

HUMAN RIGHTS DEPARTMENT[421]

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CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The department of human rights hereby adopts, with the following exceptions and amendments, uniform rules on agency procedure relating to public records and fair information practices printed in the first volume of the Iowa Administrative Code.

421—2.1(22) Definitions. As used in this chapter:

“Agency.” In lieu of the words “(official or body issuing these rules)”, insert the “Department of Human Rights and the Divisions for Community Action Agencies, Criminal and Juvenile Justice Planning, Deaf Services, Persons with Disabilities, Latino Affairs, Status of Women, and Status of African-Americans.”

“Custodian.” In lieu of the words “means the agency,” insert “means the director of the department of human rights or the administrator of the division within which the records are maintained”.

“Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

421—2.3(22) Requests for access to records.

2.3(1) Location of record. In lieu of the words “(insert agency head)” insert “director of the department of human rights, or the administrator of the appropriate division within the department”. In lieu of the words “(insert agency name and address)” insert the “Department of Human Rights or the appropriate division within the department, Lucas State Office Building, Des Moines, Iowa 50319.”

2.3(2) Office hours. In lieu of the words “insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4”, insert “8 a.m. to 4:30 p.m. Monday through Friday, except legal holidays”.

2.3(6) Copying. In lieu of the words “A reasonable number of copies”, insert “One copy”.

2.3(7) Fees.

c. Supervisory fee. In lieu of the words “(specify time period)”, insert “one-half hour”.

421—2.6(22) Procedure by which additions, dissents or objections may be entered into certain records. In lieu of the words “(designate office)” insert “department of human rights”.

421—2.9(22) Disclosures without the consent of the subject.

2.9(1) Open records. Open records are routinely disclosed without the consent of the subject.

2.9(2) Confidential records. To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 2.10(22) or in any notice for a particular record system.
- b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided that the record is transferred in a form that does not identify the subject.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.

421—2.10(22) Routine use. To the extent allowed by law, the following uses are considered routine uses of all agency records:

2.10(1) Disclosure to those employees of the agency who have a need for the record in the performance of their duties. The custodian of the record may upon request of any employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

2.10(2) Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

2.10(3) Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

2.10(4) Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

2.10(5) Any disclosure specifically authorized by the statute under which the record was collected or maintained.

421—2.11(22) Consensual disclosure of confidential records.

2.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 2.7(22).

2.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

421—2.12(22) Release to subject.

2.12(1) *One subject.* The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 2.6(22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

2.12(2) *Multiple subjects.* Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

421—2.13(22) Availability of records.

2.13(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

2.13(2) *Confidential records.* The following records may be withheld from public inspection.

a. Information pertaining to clients receiving advocacy or referral services. (Iowa Code section 216A.6);

b. Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72);

c. Records which are exempt from disclosure under Iowa Code section 22.7;

d. Minutes of closed meetings of a government body. (Iowa Code section 21.5(4));

e. Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy under Iowa Code section 17A.3(1) "d";

f. Those portions of agency staff manuals, instructions or other statements excluded from the definition of "rule." (Iowa Code section 17A.2(7) "f");

g. Records which constitute an attorney work product, attorney-client communications, or which are otherwise privileged. (Iowa Code sections 22.7(4), 622.10, and 622.11 and chapter 622B);

h. Records received from other agencies pursuant to Iowa Code section 216A.136 that are confidential under state or federal law;

i. Personal information in personnel files including, but not limited to, evaluations, discipline, social security number, home address, gender, birth date, and medical and psychological evaluations;

j. Any other records made confidential by law.

2.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 2.4(22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 2.4(3).

421—2.14(22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 2.1(22). For each record system, this rule describes the legal authority for the collection or maintenance of that information; the means of storage of that information and indicates when applicable; if a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system; and when the record system is confidential, indicates the statutory authority. The record systems maintained within the agency are:

2.14(1) Personnel records.

a. The agency maintains files containing information about employees, families and dependents, and applicants for commission members or staff positions within the agency. These files include, but are not limited to, payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports and other information concerning employees and related issues. The files are maintained by department and by division.

b. The legal authority for maintaining the records for state-funded programs in Iowa Code sections 19A.11 and 91A.6, and chapter 601K. The legal authority for maintaining the records for federally funded programs is P.L. 97-35, Subtitle B, Section 675(c), P.L. 93-569, Title 5, U.S.C. 552a, P.L. 93-415, P.L. 98-473, Title II, Chapter 14, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and some parts are on a data processing system that matches, collates or permits the comparison of some personally identifiable information within the state's automated data processing system.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

2.14(2) Advocacy records.

a. The agency maintains files containing information pertaining to clients receiving advocacy or referral services to help alleviate or solve a problem. Such information may include, but is not limited to, names and addresses of clients, documents or other material relating to advocacy issues, social or economic conditions or circumstances of particular clients, department or division evaluations of information about clients, medical or psychiatric data provided to the department or division concerning a client, and legal data related to the client. These files are maintained by division and may be indexed by advocacy files, client files, interpreting files or any direct service involving individual client assistance set forth in this rule or by statute.

b. The authority for maintaining these records is Iowa Code chapter 601K and P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. Most of the information is maintained on paper; however, some divisions have some records in computer form which are maintained by the respective division.

d. Information contained within this record system is confidential under the authority of Iowa Code subsection 22.7(18) and 1988 Iowa Acts, House File 2255.

2.14(3) Fiscal records.

a. The agency maintains files containing fiscal information for state-funded programs and federally funded grants or contracts that may contain personally identifiable information. These records are maintained by department and by division.

b. The authority for maintaining these records is Iowa Code chapter 601K, P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. These records are stored on paper and on the state's automated data processing system that matches, collates or permits the comparison of some personally identifiable information.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

2.14(4) General correspondence, mailing lists, and program or grant data.

a. The agency maintains correspondence files, grant notices and applications, conference or committee listings and reports, commission meeting minutes, mailing lists, program and grant information including surveys or specialized reports and activities that contain some personally identifiable information that may include names, addresses or other descriptive data. These records are generally collected and maintained by division.

b. The authority for maintaining these records is Iowa Code chapter 601K, P.L. 97-35, P.L. 93-569, P.L. 93-415, P.L. 98-473, P.L. 98-457 and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and in computer systems within each respective division.

d. These records are generally open to the public unless otherwise authorized to be confidential by law.

2.14(5) Criminal and juvenile justice information obtained from other agencies.

a. The agency maintains files containing criminal and juvenile justice information obtained from other agencies to conduct research and evaluations, to provide data and analytical information to federal, state and local governments, and to assist other agencies in the use of criminal and juvenile justice data. These files may contain personally identifiable information.

b. The agency maintains these records pursuant to the authority of Iowa Code sections 216A.136 and 216A.138 and by interagency agreements.

c. The information is maintained on paper, some of which is also in computer files, or in computer files and not on paper, or on a data processing system. Some of these files and systems are capable of matching, collating or permitting the comparison of some personally identifiable information.

d. Certain criminal and juvenile justice information contained within these records and record systems is confidential under state or federal law or rule.

421—2.15(22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems retrieved by a personal identifier as defined in rule 2.1(22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 2.13(22). All records are stored both on paper and in automated data processing systems, unless otherwise noted.

2.15(1) Administrative records. This includes documents concerning budget, inventory, annual reports, office policies, state forms and reports.

2.15(2) Publications, resource and library materials. This includes books, periodicals, newsletters, government documents and public reports. These materials would generally be open to the public; some may be protected by copyright law.

2.15(3) Office publications. The divisions distribute to the public a variety of materials including brochures and typed information regarding issues pertinent to their programs or constituent groups. Also included are statistical reports, program reports and news releases.

2.15(4) Rule-making records. These include documents generated during the rule-making process, including public comments, and are available for public inspection.

2.15(5) *All other records.* Records are open if not exempted from disclosure by law.

421—2.16(22) Availability to listings of specific record series in the department by division. A detailed listing of records is available to the public in the central administration office in paper or automated data processing form. This listing includes, by division, the record series name, a general description of the record series, record location, maintenance, physical medium, identifier by which the records are accessed, individuals who have routine access, whether the record is entirely public, entirely confidential, or partially public and partially confidential, whether the record has or does not have personally identifiable information, what forms are associated with the record series and whether or not there is computer matching of personally identifiable information.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code chapters 22 and 216A.

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CHAPTER 3
PETITIONS FOR RULE MAKING

421—3.1(17A) Adoption by reference. The department of human rights 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 “department of human rights”.
2. In lieu of the words “(AGENCY NAME)”, insert “DEPARTMENT OF HUMAN RIGHTS”.
3. In lieu of the words “(designate official by full title and address)”, insert “Director, 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

421—4.1(17A) Adoption by reference. The department of human rights 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 “director”.
2. In lieu of the words “(specify time period)”, insert “one year”.
3. In lieu of the words “(identify office and address)”, insert “Director, 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 director at (515)281-7300 voice/tty”.
5. In lieu of the words “(designate office)”, insert “Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(specify the office and address)”, insert “Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(agency head)”, insert “director”.

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

421—5.1(17A) Adoption by reference. The department of human rights 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 “department of human rights”.
2. In lieu of the words “(designate office)”, insert “Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
3. In lieu of the words “(AGENCY NAME)”, insert “DEPARTMENT OF HUMAN RIGHTS”.
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 “Director, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(specify office and address)”, insert “Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency name)”, insert “department of human rights”.
9. In lieu of the words “(designate agency head)”, insert “director”.

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

421—6.1(17A) Adoption by reference. The department of human rights 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 “department of human rights”.
2. In lieu of the words “(designate official)”, insert “director”.
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 “Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(designate office)”, insert “department of human rights”.
7. In lieu of the words “(agency to designate person to whom violations should be reported)”, insert “director”.
8. In lieu of the words “(board, commission, director)”, insert “director”.
9. In lieu of the words “(the agency)”, insert “department of human rights”.

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

421—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 department applicable only to an identified person on the basis of the particular circumstances of that person.

421—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 department 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.

421—7.3(17A) Applicability. This chapter applies only to waivers of those departmental rules that are within the exclusive rule-making authority of the department. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the department does not possess statutory authority to bind a court, to any extent, with its definition.

421—7.4(17A) Compliance with law. The department 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.

421—7.5(17A) Criteria for a waiver. The department may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person, if the department 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 department 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.

421—7.6(17A) Department discretion. The final decision to grant or deny a waiver shall be vested in the department director. This decision shall be made at the discretion of the department upon consideration of relevant facts.

421—7.7(17A) Burden of persuasion. The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver based upon the criteria contained in rule 7.5(17A) of this chapter.

421—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 department 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 department'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 department with information relevant to the waiver.

421—7.9(17A) Additional information. Prior to issuing an order granting or denying a waiver, the department 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 department 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 department to discuss the petition and surrounding circumstances.

421—7.10(17A) Notice. The department shall acknowledge the petition upon receipt. The department 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 department may give notice to other persons. To accomplish this notice provision, the department 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 department attesting to the fact that notice has been provided.

421—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 department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute or other binding law.

421—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.

421—7.13(17A) Conditions. The department may condition the granting of the waiver on such conditions that the department deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

421—7.14(17A) Time for ruling. The department 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 department may grant or deny the petition at the time the final decision in that contested case is issued.

421—7.15(17A) When deemed denied. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver as required by rule 7.12(17A).

421—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.

421—7.17(17A) Record keeping. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the department 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 department office during regular business hours.

421—7.18(17A) Cancellation of a waiver. A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the department or knowingly misrepresented to the department 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.

421—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.

421—7.20(17A) Defense. After the department 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.

421—7.21(17A) Appeals. Appeals within the department from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and department 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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