



Minnesota Clean Indoor Act Variance Request Instructions

In order for the Minnesota Department of Health (MDH) to consider a variance request, information required in Minnesota Rules part 4717.7000, subpart 2 (enclosed) must be provided. Your company must specifically address items A through E. If this information is not provided as part of the variance request, MDH will not be able to initiate review of your request.

In granting a variance, MDH may attach conditions considered necessary to protect public health, safety, or the environment. MDH shall notify you in writing of the decision to grant or deny the variance. If the variance is granted, the notification must specify the period of time for which the variance will be in effect and the alternative measures or conditions, if any, the applicant must meet. If a variance is denied, MDH shall specify the reasons for denial. Variance requests will not be reviewed for approval until they are submitted in sufficient detail to permit proper evaluation for compliance.

4717.7000 VARIANCE REQUEST.

Subpart 1. **Request.** A party may ask the commissioner of health to grant a variance from the following rules:

- A. clean indoor air, parts [4620.0100](#) to [4620.1500](#), except part [4620.0300](#);
- B. formaldehyde in housing, part [4620.1800](#);
- C. asbestos abatement, part [4620.3710](#), item A, and, where space limitations prevent compliance with the specified requirements or where compliance with the specified requirements would create a greater hazard, parts [4620.3566](#), [4620.3567](#), [4620.3568](#), subparts 1 to 4, [4620.3569](#), [4620.3571](#), subparts 1 and 2, and [4620.3575](#), subpart 3;
- D. lodging establishments, parts [4625.0400](#) to [4625.0600](#); [4625.0900](#); [4625.1200](#) to [4625.1600](#); [4625.2000](#), except the last sentence; and [4625.2200](#);
- E. manufactured home parks and recreational camping areas, parts [4630.0400](#); [4630.0600](#), subparts 2 to 4; and [4630.0900](#) to [4630.1700](#);
- F. children's camps, parts [4630.2300](#) to [4630.4700](#);
- G. roller towels, part [4635.0200](#);
- H. enclosed sports arenas, parts [4620.3900](#) to [4620.4800](#), except part [4620.4300](#);
- I. water conditioning contractors and installers, parts [4715.5000](#) to [4715.6000](#);
- J. public swimming pools, parts [4717.0100](#) to [4717.3900](#);
- K. general requirements for construction of surface water and groundwater under the direct influence of surface water treatment facilities, parts [4720.3920](#) to [4720.3965](#);
- L. water haulers, parts [4720.4000](#) to [4720.4600](#);
- M. wellhead protection, parts [4720.5200](#) to [4720.5570](#);
- N. wells and borings, parts [4725.0100](#) to [4725.7450](#);
- O. explorers and exploratory borings, parts [4727.0100](#) to [4727.1300](#);

- P. explorers and exploratory borings, parts [4727.0100](#) to [4727.1300](#);
- Q. ionizing radiation, parts [4730.0100](#) to [4730.3610](#), except parts [4730.0400](#) and [4730.0600](#); and
- R. lead poisoning prevention, parts [4761.1000](#) to [4761.1200](#), except part [4761.1100](#).

Subp. 2. **Procedures for requesting a variance.** The procedures in this subpart apply to a request for a variance of the rules specified in subpart 1. Additional procedures may be specified in the rules listed in subpart 1 which also must be complied with. The party requesting the variance must submit the variance request in writing to the commissioner of health along with any applicable fee. A request must contain:

- A. the specific language in the rule or rules from which the variance is requested;
- B. the reasons why the rule cannot be met;
- C. the alternative measures that will be taken to assure a comparable degree of protection to health or the environment if a variance is granted;
- D. the length of time for which the variance is requested;
- E. a statement that the party applying for the variance will comply with the terms of the variance, if granted; and
- F. other relevant information the commissioner determines necessary to properly evaluate the request for the variance.

Subp. 3. **Applicant for a variance.** The applicant for a variance must be the party to whom the rule specified in subpart 1 applies.

STAT AUTH: MS s [14.05](#); [31.101](#); [31.11](#); [103I.101](#); [103I.221](#); [103I.301](#); [103I.621](#); [144.05](#); [144.08](#); [144.12](#); [144.123](#); [144.383](#); [145A.02](#); [157.01](#); [157.011](#); [157.04](#); [157.08](#); [157.09](#); [157.13](#); [326.70](#) to [326.81](#)

HIST: 15 SR 1597; 17 SR 2773; 19 SR 1419; 19 SR 1637; 20 SR 2765; 22 SR 314; 22 SR 668; 23 SR 519; 23 SR 1591; 26 SR 31

* **NOTE:** The amendments to subpart 1 adopted at 26 SR 31 are *effective January 1, 2002.
Current as of 09/11/02

4717.7010 CRITERIA FOR DECISION; CONDITIONS.

Subpart 1. **Criteria for granting a variance.** The commissioner may grant a variance if:

- A. the variance was requested in a manner prescribed by part [4717.7000](#);
- B. the variance will have no potential adverse effect on public health, safety, or the environment;
- C. the alternative measures to be taken, if any, are equivalent to or superior to those prescribed in the rule;
- D. strict compliance with the rule will impose an undue burden on the applicant; and
- E. the variance does not vary a statutory standard.

Subp. 2. **Conditions for variance.** In granting a variance the commissioner may attach conditions the commissioner determines are needed to protect public health, safety, or the environment.

Subp. 3. **Future effect.** A variance shall have only future effect.

STAT AUTH: MS s [14.05](#)

HIST: 15 SR 1597
Current as of 09/11/02

4717.7020 NOTIFICATION OF DECISION.

The commissioner of health shall notify the party in writing of the commissioner's decision to grant or deny the variance. If a variance is granted, the notification must specify the period of time for which the variance will be effective and the alternative measures or conditions, if any, the applicant must meet. If a variance is denied, the commissioner of health shall specify the reasons for the denial.

STAT AUTH: MS s [14.05](#)

HIST: 15 SR 1597
Current as of 09/11/02

4717.7030 EFFECT OF ALTERNATIVE MEASURES OR CONDITIONS.

Alternative measures or conditions attached to a variance have the force and effect of the applicable rule. If the party violates the alternative measures or conditions attached to the variance, the party is subject to the enforcement actions and penalties provided in the applicable law or rule. The party to whom a variance has been issued must notify the commissioner of health in writing within 30 days of any material change in the conditions upon which the variance was granted.

STAT AUTH: MS s [14.05](#)

HIST: 15 SR 1597
Current as of 09/11/02

4717.7040 RENEWAL OF VARIANCE.

A request for the renewal of a variance must be submitted to the commissioner of health in writing 30 days before its expiration date. Renewal requests must contain the information specified in part [4717.7000](#), subpart 2. The commissioner shall renew a variance if the party continues to satisfy the criteria contained in part [4717.7010](#) and demonstrates compliance with the alternative measures or conditions imposed at the time the original variance was approved. This provision does not apply if there has been any material change in the conditions upon which the variance was granted.

STAT AUTH: MS s [14.05](#)

HIST: 15 SR 1597
Current as of 09/11/02

4717.7050 DENIAL, REVOCATION, OR REFUSAL TO RENEW; APPEALS.

Subpart 1. **Action.** The commissioner shall deny, revoke, or refuse to renew a variance if the commissioner determines that the criteria in part [4717.7010](#) are not met.

Subp. 2. **Appeal procedure.** A party may appeal the denial, revocation, or refusal to renew a variance by requesting, in writing, a contested case hearing under the Administrative Procedure Act, Minnesota Statutes, chapter 14, within 30 days of receipt of the notice to deny, revoke, or refuse to renew the variance.

STAT AUTH: MS s [14.05](#)

HIST: 15 SR 1597
Current as of 09/11/02