

**IOWA REAL ESTATE APPRAISER EXAMINING BOARD [193F]****Notice of Intended Action**

Pursuant to the authority of Iowa Code Section 543D.5, “the board shall adopt rules establishing uniform appraisal standards and appraiser certification requirements and other rules necessary to administer and enforce this chapter and its responsibilities under chapter 272C. The board shall consider and may incorporate any standards recommended by the Appraisal Foundation, or by a professional appraisal organization, or by a public authority or organization responsible to review appraisals or for the oversight of appraisers.” The Iowa Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 1 “Organization and Administration” and to amend Chapter 2 “Definitions” and to adopt new Chapter 17, “Superintendent Supervision Standards and Procedures,” Iowa Administrative Code. Consistent with Iowa Acts 2016 (86 G.A) H.F. 2436, §§ 22–32, the proposed amendments to Chapters 1 and 2 and the adoption of new Chapter 17 move the Board under the Banking Division of the Iowa Department of Commerce, subject to the Board to the supervision and authority of the Superintendent of the Banking Division of the Iowa Department of Commerce’s (“Superintendent”), and articulate the standards and procedures by which such supervision shall occur.

The proposed amendments to Chapter 1 place the Board under the supervision of the Superintendent, consistent with Iowa Code section 543D.23. The proposed amendment to Chapter 2 adds two definitions. The proposed adoption of Chapter 17 sets forth the standards and procedures by which the Superintendent shall supervisor the Board.

Consideration will be given to all written suggestions or comments received no later than 4:30 p.m. on October 4, 2016. Comments should be addressed to Brandy March, Iowa Appraiser

Examining Board, 200 E. Grand, 3<sup>rd</sup> Floor, Suite 350, Des Moines, Iowa, 50309. E-mail may be sent to: [brandy.march@iowa.gov](mailto:brandy.march@iowa.gov).

A public hearing will be held on October 4, 2016, at 8:30 a.m. in the Third Floor Professional Licensing Small Conference Room, 200 E. Grand, 3<sup>rd</sup> Floor, Des Moines, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any person who wishes to speak will be asked to give the person's name and address for the record and to confine remarks to the subject of the proposed amendments.

These amendments do not have any fiscal impact to the state of Iowa.

These amendments are subject to waiver or variance pursuant to 193F-Chapter 11.

After analysis and review, no direct impact on jobs exist as these rules implement procedural changes only.

These amendments are intended to implement Iowa Code chapters 17A, 272C, 543D, and 546.

The following amendments are proposed.

ITEM 1. Adopt **new** sub-rule 193F-1.1(3) as follows:

1.1(3) *New subrule.* All board action under Iowa Code chapter 543D and implementing rules shall be taken under the supervision of the superintendent, as provided in section 543D.23.

ITEM 2. Rescind subrule 193F-1.2(1) and adopt the following **new** subrule in lieu thereof:

1.2(1) *New subrule.* The superintendent is vested with authority to review, approve, modify, or reject all board action under Iowa Code chapter 543D and implementing rules. 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 actions recommended or proposed by the board which may be anticompetitive.

ITEM 3. Rescind subrule 193F-1.2(2) and adopt the following **new** subrule in lieu thereof:

1.2(2) *New subrule.* In performing its duties and in exercising its authority under Iowa Code chapter 543D and implementing rules, the board may take action without preclearance by the superintendent if the action is ministerial or non-discretionary. As used in this chapter, “ministerial or non-discretionary” 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.

ITEM 4. Adopt **new** subrule 193F-1.2(3) as follows:

1.2(3) *New subrule.* Prior to taking discretionary action under Iowa Code chapter 543D and implementing rules, 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 rulemaking, declaratory orders, or waivers or variances from rules, rulemaking, disciplinary proceedings against licensees, administrative proceedings against unlicensed persons, or any action commenced in the district court.

ITEM 5. Adopt **new** subrule 193F-1.2(4) as follows:

1.2(4) *New subrule.* 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 proposed discretionary action is or may be anticompetitive, the board may submit proposed action to the preclearance procedures outlined in 193F--- chapter 17.

ITEM 6. Adopt **new** subrule 193F-1.2(5) as follows:

1.2(5) *New subrule.* A person aggrieved by any final action of the board taken under Iowa Code chapter 543D or implementing rules may appeal such 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 non-discretionary, or discretionary, and whether the proposed action was or was not submitted to 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. Final board action which is ministerial or non-discretionary is immediately effective when issued by the board, but is subject to appeal to the superintendent.

d. Final board action which is discretionary shall be effective upon the expiration of 20 days following issuance of the board's action if not timely reviewed by or appealed to the superintendent, or upon final action by the superintendent if timely reviewed or appealed.

ITEM 7. Amend sub-rule 193F-2.1 as follows:

**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 established on November 30, 1987, ~~as a not-for-profit corporation under the laws of Illinois to develop qualifications and criteria for the appraisal profession.~~

*New definition. “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.

*New definition.* “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.

ITEM 8. Adopt the following **new** chapter 193F-17 and subrules as follows:

## **CHAPTER 17**

### **SUPERINTENDENT SUPERVISION STANDARDS AND PROCEDURES**

#### **Chapter 17: SUPERINTENDENT SUPERVISION STANDARDS AND PROCEDURES**

**193F—17.1(543D) *New Chapter 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) *New subrule. Ministerial and non-discretionary board actions.*** Board actions which are ministerial or non-discretionary, as provided in subrule 1.2(2), shall be monitored to

assure 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)** *New subrule. Discretionary board actions.* The superintendent shall independently assess discretionary board actions, as provided in subrule 1.2(3), to determine whether the 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)** *New subrule. 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)** *New subrule. 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.

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

**17.2(1)** *New subrule. Ministerial or non-discretionary board actions.* The superintendent's monitoring of ministerial or non-discretionary board actions shall be flexible and designed to spot check compliance. The board shall provide any information the superintendent requests to adequately monitor such actions. Final board action which is ministerial or non-discretionary 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 include:

- a. The person initiating the appeal;
- b. The board action which is being appealed;
- c. The specific facts or law alleged to be in error in the board action; and,
- d. The relief sought and the grounds for such relief.

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 rule 17.1(4).

**17.2(2)** *New subrule. Preclearance.* When the board seeks preclearance of 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 rule 17.1(4).

**17.2(3)** *New subrule. Review or appeal of final, discretionary board action.* 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, the written notice of appeal shall be filed with the superintendent and served upon the board within such 20-day period, and shall include:

- a. The person initiating the appeal;
- b. The board action which is being appealed;
- c. The specific facts or law alleged to be in error in the board action; and,
- d. The relief sought and the grounds for such relief.

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 its receipt of the appeal. Persons 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 rule 17.1(4).

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

a. All board decisions in a contested case, whether by consent or following hearing, are proposed decisions and shall be provided to the superintendent when issued.

b. Any adversely affected party may appeal the proposed decision to the superintendent within 20 days after issuance of the proposed decision. The superintendent may initiate review of the proposed decision on the superintendent's own motion at any time within 20 days following issuance of such decision.

c. A 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; and,
- (5) The grounds for relief.

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

e. 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.

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

g. Unless otherwise ordered, within 20 days of the notice of appeal 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.

- h. The record on appeal or review shall be the entire record made at hearing.
- i. The superintendent shall issue a written decision as provided in rule 17.1(4).