

CHAPTER 4620
DEPARTMENT OF HEALTH
CLEAN INDOOR AIR

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4620.0100 DEFINITIONS.

Subpart 1. **Scope.** All terms which are defined in Minnesota Statutes, sections 144.411 to 144.417 shall have the meanings attributed to them therein. For the purpose of parts 4620.0100 to 4620.1500 the terms defined herein shall have the meanings given to them.

Subp. 2. **Acceptable smoke-free area.** "Acceptable smoke-free area" means:

A. A contiguous portion of the public place or public meeting including seating arrangements, measuring a minimum of 200 square feet, where smoking is prohibited; and

B. At least one of the following conditions exists:

(1) There is a continuous, physical barrier such as a wall, partition, or furnishing, of at least 56 inches (1.42 meters) in height to separate the smoking-permitted and no-smoking areas. The barrier may contain doors or portals for exit and entry.

(2) There is a space of at least four feet (1.22 meters) in width to separate the smoking-permitted and no-smoking areas. This space may be either an unoccupied area or a section of seating area acting as a buffer zone in which smoking is not permitted, but which itself is not part of the "acceptable smoke-free area."

(3) The ventilation system in the room containing both a smoking-permitted and no-smoking area has total air circulation (recirculated plus outside air) of not less than six air changes per hour including supply of tempered outside air determined according to rules of the Department of Administration, State Building Code, Minn. Reg. SBC 6007 (c) (3).

Subp. 3. **Act.** "Act" means the Minnesota Clean Indoor Air Act of 1975, Laws of Minnesota 1975, chapter 211, and Minnesota Statutes, sections 144.411 to 144.417.

Subp. 4. **Bar.** "Bar" shall mean any establishment or portion of an establishment where one can purchase and consume alcoholic beverages, but excluding any such establishment or portion of the establishment having table and seating facilities for serving of meals to more than 50 people at one time, and where, in consideration of payment, meals are served at tables to the public.

Subp. 5. **Factory.** "Factory, warehouse, or similar place of work" means the indoor area of any facility of an enterprise used principally to manufacture or assemble goods, products, or merchandise not for the purpose of direct retail sale, and shall include those areas incidental but related to the primary operation.

Subp. 6. **Health care facilities.** "Health care facilities" means any institution, place, building, or agency which is required to be licensed under Minnesota Statutes, sections 144.50 to 144.58, including but not limited to, hospitals, nursing homes, boarding care homes, supervised living facilities, and surgical centers.

Subp. 7. **Meals.** "Meals" shall mean any foods made available to be consumed on the premises except foods which are prepackaged when served to the patron and foods which are served as snacks or appetizers.

Subp. 8. **Office.** "Office" means any building, structure, or area which is used by the general public or serves as a place of work at which the principal activities consist of professional, clerical, or administrative services. This classification shall include professional offices, financial institutions, business offices, and government offices.

Subp. 9. **One side of the room.** "One side of the room" shall mean a contiguous portion of the room, including any seating arrangements.

Subp. 10. **Other person in charge.** "Other person in charge" shall mean the agent of the proprietor authorized to perform administrative direction to and general supervision of the activities within the public place at any given time.

Subp. 11. **Place of work.** "Place of work" shall mean any location at which two or more individuals perform any type of a service for consideration of payment under any type of employment relationship, including but not limited to such employment relationship with or for a private corporation, partnership, individual, or government agency. This term shall also include any locations wherein two or more individuals gratuitously perform services for which individuals are ordinarily paid.

Subp. 12. **Private social function.** "Private social function" shall mean any function for which all the following conditions are met:

A. the function is a specific social or recreational event for which an entire room or hall has been reserved for the purpose of entertainment or pleasure and not for the principal purpose of education, sales, or business;

B. the function is limited in attendance to people who have been specifically designated and their guests; and

C. seating arrangements for the function, if any, are under control of the sponsor of the function and not of the person otherwise responsible for the public place.

Subp. 13. **Proprietor.** "Proprietor" means the party, regardless of whether he is owner or lessee of the public place, who ultimately controls, governs, or directs the activities within the public place. The term does not mean the owner of the property unless he ultimately controls, governs, or directs the activities within the public place. The term "proprietor" may apply to a corporation as well as an individual.

Subp. 14. **Public conveyance.** "Public conveyance" means any air, land, or water vehicle used for the transportation of persons whether or not for compensation, including but not limited to airplanes, trains, buses, boats, and taxis. The term includes vans and trucks which may be used to transport persons to, from, and during work or jury duty. The term does not include privately owned vehicles when used for private purposes.

Subp. 15. **Responsible person.** "Responsible person" means the proprietor or other person in charge as herein defined.

Subp. 16. **Restaurant.** "Restaurant" means any building, structure, or area used as, maintained as, or advertised as, or held out to the public to be an enclosure where meals, for consideration of payment, are made available to be consumed on the premises. For the purpose of these rules, the term "restaurant" shall not depend upon licensure as such under Minnesota Statutes, chapter 157.

Subp. 17. **Room.** "Room" means any indoor area which is bordered on all sides by a wall or partition of at least 56 inches (1.42 meters). Such sides shall be continuous and solid except for door portals for entry and exit.

Statutory Authority: *MS s 144.413; 144.417*

NOTE: The cross-reference in subpart 2, item B, subitem (3) is not converted to a Minnesota Rules number because SBC 6007 (c) (3) does not exist.

4620.0200 SCOPE AND PURPOSE.

Parts 4620.0100 to 4620.1500 are promulgated pursuant to authority granted to the commissioner of health in Minnesota Statutes, section 144.417, subdivision 1, relating to prohibition of smoking in public places and at public meetings. Parts 4620.0100 to 4620.1500 apply to "public places" and "public meetings," as defined in Minnesota Statutes, section 144.413, subdivisions 2 and 3. "Public place" includes all enclosed, indoor areas used by the general public or serving as a place of work, regardless of type of ownership of the area. Restrictions and prohibitions on smoking in "factories, warehouses, and similar places of work" shall be regulated under rules of the Department of Labor and Industry.

Nothing in parts 4620.0100 to 4620.1500 shall be construed to in any way affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations.

It is the purpose of parts 4620.0100 to 4620.1500 to provide clarification of certain provisions of the Minnesota Clean Indoor Air Act and to maintain the same public policy position as the act.

Statutory Authority: *MS s 144.417*

4620.0300 SMOKING PROHIBITED.

Smoking shall be prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person shall make arrangements for an acceptable smoke-free area as defined in part 4620.0100, subpart 2. The size and location of any smoking-permitted area shall be determined such that toxic effects of smoking are minimized in the adjacent no-smoking area.

Statutory Authority: *MS s 144.414; 144.417*

4620.0400 SMOKING-PERMITTED AREA.

Subpart 1. Smoking permitted area in one room. If smoking is to be permitted in an area of a public place or public meeting, the responsible person shall designate such area as "smoking-permitted." One and only one smoking-permitted area shall be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate more than one smoking-permitted area and shall otherwise comply with these rules.

Subp. 2. Smoking-permitted area in two or more rooms. In a public place which contains two or more rooms which are used for the same activity, the responsible person may designate one entire room as smoking permitted as long as at least a portion of one other comparable room has been designated as a no-smoking area.

Subp. 3. No-smoking area within the room. In the case of a public place consisting of a single room in which a smoking-permitted area is designated, the responsible person shall be responsible for reserving and clearly designating a no-smoking area on one side of the room.

Subp. 4. Size of the area. The size of the designated smoking-permitted area shall not be more than proportionate to the preference of users of that location for a smoking-permitted area, as can be demonstrated by a responsible person. The proportional preference of users of a smoking-permitted area in that location may be demonstrated by the responsible person by evidence of any of the following:

A. the percentage of users of the location who express a preference for a smoking-permitted area when the responsible person asks all users for their preference; or

B. the percentage of users of the location who request or select a smoking-permitted area when the responsible person does not ask all users for their preference; or

C. the percentage of users who are determined by the proprietor to prefer a smoking-permitted area by an alternate method which reasonably indicates the user's preference.

Statutory Authority: *MS s 144.415; 144.417*

4620.0500 SIGNS.

Subpart 1. Posting. To advise persons of the existence of "no-smoking" and "smoking-permitted" areas, "No Smoking" and "Smoking Permitted" signs shall be posted in the appropriate areas. In addition, the statement "Smoking is prohibited except in designated areas," shall be conspicuously posted at all major entrances to any public place.

Subp. 2. Statement on sign. All signs which are used to identify a location where the responsible person prohibits smoking in an entire public place or public meeting shall use the statement, "No smoking is permitted in this entire establishment," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position within the establishment. All signs which are used to identify a smoking-permitted area shall use the words "smoking permitted" and/or use the international smoking symbol. Signs which are used to identify a no-smoking area shall use the words "no smoking" and/or the international no-smoking symbol.

Subp. 3. Placement of sign. All signs which are used to identify smoking-permitted and no-smoking areas shall be placed at a height and location easily seen by a person in the establishment and not obscured in any way. "Smoking permitted" and "no-smoking" signs, except signs on tables or seats, shall be in printed letters of not less than 1.5 inches (3.8 centimeters) in height. Whenever either of the international symbols is used, the diameter of the outer circle shall not be less than four inches. In large areas where signs may have to be read from a distance, the following are minimum sizes which must be used:

| Farthest distance from which sign is to be read: | Height of lettering | Diameter of outer circle on symbol |
|--|------------------------|---------------------------------------|
| 150 feet | 4 inches | 6 inches |
| 200 feet | 6 inches | 10 inches |
| 350 feet | 8 inches | 15 inches |
| 500 feet | 12 inches | 18 inches |

The boundary between a no-smoking area and smoking-permitted area shall be clearly designated so that persons may differentiate between the two areas.

Subp. 4. Size of lettering. All signs which are used on tables or seats to designate no-smoking and smoking-permitted areas shall use printed letters of not less than 0.5 inches (1.3 centimeters) in height. Whenever either of the international symbols is used, the diameter of the outer circle shall not be less than three inches. When such signs are used, the responsible person shall conspicuously post at least one "No Smoking" sign and one "Smoking Permitted" sign either at the boundary between the two areas or on the walls adjacent to the no-smoking and smoking-permitted areas. The size of lettering on signs reading "Smoking Permitted" shall not exceed the size of lettering on signs reading "No Smoking" in the same public place.

Subp. 5. Signs used to identify bar as smoking area. All signs which are used to identify a bar that has been designated as a smoking area in its entirety shall use the statement, "This establishment is a smoking area in its entirety," or a similar statement. The sign shall be conspicuously posted either on all outside entrances or in a position clearly visible on entry into the establishment.

Subp. 6. Posting in restaurant. A restaurant or other public place which has controlled seating (an employee directs patrons to seating or waiting areas) must ask each person whether he prefers a smoking-permitted or a no-smoking area

before directing that person to a seat in the appropriate area. At least one sign advising the public of this mechanism shall be conspicuously posted at all entrances normally used by the public. Similarly a restaurant or other public place which takes advance reservations shall ask the person's preference for a smoking-permitted or no-smoking area at the time the reservation is made. A restaurant or other public place which uses controlled seating as defined above shall be exempt from the sign requirements contained in subparts 3 and 4.

Statutory Authority: *MS s 144.416; 144.417*

4620.0600 PERMISSIBLE ASH TRAYS.

Portable ash trays are banned in all no-smoking areas. Only ash stands and permanent ash trays may be used at or near the entrance to a no-smoking area. Such ash stands and permanent ash trays shall be conspicuously labeled with the following message placed on or near the ash stand:

SMOKING IS PROHIBITED

PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY

Statutory Authority: *MS s 144.417*

CATEGORIES OF AFFECTED PLACES

4620.0700 COMPLIANCE.

Absent irreconcilable conflict, the responsible person shall be expected to comply with parts 4620.0300 to 4620.0600 and the specific provisions governing that public place in parts 4620.0700 to 4620.1400. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a general provision of parts 4620.0300 to 4620.0600, the specific portion of parts 4620.0700 to 4620.1400 shall prevail over the general. The public places specified in this rule shall be expected to comply with applicable provisions according to functional activities taking place in a public area and not according to the nature of a controlling establishment. For example, different rules may apply to component areas of a medical center according to the actual functional activities of each area, such as a restaurant, office, or health care facility.

Statutory Authority: *MS s 144.417*

4620.0800 PLACES OF WORK.

As an alternative to part 4620.0400, subpart 1 requiring one and only one smoking-permitted area per room, a place of work which is not customarily frequented by the general public may contain several, separate no-smoking and smoking-permitted areas within the same room provided each no-smoking area is at least 200 square feet (18.2 square meters) in area. Such no-smoking areas must comply with the requirements for an acceptable smoke-free area as defined in part 4620.0100, subpart 2. Under this alternative for places of work which are not customarily frequented by the general public, the responsible person shall not be required to comply with sign provisions of part 4620.0500, but the responsible person must conspicuously post at least one sign on each floor which states "smoking is prohibited except in designated smoking areas." These rules shall not apply to a private residence when the residence is not customarily used as a "place of work."

Any "factory, warehouse, or similar place of work," as defined in part 4620.0100, subpart 5, shall be regulated by rules of the Department of Labor and Industry.

Statutory Authority: *MS s 144.415; 144.417*

4620.0900 OFFICES.

Smoking is permitted in a private office. "Private office" means an enclosed

room in an office which is occupied exclusively by smokers, even though such room may occasionally be visited by nonsmokers. When a public place which is a factory, warehouse, or similar place of work contains an office which is incidental but related to the primary operation, such office shall for the purposes of this act, be regulated under rules of the Department of Labor and Industry.

Statutory Authority: *MS s 144.415; 144.417*

4620.1000 RESTAURANTS.

During hours of operation when a facility which may otherwise be considered a restaurant does not serve food but does serve alcoholic beverages, the facility shall be considered a bar. When a public place which is a factory, warehouse, or similar place of work contains a restaurant which is intended as an employee eating area and which is incidental to the primary operation, such restaurant shall, for the purposes of this act, be regulated under rules of the Department of Labor and Industry. A restaurant shall be deemed to be in compliance with these rules if 30 percent of the seats in the eating area are designated as "Smoking Prohibited."

Statutory Authority: *MS s 144.415; 144.417*

4620.1100 PUBLIC CONVEYANCES.

No person is permitted to smoke in a public conveyance except in designated smoking areas. Smoking-permitted sections may be designated in any public conveyance with a capacity of ten or more persons including the driver. A public conveyance with a capacity of less than ten persons may be considered to be a smoking area in its entirety if the driver and all passengers expressly consent.

Statutory Authority: *MS s 144.415; 144.417*

4620.1200 HEALTH CARE FACILITIES.

The requirement for posting of appropriate signs in parts 4620.0300 to 4620.0600 shall be satisfied in patient or resident rooms if there is at least one sign at the entrance to each floor and wing which states: "Smoking is prohibited except in designated smoking areas." One of the following procedures shall be used in patient or resident rooms:

A. The responsible person shall ask all prospective patients or residents or a person authorized to represent the patient or resident whether a smoking-permitted or no-smoking area is preferred. The responsible person then shall assign rooms according to this preference when space is available. When space is not available in a no-smoking room and a person is admitted to a room originally designated for smoking, smoking shall be prohibited in that room unless expressly permitted by the nonsmoker.

B. If the responsible person does not assign patient or resident rooms according to the smoking preference of the patient or resident, smoking shall be prohibited in all such rooms except rooms occupied exclusively by persons who smoke or persons who have expressed permission for smoking.

Visitors and staff shall be prohibited from smoking in patient or resident rooms unless the occupants expressly permit.

In hospitals, smoking shall be prohibited in corridors, emergency rooms, treatment rooms, admitting areas, and intensive care units.

Statutory Authority: *MS s 144.415; 144.417*

4620.1300 HOTELS, MOTELS, AND RESORTS.

No person may smoke in hotels, motels, and resorts except in designated smoking areas. This prohibition does not apply to sleeping rooms which are rented to a guest.

Statutory Authority: *MS s 144.415; 144.417*

4620.1400 COMMON AREAS.

Entry or exit areas, ticket areas, registration areas, common traffic areas, or similar sections of public places shall not be designated in their entirety as a smoking-permitted area if nonsmokers would be required to use the area to participate in activities for which the public place is intended. These rules shall not be construed to prevent designation of a smoking-permitted area in a portion of the establishment which nonsmokers must briefly cross to reach the intended activity.

Statutory Authority: *MS s 144.415; 144.417*

4620.1500 APPLICATION FOR WAIVER OF THE LAW.

Subpart 1. Application. To apply for a waiver of the act, the responsible person for a public place or public meeting shall submit a written application to the commissioner of health stating the grounds for the waiver. The commissioner has the right to request any other information reasonably necessary to determine the merits of the waiver application. Failure to submit such requested information may result in denial of the waiver application.

Subp. 2. Burden on applicant. An applicant for waiver shall have the burden to provide clear and convincing evidence to demonstrate that compelling reasons exist to necessitate a waiver. Such compelling reasons may consist of evidence that implementation of the act and these rules would endanger the ability of the public place to produce sufficient income to meet its operating expenses. Acceptable evidence of such compelling reasons shall consist of financial records and/or projections, based upon demonstrable proof, reasonably showing changes of income and/or expenses which are directly attributable to the act or these rules.

Subp. 3. Factors to be considered. In making determination of the eligibility of an applicant for a waiver, the commissioner of health shall:

A. consider information supplied by the responsible person in the application for waiver;

B. consider prevailing smoking restrictions and other practices relating to similar public places in the community; and

C. consider other relevant information consistent with the public policy expressed in the act.

Subp. 4. Final decision. After the commissioner has reviewed the information required in subpart 3, the commissioner shall make the final decision on the waiver application and shall respond in writing to the applicant indicating that the waiver request has been denied or approved and reasons therefor.

Statutory Authority: *MS s 144.417*

FORMALDEHYDE IN HOUSING UNITS

4620.1600 [Repealed, L 1985 c 216 s 1]

4620.1700 [Repealed, L 1985 c 216 s 1]

4620.1800 MAXIMUM PERMISSIBLE FORMALDEHYDE LEVEL IN HOUSING UNITS.

At the time of sale of a newly constructed housing unit, the ambient indoor air of any habitable room in the unit shall not contain more than 0.4 parts of formaldehyde per million parts of air as measured according to the procedures specified in parts 4620.1900 and 4620.2000. The seller is responsible for assuring that the unit complies with this level.

The installation of urea formaldehyde foam insulation in a housing unit which is not newly constructed shall not cause the indoor level of formaldehyde in any habitable room in the unit to exceed the higher of 0.4 parts per million or the preinstallation level as measured according to the procedures specified in parts 4620.1900 to 4620.2100. The installer of urea formaldehyde foam insulation is responsible for assuring that the installation complies with this level.

MINNESOTA RULES 1989

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CLEAN INDOOR AIR 4620.1800

Statutory Authority: *MS s 144.495*

History: *9 SR 1576*

NOTE: This part was amended at 9 State Register, page 1576 on January 7, 1985, in accordance with an order of the Minnesota Supreme Court dated March 23, 1984, in the case of Manufactured Housing Institute, et al., Appellants, vs. George R. Pettersen, individually, et al., Respondents (C7-83-124).

4620.1900 [Repealed, L 1985 c 216 s 1]

4620.2000 [Repealed, L 1985 c 216 s 1]

4620.2100 [Repealed, L 1985 c 216 s 1]