

**567—21.2(455B) Variances.**

**21.2(1) Application for variances.** A person may make application for a variance from applicable rules or standards specified in this title.

*a. Contents.* Each application for a variance shall be submitted to the director stating the following:

(1) The name, address and telephone number of the person submitting the application or, if such person is a legal entity, the name and address of the individual authorized to accept service of process on its behalf and the name of the person in charge of the premises where the pertinent activities are conducted.

(2) The type of business or activity involved.

(3) The nature of the operation or process involved; including information on the air contaminants emitted, the chemical and physical properties of such emissions and the estimated amount and rate of discharge of such emissions.

(4) The exact location of the operation or process involved.

(5) The reason or reasons for considering that compliance with the provisions specified in these rules will produce serious hardship without equal or greater benefits to the public, and the reasons why no other reasonable method can be used for such operations without resulting in a hazard to health or property.

(6) Each application shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth and accuracy. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information provided are true and accurate.

*b. Variance extension.* The request for extension of a variance shall be accompanied by an emission reduction program as specified in rule 567—21.3(455B).

**21.2(2) Processing of applications.** Each application for a variance and its supporting material shall be reviewed and an investigation of the facilities shall be made by the department, for evaluation of whether or not the emissions involved will produce the following effects.

*a. Endanger human health.* Endanger or tend to endanger the health of persons residing in or otherwise occupying the area affected by said emissions.

*b. Create safety hazards.* Create or tend to create safety hazards, such as (but not limited to) interference with traffic due to reduced visibility.

*c. Damage to livestock or plant life.* Damage or tend to damage any livestock harbored on, or any plant life on, property that is affected by said emissions and under other ownership.

*d. Damage property.* Damage or tend to damage any property on land that is affected by said emissions and under other ownership.

**21.2(3) Trial burns for alternative fuels.** An alternative fuel shall be defined as a fuel for which the emissions from combusting the fuel are not known and shall exclude natural gas, coal, liquid propane, and all petroleum distillates.

*a. Variance from construction permit.* The director may grant a variance for the purpose of testing an alternative fuel and quantifying the emissions from the alternative fuel, except as prohibited under paragraph 21.2(4)“c.”

*b. Baseline testing.* In addition to submitting the information required in subrule 21.2(1), the applicant may be required to submit baseline emission data for all applicable pollutants as a condition of approval.

*c. Source testing.* Emissions testing deemed necessary for any pollutant may be required as a condition of the variance and shall be conducted in accordance with 567—paragraph 25.1(7)“a.”

**21.2(4) Decision.**

*a. Granting of variance.* The director shall grant a variance when the director concludes that the action is appropriate. The variance may be granted subject to conditions specified by the director. The director shall specify the time intervals as are considered appropriate for submission of reports on the progress attained in the emission reduction program.

*b. Denial of variance.* The director shall deny a variance when the director concludes that the action is appropriate. The applicant may request a review hearing before the commission if the application is denied.

*c.* The director shall not grant a variance from any of the following requirements:

(1) Case-by-case maximum achievable control technology (MACT), 567—paragraph 22.1(1) “*b*”;

(2) Prevention of significant deterioration (PSD), 567—Chapter 33, to the extent that variances may not be granted from the preconstruction review and permitting program specified under 567—Chapter 33 (formerly rule 567—22.4(455B)), or from any PSD requirement contained in a PSD permit issued under 567—Chapter 33, or from any PSD requirement contained in a PSD permit issued under 40 CFR Section 51.166 or 52.21.

(3) New source performance standards, 567—subrule 23.1(2);

(4) Emission standards for hazardous air pollutants, 567—subrule 23.1(3);

(5) Emission standards for hazardous air pollutants for source categories, 567—subrule 23.1(4); or

(6) Emission guidelines, 567—subrule 23.1(5).

This rule is intended to implement Iowa Code section 455B.143.