

189—23.5(17A,ExecOrd11) Superintendent's responsibilities regarding petition for waiver or variance.

23.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the superintendent 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 superintendent may, on the superintendent's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent's designee.

23.5(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board or superintendent so provides by rule or order; or (c) when a statute so requires.

23.5(3) Ruling. An order granting or denying a waiver or variance 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 period of the waiver if one is issued.

23.5(4) Conditions. The superintendent may place any condition on a waiver or variance that the board or superintendent finds desirable to protect the public health, safety, and welfare.

23.5(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

23.5(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the superintendent a waiver may be renewed if the superintendent finds that grounds for a waiver continue to exist.

23.5(7) Time for ruling. The superintendent shall grant or deny a petition for a waiver or variance 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, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

23.5(8) When deemed denied. Failure of the superintendent to grant or deny a petition within the required time period shall be deemed a denial of that petition by the superintendent.

23.5(9) Service of order. 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.