

STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]

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CHAPTER 1 ORGANIZATION

- 1.1(216A) Commission on the status of blacks
- 1.2(216A) Division on the status of blacks
- 1.3(216A) Organization

CHAPTER 2 PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

- 2.1(22) Adoption by reference
- 2.2(22) Custodian of records

CHAPTER 3 PETITIONS FOR RULE MAKING

- 3.1(17A) Adoption by reference

CHAPTER 4 AGENCY PROCEDURE FOR RULE MAKING

- 4.1(17A) Adoption by reference

CHAPTER 5 DECLARATORY ORDERS

- 5.1(17A) Adoption by reference

CHAPTER 6 CONTESTED CASES

- 6.1(17A) Adoption by reference

CHAPTER 7 WAIVER RULES

- 7.1(17A) Definition
- 7.2(17A) Scope of chapter
- 7.3(17A) Applicability
- 7.4(17A) Compliance with law
- 7.5(17A) Criteria for a waiver
- 7.6(17A) Division discretion
- 7.7(17A) Burden of persuasion
- 7.8(17A) Contents of petition
- 7.9(17A) Additional information
- 7.10(17A) Notice
- 7.11(17A) Hearing procedures
- 7.12(17A) Ruling
- 7.13(17A) Conditions
- 7.14(17A) Time for ruling
- 7.15(17A) When deemed denied
- 7.16(17A) Service of orders
- 7.17(17A) Record keeping
- 7.18(17A) Cancellation of a waiver

7.19(17A)	Violations
7.20(17A)	Defense
7.21(17A)	Appeals

CHAPTER 1
ORGANIZATION

434—1.1(216A) Commission on the status of blacks.

1.1(1) *Commission established.* The commission on the status of blacks is established, pursuant to Iowa Code section 216A.142, consisting of nine members. The members of the commission are appointed by the governor, to serve terms of not more than four years per appointment, and confirmed by the senate. In addition, the director of the department of human rights will serve as an ex-officio member of the commission.

1.1(2) *Nominations.* Nominations for commission officers shall be made in March of each year. An official ballot shall be prepared and ballots shall be cast at the May meeting.

1.1(3) *Election.* Officers shall hold office for one year, July 1 through June 30, unless removed by two-thirds vote of the commission. No officer shall hold the same office for more than three consecutive terms.

1.1(4) *Meetings.* The commission on the status of blacks shall meet every other month and may hold special meetings on the call of the chairperson. Six members of the commission shall constitute a quorum. A simple majority of the quorum is necessary to carry or defeat a motion.

a. Nonattendance. In accordance with Iowa Code section 69.15, any person who has been appointed to serve on the commission shall be deemed to have submitted a resignation from the commission if any of the following occurs:

- (1) The person does not attend three or more consecutive regular meetings.
- (2) The person attends less than half of the regular meetings in any period of 12 calendar months, beginning July 1.

b. Persons wishing to appear before the commission shall submit a written request to the division administrator not less than four weeks prior to a scheduled meeting. The written request shall include ten copies of any materials the requester desires the commission to review. Presentations may be made at the discretion of the chairperson and only upon matters appearing on the agenda.

c. Special meetings may be called by the chairperson only upon finding good cause and shall be held in strict accordance with Iowa Code chapter 21.

d. Cameras and recording devices may be used at open meetings, provided they do not obstruct the meeting.

e. The presiding officer of a meeting may exclude any person from the meeting for repeated behavior that disrupts the meeting.

f. Cases not covered by these rules shall be governed by Robert's Rules of Order (newly revised edition).

1.1(5) *Minutes.* Minutes of the commission meetings are prepared and sent to all commission members. Approved minutes are available at the division office for inspection during regular business hours.

1.1(6) *Duties.* In accordance with Iowa Code section 216A.146, the commission shall serve as an information clearinghouse on programs and agencies operating to assist blacks. Clearinghouse duties shall include, but are not limited to:

- a.* Serving as a referral agency to assist blacks in securing access to state agencies and programs.
- b.* Serving as a liaison with federal, state, and local governmental units and private organizations on matters relating to blacks.
- c.* Serving as a communications conduit to state government for black organizations in the state.
- d.* Stimulating of public awareness of the problems of blacks.
- e.* Conducting conferences and training programs for blacks, public and private agencies and organizations, and the general public.
- f.* Coordinating, assisting, and cooperating with public and private agencies in efforts to expand equal rights and opportunities for blacks in the areas of employment, economic development, education, health, housing, recreation, social welfare, social services, and the legal system.
- g.* Serving as the central permanent agency for the advocacy of services for blacks.

h. Providing assistance to and cooperating with individuals and public and private agencies and organizations in joint efforts to study and resolve problems relating to the improvement of the status of blacks.

i. Publishing and disseminating information relating to blacks, including publicizing their accomplishments and contributions to this state.

j. Evaluating existing and proposed programs and legislation for their impact on blacks.

k. Coordinating or conducting training programs for blacks to enable them to assume leadership positions.

l. Conducting surveys of blacks to ascertain their needs.

m. Assisting the department of personnel in the elimination of underutilization of blacks in the state's workforce.

n. Recommending legislation to the governor and the general assembly designed to improve the educational opportunities and the economic and social conditions of blacks in the state.

1.1(7) Additional authority. In accordance with 216A.147, the commission may do any or all of the following:

a. Do all things necessary, proper, and expedient in accomplishing the duties listed in 1.1(6) and this subrule.

b. Hold hearings.

c. Issue subpoenas, in accordance with Iowa Code section 17A.13, so that all departments, divisions, agencies, and offices of the state shall make available, upon request of the commission, information which is pertinent to the subject matter of the study and which is not by law confidential.

d. Enter into contracts, within the limits of funds made available, with individuals, organizations, and institutions for services furthering the objectives of the commission as listed herein below:

The commission shall study the changing needs and problems of blacks in this state and recommend new programs, policies, and constructive action to the governor and the general assembly including, but not limited to, the following areas:

(1) Public and private employment policies and practices.

(2) Iowa labor laws.

(3) Legal treatment relating to political and civil rights.

(4) Black children, youth, and families.

(5) The employment of blacks and the initiation and sustaining of black businesses and black entrepreneurship.

(6) Blacks as members of private and public boards, committees, and organizations.

(7) Education, health, housing, social welfare, human rights, and recreation.

(8) The legal system, including law enforcement, both criminal and civil.

(9) Social service programs.

e. Seek advice and counsel of informed individuals and organizations in the accomplishment of the objectives of the commission.

f. Apply for and accept grants of money or property from the federal government or any other source, and upon its own order use this money, property, or other resources to accomplish the objectives of the commission.

434—1.2(216A) Division on the status of blacks. The division on the status of blacks, within the department of human rights, was created pursuant to Iowa Code section 216A.1 and is required to advocate, coordinate, implement, and provide services to, and on behalf of, black citizens. The commission on the status of blacks is responsible for establishing policies for the division on the status of blacks to be carried out by the administrator of the division as set out in Iowa Code section 216A.145.

434—1.3(216A) Organization.

1.3(1) Location. The division on the status of blacks consists of an office located in the Department of Human rights, first floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3855. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

1.3(2) Composition of staff.

a. Administrator. The governor shall appoint the administrator, subject to confirmation by the senate. The administrator shall serve at the pleasure of the governor. The administrator is responsible for the overall administration of the program. The administrator recruits, interviews, appoints, trains, supervises, evaluates, and terminates staff; plans and oversees the execution of the budget; ensures provision of adequate services in the application of policies, rules, and regulations; determines the number and type of personnel and makes staffing and budgetary recommendations to the commission; develops, establishes, and maintains cooperative working relations with public and private agencies and organizations; identifies legislative issues; interprets program objectives and promotes public interest in and the acceptance of the division on the status of blacks; and maintains an adequate reporting system for necessary records.

b. Consultants. The consultant is responsible for planning programs for the division; developing training activities consistent with program requirements; facilitating and presenting training activities to private and public agencies; identifying and making application to grant programs to assist with program initiatives; organizing and implementing informational programs that serve the public; and conducting research and studies that are necessary to program operations.

These rules are intended to implement Iowa Code sections 216A.141 to 216A.149.

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[Filed emergency 7/22/94—published 8/17/94, effective 7/22/94]

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

434—2.1(22) Adoption by reference. The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

434—2.2(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 section 22.11.

[Filed 1/2/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]

CHAPTER 3
PETITIONS FOR RULE MAKING

434—3.1(17A) Adoption by reference. The division on the status of African-Americans 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 African-Americans, department of human rights”.

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

3. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division on the Status of African-Americans, 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.

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

434—4.1(17A) Adoption by reference. The division on the status of African-Americans 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 “Division on the Status of African-Americans, 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)281-7283”.
5. In lieu of the words “(designate office)”, insert “Division on the Status of African-Americans, 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 African-Americans, 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 5
DECLARATORY ORDERS

434—5.1(17A) Adoption by reference. The division on the status of African-Americans 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 African-Americans”.
2. In lieu of the words “(designate office)”, insert “Division on the Status of African-Americans, 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 AFRICAN-AMERICANS”.
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 African-Americans, 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 African-Americans, 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 African-Americans”.
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.

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CHAPTER 6
CONTESTED CASES

434—6.1(17A) Adoption by reference. The division on the status of African-Americans hereby adopts the contested cases 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 “(agency name)”, insert “division on the status of African-Americans, department of human rights”.
2. In lieu of the words “(designate official)”, insert “administrator”.
3. In subrule 7.3(2) delete the words “or by (specify rule number)”.
4. In lieu of the words “(agency specifies class of contested case)”, insert “division contested cases”.
5. In lieu of the words “(specify office and address)”, insert “Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(designate office)”, insert “division on the status of African-Americans”.
7. In lieu of the words “(agency to designate person to whom violations should be reported)”, insert “administrator”.
8. In lieu of the words “(board, commission, director)”, insert “administrator”.
9. In lieu of the words “(the agency)”, insert “division on the status of African-Americans”.

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

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CHAPTER 7
WAIVER RULES

434—7.1(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.

434—7.2(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.

434—7.3(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.

434—7.4(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.

434—7.5(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 7.3(17A) and 7.4(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.

434—7.6(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.

434—7.7(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 the petitioner a waiver based upon the criteria contained in rule 7.5(17A) of this chapter.

434—7.8(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 last 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 entity or person who 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.

434—7.9(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.

434—7.10(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.

434—7.11(17A) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for 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.

434—7.12(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.

434—7.13(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.

434—7.14(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.

434—7.15(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 7.12(17A).

434—7.16(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 law.

434—7.17(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.

434—7.18(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.

434—7.19(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.

434—7.20(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.

434—7.21(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 Iowa Code section 17A.9A and Executive Order Number 11.

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