

CHAPTER 4620
DEPARTMENT OF HEALTH
CLEAN INDOOR AIR

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4620.0050 SCOPE AND PURPOSE.

Parts 4620 0050 to 4620 1500 must be read in conjunction with the Minnesota Clean Indoor Air Act, Minnesota Statutes, sections 144 411 to 144.417.

Nothing in parts 4620 0050 to 4620.1500 shall be construed to affect smoking prohibitions imposed by the fire marshal or other laws, ordinances, or regulations

Statutory Authority: *MS s 144 411 to 144.417*

History: *19 SR 1128*

4620.0100 DEFINITIONS.

Subpart 1 **Scope.** For the purpose of parts 4620.0050 to 4620.1500, the terms in this part have the meanings given them

Subp 2 **Acceptable nonsmoking area.** "Acceptable nonsmoking area" means

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

B where at least one of the conditions in subitems (1) to (3) 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 separating the smoking-permitted and acceptable nonsmoking 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 separating the smoking-permitted and acceptable nonsmoking 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 nonsmoking area.

(3) The ventilation system in the room containing both a smoking-permitted and an acceptable nonsmoking area must provide outdoor air requirements for ventilation of not less than 15 cubic feet per minute per person

Subp 3 [Repealed, 19 SR 1128]

Subp. 4. **Bar.** "Bar" means any establishment or portion of an establishment where one can purchase and consume alcoholic beverages. Any such establishment or portion of an establishment is not considered a "bar" for the purposes of parts 4620.0050 to 4620.1500 if it has

A table and seating facilities for more than 50 people at one time, and

B licensed food service provided, in consideration of payment, excluding licensed limited food service establishments as defined in part 4625 2401, subpart 22

Subp. 4a **Environmental tobacco smoke.** "Environmental tobacco smoke" means

A smoke from a cigarette, pipe, cigar, or other lighted smoking equipment; and

B exhaled smoke from a smoker

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

Subp 6 [Repealed, 19 SR 1128]

Subp 7. [Repealed, 19 SR 1128]

Subp 8. **Office.** "Office" means any building, structure, or area used by the general public or serving as a place of work at which the principal activities consist of professional, clerical, or administrative services. An office includes professional offices, offices in financial institutions, business offices, telemarketing offices, and government offices

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

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

Subp 11. **Place of work.** "Place of work" means 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 an employment relationship with or for a private corporation, partnership, individual, or government agency. This term includes any location where two or more individuals gratuitously perform service for which individuals are ordinarily paid. Examples of a place of work include an office, a public conveyance, a factory, a warehouse, or a similar place of work

Subp 11a **Private enclosed office.** "Private enclosed office" means a room occupied by one person with floor to ceiling walls and a closeable door.

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

A. the function is a specific social event for which an entire room or building 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

[For text of subp 13, see M.R.]

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 and those which serve as a place of work, for example, locomotives, police vehicles, or fire vehicles. The term does not include privately owned vehicles when used for private purposes

Subp 14a. **Public meeting.** "Public meeting" has the meaning given in Minnesota Statutes, section 144 413

Subp 14b. **Public place.** "Public place" has the meaning given in Minnesota Statutes, section 144 413. For purposes of parts 4620 0050 to 4620 1500, a public place includes all indoor areas used by the general public or serving as a place of work or jury duty. It does not include a place used for a private social function or a private enclosed office.

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

Subp 16 **Restaurant.** "Restaurant" means any building, structure, or area used as, maintained as, or advertised as, or held out to the public for food service as defined in part 4625.2401, subpart 15, which requires licensure under Minnesota Statutes, chapter 157, m consideration of payment other than a bar as defined in subpart 4.

Subp. 16a. **Retail store.** "Retail store" means that portion of a commercial occupancy used for the transaction of business or the rendering of a service directly to the public, including shops, retail food stores, laundries or laundromats, and department stores

Subp 17 **Room.** "Room" means any indoor area bordered on all sides by a floor to ceiling wall. The sides must be continuous and solid except for closeable doors for entry and exit

Statutory Authority: *MS s 144 411 to 144.417*

History: *19 SR 1128*

4620.0200 [Repealed, 19 SR 1128]

4620.0300 SMOKING PROHIBITED AREAS.

Smoking is prohibited in all sections of public places or public meetings except in areas designated as smoking-permitted areas. The responsible person must arrange for an acceptable nonsmoking area. The size and location of any smoking-permitted area must minimize environmental tobacco smoke in any adjacent acceptable nonsmoking area in accordance with procedures specified in parts 4620.0050 to 4620.1500.

Statutory Authority: *MS s 144 411 to 144 417*

History: *19 SR 1128*

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 must designate the area as "smoking-permitted." One and only one smoking-permitted area may be designated per room. However, rooms containing at least 20,000 square feet (1,858 square meters) in total floor space may designate no more than one smoking-permitted area per 20,000 square feet, or fraction thereof, and shall otherwise comply with parts 4620.0050 to 4620.1500.

Subp 2. Smoking-permitted area in two or more rooms. In a public place which contains two or more rooms used for the same activity, the responsible person may designate one entire room as smoking-permitted as long as at least one other comparable room has been designated as an acceptable nonsmoking area.

Subp 3 Acceptable nonsmoking area within a room. In the case of a public place consisting of a single room in which a smoking-permitted area is designated, the responsible person is responsible for reserving and clearly designating an acceptable nonsmoking area on one side of the room. The responsible person must make reasonable efforts to prevent smoking in nonsmoking areas.

Subp 4 Size of the area. The size of the designated smoking-permitted area must 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 percent 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 percent 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 percent 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.

Subp 5 Private enclosed office. Smoking is permitted in a private enclosed office if the door is kept closed while smoking occurs.

Statutory Authority: *MS s 144 411 to 144 417*

History: *19 SR 1128*

4620.0500 SIGNS.

Subpart 1 Posting. To advise persons of the existence of acceptable nonsmoking and smoking-permitted areas, "No Smoking" and "Smoking Permitted" signs must be posted in the places specified in this part. In addition, the statement "Smoking is prohibited except in designated areas," or a similar statement must be conspicuously posted on or immediately inside of all outside entrances to any public place.

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

Subp 3. Placement of sign. All signs used to identify smoking-permitted and acceptable nonsmoking areas must be placed at a height and location easily seen by a person in the establishment and must not be obscured in any way. In areas where signs have to be read from a distance, the following are minimum lettering and symbol sizes which must be used.

Distance from which sign is to be read	Height of lettering	Diameter of outer circle on symbol
Up to 75 feet	1.5 inches	4 inches
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 an acceptable nonsmoking area and smoking-permitted area must be clearly designated so a person can differentiate between the two areas.

Subp. 4 Size of lettering. Signs used on tables, seats, or entrances to designate acceptable nonsmoking and smoking-permitted areas must 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 must not be less than three inches. The size of lettering on signs reading "Smoking Permitted" must not exceed the size of lettering on signs reading "No Smoking" in the same public place.

Subp. 5. Posting in a bar. All signs used to identify a bar that has been designated as a smoking area in its entirety must use the statement, "This establishment is a smoking area in its entirety," or a similar statement. In a bar that has food service as specified in part 4620.0100, subpart 4, and that allows smoking in its entirety when food service is not available, all signs used to identify smoking-permitted areas must state, "This establishment is a smoking area in its entirety except when food service is available," or a similar statement. The sign must be conspicuously posted either on or immediately inside of all outside entrances to the establishment.

Subp 6 Posting in a restaurant. A restaurant which has controlled seating (an employee directs patrons to seating or waiting areas) must ask each person whether that person prefers a smoking-permitted or a nonsmoking area before directing that person to a seat in the appropriate area. At least one sign advising the public of this procedure must be conspicuously posted on or immediately inside of all outside entrances to the establishment. Similarly, a restaurant or other public place which takes advance reservations must ask the person's preference for a smoking-permitted or nonsmoking area at the time the reservation is made. A restaurant or other public place which uses controlled seating as defined above is exempt from the sign requirements contained in subparts 3 and 4.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

NOTE: The amendments to subpart 5 adopted at 19 SR 1128 are effective July 1, 1995.

4620.0600 PERMISSIBLE ASH TRAYS.

Portable ash trays are banned in all acceptable nonsmoking areas. Only ash stands and permanent ash trays may be used at or near the entrance to an acceptable nonsmoking area. Ash stands and permanent ash trays must be conspicuously labeled with the following message or a similar statement and placed on or near the ash stand.

SMOKING IS PROHIBITED

PLEASE EXTINGUISH ALL SMOKING MATERIALS IMMEDIATELY

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

4620.0700 COMPLIANCE.

The responsible person must comply with parts 4620.0050 to 4620.1500. If the provisions of the rules governing specific affected places conflict with or are inconsistent with a

general provision of parts 4620.0050 to 4620.0600, the specific portion of parts 4620.0700 to 4620.1500 shall prevail over the general. The public places specified in this rule must comply with the provisions in parts 4620.0700 to 4620.1500 according to the 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 building according to the actual functional activity of the area, such as a restaurant, office, or retail space.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

4620.0750 LUNCHROOM OR LOUNGE.

A lunchroom or lounge must be designated as specified in this part.

A The responsible person must designate an acceptable nonsmoking area in the lunchroom or lounge that meets demand. Amenities, such as refrigerators or microwaves, must be located in the nonsmoking area. The space occupied by these amenities must not be calculated as part of the square footage or percentage of area allocated to the nonsmoking seating area.

B The demand for a nonsmoking area must be determined as specified in part 4620.0400, subpart 4, or the responsible person may designate at least 70 percent of the lunchroom or lounge as a nonsmoking area.

C The responsible person must also provide a method of separation, as described in part 4620.0100, subpart 2, item B, between the nonsmoking and smoking-permitted areas.

D If there are two or more lunchrooms or lounges, one may be designated as smoking-permitted in its entirety as long as at least one other comparable lunchroom or lounge is designated as nonsmoking in its entirety.

E If there is only one lunchroom or lounge and it measures less than 200 square feet, the responsible person may alternate nonsmoking and smoking-permitted break times. Nonsmoking employees must not be required to take breaks during the time the lunchroom or lounge is designated as smoking-permitted in its entirety.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

NOTE. This part is effective July 1, 1995.

4620.0800 [Repealed, 19 SR 1128]

4620.0900 [Repealed, 19 SR 1128]

4620.0950 OFFICE BUILDINGS.

Smoking is prohibited in all office spaces, except in the following locations.

A in a private enclosed office if the door is kept closed while smoking occurs,

B in a designated smoking-permitted area of a lunchroom or lounge as specified in part 4620.0750, or

C where a designated smoking-permitted area of a lunchroom or lounge is not available with the office space controlled by the responsible person, then one smoking-permitted area per 20,000 square feet, or fraction thereof, may be designated by the responsible person. One of the separation methods specified in part 4620.0100, subpart 2, item B, must be provided between the nonsmoking and smoking-permitted areas.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

NOTE. This part is effective July 1, 1995.

4620.0975 FACTORIES, WAREHOUSES, OR SIMILAR PLACES OF WORK.

Subpart 1 **Conditions.** To avoid the restriction specified in subpart 2, in a factory, warehouse, or similar place of work, employees must be

A provided outdoor air requirements for ventilation of not less than 15 cubic feet per minute per person during occupied hours, and

B stationed at least four feet apart.

Documentation of the ventilation rate in item A must be verified by an individual certified by the National Environmental Balancing Bureau or the Associated Air Balance Council. The commissioner will accept a ventilation rate specified in item A which has been verified within the previous 12 months provided changes affecting the operation of the ventilation system have not been made.

Subp. 2 Restriction. If the conditions specified in subpart 1, items A and B, cannot be met, then smoking must be restricted in a factory, warehouse, or similar place of work to the following locations.

A a private enclosed office if the door is kept closed while smoking occurs,

B the designated smoking-permitted area of a lunchroom or lounge as specified in part 4620 0750, or

C where a designated smoking-permitted area of a lunchroom or lounge is not available with the factory or warehouse space controlled by the responsible person, then one smoking-permitted area per 20,000 square feet, or fraction thereof, may be designated by the responsible person. One of the separation methods specified in part 4620 0100, subpart 2, item B, must be provided between the nonsmoking and smoking-permitted areas.

Statutory Authority: *MS s 144 411 to 144 417*

History: *19 SR 1128*

NOTE: This part is effective July 1, 1995

4620.1000 RESTAURANTS.

During its hours of operation, a restaurant shall be in compliance with parts 4620 0500 to 4620.1500 if 30 percent of the seats in the eating area are designated as "Smoking Prohibited."

When a facility contains both a restaurant and a bar and the restaurant and bar are in separate rooms, and both the restaurant and bar have food service available to patrons, then

A the responsible person must calculate the total seating for both the restaurant and bar;

B the responsible person must determine 30 percent of the total seating in item A to be designated as nonsmoking seating; and

C the responsible person may locate the required 30 percent nonsmoking seating entirely in the restaurant, entirely in the bar, or allocate part of the 30 percent in the bar and part of the 30 percent in the restaurant.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

4620.1025 BARS.

During the hours of operation when food service is available to patrons that requires licensure as a restaurant under Minnesota Statutes, chapter 157, and as a food and beverage service establishment under part 4625 2401, subpart 15, a bar must provide the same percent or greater of nonsmoking seating as required for restaurants in part 4620 1000. During the hours of operation when a bar does not make such food service available, the bar may be designated as smoking-permitted in its entirety.

Statutory Authority: *MS s 144 411 to 144 417*

History: *19 SR 1128*

NOTE: This part is effective July 1, 1995

4620.1200 HEALTH CARE FACILITIES.

Subpart 1. Chemical dependency and mental health patients. Smoking by a patient in a licensed chemical dependency treatment program or licensed mental health program located in a hospital, health care clinic, doctor's office, or other health care-related facility is only permitted in a separated room ventilated at a rate of 60 cubic feet per minute per person under the conditions specified in Minnesota Statutes, section 144 414, subdivision 3, paragraph (b).

Subp. 2 Smoking in a nursing home, boarding care facility. Smoking in a nursing home, boarding care facility, or other licensed residential facility is permitted in a patient or resident room if the procedures in item A or B are followed.

A. The responsible person must ask all prospective patients or residents or a person authorized to represent the patient or resident whether a smoking-permitted or an acceptable nonsmoking area is preferred. The responsible person must assign rooms according to this preference when space is available. When space is not available in a nonsmoking room and a person is admitted to a room originally designated for smoking, smoking must 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 must be prohibited in all such rooms except rooms occupied exclusively by persons who smoke or persons who express permission for smoking.

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

Acceptable nonsmoking areas and smoking-permitted areas in commonly used space of the facilities in this subpart must be designated according to part 4620.0400.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

4620.1400 COMMON AREAS.

Subpart 1. **General.** Common areas are areas used by both nonsmokers and smokers such as entry or exit areas, lobby areas, ticket areas, registration areas, common traffic areas, common areas of rental apartment buildings, or similar sections of public places. These common areas must 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 space is intended. Parts 4620.0050 to 4620.1500 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.

Subp. 2. **Elevators.** Elevators must be designated smoking prohibited in their entirety.

Subp. 3. **Restrooms.** Smoking is prohibited in restrooms of office buildings, factories, warehouses, and similar places of work.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*

4620.1425 RETAIL STORES.

Smoking is prohibited in all customer areas of retail stores, except for designated smoking areas. To allow smoking in a smoking-permitted area, the same goods and services must be available in a nonsmoking area. Smoking-permitted areas must be designated according to part 4620.0400. Smoking-permitted areas for employees may be designated according to parts 4620.0400 and 4620.0750. However, designated smoking-permitted areas for employees must be separate from all customer areas. When a restaurant is located within a retail store, that space licensed as a restaurant must comply with the provisions of part 4620.1000.

Statutory Authority: *MS s 144.411 to 144.417*

History: *19 SR 1128*