

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Rule making related to update of rules

The Real Estate Appraiser Examining Board hereby amends Chapter 1, “Organization and Administration,” Chapter 3, “General Provisions for Examinations,” Chapter 4, “Associate Real Property Appraiser,” Chapter 5, “Certified Residential Real Property Appraiser,” Chapter 6, “Certified General Real Property Appraiser,” Chapter 7, “Disciplinary Actions Against Certified and Associate Appraisers,” and to adopt new Chapter 13, “Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions,” and to amend Chapter 18, “Waivers and Variances from Rules,” Chapter 20, “Contested Cases,” Chapter 22, “Petition for Rule Making,” Chapter 25, “Public Records and Fair Information Practices,” and Chapter 26, “Military Service, Veteran Reciprocity, and Spouses of Active Duty Military Service Members,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code chapter 543D.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 543D.

Purpose and Summary

These amendments implement changes recommended and required by 2020 Iowa Acts, House File 2389 and House File 2627.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 4, 2020, as **ARC 5261C**. A public hearing was held on November 24, 2020, at 10 a.m. in the Small Conference Room, Third Floor, 200 East Grand Avenue, Des Moines, Iowa. No one attended the public hearing. Two written comments were received.

The first written comment was from the Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council. The ASC stated there were concerns with the Board maintaining compliance with Policy Statement 5: Reciprocity due to the inclusion of the one-year requirement in rule 193F—26.4(272C). The ASC stated that the Board should consider removing the requirement for one year as it relates to licensure, registration, or certification in another jurisdiction in paragraph 26.4(1)“b” due to the fact that the federal Dodd-Frank Act is very specific on reciprocity requirements and that having the one-year requirement would put Iowa out of compliance and could cause the state’s appraiser program to be derecognized. The ASC also had a concern with subrule 5.4(2), commenting that once an associate appraiser is registered with Iowa, all experience must be supervised per The Appraisal Foundation’s Appraiser Qualifications Board (AQB) criteria and that the Board should consider adding the words “before receiving an associate credential in Iowa” to numbered paragraphs 5.4(2)“b”(2)“1” and 6.4(2)“b”(2)“1.”

The second written comment was from the Iowa Division of Banking’s Finance Bureau Chief, who requested that rule 193F—5.4(543D) be broadened to include certified general appraisers.

The following changes were made since publication of the Notice. The Board further amended the introductory paragraph of rule 193F—5.4(543D) to add the words “or general” before “real property appraiser” and further amended numbered paragraphs 5.4(2)“b”(2)“1” and 6.4(2)“b”(2)“1” to add the phrase “before receiving an associate credential in Iowa” after the words “The experience was attained.” The Board also removed the words “for at least one year” from new paragraph 26.4(1)“b.” In addition,

the references to 2020 Iowa Acts, House File 2627, were removed from citations in subrule 3.4(1) and rule 193F—18.13(17A,543D) since the provisions in the legislation are now codified in the 2021 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Board on January 27, 2021.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any.

Review by Administrative Rules Review Committee

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

Effective Date

This rule making will become effective on March 31, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 1.2(3) as follows:

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 ~~or variances~~ from rules, rule making, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

ITEM 2. Amend rule 193F—1.22(272C,543D) as follows:

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

~~1.22(1)~~ Before 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 ~~or other background matters~~ that may impair registration or certification may request that the board evaluate the prospective applicant's criminal history ~~or other background matters~~ by submitting a written request to the board. Upon receiving such a request, the board may request additional supporting materials.

~~1.22(2)~~ Requests will be processed under the same standards as applications for registration or certification in order to inform the prospective applicant whether any of the disclosed information is or may be a bar to future registration or certification. In responding to a request, the board shall address

~~only the offenses or matters listed in the request. The board's response will be based upon the laws, rules, and guidelines in effect at the time of the board's response, including the guidelines and policies promulgated by the AQB or ASC.~~

~~1.22(3) If the information supplied 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 response shall not be binding on a future board.~~

ITEM 3. Amend rule 193F—3.4(543D) as follows:

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 taken against an associate appraiser registration.

3.4(2) and 3.4(3) No change.

ITEM 4. Amend subrule 4.1(5) as follows:

4.1(5) 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.

ITEM 5. Amend rule 193F—5.4(543D) as follows:

193F—5.4(543D) Supervised experience required for initial certification. All 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) No change.

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.

~~a. b.~~ Applicants for initial certification in Iowa who request that the board approve Requests for experience performed in the absence of registration as an associate real property appraiser ~~may file an application for approval on a form provided~~ shall be made on forms prescribed by the board. ~~The burden shall be on the applicant to establish by clear and convincing evidence all of the following:~~

~~(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 Appraiser Qualifications Board AQB and Appraisal Subcommittee ASC.

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

~~(3)~~ 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)~~ 4. Approval of the application would foster the board's goal of fair and consistent treatment of applicants.

~~(5)~~ 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.

~~b. (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)~~ 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)~~ 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.

ITEM 6. Amend rule 193F—6.4(543D) as follows:

193F—6.4(543D) Supervised experience required for initial certification. All 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) No change.

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.

~~a. b.~~ Applicants for certified general real property certification in Iowa who request that the board approve Requests for experience performed in the absence of registration as an associate real property appraiser ~~may file an application for approval on a form provided~~ shall be made on forms prescribed by

the board. ~~The burden shall be on the applicant to establish by clear and convincing evidence all of the following:~~

(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 Appraiser Qualifications Board AQB and Appraisal Subcommittee ASC.

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

~~(3) 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) 4.~~ Approval of the application would foster the board’s goal of fair and consistent treatment of applicants.

~~(5) 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.

~~b. (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) 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) 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.

ITEM 7. Amend subrule 7.3(11) as follows:

7.3(11) Conviction of a crime.

a. Conviction, in this state or any other jurisdiction, of any felony ~~related~~ 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 ~~substantially~~ directly related to the practice of real property appraising. A certified copy of the ~~record~~ 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.

ITEM 8. Adopt the following **new** 193F—Chapter 13:

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.

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.

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.

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.

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.

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.

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

ITEM 9. Amend **193F—Chapter 18**, title, as follows:

WAIVERS AND VARIANCES FROM RULES

ITEM 10. Amend rule 193F—18.1(17A,543D) as follows:

193F—18.1(17A,543D) Definitions. For purposes of this chapter, “a waiver ~~or variance~~” 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. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

ITEM 11. Amend rule 193F—18.4(17A,543D), introductory paragraph, as follows:

193F—18.4(17A,543D) Criteria for waiver ~~or variance~~. 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:

ITEM 12. Amend subrule 18.11(2) as follows:

18.11(2) The board chair, or vice chair if the chair is unavailable, may rule on a petition for waiver ~~or variance~~ if (a) the petition was not filed in a contested case, (b) the ruling would not be timely if made at the next regularly scheduled board meeting, and (c) the ruling can be based on board precedent or a reasonable extension of prior board action on similar requests.

ITEM 13. Amend subrule 18.11(5) as follows:

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

ITEM 14. Amend rule 193F—18.13(17A,543D) as follows:

193F—18.13(17A,543D) Summary reports. ~~Semiannually, the board shall prepare a summary report identifying~~ 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 ~~report~~ board shall ~~detail~~ 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. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

ITEM 15. Amend subrule 20.21(1) as follows:

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 ~~variances~~ waivers, in whole or in part, from this rule.

ITEM 16. Amend subrule 22.4(2) as follows:

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.

ITEM 17. Adopt the following new rule 193F—22.5(17A):

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.

ITEM 18. Amend rule 193F—25.3(17A,22) as follows:

193F—25.3(17A,22) Requests for access to records.

25.3(1) No change.

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) and **25.3(5)** No change.

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) No change.

ITEM 19. Amend subrule 25.14(7) as follows:

25.14(7) Waivers ~~and variances~~. Requests for waivers ~~and variances~~, board proceedings and rulings on such requests, and reports prepared for the administrative rules committee and others.

ITEM 20. Amend **193F—Chapter 26**, title, as follows:
~~MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY MILITARY SERVICE MEMBERS~~ LICENSURE OF PERSONS LICENSED IN OTHER JURISDICTIONS

ITEM 21. Adopt the following new definition of "Issuing jurisdiction" in rule **193F—26.1(272C)**:
"Issuing jurisdiction" means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

ITEM 22. Rescind the definition of "Spouse" in rule **193F—26.1(272C)**.

ITEM 23. Amend rule 193F—26.3(272C) as follows:

193F—26.3(272C) Veteran ~~and spouse of active duty military service member~~ reciprocity.

26.3(1) A veteran ~~or spouse~~ with an unrestricted professional license in another jurisdiction may apply for licensure in Iowa through reciprocity. A veteran ~~or spouse~~ 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 ~~or spouse~~ 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) ~~or spouse of an active duty member of the military forces of the United States.~~

26.3(3) to 26.3(5) No change.

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 (administrative hearing) proceeding as provided in rule 193F—20.39(546,543D,272C) and may participate in ~~a contested case~~ 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 provisions of 193F—Chapter 20 shall~~ 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.

ITEM 24. Adopt the following new rule 193F—26.4(272C):

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.

[Filed 1/29/21, effective 3/31/21]

[Published 2/24/21]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/24/21.