

STATUS OF WOMEN DIVISION[435]

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CHAPTER 1
DESCRIPTION

435—1.1(216A) Composition. The commission on the status of women consists of nine voting members appointed by the governor subject to confirmation by the senate; and five members serving as ex officio nonvoting members: one to be appointed by the speaker of the house from the membership of the house, one to be appointed by the minority leader of the house from the membership of the house, one to be appointed by the majority leader of the senate from the membership of the senate, one to be appointed by the minority leader of the senate from the membership of the senate, and one to be the director of the department of human rights. Commissioners are appointed to comply with Iowa Code section 69.16 regarding political affiliation and section 69.16A regarding gender balance.

The chairperson is a commission member elected by the commission. The commission has an executive director who is the administrator of the division on the status of women, department of human rights.

435—1.2(216A) Meetings. The commission meets at least six times each year and, additionally, holds special meetings on the call of the chair. A majority of the membership constitutes a quorum.

435—1.3(216A) Purpose. The commission studies the changing needs and problems of women as wives, mothers, workers, and volunteers and develops and recommends new programs and constructive action to the governor and the general assembly. The commission has no enforcement powers. Each year the commission files a report of its proceedings with the governor and the general assembly.

These rules are intended to implement Iowa Code sections 216A.51 to 216A.60.

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CHAPTER 2
DUTIES

435—2.1(216A) Information. The commission gathers and distributes information through its office in the Lucas State Office Building, Des Moines, Iowa 50319.

435—2.2(216A) Authority. The administrator carries out the program and policies as determined by the commission. The commission holds hearings, adopts rules, enters into contracts, accepts grants, and seeks advice and counsel outside its membership in the performance of its duties which are to:

1. Serve as the central permanent agency for the development of services for women and act as a clearinghouse on present programs and agencies that operate to assist women.
2. Publish and disseminate information relating to women, develop educational programs, and conduct conferences.
3. Provide assistance to organized efforts by communities, organizations, associations, and other groups working toward the improvement of the status of women.
4. Assist governmental agencies in equalizing and expanding opportunities and rights of women and join in efforts of public and private agencies to study and resolve problems relating to the status of women.

These rules are intended to implement Iowa Code section 216A.54.

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CHAPTER 3
IOWA WOMEN'S HALL OF FAME

435—3.1(216A) Purpose. The purpose of the Iowa Women's Hall of Fame shall be to recognize significant achievements of Iowa women and to educate the public by identifying those whose efforts have enhanced and improved the quality of life for women in Iowa, the community, state, nation or world, or a particular profession or discipline.

435—3.2(216A) Committee. The Iowa Women's Hall of Fame committee shall consist of three commissioners, one serving as the committee chair; two public members appointed by the committee chair; and the commission chair ex officio.

435—3.3(216A) Selections procedure. The committee shall solicit nominations for the Iowa Women's Hall of Fame. The committee shall recommend to the commission for its approval no more than four individuals to be inducted into the Iowa Women's Hall of Fame. The committee shall plan the ceremony and reception each year for the Iowa Women's Hall of Fame.

435—3.4(216A) Cristine Wilson Medal for Equality and Justice. The Cristine Wilson Medal for Equality and Justice shall memorialize the efforts and accomplishments of the commission's first chairperson. The medal is awarded on an intermittent basis to persons whose work is deemed outstanding and a significant contribution to Iowa's recognition as a state characterized by equality and justice. The Iowa Women's Hall of Fame committee shall make recommendations to the commission for persons to receive this award.

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CHAPTER 4
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

435—4.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

435—4.2(22) Custodian of records. The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A and 22 and section 216A.6.

[Filed emergency 8/19/88 after Notice 5/18/88—published 9/7/88, effective 8/19/88]

CHAPTER 5
IOWANS IN TRANSITION
Rescinded IAB 9/23/09, effective 10/28/09

CHAPTER 6
Reserved

CHAPTER 7
DECLARATORY ORDERS

435—7.1(17A) Adoption by reference. The commission on the status of women hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate agency)”, insert “division on the status of women”.
2. In lieu of the words “(designate office)”, insert “Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
3. In lieu of the words “(AGENCY NAME)”, insert “DIVISION ON THE STATUS OF WOMEN”.
4. In lieu of the words “_____ days (15 or less)”, insert “10 days”.
5. In lieu of the words “_____ days” in subrule 6.3(1), insert “20 days”.
6. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(specify office and address)”, insert “Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency name)”, insert “division on the status of women”.
9. In lieu of the words “(designate agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 8
PETITIONS FOR RULE MAKING

435—8.1(17A) Adoption by reference. The commission on the status of women hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate office)”, insert “Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

2. In lieu of the words “(AGENCY NAME)”, insert “DIVISION ON THE STATUS OF WOMEN”.

3. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 4/29/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]

CHAPTER 9
AGENCY PROCEDURE FOR RULE MAKING

435—9.1(17A) Adoption by reference. The commission on the status of women hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)”, insert “administrator”.
2. In lieu of the words “(specify time period)”, insert “one year”.
3. In lieu of the words “(identify office and address)”, insert “Administrator, Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
4. In lieu of the words “(designate office and telephone number)”, insert “the administrator at (515)281-4461”.
5. In lieu of the words “(designate office)”, insert “Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(specify the office and address)”, insert “Division on the Status of Women, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 10
WAIVER RULES

435—10.1(17A) Definition. The term “waiver” as used in this chapter means a prescribed waiver or variance from a specific rule or set of rules of this division applicable only to an identified person on the basis of the particular circumstances of that person.

435—10.2(17A) Scope of chapter. This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

435—10.3(17A) Applicability. This chapter applies only to waivers of those division rules that are within the exclusive rule-making authority of the division. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the division does not possess statutory authority to bind a court, to any extent, with its definition.

435—10.4(17A) Compliance with law. The division may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

435—10.5(17A) Criteria for a waiver. The division may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person, if the division finds that the waiver is consistent with rules 10.3(17A) and 10.4(17A) of this chapter, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. The following criteria have been met:
 - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
 - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

In determining whether a waiver would be consistent with the public interest, the division administrator shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

435—10.6(17A) Division discretion. The final decision to grant or deny a waiver shall be vested in the division administrator. This decision shall be made at the discretion of the division upon consideration of relevant facts.

435—10.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver based upon the criteria contained in rule 10.5(17A) of this chapter.

435—10.8(17A) Contents of petition. A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, 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 or set of rules from which a waiver is requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented 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 petitioner and the division relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the past five years.

6. Any information known to the requester relating to the division's treatment of similar cases.

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

9. The name, 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 of the waiver request to furnish the division with information relevant to the waiver.

435—10.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the division 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 division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

435—10.10(17A) Notice. The division shall acknowledge the petition upon receipt. The division 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 division may give notice to other persons. To accomplish this notice provision, the division 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 division attesting to the fact that notice has been provided.

435—10.11(17A) 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 of a rule or set of rules filed within a contested case and shall otherwise apply to division proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute or other binding law.

435—10.12(17A) 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 operative time period of a waiver if one is issued.

435—10.13(17A) Conditions. The division may condition the granting of the waiver on such conditions that the division deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

435—10.14(17A) Time for ruling. The division 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, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

435—10.15(17A) When deemed denied. Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver as required by rule 10.12(17A).

435—10.16(17A) Service of orders. 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 the law.

435—10.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1) “e,” the division shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the division office during regular business hours.

435—10.18(17A) Cancellation of a waiver. A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the division or knowingly misrepresented to the division material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

435—10.19(17A) Violations. A 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.

435—10.20(17A) Defense. After the division issues an order granting a waiver, the order shall constitute a defense, within the 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.

435—10.21(17A) Appeals. Appeals within the division from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and division rules. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

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