall advise the requester in writing whether the program is approved and the number of hours allowed. Appraisers not complying with the requirement of this rule may be denied credit for the program. Application for postapproval of a continuing education program shall include the following fee and information:

1. Application fee of \$25;
2. School, firm, organization or person conducting the program;

3. Location of the program;
4. Title of program and description of program;
5. Credit hours requested for approval;
6. Dates of program;
7. Principal instructor(s); and
8. Verification of attendance.

193F—11.12(272C,543D) Review of provider or program. The board on its own motion or upon receipt of a complaint or negative evaluation may monitor or review any approved program or provider and, upon evidence of significant variation in the program presented from the program approved, a violation of board rules, or material misstatement or omission in the application form, may withdraw approval of the provider or program and disallow all or any part of the approved hours granted to the provider. The provider, as a condition of approval, agrees to allow the board or its authorized representatives to monitor ongoing compliance with board rules through means including, but not limited to, unannounced attendance at programs.

193F—11.13(272C,543D) Hearings. In the event of denial, in whole or in part, of any application for approval of a continuing education program or provider, or credit for a continuing education program, or withdrawal of approval of a continuing education program or provider, the provider or appraiser may, within 30 days of the date of mailing of the notice of denial or withdrawal, request a contested case hearing before the board, as provided in rule 193F—20.8(17A).

[ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code sections 543D.5, 543D.9 and 543D.16 and chapter 272C.

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[Filed ARC 5785C (Notice ARC 5611C, IAB 5/5/21), IAB 7/28/21, effective 9/1/21]

CHAPTER 12

FEES

[Prior to 2/20/02, see 193F—Chapter 10]

193F—12.1(543D) Required fees. The following fee schedule applies to certified general, certified residential and associate appraisers.

Initial examination application fee	\$150
Examination fee (and reexamination fee)	\$145
Biennial registration fee for active status (initial, reciprocal, renewal):	
Certified real property appraiser > one year	\$200
Certified real property appraiser < one year	\$100
Associate real property appraiser > one year	\$200
Associate real property appraiser < one year	\$100
Biennial registration fee for inactive status (initial, reciprocal, renewal):	
Certified real property appraiser	\$100
Associate real property appraiser	\$50
Temporary practice permit fee (each request)	\$100
Fee to reinstate a lapsed or retired license (lapsed or retired to active status)	\$150 (plus the registration fee)
Fee to reactivate an inactive or retired license (inactive or retired to active status)	\$50 (plus the registration fee)
Formal wall certificate	\$25
Work product review fees:	
Original submission, certified residential	\$300
Original submission, certified general	\$650
Additional residential reports as requested by the board	\$150 per report
Additional nonresidential reports as requested by the board	\$250 per report
Voluntary submission of residential reports for review	\$150 per report
Voluntary submission of nonresidential reports for review	\$250 per report
Course application fee (non-AQB-approved courses and secondary providers)	\$50
Pre-/post-course application fee	\$25
Background check	\$51

ASC National Registry fee > one year, separate from registration fee	\$80
ASC National Registry fee < one year, separate from registration fee	\$40
Fee to add supervisory appraiser	\$25
Fee to add course instructor	\$10
Waiver to administrative rules	\$25
Late renewal fee (associate, certified)	\$50

[ARC 7774B, IAB 5/20/09, effective 6/24/09; ARC 9667B, IAB 8/10/11, effective 9/14/11; ARC 5237C, IAB 10/21/20, effective 11/25/20; ARC 5785C, IAB 7/28/21, effective 9/1/21]

193F—12.2(543D) Prorating of registration fees. An applicant applying for initial or reciprocal registration or certification within 12 months from the applicant's required renewal date, pursuant to rule 193F—9.1(543D), shall pay half the required fee. An applicant applying for initial or reciprocal registration or certification more than 12 months from the applicant's required renewal date shall pay the full registration fee. An applicant applying to reinstate or reactivate a lapsed registration or certification within 12 months from the applicant's required renewal date, pursuant to rule 193F—9.1(543D), shall pay half the required renewal fee plus the applicable reactivation or reinstatement fee. An applicant applying to reinstate or reactivate a lapsed registration or certification more than 12 months from the applicant's required renewal date shall pay the full renewal fee plus the applicable reactivation or reinstatement fee.

[ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—12.3(543D) Federal registry fee. The board shall collect and transmit to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council, on an annual basis, a roster of individuals who have received certification or registration as real property appraisers and a registry fee of \$40 for each individual listed on the roster.

[ARC 9667B, IAB 8/10/11, effective 9/14/11; ARC 5785C, IAB 7/28/21, effective 9/1/21]

These rules are intended to implement Iowa Code section 543D.6.

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[Filed ARC 5785C (Notice ARC 5611C, IAB 5/5/21), IAB 7/28/21, effective 9/1/21]

CHAPTER 13
USE OF CRIMINAL CONVICTIONS IN ELIGIBILITY DETERMINATIONS AND INITIAL
LICENSING DECISIONS

193F—13.1(272C) Definitions. For the purposes of these rules, the following definitions shall apply:

“*Complete criminal record*” includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

“*Conviction or convicted*” includes all convictions regardless of whether classified as a felony or a misdemeanor, and regardless of the jurisdiction in which the offense occurred. “Conviction” includes a finding, plea, or verdict of guilt made or returned in a criminal proceeding, even if the adjudication of guilt is deferred, withheld, or not entered. “Conviction” includes Alford pleas and pleas of nolo contendere.

“*Disqualifying offense*” means a conviction directly related to the practice of the profession. A conviction is directly related to the practice of the profession if either (1) the actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession, or (2) the circumstances under which an offense was committed are circumstances customary to a licensed profession.

“*License or licensure,*” as the term is used in this chapter, includes a registration as an associate appraiser, original certification as a certified residential real property appraiser or certified general real property appraiser, upgrade from a certified residential real property appraiser to a certified general real property appraiser, reciprocal license, temporary practice permit, or any other license or certification issued by the board.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.2(272C) License application.

13.2(1) *Disqualifying offense determination.* If an applicant for licensure elects not to petition the board for an eligibility determination, the applicant’s convictions will be reviewed when the board receives a completed license application. An applicant must disclose all convictions on a license application. Failure to disclose all convictions is grounds for license denial or disciplinary action following license issuance. Upon request of the board’s executive officer, an applicant with convictions must submit the complete criminal record for each conviction and a personal statement regarding whether each conviction directly relates to the practice of the profession in order for the license application to be considered complete. An applicant is strongly encouraged to submit all evidence of rehabilitation that the applicant wishes to be considered by the board as part of the license application. The board may deny a license if the applicant has a disqualifying offense, unless the applicant demonstrates by clear and convincing evidence that the applicant is rehabilitated. Any application fees paid will not be refunded if the license is denied.

13.2(2) *Time and manner of decision.* The board may make a decision in accordance with normal application processing timelines after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions regarding potentially disqualifying offenses.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.3(272C) Eligibility determination.

13.3(1) *Eligibility determination.* An individual who has not yet submitted a completed license application may petition the board for an eligibility determination of whether one or more of the individual’s convictions are disqualifying offenses that would prevent the individual from being licensed. A petitioner may submit a petition for eligibility determination at any time prior to applying for a license. An applicant for licensure is not required to petition the board for an eligibility determination prior to applying for a license. To petition the board for an eligibility determination of whether one or more of the petitioner’s convictions are disqualifying offenses, a petitioner must submit all of the following:

- a. A completed eligibility determination form, which is available on the board’s website;

- b. The complete criminal record for each of the petitioner's convictions;
- c. A personal statement regarding whether each conviction directly relates to the practice of the profession;
- d. All evidence of rehabilitation that the petitioner wishes to be considered by the board; and
- e. Payment of a nonrefundable fee in the amount of \$25.

13.3(2) *Time and manner of decision.* The board has 30 days from receiving a petition for eligibility determination, or until the next regularly scheduled board meeting, whichever is later, to make a decision. The board may make a decision after discussing the petition for eligibility determination at a board meeting, in closed session, or may authorize staff to make decisions on petitions for eligibility determinations or license applications. A written decision will be sent to the petitioner or applicant by regular mail and, if an email address was provided, by email.

13.3(3) *Inaccurate or incomplete information.* If the information supplied in connection with a petition for eligibility determination is not accurate or is incomplete, or if applicable laws, rules, or guidelines change or are impacted by intervening board orders or case law, the board's eligibility determination shall not be binding on a future board.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.4(272C) Substance of decision. In reviewing a petition for eligibility determination or a license application involving potentially disqualifying offenses, the board will determine whether any of the convictions are disqualifying offenses in the following manner.

13.4(1) *No disqualifying offenses.*

a. If the board finds that none of the convictions disclosed in an eligibility determination petition are disqualifying offenses, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for license denial.

b. If the board finds that none of an applicant's convictions disclosed in a license application are disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant with no disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(2) *Disqualifying offense.* If one or more convictions are disqualifying offenses, the board will determine whether the petitioner or applicant has established rehabilitation by clear and convincing evidence utilizing the following factors:

a. The nature and seriousness of the crime for which the applicant was convicted.

b. The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant's release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, or a forcible felony as defined in Iowa Code section 702.11, and the applicant has not been convicted of another crime after release from incarceration.

c. The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.

d. The age of the applicant at the time the offense was committed.

e. Any treatment undertaken by the applicant.

f. Whether a certificate of employability has been issued to the applicant pursuant to Iowa Code section 906.19.

g. Any letters of reference submitted on behalf of the applicant.

h. All other relevant evidence of rehabilitation and present fitness of the applicant.

13.4(3) *Petitioner or applicant rehabilitated.*

a. If the board finds that the petitioner established rehabilitation for all disqualifying offenses disclosed in an eligibility determination petition, the board will issue a written decision informing the petitioner that the disclosed convictions will not be grounds for denial if the petitioner later submits a completed license application.

b. If the board finds that the applicant established rehabilitation for all disqualifying offenses, the applicant's convictions will not form the basis of any denial.

c. Notwithstanding the foregoing, an applicant who demonstrated rehabilitation for all disqualifying convictions must still meet all other requirements to be eligible for licensure and may be denied a license on other grounds.

13.4(4) *Petitioner or applicant not rehabilitated.* If the board finds the petitioner or applicant failed to demonstrate rehabilitation for all disqualifying offenses, the board will issue a written decision informing the petitioner or applicant that one or more convictions are grounds for license denial. The board's written decision will include all of the following:

- a. The convictions that are disqualifying;
- b. A written determination as to how each disqualifying offense is encompassed by a publicly available list identifying the convictions that may disqualify an applicant from receiving a license;
- c. A written determination that each disqualifying offense directly relates to the profession;
- d. A written finding regarding each rehabilitation factor specified in subrule 13.4(2);
- e. The earliest date the petitioner or applicant may submit a new petition for eligibility determination or license application;
- f. A statement indicating that evidence of rehabilitation may be considered upon reapplication, including any specific evidence the board would find persuasive on reapplication, if any; and
- g. Information regarding how to appeal the decision and have the matter set for hearing.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.5(272C) Appeal. A petitioner or applicant may appeal a determination of ineligibility, or the denial of a license application, in the manner and time frame set forth in the board's written decision. A timely appeal will cause a nondisciplinary license denial contested case proceeding as provided in rule 193F—20.39(546,543D,272C) to be initiated. The board's rules governing nondisciplinary license denial contested case hearings will apply unless otherwise specified in this rule. Failure to timely appeal will result in the board's written decision becoming a final order.

13.5(1) A petitioner or applicant must appeal a determination of ineligibility or the denial of a license application in order to exhaust administrative remedies.

13.5(2) A file-stamped copy of the final order or judgment of conviction or plea of guilty constitutes conclusive evidence of a conviction.

13.5(3) The board shall have the burden of proof to establish that the petitioner's or applicant's convictions include at least one disqualifying offense by a preponderance of the evidence. Once established, the burden of proof shall shift to the petitioner or applicant to establish rehabilitation by clear and convincing evidence.

13.5(4) A petitioner or applicant who is aggrieved or adversely affected by a final decision of the board rendered following a nondisciplinary hearing following a nondisciplinary license denial hearing must initiate further appeal to the superintendent in accordance with 193F—Chapter 17 in order to exhaust administrative remedies.

13.5(5) A petitioner or applicant may only seek judicial review of a determination of ineligibility or license application denial after the issuance of a final order following a contested case proceeding and following any appeal to or review by the superintendent, if taken or initiated within applicable time frames.

13.5(6) Judicial review of final agency action shall be in accordance with Iowa Code section 17A.19. [ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—13.6(272C) Future petitions or applications. If a final order determines a petitioner is ineligible, the petitioner may not submit a subsequent petition for eligibility determination or a license application prior to the date specified in the final order. If a final order denies a license application, the applicant may not submit a subsequent license application or a petition for eligibility determination prior to the date specified in the final order.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

These rules are intended to implement Iowa Code chapter 272C.

[Filed ARC 5484C (Notice ARC 5261C, IAB 11/4/20), IAB 2/24/21, effective 3/31/21]

CHAPTER 14
CERTIFIED GENERAL APPRAISER
EDUCATION REQUIREMENTS
Rescinded IAB 5/20/09, effective 6/24/09

CHAPTER 15
SUPERVISOR RESPONSIBILITIES

193F—15.1(543D) Description. The importance of the role of the supervisory appraiser places ethical and professional standards on those who serve in this capacity. The function of the supervisory appraiser is to help adequately prepare an associate to demonstrate professional competence and work independently upon issuance of full licensure. The supervisor is considered an integral part of the training process, and supervision should be considered a full-time, hands-on responsibility.

[ARC 0881C, IAB 7/24/13, effective 8/28/13; ARC 1732C, IAB 11/12/14, effective 12/17/14]

193F—15.2(543D) Supervisory appraiser responsibilities. Supervisory appraisers shall:

1. Ensure that the information presented in the appraisal report is accurate and dependable in order to provide a valid and credible report.
2. Adequately supervise an associate in the data-gathering process to ensure that the associate is correctly and properly collecting pertinent and factual data for analysis.
3. Ensure that the associate is knowledgeable about the various sources from which to gather data and that the data collected is reliable. The associate should be exposed to any sources of research that would be considered by one's peers in the marketplace including cost manuals, multiple listing services, public records and Internet study.
4. Teach the associate to reason independently and formulate reasonable conclusions based upon the analysis of the information gathered.
5. Teach the basic routine of the appraisal process including a consistent and regular pattern of data gathering, analysis, and report writing.
6. Review and critique appraisal reports for accuracy, ease of reading, understanding and purpose, and ensure that all addenda are both relevant and pertinent.
7. Ensure that factual data is reliable and that analysis is both supported and documented. All necessary certification and limiting conditions should be up to date and applicable to the assignment.
8. Expose an associate to as many different property types, report formats and value ranges as possible with the understanding that each time a new or unique assignment is introduced, there is a responsibility to instruct and educate the associate to ensure competency.
9. Inspect each appraised property with the associate until the supervisor determines the associate is competent, in accordance with the COMPETENCY RULE of USPAP for the property type and geographic location.
10. Bring the associate appraiser to a professional level that enables the associate to demonstrate competency independently.
11. Notify the board within ten calendar days after the supervisor ceases supervising an associate appraiser. The notice must include the name of the associate appraiser and the date the supervision ceased.

[ARC 0881C, IAB 7/24/13, effective 8/28/13; ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 5237C, IAB 10/21/20, effective 11/25/20]

193F—15.3(543D) Requirements for a supervisory appraiser.

15.3(1) A supervisory appraiser shall:

- a. Have a minimum of three years of experience as an Iowa certified appraiser, be in good standing in all jurisdictions, and be actively certified in Iowa during all periods when providing supervision.
- b. Have a maximum of three associates or trainees, regardless of the jurisdiction in which the associate or trainee is registered or performs appraisal services, and shall register with the board the name, office address and starting date of each associate, as well as any termination dates (voluntary or involuntary).
- c. Be responsible for the training and direct supervision of the associate appraiser by accepting full responsibility for the appraisal report by signing and certifying that the report is in compliance with USPAP.

d. Keep copies of associate appraiser reports for a period of at least five years or at least two years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last.

e. Comply with all applicable requirements of the Appraiser Qualifications Board.

15.3(2) For purposes of this rule, “good standing” means the absence of a disciplinary action in any jurisdiction which affects the appraiser’s legal eligibility to engage in an appraisal practice as a certified appraiser. Examples of disciplinary actions that would affect an appraiser’s legal eligibility to engage in an appraisal practice as a certified appraiser include revocation, suspension, or voluntary surrender to resolve a disciplinary investigation or action, or a practice restriction that limits the type, geographic location, or scope of an appraiser’s practice or an appraiser’s authority to practice without the supervision of another certified appraiser. An appraiser subject to such a disciplinary action would not be in good standing until three years after the successful completion or termination of the sanction which affected the appraiser’s legal eligibility to engage in an appraisal practice as a certified appraiser.

15.3(3) An appraisal experience log shall be maintained jointly by the supervisory appraiser and the associate appraiser as more fully described in rule 193F—4.2(543D).

15.3(4) A certified appraiser shall perform as a supervisory appraiser in Iowa only if the appraiser has completed a course that, at a minimum, complies with the specifications for course content established by the Appraiser Qualifications Board. The course is to be completed before the certified appraiser provides supervision.

[ARC 0881C, IAB 7/24/13, effective 8/28/13; ARC 1732C, IAB 11/12/14, effective 12/17/14; ARC 4169C, IAB 12/5/18, effective 1/9/19; ARC 4707C, IAB 10/9/19, effective 11/13/19]

193F—15.4(543D) Restrictions. The board may prohibit or further restrict an appraiser’s authorization to act as a supervisory appraiser if the board deems such action necessary to protect the public as part of the remedies or sanctions imposed in a disciplinary action.

[ARC 0881C, IAB 7/24/13, effective 8/28/13]

These rules are intended to implement Iowa Code sections 543D.5 and 543D.22.

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[Filed ARC 5237C (Notice ARC 5126C, IAB 8/12/20), IAB 10/21/20, effective 11/25/20]

CHAPTER 16
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

193F—16.1(543D) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not certified or registered by the board pursuant to Iowa Code chapter 543D based on the unlawful practices specified in Iowa Code section 543D.21.

For the purposes of this chapter, “nonlicensee” means a person who has never been certified or registered with the board, a person who surrendered a certificate or associate registration to the board, or a person whose certificate or associate registration has been revoked by the board.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.2(543D) Grounds for imposing civil penalties. Grounds for issuing an order requiring compliance with Iowa Code chapter 543D or imposing civil penalties up to \$1,000 for each violation include:

16.2(1) Use of the term “certified real estate appraiser” by a person who is not certified as a real estate appraiser by the board or in compliance with the temporary practice provisions of 193F—10.2(543D).

16.2(2) Use of the term “certified real estate appraiser” by a person in connection with or as part of the name or signature of a firm, partnership, corporation, or group, or in a manner that may be interpreted as referring to a firm, partnership, corporation, group, other business entity, or anyone other than an individual holder of a certificate issued by the board.

16.2(3) Use of the term “associate real estate appraiser” by a person who is not registered with the board as an associate real estate appraiser.

16.2(4) Falsely impersonating a certified real estate appraiser or associate real estate appraiser by using the certification or registration title, number or signature of a certified real estate appraiser or associate real estate appraiser, or by using the nonexistent certification or registration title, number or signature of a fictitious holder of a certificate or registration with the board.

16.2(5) Fraud, deceit, or deception, through act or omission, in connection with an application for certification or registration under Iowa Code chapter 543D, including the submission to the board of false information or documents, or the failure to disclose material information in connection with such an application for certification or registration.

16.2(6) Assisting a certified real estate appraiser in the development or reporting of an appraisal assignment that is required by Iowa Code chapter 543D, or by federal or state law, rule, or policy to be performed by a certified real estate appraiser, unless the person assisting the certified real estate appraiser meets one or more of the following conditions:

- a. The person is certified under this chapter.
- b. The person is registered as an associate real estate appraiser and is acting under the direct supervision of a certified real estate appraiser.
- c. The person is solely providing administrative services, such as taking photographs, preparing charts, or typing reports, and is not providing real estate appraisal assistance in developing the analysis, valuation, opinions, or conclusions associated with the appraisal assignment.
- d. The person is providing professional consultation that does not constitute real property appraisal assistance, such as the assistance of a professional engineer or certified public accountant.

16.2(7) Improperly influencing or attempting to improperly influence the development, reporting, result, or review of a real estate appraisal as provided in Iowa Code section 543D.21.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.3(543D) Investigations. The board is authorized by Iowa Code sections 17A.13(1) and 543D.21 to conduct such investigations as are needed to determine whether grounds exist to make application to the district court pursuant to Iowa Code section 543D.21 or to impose civil penalties against a person who is not certified or registered with the board. Such investigations shall conform to the procedures outlined in 193F—Chapters 8 and 19. The board is authorized to issue subpoenas and to compel the testimony of witnesses in connection with such investigations, pursuant to Iowa Code

section 543D.21. Complaint and investigatory files solely concerning persons who are not certified or registered by the board are not confidential except as provided in Iowa Code chapter 22.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.4(543D) Notice of intent to impose civil penalties.

16.4(1) The notice of the board's intent to issue an order to require compliance with Iowa Code section 543D.21 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel.

16.4(2) The notice shall include the following:

a. A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.

b. Reference to the particular sections of the statutes and rules involved.

c. A short, plain statement of the alleged unlawful practices.

d. The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code section 543D.21.

e. Notice of the nonlicensee's right to a hearing and the time frame in which hearing must be requested.

f. The address to which written request for hearing must be made.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.5(543D) Request for hearing.

16.5(1) Nonlicensees must request a hearing within 30 days of the date the notice is received or service is accepted. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal delivery to the board office.

16.5(2) If a request for hearing is not timely made, as described in the notice, the board chairperson or the chairperson's designee may issue an order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

16.5(3) If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees. Hearings involving nonlicensees are open to the public.

16.5(4) A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 543D at any stage of the proceeding upon mutual consent of the board.

16.5(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. Copies may be published as provided in rule 193F—20.30(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—16.6(543D) Factors to consider. Among the factors the board may consider when determining the amount of civil penalty to impose, if any, are the following:

1. The time elapsed since the unlawful practice occurred.
2. Evidence of reform or remedial actions.
3. Whether the violation is a repeat offense following a prior warning letter or other notice of the nature of the infraction.
4. Whether the violation involved an element of deception.
5. Whether the unlawful practice violated a prior order of the board, court order, cease and desist agreement, consent order, or similar document.
6. The clarity of the issue involved.
7. Whether the violation was willful and intentional.
8. Whether the nonlicensee acted in bad faith.
9. The extent to which the nonlicensee cooperated with the board.

10. The circumstances leading to the violation.
11. Whether the amount imposed will be a substantial economic deterrent to the violation.
12. The economic benefits gained by the nonlicensee as a result of the violation.
13. The severity of the violation and the risk of harm to the public.
14. The interest of the public.

193F—16.7(543D) Enforcement options. In addition or as an alternative to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, enter into a consent order, issue an informal cautionary letter, refer the matter to the attorney general, or refer the matter to the licensing entity with regulatory authority over the nonlicensee and jurisdiction to take action against the person's real estate-related license as provided in Iowa Code section 543D.21.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A and 543D.

[Filed 7/13/07, Notice 5/23/07—published 8/1/07, effective 9/5/07]

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CHAPTER 17
SUPERINTENDENT SUPERVISION STANDARDS AND PROCEDURES

193F—17.1(543D) Superintendent supervision standards. The level of the superintendent's supervisory scrutiny of board actions will vary depending on the nature of the board action, the surrounding circumstances, and whether the action is or may be anticompetitive. In general, the superintendent will independently evaluate both the procedures and the substantive merits of board actions.

17.1(1) Ministerial and nondiscretionary board actions. Board actions which are ministerial or nondiscretionary, as provided in 193F—subrule 1.2(2), shall be monitored to ensure that such actions are consistent with the mandates required by state or federal law, rule, or regulation; by the AQB; or by the appraisal subcommittee.

17.1(2) Discretionary board actions. The superintendent shall independently assess discretionary board actions, as provided in 193F—subrule 1.2(3), to determine whether an action reflects clearly articulated state policy as the inherent, logical, or ordinary result of the exercise of authority delegated to the board by the legislature and is not the result of private interests attempting to restrain trade or otherwise pursue anticompetitive objectives that are contrary to state policy goals. Discretionary board actions which are not anticompetitive shall be monitored by the superintendent but will only be subjected to preclearance procedures if specifically requested by the board or at the superintendent's election. Discretionary board actions that are or may be anticompetitive shall require the superintendent's prior written approval.

17.1(3) Information review and gathering. When monitoring or evaluating board actions, the superintendent may rely on the information provided by the board in support of the board's actions if the superintendent is satisfied that the information is sufficient for an independent, de novo evaluation of the substantive merits of the board's action. The superintendent may supplement the board's information and gather additional information if deemed necessary or desirable.

17.1(4) Written decisions. Following the superintendent's independent evaluation of the substantive merits of board actions, the superintendent shall issue a written decision approving, modifying, or disapproving the recommended action, and explaining the reasons and rationale for such decision. This requirement shall apply when the superintendent is requested to provide preclearance for a board action and when the superintendent evaluates a final board action upon review by or appeal to the superintendent.

[ARC 2808C, IAB 11/9/16, effective 1/1/17]

193F—17.2(543D) Procedures for superintendent supervision.

17.2(1) Ministerial or nondiscretionary board actions.

a. The superintendent's monitoring of ministerial or nondiscretionary board actions shall be flexible and designed to spot check compliance. The board shall provide any information that the superintendent requests to adequately monitor such actions. Final board action which is ministerial or nondiscretionary may be appealed to the superintendent by an aggrieved person within 20 days of the issuance of the board action. The written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period and shall specify:

- (1) The name of the person initiating the appeal;
- (2) The board action which is being appealed;
- (3) The specific facts or law alleged to be in error in the board action;
- (4) The relief sought; and
- (5) The grounds for such relief.

b. The board may respond to the notice of appeal within 20 days of its receipt of the appeal. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(2) Preclearance. When the board seeks preclearance of a proposed board action, the board shall submit a written report which identifies the proposed action, describes the basis and support for the action, outlines the persons or markets which may be affected by the action, and attaches sufficient information

from which the superintendent can make an independent, de novo evaluation of the substantive merits of the proposed action. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(3) Review or appeal of final, discretionary board action.

a. Final, discretionary board action may be reviewed by or appealed to the superintendent within 20 days of the issuance of the board action. Such decisions shall be provided to the superintendent when issued to affected persons. If the final board action is not a contested case decision following hearing, a written notice of appeal or request for review shall be filed with the superintendent and served upon the board within such 20-day period, and shall specify:

- (1) The name of the person initiating the appeal or requesting review;
- (2) The board action which is being appealed or for which review is requested;
- (3) The specific facts or law alleged to be in error in the board action, or other specific reason(s)

why such review is sought;

- (4) The relief sought; and
- (5) The grounds for such relief.

b. A review initiated by the superintendent shall be in writing and shall inform the board and affected persons of the nature of the superintendent's concerns. The board may respond to the superintendent's review or notice of appeal within 20 days of the board's receipt of the appeal. A person notified of a superintendent's review may respond to the superintendent's review within 20 days of the issuance of the review. The superintendent shall issue a written decision as provided in subrule 17.1(4).

17.2(4) Review or appeal of contested case decision.

a. All board decisions in a contested case following hearing shall be provided to the superintendent when issued. If a timely review is initiated or a timely appeal is taken, the effectiveness of such final board action shall be delayed during the pendency of such review or appeal.

b. All board decisions in a contested case resolved by consent are final decisions, shall be provided to the superintendent when issued, and are subject to the review procedures set forth in subrule 17.2(3).

c. Any aggrieved party may appeal a proposed decision to the superintendent within 20 days after issuance of the proposed decision.

d. When a proposed decision is or may be anticompetitive, the board (regardless of whether the proposed decision is in favor of the state) may request review of the proposed decision.

e. The superintendent may initiate a review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

f. A notice of appeal or request for review must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The party or parties initiating the appeal or requesting review;
- (2) The proposed decision or order which is being appealed or for which review is requested;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

- (4) The relief sought; and
- (5) The grounds for such relief.

g. A notice of superintendent's review shall identify the superintendent's concerns with sufficient detail from which the board or a party can respond.

h. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The superintendent may preside over the taking of additional evidence or may remand a case to the board for further hearing.

i. The superintendent shall issue a schedule for consideration of the review or appeal.

j. Unless otherwise ordered, within 20 days of the notice of appeal, request for review, or order for review, the board and each appealing party may file briefs. Within 20 days thereafter, the board or any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with

the briefs. The superintendent may resolve the appeal or review on the briefs or provide an opportunity for oral argument. The superintendent may shorten or extend the briefing period as appropriate.

k. The record on appeal or review shall be the entire record made at hearing.

l. The superintendent shall issue a written decision as provided in subrule 17.1(4).

[ARC 2808C, IAB 11/9/16, effective 1/1/17; ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5237C, IAB 10/21/20, effective 11/25/20]

These rules are intended to implement Iowa Code chapter 543D.

[Filed ARC 2808C (Notice ARC 2710C, IAB 9/14/16), IAB 11/9/16, effective 1/1/17]

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 5237C (Notice ARC 5126C, IAB 8/12/20), IAB 10/21/20, effective 11/25/20]

CHAPTER 18 WAIVERS

193F—18.1(17A,543D) Definitions. For purposes of this chapter, “a waiver” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—18.2(17A,543D) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.3(17A,543D) Applicability. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.4(17A,543D) Criteria for waiver. In response to a petition completed pursuant to rule 193F—18.6(17A,543D), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—18.5(17A,543D) Filing of petition. A petition for waiver must be submitted in writing to the board as follows:

18.5(1) License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

18.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

18.5(3) Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s executive officer.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.6(17A,543D) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, email 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. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 193F—18.4(17A,543D). This statement shall include a signed statement from

the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the past five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, email 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, email address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

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

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.7(17A,543D) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive officer, a committee of the board, or a quorum of the board.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.8(17A,543D) 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 email or similar electronic means.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.9(17A,543D) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to board proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.10(17A,543D) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

18.10(1) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

18.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

18.10(3) Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

18.10(4) Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

18.10(5) Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

18.10(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

18.10(7) Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

18.10(8) When deemed denied. Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

18.10(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 email address provided by the petitioner unless the petitioner specifically requests a mailed copy.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.11(17A) Interim rulings.

18.11(1) The executive officer shall, upon receipt of a petition that meets all applicable criteria established in this chapter, present the request to the board chairperson or vice chairperson along with all pertinent information regarding established precedent for granting or denying such requests.

18.11(2) The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver 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.

18.11(3) The board chair or vice chair may call a special electronic meeting of the board when prior board precedent does not clearly resolve the request, input of the board is deemed required, a ruling is not authorized under subrule 18.11(2) and the practical result of waiting until the next regularly scheduled board meeting would be denial of the request due to timing issues.

18.11(4) Interim rulings are effective when made, but a waiver report shall be placed on the agenda at the next regularly scheduled board meeting and recorded in the minutes.

18.11(5) This rule on interim rulings does not apply if the waiver was filed in a contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—18.12(17A,543D) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.13(17A,543D) Summary reports. When the board grants or denies a waiver, within 60 days thereof the board shall submit the information required by this rule to the Internet site devised by the administration rules coordinator pursuant to Iowa Code section 17A.9A(4) to identify rules for which a petition for a waiver has been granted or denied and make this information available to the public. The required information, some of which may be generated by the Internet site, includes the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule,

a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the board shall include information detailing the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of waivers has affected the general applicability of the rule itself.
[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—18.14(17A,543D) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
 2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
 3. The subject of the waiver order has failed to comply with all conditions contained in the order.
- [ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.15(17A,543D) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.16(17A,543D) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—18.17(17A,543D) Judicial review. Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code section 17A.9A and chapter 543D.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 5484C (Notice ARC 5261C, IAB 11/4/20), IAB 2/24/21, effective 3/31/21]

CHAPTER 19
INVESTIGATORY SUBPOENAS

193F—19.1(17A,272C,543D) Investigatory subpoena authority. Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the production of professional records, books, papers, correspondence and other records which are deemed necessary as evidence in connection with the investigation of a licensee disciplinary proceeding, or otherwise necessary for the board to determine whether to commence a contested case. When such an investigation involves licensee discipline, the board may subpoena such evidence whether or not privileged or confidential under law.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—19.2(17A,272C,543D) Investigatory subpoena procedures.

19.2(1) The board's executive officer or designee may, upon the written request of a board investigator or on the officer's own initiative, subpoena books, papers, records, and other real evidence which the officer determines are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. The patient was notified and an attempt was made to secure an authorization from the patient for release of the records at issue.

19.2(2) A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of the reasons that the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 19.2(1) have been satisfied.

19.2(3) Each subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production, or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the executive officer or designee;
- f. The date of issuance;
- g. A return of service.

19.2(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and 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.

19.2(5) Upon receipt of a timely motion to quash or modify a subpoena, 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 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.

19.2(6) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to

intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

19.2(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of intra-agency appeal. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of intra-agency appeal until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A, 272C, and 543D.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 20
CONTESTED CASES

193F—20.1(17A,543D) Definitions. In addition to the defined terms set forth in 193F—Chapter 2, the following additional terms shall apply in the context of this chapter, except where otherwise specifically defined by law:

“Contested case” means any adversary proceeding before the board to determine whether disciplinary action should be taken against a licensee under Iowa Code chapter 543D; an adversary proceeding against a nonlicensee pursuant to Iowa Code section 543D.21; 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, or certificate authorized by Iowa Code chapter 543D and the board’s implementing rules related thereto.

“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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.2(17A,543D) Scope and applicability of the Iowa Rules of Civil Procedure. 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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.3(17A,272C) Commencement of a contested case and probable cause. A contested case 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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.4(17A,272C) Informal settlement. The board, board staff or a board committee may attempt to informally settle a disciplinary case before filing a statement of charges and notice of hearing. If the board and the licensee agree to a settlement of the case, a statement of charges shall be filed simultaneously with a consent order. The statement of charges and consent order may be separate documents or may be combined in one document. By electing to sign a consent order, the licensee waives all rights to a hearing and all attendant rights. The consent order shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C). Matters not involving licensee discipline which may culminate in a contested case may also be settled through consent order. Procedures governing settlement after notice of hearing is served are described in rule 193F—20.42(543D,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.5(17A) Statement of charges. The statement of charges shall set forth the acts or omissions with which the respondent is charged including the statute(s) and rule(s) which are alleged to have been violated and shall be in sufficient detail to enable the preparation of the respondent's defense. The statement of charges shall be incorporated within or attached to the notice of hearing. The statement of charges and notice of hearing are public records open for public inspection under Iowa Code chapter 22.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.6(17A,272C) Notice of hearing.

20.6(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:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted;
- e. Identification of all parties, including the name, address and telephone number of the assistant attorney general designated as prosecutor for the state and the respondent's counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement after charges are filed;
- h. Identification of the board or a panel of board members as the presiding officer, or statement that the presiding officer will be an administrative law judge from the department of inspections and appeals;
- i. If applicable, notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 193F—20.10(17A,272C), that the presiding officer be an administrative law judge from the department of inspections and appeals;
- j. A statement requiring or authorizing the respondent to submit an answer of the type specified in rule 193F—20.9(17A,272C) within 20 days after service of the notice of hearing;
- k. If applicable, notification of the licensee's right to request a closed hearing in a licensee disciplinary proceeding;
- l. Information on whom to contact if, because of a disability, auxiliary aids or services are needed for a party to participate in the matter;
- m. If applicable, the date, time, and manner of conduct of a prehearing conference under rule 193F—20.21(17A,272C); and
- n. The mailing address and email address for filing with the board and notice of the option of email service as provided in subrule 20.17(6).

20.6(2) Service of notice of hearing. Service of notice of hearing on a licensee to commence a contested case which may affect the licensee's continued licensure, such as a licensee disciplinary case or challenge to the renewal of a license, shall be made by personal service as in civil actions, by restricted certified mail, return receipt requested, or by the acceptance of service by the licensee or the licensee's duly authorized legal representative. Service of the notice of hearing to commence all other contested cases may additionally be made by certified mail, return receipt requested.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.7(13,272C) Legal representation.

20.7(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.

20.7(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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.8(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the board action in question.

The request for a contested case proceeding shall state the name and address of the requester; identify the specific board action which is disputed; describe issues of material fact in dispute; and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved. If the board grants the request, the board shall issue a notice of hearing. If the board denies the request, the board shall issue a written order specifying the basis for the denial.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.9(17A,272C) Form of answer.

20.9(1) Unless otherwise provided in the notice of hearing, the answer shall:

a. State the name, address, and telephone number of the person filing the answer, the person on whose behalf it is filed, and the attorney representing that person, if any.

b. Specifically admit, deny, or otherwise answer all material allegations of the statement of charges.

c. State any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

Any allegation in the statement of charges not denied in the answer is considered admitted. Any affirmative defense not raised in the answer shall be deemed waived for purposes of any subsequent intra-agency appeal, judicial review and corresponding appeal(s).

20.9(2) The answer may include any additional facts or information which the respondent deems relevant to the issues and which may be of assistance in the ultimate determination of the case, including explanations, remarks or statements of mitigating circumstances.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.10(17A,272C) Presiding officer.

20.10(1) The presiding officer in all licensee disciplinary contested cases shall be the board, a panel of board members, or a panel of nonboard member specialists as provided in Iowa Code sections 272C.6(1) and 272C.6(2). When board members act as presiding officer, they shall conduct the hearing and issue either a final decision or, if a quorum of the board is not present, a proposed decision. As provided in subrule 20.10(4), the board may be assisted by an administrative law judge when the board acts as presiding officer.

20.10(2) In cases which do not pertain to licensee discipline, the board may act as presiding officer or may notify the parties that an administrative law judge will act as presiding officer at hearing and issue a proposed decision. The use of an administrative law judge as presiding officer is only an option in cases which do not pertain to licensee discipline because only the board may conduct licensee discipline hearings pursuant to Iowa Code section 272C.6. Any party to a nondisciplinary case who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies the presiding officer as the board. The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves a disciplinary hearing to be held by the board pursuant to Iowa Code section 272C.6.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interboard appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

20.10(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is granted, the administrative law judge assigned to act as presiding officer and issue a proposed decision in a nondisciplinary contested case shall have a J.D. degree unless waived by the board.

20.10(4) The board or a panel of board members when acting as presiding officer may request that an administrative law judge perform certain functions as an aid to the board or board panel, such as ruling on prehearing motions, conducting the prehearing conference, ruling on evidentiary objections at hearing, assisting in deliberations, or drafting the written decision for review by the board or board panel.

20.10(5) All rulings by an administrative law judge who acts either as presiding officer or assistant to the board are subject to appeal to the board pursuant to rules 193F—20.31(17A) and 193F—20.32(17A). A party must timely seek intra-agency appeal of prehearing rulings or proposed decisions in order to exhaust adequate administrative remedies. While a party may seek immediate board or board panel review of rulings made by an administrative law judge when sitting with and acting as an aid to the board or board panel during a hearing, such immediate review is not required to preserve error for judicial review.

20.10(6) Unless otherwise provided by law, board members, when reviewing a proposed decision of a panel of the board or an administrative law judge, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.11(17A) Time requirements.

20.11(1) Time shall be computed as provided in Iowa Code section 4.1(34).

20.11(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.12(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.13(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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.14(17A) Disqualification.

20.14(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated, in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

20.14(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 20.28(9).

20.14(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

20.14(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 20.14(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code 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.

20.14(5) If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

20.14(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 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 193F—20.31(17A), if applicable, and seek a stay under rule 193F—20.34(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.15(17A) Consolidation—severance.

20.15(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

20.15(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.16(17A) Amendments. Any notice of hearing or statement of charges may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.17(17A) Service and filing of pleadings and other papers.

20.17(1) When service is required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as prosecutor for the state, simultaneously with their filing. Except for the original notice of hearing and statement of charges, and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties. A notice of hearing and statement of charges shall be served by the board as provided in subrule 20.6(2). Once a specific administrative law judge has been assigned to a case, copies of all prehearing motions shall also be served on the administrative law judge.

20.17(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery, including through electronic transmission if reasonably calculated to reach the party or the party's attorney, or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

20.17(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the board.

20.17(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 email 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 email or other approved electronic means.

20.17(5) Proof of mailing. Proof of mailing includes either a legible United States Postal Service nonmetered postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Iowa Real Estate Appraiser Examining Board and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

20.17(6) Electronic service. Email or similar electronic means, unless precluded by a provision of law, shall be permitted to accomplish service where such electronic transmission is reasonably calculated to reach the other party or the other party's attorney. Factors to consider in determining whether such electronic transmission is reasonably calculated to reach the other party include, but are not limited to, prior communication practices between the parties, whether consent has been given by a party or the party's attorney, and whether the presiding officer has previously entered an order authorizing service by electronic transmission. 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. [ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.18(17A) Discovery.

20.18(1) The scope of discovery described in Iowa Rule of Civil Procedure 1.503 shall apply to contested case proceedings.

20.18(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 Rule 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.

20.18(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 193F—20.21(17A,272C).

20.18(4) Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

20.18(5) Discovery shall be served on all parties to the contested case proceeding but shall not be filed with the board.

20.18(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.

20.18(7) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.19(17A,272C) Issuance of subpoenas in a contested case.

20.19(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. The nature of the issues in the case reasonably justifies the issuance of the requested subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for the release of the records at issue.

20.19(2) A request for a subpoena shall include the following information, as applicable:

- a. The name, address, email address, and telephone number of the person requesting the subpoena;
- b. The name and address of the person to whom the subpoena shall be directed;
- c. The date, time, and location at which the person shall be commanded to attend and give testimony;
- d. Whether the testimony is requested in connection with a deposition or hearing;
- e. A description of the books, papers, records or other real evidence requested;
- f. The date, time, and location for production, or inspection and copying; and
- g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 20.19(1) have been satisfied.

20.19(3) Each subpoena shall contain, as applicable:

- a. The caption of the case;
- b. The name, address, and telephone number of the person who requested the subpoena;
- c. The name and address of the person to whom the subpoena is directed;
- d. The date, time, and location at which the person is commanded to appear;
- e. Whether the testimony is commanded in connection with a deposition or hearing;
- f. A description of the books, papers, records, or other real evidence the person is commanded to produce;
- g. The date, time, and location for production, or inspection and copying;
- h. The time within which a motion to quash or modify the subpoena must be filed;
- i. The signature, address, and telephone number of the executive officer or designee;
- j. The date of issuance; and
- k. A return of service.

20.19(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.

20.19(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.

20.19(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.

20.19(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge the ruling must appeal the ruling to the board in accordance with the procedure applicable to intra-agency appeals of proposed decisions set forth in rules 193F—20.31(17A) and 193F—20.32(17A), provided that all of the time frames are reduced by one-half.

20.19(8) If the person contesting the subpoena is not a party to the contested case proceeding, the board's decision is final for purposes of further intra-agency appeal. If the person contesting the subpoena is a party to the contested case proceeding, the board's decision is not final for purposes of further intra-agency appeal until there is a proposed decision in the contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.20(17A) Motions.

20.20(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

20.20(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the board or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

20.20(3) The presiding officer may schedule oral argument on any motion. If the board requests that an administrative law judge issue a ruling on a prehearing motion, the ruling is subject to interlocutory appeal pursuant to rule 193F—20.31(17A).

20.20(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least 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.

20.20(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 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.

20.20(6) Motions for summary judgment must be filed and served at least 20 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within ten days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 15 days after the filing of the motion, unless a shorter time is ordered by the presiding

officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 193F—20.33(17A) and appeal pursuant to rule 193F—20.32(17A).
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.21(17A,272C) Prehearing conference and disclosures.

20.21(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than ten days prior to the hearing date. A prehearing conference shall be scheduled not less than five business days prior to the hearing date. The board shall set a prehearing conference in all licensee disciplinary cases and provide notice of the date and time in the notice of hearing. Written notice of the prehearing conference shall be given by the board to all parties. For good cause the presiding officer may permit waivers, in whole or in part, from this rule.

20.21(2) Each party shall disclose at or prior to the prehearing conference:

- a.* A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and
- b.* A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

20.21(3) In addition to the requirements of subrule 20.21(2), the parties at a prehearing conference may:

- a.* Enter into stipulations of law or fact;
- b.* Enter into stipulations on the admissibility of exhibits;
- c.* Identify matters which the parties intend to request be officially noticed;
- d.* Enter into stipulations for waiver of any provision of law; and
- e.* Consider any additional matters which will expedite the hearing.

20.21(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.

20.21(5) The parties shall exchange copies of all exhibits marked for introduction at hearing in the manner provided in subrule 20.26(4) no later than three business days in advance of hearing, or as ordered by the presiding officer at the prehearing conference.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—20.22(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

20.22(1) A written application for a continuance shall:

- a.* Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b.* State the specific reasons for the request; and
- c.* Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The board may waive notice of such requests for a particular case or an entire class of cases.

20.22(2) In determining whether to grant a continuance, the presiding officer may require documentation of any grounds for continuance and may consider:

- a.* Prior continuances;

- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

20.22(3) The board's executive officer or an administrative law judge may enter an order granting an uncontested application for a continuance. Upon consultation with the board chair or chair's designee, the board's executive officer or an administrative law judge may deny an uncontested application for a continuance, or rule on a contested application for continuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.23(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing upon written notice filed with the board and served on all parties. Unless otherwise ordered by the board, a withdrawal shall be with prejudice.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.24(17A) Intervention.

20.24(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

20.24(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

20.24(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

20.24(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.25(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.

20.25(1) Examination of witnesses. All witnesses shall be sworn or affirmed by the presiding officer or the court reporter and shall be subject to cross-examination. Board members and the administrative law judge have the right to examine witnesses at any stage of a witness's testimony. The presiding officer may limit questioning in a manner consistent with law.

20.25(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.

20.25(3) Record of proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription shall be filed with and maintained by the board for at least five years from the date of decision.

20.25(4) Order of proceedings. Before testimony is presented, the record shall show the identities of any board members present, the identity of the administrative law judge, the identities of the primary parties and their representatives, and the fact that all testimony is being recorded. In contested cases initiated by the board, such as licensee discipline, hearings shall generally be conducted in the following order, subject to modification at the discretion of the board:

a. The presiding officer or designated person may read a summary of the charges and answers thereto and other responsive pleadings filed by the respondent prior to the hearing.

b. The assistant attorney general representing the state interest before the board shall make a brief opening statement which may include a summary of charges and the names of any witnesses and documents to support such charges.

c. Each respondent shall be offered the opportunity to make an opening statement, including the names of any witnesses the respondent(s) desires to call in defense. A respondent may elect to make the opening statement just prior to the presentation of evidence by the respondent(s).

d. The presentation of evidence on behalf of the state.

e. The presentation of evidence on behalf of the respondent(s).

f. Rebuttal evidence on behalf of the state, if any.

g. Rebuttal evidence on behalf of the respondent(s), if any.

h. Closing arguments first on behalf of the state, then on behalf of the respondent(s), and then on behalf of the state, if any.

The order of proceedings shall be tailored to the nature of the contested case. In license reinstatement hearings, for example, the respondent will generally present evidence first because the respondent is obligated to present evidence in support of the respondent's application for reinstatement pursuant to rule 193F—20.38(17A,272C). In license denial hearings, the state will generally first establish the basis for the board's denial of licensure, but thereafter the applicant has the burden of establishing the conditions for licensure pursuant to rule 193F—20.39(546,543D,272C).

20.25(5) Decorum. The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

20.25(6) Immunity. The presiding officer shall have authority to grant immunity from disciplinary action to a witness, as provided by Iowa Code section 272C.6(3), but only upon the unanimous vote of all members of the board hearing the case. The official record of the hearing shall include the reasons for granting the immunity.

20.25(7) Sequestering witnesses. The presiding officer, on the officer's own motion or upon the request of a party, may sequester witnesses.

20.25(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.

20.25(9) Depositions. Depositions may be used at hearing to the extent permitted by Iowa Rule of Civil Procedure 1.704.

20.25(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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.26(17A) Evidence.

20.26(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

20.26(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

20.26(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

20.26(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.

20.26(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

20.26(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

20.26(7) Irrelevant, immaterial and unduly repetitious evidence should be excluded. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.27(17A) Default.

20.27(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

20.27(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

20.27(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 193F—20.32(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

20.27(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

20.27(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

20.27(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 1.977.

20.27(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 193F—20.31(17A).

20.27(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

20.27(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

20.27(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 193F—20.34(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.28(17A) Ex parte communication.

20.28(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 20.14(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

20.28(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

20.28(3) Written, oral or other forms of communication are ex parte if made without notice and opportunity for all parties to participate.

20.28(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 193F—20.17(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

20.28(5) Persons who jointly act as presiding officers in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

20.28(6) The executive officer or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as the executive officer or other persons are not disqualified from participating in the making of a proposed or final decision under any provision of law and the executive officer or other persons comply with subrule 20.28(1).

20.28(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 193F—20.22(17A).

20.28(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

20.28(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

20.28(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the board. Violation of ex parte communication prohibitions by board personnel shall be reported to the superintendent for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.29(17A) Recording costs. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.30(17A,272C) Final decisions, publication and client notification.

20.30(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.

20.30(2) Publication of decisions. Final decisions of the board, including consent agreements and consent orders, are public documents, are available to the public and may be disseminated as provided in Iowa Code chapter 22 by the board or others. Final decisions relating to licensee discipline shall be published on the board's website, may be published in the board's newsletter, and may be transmitted to the appropriate professional association(s), national association(s), other states, and news media, or otherwise disseminated. The board may, in its discretion, issue a formal press release.

20.30(3) Notification of clients. Within 15 days (or such other time period specifically ordered by the board) of the licensee's receipt of a final decision of the board, whether entered by consent or following hearing, which suspends or revokes a license or accepts a voluntary surrender of a license to resolve a disciplinary case, the licensee shall notify in writing all current clients of the fact that the license has been suspended, revoked or voluntarily surrendered. Such notice shall advise clients to obtain alternative professional services. Within 30 days of receipt of the board's final order, the licensee shall file with the

board copies of the notices sent. Compliance with this requirement shall be a condition for an application for reinstatement.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.31(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the administrative law judge, such as a ruling on a motion to quash a subpoena or other prehearing motion. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of the interlocutory order at the time of the issuance of a final decision would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the date for compliance with the order or the date of hearing, whichever is earlier.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.32(17A) Appeals and review.

20.32(1) *Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions.*

a. Proposed decision. Decisions issued by a panel of less than a quorum of the board or by an administrative law judge are proposed decisions. All licensee disciplinary decisions must be issued by the board. A proposed disciplinary decision issued by a panel of the board must be acted upon by the full board in order to become the board's final proposed decision for purposes of 193F—subrule 17.2(4). In nondisciplinary cases, a proposed decision issued by a panel of the board or an administrative law judge becomes a final proposed decision for purposes of 193F—subrule 17.2(4) if not timely appealed by any party or reviewed by the board.

b. Appeal by party. Any adversely affected party may appeal a proposed decision rendered by a panel of the board or administrative law judge to the board within 30 days after issuance of the proposed decision. Such an appeal is required prior to seeking further intra-agency appeal as set forth in subrule 20.32(2) and 193F—subrule 17.2(4), is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

c. Review. The board may initiate review of a proposed decision rendered by a panel of the board or administrative law judge on its own motion at any time within 30 days following the issuance of such a decision.

d. Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- (1) The parties initiating the appeal;
- (2) The proposed decision or order which is being appealed;
- (3) The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- (4) The relief sought;
- (5) The grounds for relief.

e. Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

f. Scheduling. The board shall issue a schedule for consideration of the appeal.

g. Briefs and arguments. Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

h. Record. The record on appeal or review shall be the entire record made before the hearing panel or administrative law judge.

20.32(2) *Intra-agency review or appeal to the superintendent.*

a. Proposed decisions. Notwithstanding anything in these rules to the contrary, all board decisions in a contested case following hearing are proposed decisions and shall be provided to the superintendent when issued as required by 193F—subrule 17.2(4). Decisions issued by a panel of less than a quorum of the board or by an administrative law judge shall not constitute a final proposed decision of the board for purposes of this subrule and 193F—subrule 17.2(4) until the appeal and review procedures outlined in subrule 20.32(1) are exhausted and the review process is complete.

b. Procedures for intra-agency review or appeal to the superintendent. Procedures for intra-agency review or appeal by or to the superintendent in a hearing following a contested case are outlined in 193F—subrule 17.2(4) and are incorporated by reference as if set forth herein.

c. Intra-agency appeal to superintendent. No person aggrieved by a proposed decision of the board may seek judicial review of that action without first appealing the action to the superintendent, as more fully described in this subrule and 193F—Chapter 17. Such intra-agency appeal to the superintendent is required to exhaust administrative remedies and is a jurisdictional prerequisite to seeking judicial review.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.33(17A) Applications for rehearing.

20.33(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

20.33(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 20.33(3), the applicant requests an opportunity to submit additional evidence.

20.33(3) *Additional evidence.* A party may request the taking of additional evidence only by establishing that (a) the facts or other evidence arose after the original proceeding, or (b) the party offering such evidence could not reasonably have provided such evidence at the original proceeding, or (c) the party offering the additional evidence was misled by any party as to the necessity for offering such evidence at the original proceeding.

20.33(4) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order. The application for rehearing is deemed filed on the date it is received by the board unless the provisions of subrule 20.17(4) apply.

20.33(5) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies of the application on all parties.

20.33(6) *Disposition.* An application for rehearing shall be deemed denied unless the board grants the application within 20 days after its filing. An order granting or denying an application for rehearing is deemed issued on the date it is filed with the board.

20.33(7) *Proceedings.* If the board grants an application for rehearing, the board may set the application for oral argument or for hearing if additional evidence will be received. If additional evidence will not be received, the board may issue a ruling without oral argument or hearing. The board may, on the request of a party or on its own motion, order or permit the parties to provide written argument on one or more designated issues. The board may be assisted by an administrative law judge in all proceedings related to an application for rehearing.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.34(17A) Stays of board actions.**20.34(1) When available.**

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The board may rule on the stay or authorize the administrative law judge to do so.

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.

20.34(2) When granted. In determining whether to grant a stay, the presiding officer or board shall consider the factors listed in Iowa Code section 17A.19(5) “c.”

20.34(3) Vacation. A stay may be vacated by the issuing authority upon application of the board or any other party.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.35(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.36(17A) Emergency adjudicative proceedings.

20.36(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare, and consistent with the United States Constitution and Iowa Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18A to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order, the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

20.36(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board’s decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

- (4) First-class mail to the last address on file with the board; or
- (5) Electronic service. Fax or email notification may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax or email and has provided a fax number or email address for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

20.36(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

20.36(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.37(17A,272C) Judicial review. Judicial review of the board's decision may be sought in accordance with the terms of Iowa Code chapter 17A.

20.37(1) Consistent with Iowa Code section 17A.19(3), if a party does not file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the issuance of the board's final decision. The board's final decision is deemed issued on the date it is mailed or the date of delivery if service is by other means, unless another date is specified in the order.

20.37(2) If a party does file a timely application for rehearing, a judicial review petition must be filed with the district court within 30 days after the application for rehearing is denied or deemed denied. An application for rehearing is denied or deemed denied as provided in subrule 20.33(6).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.38(17A,272C) Reinstatement.

20.38(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 20.38(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.

20.38(2) Any person whose license has been revoked or suspended by the board, or who voluntarily surrendered a license in a disciplinary proceeding, may apply to the board for reinstatement in accordance with the terms of the order of revocation or suspension, or order accepting the voluntary surrender.

20.38(3) Unless otherwise provided by law, if the order of revocation or suspension did not establish terms upon which reinstatement might occur, or if the license was voluntarily surrendered, an initial application for reinstatement may not be made until at least one year has elapsed from the date of the order or the date the board accepted the voluntary surrender of a license.

20.38(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.

20.38(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 20.30(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 in 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.

20.38(6) An order of reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law and must be based upon the affirmative vote of not less than a majority of the board. This order will be published as provided for in subrule 20.30(2).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.39(546,543D,272C) Hearing on license denial. If the board denies an application for an initial, reciprocal or comity license, the executive officer shall send written notice to the applicant by regular first-class mail identifying the factual and legal basis for denying the application. If the board denies an application to renew an existing license, the provisions of rule 193F—20.40(546,543D,272C) shall apply.

20.39(1) An applicant who is aggrieved by the denial of an application for licensure and who desires to contest the denial must request a hearing before the board within 30 calendar days of the date the notice of denial is mailed. A request for a hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors that the applicant contends were made by the board, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the board shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

20.39(2) The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 193F—20.10(17A,272C). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 193F—20.32(17A).

20.39(3) License denial hearings are contested cases open to the public. Evidence supporting the denial of the license may be presented by an assistant attorney general. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

20.39(4) The board, after a hearing on license denial, may grant or deny the application for licensure. If denied, the board shall state the reasons for denial of the license and may state conditions under which the application for licensure might be granted, if applicable.

20.39(5) The notice of license denial, request for hearing, notice of hearing, record at hearing and order are open records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be provided to the media, collateral organizations and other persons or entities.

20.39(6) Following intra-agency appeal to the superintendent as required by subrule 20.32(2) and 193F—subrule 17.2(4), judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.40(546,543D,272C) Denial of application to renew license. If the board denies a timely and sufficient application to renew a license, a notice of hearing shall be issued to commence a contested case proceeding.

20.40(1) Hearings on denial of an application to renew a license shall be conducted according to the procedural rules applicable to contested cases. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 20.39(2) and 20.39(4) to 20.39(6) shall generally apply, although license denial hearings which are in the nature of disciplinary actions will be subject to all laws and rules applicable to such hearings.

20.40(2) Pursuant to Iowa Code section 17A.18(2), an existing license shall not terminate or expire if the licensee has made timely and sufficient application for renewal until the last day for seeking judicial review of the board's final order denying the application, or a later date fixed by order of the board or the reviewing court.

20.40(3) Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

a. Received by the board in paper or electronic form, or postmarked with a nonmetered United States Postal Service postmark on or before the date the license is set to expire or lapse;

b. Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;

c. Fully completed; and

d. Accompanied with the proper fee. The fee shall be deemed improper if, for instance, the amount is incorrect, the fee was not included with the application, the credit card number provided by the applicant is incorrect, the date of expiration of a credit card is omitted or incorrect, the attempted credit card transaction is rejected, or the applicant's check is returned for insufficient funds.

20.40(4) The administrative processing of an application to renew an existing license shall not prevent the board from subsequently commencing a contested case to challenge the licensee's qualifications for continued licensure if grounds exist to do so.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.41(543D,272C) Recovery of hearing fees and expenses. The board may assess the licensee certain fees and expenses relating to a disciplinary hearing only if the board finds that the licensee has violated a statute or rule enforced by the board. Payment shall be made directly to the banking division of the department of commerce.

20.41(1) All hearing fees and costs assessed by the board shall be paid directly to the division of banking and shall be held in a separate fund administered by the superintendent. The superintendent shall distribute moneys held in this fund during the fiscal year in which those moneys are paid to the division of banking. Distributions from the fund shall be made upon the request of the board and in the sole discretion of the superintendent. A distribution received by the board under this chapter shall be used only for expenditures related to disciplinary hearings.

a. The superintendent shall consider the following factors in exercising discretion as to whether to distribute funds to the board:

(1) The remaining funds in the board's allocated budget appropriate for disciplinary hearings in that fiscal year;

(2) The number of disciplinary hearings the board has scheduled for the remainder of that fiscal year; the nature and seriousness of those hearings; and the public health, safety, and welfare interests implicated by those hearings;

(3) Whether the board has adopted and implemented hearing cost recovery rules.

b. The superintendent shall, within 45 days from the end of the fiscal year, distribute to the board a percentage of the remaining fees and costs that is equal to the percentage of the board's total allocated budget in relation to the divisionwide total budget governed by this chapter. The fees and costs allocated back to the board shall be considered repayment receipts as defined in Iowa Code section 8.2. The fees and costs allocated back to the board shall be applied to the costs incurred for prosecution of contested cases which could result in disciplinary action.

20.41(2) The board may assess the following costs under this rule:

- a.* For conducting a disciplinary hearing, an amount not to exceed \$75.
- b.* All applicable costs involved in the transcript of the hearing or other proceedings in the contested case including, but not limited to, the services of the court reporter at the hearing, transcription, duplication, and postage or delivery costs. In the event of an appeal or request for review, to the full board from a decision rendered by a panel of the board or administrative law judge or by or to the superintendent from a proposed decision of the board, the appealing party shall timely request and pay for the transcript necessary for use in the board appeal process. The board may assess the transcript cost against the licensee pursuant to Iowa Code section 272C.6(6) or against the requesting party pursuant to Iowa Code section 17A.12(7), as the board deems equitable in the circumstances.
- c.* All normally accepted witness expenses and fees for a hearing or the taking of depositions, as incurred by the state of Iowa. These costs shall include, but not be limited to, the cost of an expert witness and the cost involved in telephone testimony. The costs for lay witnesses shall be guided by Iowa Code section 622.69. The cost for expert witnesses shall be guided by Iowa Code section 622.72. Mileage costs shall not be governed by Iowa Code section 625.2. The provisions of Iowa Code section 622.74 regarding advance payment of witness fees and the consequences of failure to make such payment are applicable with regard to any witness who is subpoenaed by either party to testify at hearing. Additionally, the board may assess travel and lodging expenses for witnesses at a rate not to exceed the rate applicable to state employees on the date the expense is incurred.
- d.* All normally applicable costs incurred by the state of Iowa involved in depositions including, but not limited to, the services of the court reporter who records the deposition, transcription, duplication, and postage or delivery costs. When a deposition of an expert witness is taken, the deposition cost shall include a reasonable expert witness fee. The expert witness fee shall not exceed the expert's customary hourly or daily rate, and shall include the time spent in travel to and from the deposition but exclude time spent in preparation for the deposition.

20.41(3) When imposed in the board's discretion, hearing fees (not exceeding \$75) shall be assessed in the final disciplinary order. Costs and expenses assessed pursuant to this rule shall be calculated and, when possible, entered into the final disciplinary order specifying the amount to be reimbursed and the time period in which the amount assessed must be paid by the licensee.

a. When it is impractical or not possible to include in the disciplinary order the exact amount of the assessment and time period in which to pay in a timely manner, or if the expenditures occur after the disciplinary order is issued, the board, by a majority vote of the members present, may assess through separate order the amount to be reimbursed and the time period in which payment is to be made by the licensee.

b. If the assessment and the time period are not included in the disciplinary order, the board shall have until the end of the sixth month after the date the state of Iowa paid the expenditures to assess the licensee for such expenditure. In order to rely on this provision, however, the final disciplinary order must notify the licensee that fees and expenses will be assessed once known.

20.41(4) Any party may object to the fees, costs or expenses assessed by the board by filing a written objection within 20 days of the issuance of the final disciplinary decision, or within ten days of any subsequent order establishing the amount of the assessment. A party's failure to timely object shall be deemed a failure to exhaust administrative remedies. Orders which impose fees, costs or expenses shall notify the licensee of the time frame in which objections must be filed in order to exhaust administrative remedies.

20.41(5) Fees, costs, and expenses assessed by the board pursuant to this rule shall be allocated to the expenditure category in which the disciplinary procedure of hearing was incurred. The fees, costs, and expenses shall be considered repayment receipts as defined in Iowa Code section 8.2.

20.41(6) The failure to comply with payment of the assessed costs, fees, and expenses within the time specified by the board shall constitute a violation of an order of the board, shall be grounds for discipline, and shall be considered prima facie evidence of a violation of Iowa Code section

272C.3(2)“a.” However, no action may be taken against the licensee without the opportunity for hearing as provided in this chapter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—20.42(543D,272C) Settlement after notice of hearing.

20.42(1) Settlement negotiations after the notice of hearing is served may be initiated by the licensee or other respondent, the prosecuting assistant attorney general, the board’s executive officer, or the board chair or chair’s designee.

20.42(2) The board chair or chair’s designee shall have authority to negotiate on behalf of the board but shall not have the authority to bind the board to particular terms of settlement.

20.42(3) The respondent is not obligated to participate in settlement negotiations. The respondent’s initiation of or consent to settlement negotiation constitutes a waiver of notice and opportunity to be heard during settlement negotiation pursuant to Iowa Code section 17A.17 and rule 193F—20.28(17A). Thereafter, the prosecuting attorney is authorized to discuss informal settlement with the board chair or chair’s designee, and the designated board member is not disqualified from participating in the adjudication of the contested case.

20.42(4) Unless designated to negotiate, no member of the board shall be involved in settlement negotiation until a written consent order is submitted to the full board for approval. No informal settlement shall be submitted to the full board unless it is in final written form executed by the respondent. By signing the proposed consent order, the respondent authorizes the prosecuting attorney or executive officer to have ex parte communications with the board related to the terms of settlement. If the board fails to approve the consent order, it shall be of no force and effect to either party and shall not be admissible at hearing. Upon rejecting a proposed consent order, the board may suggest alternative terms of settlement which the respondent is free to accept or reject.

20.42(5) If the board and respondent agree to a consent order, the consent order shall constitute the final decision of the board. By electing to resolve a contested case through consent order, the respondent waives all rights to a hearing and all attendant rights. A consent order in a licensee disciplinary case shall have the force and effect of a final disciplinary order entered in a contested case and shall be published as provided in rule 193F—20.30(17A,272C).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 5484C (Notice ARC 5261C, IAB 11/4/20), IAB 2/24/21, effective 3/31/21]

CHAPTER 21

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

193F—21.1(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.

21.1(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.1(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.

21.1(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 252J.8 upon the licensee or applicant.

21.1(4) Licensees and applicants shall keep the board informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

21.1(5) All board fees for application, license renewal or license 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.

21.1(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.

21.1(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, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—21.2(272C) Prohibited grounds for discipline. The board shall not suspend or revoke a license issued by the board to a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—21.3(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.

21.3(1) The notice required by Iowa Code section 272D.8 shall be served upon the licensee or applicant by restricted certified mail, return receipt requested, or personal service in accordance

with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

21.3(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.

21.3(3) The board's executive officer is authorized to prepare and serve the notice required by Iowa Code section 272D.8 upon the licensee or applicant.

21.3(4) Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

21.3(5) All board fees required for application, license renewal or license 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.

21.3(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.

21.3(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, renewed or reinstated following the board's receipt of a withdrawal of the certificate of noncompliance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 252J, 272C, and 272D.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 4708C (Notice ARC 4566C, IAB 7/31/19), IAB 10/9/19, effective 11/13/19]

CHAPTER 22
PETITION FOR RULE MAKING

193F—22.1(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:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

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. A statement of the specific rule-making action sought by the petitioner including the text or a summary of the contents of the proposed rule or amendment to a rule and, if it is a petition to amend or repeal a rule, a citation and the relevant language to the particular portion or portions of the rule proposed to be amended or repealed.
2. A citation to any law deemed relevant to the board’s authority to take the action urged or to the desirability of that action.
3. A brief summary of petitioner’s arguments in support of the action urged in the petition.
4. A brief summary of any data supporting the action urged in the petition.
5. The names, addresses, and email 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. Any request by petitioner for a meeting provided for by rule 193F—22.4(17A).

22.1(1) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, email 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.

22.1(2) The board may deny a petition because it does not substantially conform to the required form.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.2(17A) Briefs. The petitioner may attach a brief to the petition in support of the action urged in the petition. The board may request a brief from the petitioner or from any other person concerning the substance of the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the executive officer of the board at the board’s offices.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—22.4(17A) Board consideration.

22.4(1) Upon request by petitioner in the petition, the board must schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of the staff of the board, to discuss the petition. The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

22.4(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 or adopted a rule on the subject of the petition if the petition is not required to be filed according to the procedure in Iowa Code section 17A.4(1). Service of the written notice shall be sent to the email 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 emails or delivers the required notification to petitioner.

22.4(3) Denial of a petition because it does not substantially conform to the required form does not preclude the filing of a new petition on the same subject that seeks to eliminate the grounds for the board's rejection of the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—22.5(17A) Submission to administrative rules review committee.

22.5(1) Following the board's receipt of a petition, the board will submit a copy of the petition to the administrative rules review committee.

22.5(2) Following the board's disposition of a petition, the board will submit a copy of the written notice documenting the board's disposition of the petition to the administrative rules review committee. Notwithstanding the foregoing, if, in response to a petition, the board institutes rule-making proceedings on the subject of the petition, the filing of a notice of intended action shall satisfy the requirement that the board notify the administrative rules review committee of the disposition of the petition.

This rule is intended to implement Iowa Code chapter 17A.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

These rules are intended to implement Iowa Code chapter 17A.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 5484C (Notice ARC 5261C, IAB 11/4/20), IAB 2/24/21, effective 3/31/21]

CHAPTER 23
DECLARATORY ORDERS

193F—23.1(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:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

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. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions the petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been directed by, are pending determination by, or are under investigation by any governmental entity.
7. The names, addresses, and email 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 rule 193F—23.7(17A). The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, email 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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.2(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 rule 193F—23.6(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 email or similar electronic means.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.3(17A) Intervention.

23.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

23.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.

23.3(3) A petition for intervention shall be filed at the board’s office. Such a petition is deemed filed when it is received by the 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:

BEFORE THE REAL ESTATE APPRAISER EXAMINING BOARD OF THE STATE OF IOWA

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. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
5. The names, addresses, and email 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. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

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

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.4(17A) Briefs. The petitioner or intervenor may file a brief in support of the position urged. The board may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised in the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.5(17A) Inquiries. Inquiries concerning the status of a declaratory order may be made to the executive officer of the board at the board's offices.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.6(17A) Service and filing of petitions and other papers.

23.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with its filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

23.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the board at the board's office. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the board.

23.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 193F—20.17(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.7(17A) Board consideration. Upon request by petitioner, the board must schedule a brief and informal meeting between the original petitioner, all intervenors, and the board, a member of the board, or a member of the staff of the board to discuss the questions raised. The board may solicit comments

from any person on the questions raised. Also, comments on the questions raised may be submitted to the board by any person.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.8(17A) Action on petition.

23.8(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, the board 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.

23.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 193F—20.1(17A).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.9(17A) Refusal to issue order.

23.9(1) The board shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(5) and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

a. The petition does not substantially comply with the required form.

b. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the board to issue an order.

c. The board does not have jurisdiction over the questions presented in the petition.

d. The questions presented by the petition are also presented in current rule making, contested case, or other board or judicial proceeding that may definitively resolve them.

e. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.

f. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.

g. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.

h. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a board decision already made.

i. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.

j. The petitioner requests the board to determine whether a statute is unconstitutional on its face.

23.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final board action on the petition.

23.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for refusal to issue an order.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.10(17A) Contents of declaratory order—effective date. In addition to the ruling itself, a declaratory order must contain the date of its issuance; the name of petitioner; the names of intervenors; the specific statutes, rules, policies, decisions, or orders involved; the particular facts upon which it is based; and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be emailed promptly to the original petitioner and all intervenors unless the petitioner specifically requests a mailed copy.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—23.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order in a contested case proceeding. It is binding on the board, the petitioner and any intervenors and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the board. The issuance of a declaratory order constitutes final board action on the petition.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapter 17A.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 24
SALES AND LEASES OF GOODS AND SERVICES

193F—24.1(68B) Selling or leasing of goods or services by members of the board. The board members shall not sell or lease, either directly or indirectly, any goods or services to individuals, associations, or corporations that are subject to the regulatory authority of the board except as authorized by this rule, and by the consent documents filed with the Iowa ethics and campaign disclosure board pursuant to Iowa Code section 68B.4 and the corresponding provisions of rule 351—6.11(68B).

24.1(1) Conditions of consent for members. Consent shall be given by a majority of the members of the board upon a finding that the conditions required by Iowa Code section 68B.4, as described in 351—subrule 6.11(4), have been satisfied. The board may grant a blanket consent for sales and leases to classes of individuals, associations, or corporations when such blanket consent is consistent with 351—subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

24.1(2) Authorized sales and leases.

a. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by any division within the department of commerce, other than the board on which that official serves. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board.

b. A member of the board may sell or lease goods or services to any individual, association, or corporation regulated by the board if those goods or services are routinely provided to the public as part of that person's regular professional practice. This consent is granted because the sale or lease of such goods or services does not affect the board member's duties or functions on the board. In the event a complaint is filed with the board concerning the services provided by the board member to a member of the public, that board member is otherwise prohibited by law from participating in any discussion or decision by the board in that case, as provided, for instance, in the code of administrative judicial conduct at 481—Chapter 15. The board has filed its blanket consent to such sales and leases with the ethics and campaign disclosure board. The board intends that the blanket consent be interpreted broadly to allow routine professional services offered directly to the general public and to licensees, such as continuing education instruction or peer review services. Such consent recognizes that those licensees most proficient and ethical in their professional careers may also be among those whose services are desirable to enrich the professional competence of licensees. Interpreting the blanket consent broadly accordingly removes a possible disincentive to board membership.

c. Individual application and approval are not required for the sales and leases authorized by this rule and by the consents filed with the ethics and campaign disclosure board unless there are unique facts surrounding a particular sale or lease which would cause the sale or lease to affect the seller's or lessor's duties or functions, would give the buyer or lessee an advantage in dealing with the board, or would otherwise present a conflict of interest as defined in Iowa Code section 68B.2A or common law.

24.1(3) Application for consent. Prior to selling or leasing a good or service to an individual, association, or corporation subject to the regulatory authority of the department of commerce, an official must obtain prior written consent, as provided in 351—subrule 6.11(3), unless the sale or lease is specifically allowed in subrule 24.1(2) and in the consents filed with the ethics and campaign disclosure board. The request for consent must be in writing and signed by the official requesting consent. The application must provide a clear statement of all relevant facts concerning the sale or lease. The application should identify the parties to the sale or lease and the amount of compensation. The application should also explain why the sale or lease should be allowed. All applications must conform to the requirements of 351—subrule 6.11(3).

24.1(4) Limitation of consent. Consent shall be in writing and shall be valid only for the activities and the time period specifically described in the consent. Consent can be revoked at any time by a majority vote of the members of the board upon written notice to the board. A consent provided under this rule does not constitute authorization for any activity which is a conflict of interest under common law or which would violate any other statute or rule. It is the responsibility of the official requesting

consent to ensure compliance with all other applicable laws and rules. The board's ruling on each application, whether consent is conferred or denied or conditionally granted, shall be filed with the ethics and campaign disclosure board pursuant to 351—subrule 6.11(7). An official who receives a denial or conditional consent may appeal the ruling to the ethics and campaign disclosure board as provided in 351—subrule 6.11(6).

This rule is intended to implement Iowa Code chapter 68B.
[ARC 4379C, IAB 3/27/19, effective 5/1/19]

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

CHAPTER 25
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

193F—25.1(17A,22) Definitions. As used in this chapter:

“*Agency*” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“*Confidential record*” in these rules means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” in these rules means the real estate appraiser examining board within the Iowa division of banking.

“*Personally identifiable information*” in these rules means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of this agency.

“*Record system*” in these rules means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.3(17A,22) Requests for access to records.

25.3(1) Location of record. A request for access to a record should be directed to the agency. The request shall be directed to the board at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. If a request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

25.3(2) Office hours. Open records shall be made available for in-person examination and copying during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday.

25.3(3) Request for access. Requests for access to open records may be made in writing, in person, by facsimile, email, or other electronic means or by telephone. The board shall post information for making such requests in a manner reasonably calculated to apprise the public of that information. 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, email 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.

25.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of

the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 193F—25.4(17A,22) and other applicable provisions of law.

25.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

25.3(6) Copying. A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere. If feasible, the custodian of a record may provide for the electronic examination and copying of a public record in lieu of requiring in-person examination and copying of a public record.

25.3(7) Fees.

a. When charged. The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual agency expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function. To the extent permitted by law, a search fee may be charged to the same rate as and under the same conditions as are applicable to supervisory fees.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—25.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 193F—25.3(17A,22).

25.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

25.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

25.4(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, email 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.

25.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

25.4(5) Request granted. When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

25.5(1) Persons who may request. Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

25.5(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, email 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.

25.5(3) Failure to request. Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

25.5(4) Timing of decision. A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed or when the custodian receives a request for access to the record by a member of the public.

25.5(5) Request granted or deferred. If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

25.5(6) Request denied and opportunity to seek injunction. If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good-faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.6(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 agency at 200 East Grand Avenue, Suite 350, Des Moines, Iowa 50309, c/o executive officer of the real estate appraiser examining board. 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.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and, where applicable, the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Additional requirements may be necessary for special classes of records. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

This rule does not allow the subject of a record which is confidential under Iowa Code section 272C.6(4) to consent to its release.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.8(17A,22) Disclosures without the consent of the subject.

25.8(1) Open records are routinely disclosed without the consent of the subject.

25.8(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 193F—25.9(17A,22) or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

h. To other licensing authorities inside and outside Iowa as described in Iowa Code section 272C.6(4).

25.8(3) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying registrants or applicants subject to enforcement under Iowa Code chapter 252J or 598.

25.8(4) Notwithstanding any statutory confidentiality provision, the board may share information with the child support recovery unit of the department of human services and the centralized collection unit of the department of revenue for state debt for the sole purpose of identifying applicants or registrants subject to enforcement under Iowa Code chapters 252J and 272D.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—25.9(17A,22) Routine use. “Routine use” means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22. To the extent allowed by law, the following uses are considered routine uses of all board records:

25.9(1) Disclosure to those officers, employees, and agents of the board who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian’s own initiative, determine what constitutes legitimate need to use confidential records.

25.9(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

25.9(3) Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the board.

25.9(4) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

25.9(5) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

25.9(6) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

25.9(7) Disclosure to the public and news media of pleadings, motions, orders, final decisions, and informal settlement filed in licensee disciplinary proceedings.

25.9(8) Transmittal to the district court of the record in a disciplinary hearing, pursuant to Iowa Code section 17A.19(6), regardless of whether the hearing was open or closed.

25.9(9) Name and address of licensees, date of licensure, type of license, status of licensure and related information are routinely disclosed to the public upon request.

25.9(10) Name and license numbers of licensees are routinely disclosed to the public upon request. [ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.10(17A,22) Consensual disclosure of confidential records.

25.10(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to board disclosure of confidential records as provided in rule 193F—25.7(17A,22).

25.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the board may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.11(17A,22,546) Release to subject.

25.11(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. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (Iowa Code section 22.7(5))

d. All information in licensee complaint and investigation files maintained by the board for purposes of licensee discipline is 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. As otherwise authorized by law.

25.11(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.12(17A,22) Availability of records.

25.12(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

25.12(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. (Iowa Code section 22.7(11))

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.

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.

- d.* Information relating to the contents of an examination for licensure.
- e.* Minutes and tapes of closed meetings of the board. (Iowa Code section 21.5(4))
- f.* 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.
- g.* References for examination or licensure applicants. (Iowa Code section 22.7(18))
- h.* Records which constitute attorney work products or attorney-client communications or which are otherwise privileged pursuant to Iowa Code 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.
- i.* 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.*”
- j.* 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)
- k.* Email addresses of licensees when solicited for the purpose of mass communication. An email address may be open to the public when given as part of a specific, individual email correspondence.

25.12(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 193F—25.4(17A,22). If the agency initially determines that it will release such records, the agency may where appropriate notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.13(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 193F—25.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information. Records are stored on paper and in electronic form. The board’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 may also be placed on the board’s website 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:

25.13(1) Information in complaint and investigation files maintained by the board for purposes of licensee discipline. This information is required to be kept confidential pursuant to Iowa Code section 272C.6(4). However, it may be released to the licensee once a disciplinary proceeding is commenced by the filing of formal charges and the notice of hearing. Only charges and final orders are maintained electronically.

25.13(2) Information on nonlicensee investigation files maintained by the board. This information is a public record except to the extent that certain information may be exempt from disclosure under Iowa Code section 22.7(18) or other provision of law.

25.13(3) The following information regarding licensee disciplinary proceedings:

- a.* Formal charges and notices of hearing.
- b.* Complete records of open disciplinary hearings. If a hearing is closed pursuant to Iowa Code section 272C.6(1), the record is confidential under Iowa Code section 21.5(4).

c. Final written decisions, including informal stipulations and settlements.

25.13(4) Licensure. Records pertaining to licensure by examination may include:

a. Transcripts from education programs. This information is collected pursuant to Iowa Code section 543D.9.

b. Applications for examination. This information is collected pursuant to Iowa Code section 543D.7.

c. Past criminal and disciplinary record. This information is collected pursuant to Iowa Code section 543D.12.

d. Examination scores. This information is collected pursuant to Iowa Code section 543D.8.

e. Social security numbers of license applicants and licensees as required by Iowa Code section 252J.8(1).

25.13(5) In addition to the above records, records pertaining to licensure by reciprocity or comity may include:

a. Disciplinary actions taken by other boards. This information is collected pursuant to Iowa Code section 543D.10.

b. Verification of licensure by another board. This information is collected pursuant to Iowa Code section 543D.11.

c. Verification of experience and other licensure qualifications.

25.13(6) Renewal forms. This information is collected pursuant to Iowa Code sections 542.6, 542B.18, 543B.28, 543D.16, 544A.10, 544B.13, and 544C.3(5). Some renewal forms are only stored in data processing systems when licensees renew electronically.

25.13(7) Continuing education records. This information is collected pursuant to Iowa Code section 272C.2.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.14(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 193F—25.1(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 193F—25.13(17A,22) may contain information about individuals. Records are paper and electronic and may be stored in automated data processing systems. The bureau's records retention schedule shall permit the destruction of paper records once the records are converted to an electronic format.

25.14(1) Rule-making records. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not generally stored in an automated data processing system, although rule-making dockets may also be found on the board's website.

25.14(2) Board records. Agendas, minutes, and materials presented to the board members in preparation for board meetings are available from the office of the board, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4). Board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored in an automated data processing system, although minutes and other information may be found on the board's website.

25.14(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the office of the board. Information concerning examinations and registration is available from the board office. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not stored in an automated data processing system, although some board publications may be found on the board's website.

25.14(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 paragraphs 25.12(2) "b" and "c." These records may contain information about individuals collected under the authority of Iowa Code section 543D.17.

25.14(5) Policy manuals. The agency employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Policy manuals do not contain information about individuals.

25.14(6) Other records. All other records that are not exempted from disclosure by law.

25.14(7) Waivers. Requests for waivers, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

25.14(8) Declaratory orders.

25.14(9) Rule-making initiatives. All boards maintain both paper and electronic records on rule-making initiatives in accordance with Executive Order Numbers 8 and 9.

25.14(10) Personnel records of board staff and board members which may be confidential pursuant to Iowa Code section 22.7(11). The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files may include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

25.14(11) General correspondence, reciprocity agreements with other states, and cooperative agreements with other agencies.

25.14(12) Administrative records. These records include documents concerning budget, property inventory, purchasing, yearly reports, office policies for employees, time sheets, and printing and supply requisitions.

25.14(13) All other records that are not confidential by law.

[ARC 4379C, IAB 3/27/19, effective 5/1/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—25.15(17A,22) Data processing systems. All data processing systems used by the board permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.16(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by a person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the agency.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

193F—25.17(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

25.17(1) License and examination applicants. License and examination applicants are requested to supply a wide range of information depending on the qualifications for licensure or sitting for an examination, as provided by board statutes, rules and application forms. Failure to provide requested information may result in denial of the application. Some requested information, such as college transcripts, social security numbers, examination scores, and criminal histories, are confidential under state or federal law, but most of the information contained in license or examination applications is treated as public information, freely available for public examination.

25.17(2) Home address. License applicants and licensees are requested to provide both home and business addresses. Both addresses are treated as open records. The board 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 website 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.

25.17(3) License renewal. Licensees are requested to supply a wide range of information in connection with license renewal, including continuing education information, criminal history and disciplinary actions, as provided by board statutes, rules and application forms, both on paper and electronically. Failure to provide requested information may result in denial of the application. Most information contained on renewal applications is treated as public information freely available for public examination, but some information, such as credit card numbers, may be confidential under state or federal law.

25.17(4) Investigations. Licensees are required to respond to board requests for information involving the investigation of disciplinary complaints against licensees. Failure to timely respond may result in disciplinary action against the licensee to whom the request is made. Information provided in response to such a request is confidential pursuant to Iowa Code section 272C.6(4) but may become public if introduced at a hearing which is open to the public, contained in a final order, or filed with a court of judicial review.

[ARC 4379C, IAB 3/27/19, effective 5/1/19]

These rules are intended to implement Iowa Code chapters 22, 252J and 272C.

[Filed ARC 4379C (Notice ARC 4224C, IAB 1/16/19), IAB 3/27/19, effective 5/1/19]

[Filed ARC 4708C (Notice ARC 4566C, IAB 7/31/19), IAB 10/9/19, effective 11/13/19]

[Filed ARC 5484C (Notice ARC 5261C, IAB 11/4/20), IAB 2/24/21, effective 3/31/21]

CHAPTER 26
MILITARY SERVICE, VETERAN RECIPROCITY, AND LICENSURE OF PERSONS LICENSED
IN OTHER JURISDICTIONS

193F—26.1(272C) Definitions.

“Issuing jurisdiction” means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

“License” or *“licensure”* means any certification or registration that may be granted by the board.

“Military service” means honorably serving on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1; in the military services of other states, as provided in 10 U.S.C. Section 101(c); or in the organized reserves of the United States, as provided in 10 U.S.C. Section 10101.

“Military service applicant” means an individual requesting credit toward licensure for military education, training, or service obtained or completed in military service.

“Veteran” means an individual who meets the definition of “veteran” in Iowa Code section 35.1(2).
[ARC 4708C, IAB 10/9/19, effective 11/13/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—26.2(272C) Military education, training, and service credit. A military service applicant may apply for credit for verified military education, training, or service toward any experience or educational requirement for licensure by submitting a military service application form to the board office.

26.2(1) The application may be submitted with an application for licensure or examination or prior to an applicant’s applying for licensure or to take an examination. No fee is required for submission of an application for military service credit.

26.2(2) The military service applicant shall identify the experience or educational licensure requirement to which the credit would be applied if granted. Credit shall not be applied to an examination requirement.

26.2(3) The military service applicant shall provide documents, military transcripts, a certified affidavit, or forms that verify completion of the relevant military education, training, or service, which may include, when applicable, the applicant’s Certificate of Release or Discharge from Active Duty (DD Form 214) or Verification of Military Experience and Training (VMET) (DD Form 2586).

26.2(4) Upon receipt of a completed military service application, the board shall promptly determine whether the verified military education, training, or service will satisfy all or any part of the identified experience or educational qualifications for licensure.

26.2(5) The board shall grant the application in whole or in part if the board determines that the verified military education, training, or service satisfies all or part of the experience or educational qualifications for licensure.

26.2(6) The board shall inform the military service applicant in writing of the credit, if any, given toward an experience or educational qualification for licensure or explain why no credit was granted. The applicant may request reconsideration upon submission of additional documentation or information.

26.2(7) A military service applicant who is aggrieved by the board’s decision may request a contested case (administrative hearing) and may participate in a contested case by telephone. A request for a contested case shall be made within 30 days of issuance of the board’s decision. The provisions of 193F—Chapter 20 shall apply, except that no fees or costs shall be assessed against the military service applicant in connection with a contested case conducted pursuant to this subrule.

26.2(8) The board shall grant or deny the military service application prior to ruling on the application for licensure. The applicant shall not be required to submit any fees in connection with the licensure application unless the board grants the military service application. If the board does not grant the military service application, the applicant may withdraw the licensure application or request that the licensure application be placed in pending status for up to one year or as mutually agreed. The withdrawal of a licensure application shall not preclude subsequent applications supported by additional documentation or information.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—26.3(272C) Veteran reciprocity.

26.3(1) A veteran with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran must pass any examinations required for licensure to be eligible for licensure through reciprocity and will be given credit for examinations previously passed when consistent with board laws and rules on examination requirements. A fully completed application for licensure submitted by a veteran under this rule shall be given priority and shall be expedited.

26.3(2) Such an application shall contain all of the information required of all applicants for licensure who hold unrestricted licenses in other jurisdictions and who are applying for licensure by reciprocity, including, but not limited to, completion of all required forms, payment of applicable fees, disclosure of criminal or disciplinary history, and, if applicable, a criminal history background check. The applicant shall use the same forms as any other applicant for licensure by reciprocity and shall additionally provide such documentation as is reasonably needed to verify the applicant's status as a veteran under Iowa Code section 35.1(2).

26.3(3) Upon receipt of a fully completed licensure application, the board shall promptly determine if the professional or occupational licensing requirements of the jurisdiction where the applicant is licensed are substantially equivalent to the licensing requirements in Iowa. The board shall make this determination based on information supplied by the applicant and such additional information as the board may acquire from the applicable jurisdiction. As relevant to the license at issue, the board may consider the following factors in determining substantial equivalence: scope of practice, education and coursework, degree requirements, postgraduate experience, and examinations required for licensure. Generally, given federal mandates, the requirements to become certified as a real estate appraiser are substantially the same nationwide.

26.3(4) The board shall promptly grant a license to the applicant if the applicant is licensed in the same or similar profession in another jurisdiction whose licensure requirements are substantially equivalent to those required in Iowa, unless the applicant is ineligible for licensure based on other grounds, for example, the applicant's disciplinary or criminal background.

26.3(5) If the board determines that the licensing requirements in the jurisdiction in which the applicant is licensed are not substantially equivalent to those required in Iowa, the board shall promptly inform the applicant of the additional experience, education, or examinations required for licensure in Iowa. Unless the applicant is ineligible for licensure based on other grounds, such as disciplinary or criminal background, the following shall apply:

a. If an applicant has not passed the required examination(s) for licensure, the applicant may not be issued a provisional license but may request that the licensure application be placed in pending status for up to one year or as mutually agreed to provide the applicant with the opportunity to satisfy the examination requirements.

b. If additional experience or education is required in order for the applicant's qualifications to be considered substantially equivalent, the applicant may request that the board issue a provisional license for a specified period of time during which the applicant will successfully complete the necessary experience or education. The board shall issue a provisional license for a specified period of time upon such conditions as the board deems reasonably necessary to protect the health, welfare or safety of the public unless the board determines that the deficiency is of a character that the public health, welfare or safety will be adversely affected if a provisional license is granted.

c. If a request for a provisional license is denied, the board shall issue an order fully explaining the decision and shall inform the applicant of the steps the applicant may take in order to receive a provisional license.

d. If a provisional license is issued, the application for full licensure shall be placed in pending status until the necessary experience or education has been successfully completed or the provisional license expires, whichever occurs first. The board may extend a provisional license on a case-by-case basis for good cause.

26.3(6) An applicant who is aggrieved by the board's decision to deny an application for a reciprocal license or a provisional license or is aggrieved by the terms under which a provisional license will be granted may request a nondisciplinary license denial contested case proceeding as provided in rule

193F—20.39(546,543D,272C) and may participate in the hearing by telephone. A request for a contested case proceeding shall be made within 30 days of issuance of the board's decision. The board's rules governing nondisciplinary license denial contested case hearings will apply, except that no fees or costs shall be assessed against the applicant in connection with a contested case conducted pursuant to this subrule.

[ARC 4708C, IAB 10/9/19, effective 11/13/19; ARC 5484C, IAB 2/24/21, effective 3/31/21]

193F—26.4(272C) Licensure of persons licensed in other jurisdictions.

26.4(1) An individual who establishes residency in this state or who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state may apply for licensure under this rule on forms provided by the board. A certification or registration shall be issued if all of the following conditions are met:

a. The person is currently licensed, certified, or registered by at least one other issuing jurisdiction in the profession or occupation applied for with a substantially similar scope of practice and is in good standing in all issuing jurisdictions in which the person holds a license, certificate, or registration. A license, certificate, or registration issued by another jurisdiction that is classified as a licensed residential real property credential or with a scope of practice of a licensed residential real property appraiser, as defined by the AQB criteria other applicable federal law, rule, or policy, shall not be considered a profession or occupation with a substantially similar scope of practice as it relates to a certification or registration as an associate real property appraiser, certified residential real property appraiser, or a certified general real property appraiser.

b. The person has been licensed, certified, or registered by the other issuing jurisdiction forming the basis of the application.

c. When the person was licensed by the other issuing jurisdiction forming the basis of the application, the issuing jurisdiction imposed minimum educational and experience requirements, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction. Generally, given federal mandates, the minimum educational and experience requirements to become certified as a real estate appraiser are substantially the same nationwide within the applicable classification and scope of practice.

d. The person previously passed an AQB-approved examination as required by the other issuing jurisdiction for licensure, certification, or registration.

e. The person has not had a license, certificate, or registration revoked and has not voluntarily surrendered a license, certificate, or registration in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the appropriate licensing board shall determine if the cause for the action was corrected and the matter resolved. If the licensing board determines that the matter has not been resolved by the jurisdiction imposing discipline, the licensing board shall not issue or deny a license, certificate, or registration to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the appropriate licensing board shall not issue or deny a license, certificate, or registration to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees. The fees for applying for licensure under this rule shall be the same as the fees for reciprocal licensure, including as required by rules 193F—10.1(543D), 193F—12.1(543D), and 193F—12.3(543D).

i. The person does not have a criminal history that would prevent the person from holding the license, certificate, or registration applied for in this state.

26.4(2) An individual applying for licensure under this rule must provide, as applicable, proof of current residency in the state of Iowa or proof of the military member's official permanent change of station to the state of Iowa.

a. Proof of residency may include, by way of example:

- (1) Residential mortgage, lease, or rental agreement;
- (2) Utility bill;
- (3) Bank statement;
- (4) Pay check or pay stub;
- (5) Property tax statement;
- (6) A federal or state government document; or
- (7) Any other document that reliably confirms Iowa residency.

b. Proof of permanent change of station to the state of Iowa includes documentation issued by the appropriate branch of the military requiring a permanent change of station or otherwise indicating or demonstrating a permanent change of station has occurred.

26.4(3) In order to be considered a sufficient application, an application for licensure under this rule must contain or disclose all of the information referred to or required by subrule 26.4(1) and be accompanied by all applicable fees, proof or documentation required by subrule 26.4(2) or otherwise required in the forms provided by the board, and, if applicable, the submission of fingerprints and an appropriate authorization of release as may be necessary to facilitate the board's completion of a criminal history check and any corresponding fee.

26.4(4) The board shall make the determination of whether to issue a certificate or registration under this rule based on information supplied by the applicant in the application and on such additional information as the board may acquire, including information or verification from other jurisdictions.

26.4(5) A person issued a certification or registration under this rule shall be subject to the laws regulating the person's practice in this state, including Iowa Code chapter 543D, the administrative rules of the board, and the Uniform Standards of Professional Appraisal Practice, and is subject to the jurisdiction of the board.

26.4(6) An applicant who is aggrieved by the board's decision to deny an application for a license under this rule may request a nondisciplinary license denial contested case hearing as provided in rule 193F—20.39(546,543D,272C) and may participate in the hearing by telephone. A request for a nondisciplinary license denial contested case hearing shall be made within 30 days of issuance of the board's decision.

[ARC 5484C, IAB 2/24/21, effective 3/31/21]

These rules are intended to implement Iowa Code chapters 543D and 272C and 2019 Iowa Acts, House File 288.

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CHAPTER 27
IMPAIRED LICENSEE REVIEW COMMITTEE
AND IMPAIRED LICENSEE RECOVERY PROGRAM

193F—27.1(272C) Impaired licensee review committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board may establish an impaired licensee review committee.

27.1(1) Definitions. The following definitions are applicable wherever such terminology is used in the rules regarding the impaired licensee review committee.

“Committee” means the impaired licensee review committee.

“Contract” means the written document establishing the terms for participation in the impaired licensee recovery program prepared by the committee.

“Impairment” means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any neuropsychological or physical disorder or disability.

“Licensee” means a registered associate or certified real property appraiser.

“Self-report” means the licensee’s providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board’s receiving a complaint or report alleging the same from a second party.

27.1(2) Purpose. The impaired licensee review committee evaluates, assists, monitors, and, as necessary, makes reports to the board on the recovery or rehabilitation of licensees who self-report impairments or who are referred to the committee by the board.

27.1(3) Composition of the committee. The chairperson of the board shall appoint the members of the committee for that board. The membership of the committee includes, but is not limited to:

- a. One licensee member who is a certified real property appraiser with the board;
- b. One public member of the board;
- c. One or more licensed professionals with expertise in substance abuse/addiction treatment programs or other similar impairment-related treatment programs.

The board may, alternatively, contract with an established impaired licensee review committee of another board, inside or outside the department of commerce, if deemed in the best interest of the licensee or the public.

27.1(4) Eligibility. To be eligible for participation in the impaired licensee recovery program, a licensee must meet all of the following criteria:

- a. The licensee must self-report an impairment or suspected impairment directly to the office of the board or be referred to the committee by the board;
- b. The licensee must not have engaged in the unlawful diversion or distribution of controlled substances or illegal substances;
- c. At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession, although the existence of such an order shall not prevent the board from making a referral when deemed in the best interest of the licensee and the public;
- d. The licensee must not have caused harm or injury to a client;
- e. The licensee must not have been subject to a civil or criminal sanction, or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or foreign nation for actions that the committee determines to be serious infractions of the laws, administrative rules, or professional ethics related to the practice of the profession;
- f. The licensee must have provided truthful information and fully cooperated with the board or committee.

27.1(5) Meetings. The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring.

27.1(6) Terms of participation. A licensee shall agree to comply with the terms for participation in the impaired licensee recovery program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

27.1(7) *Noncompliance.* Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for the purpose of disciplinary action.

27.1(8) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as the committee receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

27.1(9) *Limitations.* The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of or fail to successfully complete the impaired licensee recovery program. Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action. A violation of a contract is a ground for licensee discipline.

27.1(10) *Confidentiality.* The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6. Accordingly, information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public. Participation in the impaired licensee recovery program under the auspices of the committee is not a matter of public record.
[ARC 4708C, IAB 10/9/19, effective 11/13/19]

This rule is intended to implement Iowa Code chapter 272C.

[Filed ARC 4708C (Notice ARC 4566C, IAB 7/31/19), IAB 10/9/19, effective 11/13/19]

CHAPTER 28
SOCIAL SECURITY NUMBERS AND PROOF OF LEGAL PRESENCE

193F—28.1(543D) Purpose. This chapter outlines a uniform process for applicants and licensees to establish proof of legal presence pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621). This chapter also addresses the requirement that a license applicant provide a social security number under 42 U.S.C. 666(a)(13) and Iowa Code sections 252J.8(1) and 272D.8(1) for purposes including the collection of child support obligations and debts owed to the state of Iowa.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—28.2(543D) Applicability.

28.2(1) Applicants and licensees who are U.S. citizens or permanent resident aliens may be requested to produce evidence of their lawful presence in the United States as a condition of initial licensure or license renewal. If requested, submission of evidence will be required once.

28.2(2) Applicants and licensees residing in the United States other than those described in subrule 28.2(1) above may be requested to provide evidence of lawful presence in the United States at the time of initial licensure and with every subsequent renewal.

28.2(3) Evidence shall not be required by foreign national applicants or licensees who are not physically present in the United States.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—28.3(543D) Acceptable evidence. The board shall accept as proof of lawful presence in the United States documents generally considered acceptable documentation for purposes of establishing a U.S. place of birth, indicating U.S. citizenship, or establishing alien status. The board will not routinely retain the evidence sent and will not return the evidence once submitted. Documents may be retained in computer “imaged” format. Legible copies will be accepted. Original documents will not be required unless a question arises concerning the documentation submitted.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—28.4(252J,261,272D,543D) Social security number disclosure.

28.4(1) An individual applying for a license from the board shall disclose the individual’s social security number on the application form unless:

a. The applicant demonstrates to the satisfaction of the board that the applicant does not possess and is not eligible for a social security number, or

b. The applicant demonstrates or attests that the applicant is in the process of applying for a social security number and will provide such number within 60 days of the date on which the applicant submits the application to the board. The license of an applicant who is licensed pursuant to this subrule may be revoked for failure to provide a valid social security number within 60 days of the date on which the application was filed.

28.4(2) An applicant who does not possess a social security number and is not eligible for a social security number will be required to demonstrate lawful presence in the United States, if applicable, and provide government-issued photo identification as needed to verify identity. If circumstances change and the applicant or licensee later attains a social security number, the applicant or licensee shall disclose the social security number to the board within 30 days of the date on which the social security number is issued.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

These rules are intended to implement Iowa Code chapter 543D.

[Filed ARC 4708C (Notice ARC 4566C, IAB 7/31/19), IAB 10/9/19, effective 11/13/19]

CHAPTER 29
VENDOR APPEALS

193F—29.1(543D) Purpose. This chapter outlines a uniform process for vendor appeals. 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.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—29.2(543D) 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 email. 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, email 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.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—29.3(543D) Procedures for vendor appeals. The board's chapter governing contested cases shall be applicable, except as otherwise provided in these rules.

29.3(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 email 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.

29.3(2) All hearings shall be open to the public.

29.3(3) Discovery requests, if any, must be served by the parties within ten days of the filing of the notice of appeal. Discovery responses or objections are due at least seven business days prior to hearing.

29.3(4) At least three business days prior to the hearing, the parties shall exchange witness and exhibit lists. The parties shall be limited at hearing to the witnesses and exhibits timely disclosed unless the board finds good cause to allow additional witnesses or exhibits at hearing.

29.3(5) The hearing, at the option of the board or administrative law judge, may be conducted in person, by telephone, or on the Iowa communications network. When the hearing is not conducted in person, all exhibits must be delivered to the board or administrative law judge no less than two business days prior to the hearing.

29.3(6) Oral proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs. Copies of tapes of oral proceedings or transcripts of certified shorthand reporters shall be paid for by the requester.

29.3(7) Any party appealing the issuance of a notice of award may petition for stay of the award pending the appeal's review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay. The filing of the petition for stay does not automatically stay the award. The board may grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public or licensees will not be significantly harmed by the stay. A stay may be vacated at any time upon application by any party or the board on its own motion with prior notice to all parties.

29.3(8) The record of the contested case shall include all materials specified in Iowa Code section 17A.12(6) and any other relevant procedural documents regardless of their form.

29.3(9) The board or administrative law judge may request the parties to submit proposed findings and conclusions or briefs.

29.3(10) Any request for continuance must be in writing, specifying the grounds, and filed no later than seven business days prior to hearing.

29.3(11) Requests for rehearing shall be made to the board within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, when new evidence is available, when an obvious mistake is corrected, or when the decision is not necessary to exhaust administrative remedies.

29.3(12) The board's final decision may be reviewed by or appealed to the superintendent within 20 days of the board's decision in accordance with 193F—subrule 17.2(3). Appealing the board's final decision to the superintendent is a prerequisite to seeking judicial review, and failure to do so shall constitute a failure to exhaust administrative remedies and preclude judicial review. Following such intra-agency appeal, judicial review may be sought in accordance with the contested case provisions of Iowa Code section 17A.19.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—29.4(543D) Procedures for board referral to an administrative law judge. The board, in its discretion, may refer a vendor appeal to the department of inspections and appeals for hearing before a qualified administrative law judge. The hearing procedures set forth in rule 193F—29.3(543D) and the board's rules governing contested cases shall be substantially the same, but the ruling of an administrative law judge acting as the sole presiding officer shall constitute a proposed decision. Board review of a proposed decision shall be according to Iowa Code section 17A.15(2) and this chapter and shall be subsequently appealable to the superintendent for purposes of interagency appeal and exhaustion. Nothing in this rule shall prevent the board from hearing a vendor appeal with the assistance of an administrative law judge. This rule merely authorizes an alternative procedure.

29.4(1) The proposed decision shall become the final decision of the board 14 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision or the board seeks review on its own motion.

29.4(2) Notice of an appeal for review of a proposed decision or notice of the board's own review shall be mailed to all parties by the board's executive officer. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The board's executive officer shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or on the Iowa communications network. The executive officer shall schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

29.4(3) Failure to appeal a proposed decision will constitute a failure to exhaust administrative remedies and preclude judicial review.

29.4(4) Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

29.4(5) Each party shall have the opportunity to file exceptions and present briefs. The executive officer may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive officer shall notify all parties of the date, time and location at least ten days in advance.

29.4(6) The board shall not receive any additional evidence unless the board grants an application to present additional evidence. Any such application must be filed by a party no fewer than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that the evidence is material to the outcome and that there were good reasons for failure to present the evidence at hearing. If an application to present additional evidence is granted, the board shall order the conditions under which the evidence shall be presented.

29.4(7) The board's final decision shall be in writing and may incorporate all or part of the proposed decision.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

193F—29.5(543D) Procedures for review by superintendent in first instance. The board or superintendent may elect to have the superintendent serve as the final decision maker in the first instance or review a proposed decision of an administrative law judge as the final decision maker. In either

case, the procedures set forth in this chapter shall be substantially the same, but further review by the superintendent shall not be required to exhaust administrative remedies or as a prerequisite to judicial review.

[ARC 4708C, IAB 10/9/19, effective 11/13/19]

These rules are intended to implement Iowa Code section 543D.23.

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