

7899.0100 VARIANCES.

Subpart 1. **Procedures and standards.** The procedures and standards contained in this part govern the consideration and disposition of all variance requests submitted to the commission. No variance requests seeking relief from the imposition of a fine pursuant to parts 7895.0125, subparts 1, items C and D; 2, items C and D; and 3, items B and C; 7895.0275, subpart 1, items C and D; and 7895.0350, subparts 1c, items A and B; 2, items C and D; 3, items B and C; and 4, items B and C, may be submitted to the commission.

Subp. 2. **Requests for a variance.** A person desirous of obtaining a variance from the application of one or more of the commission's rules shall initiate the variance process by submitting in writing to the commission the following information and documents:

A. a statement setting forth the precise nature and extent of the proposed variance and the reasons the variance is being requested;

B. any supporting documentation necessary to provide a complete description of the proposed variance; and

C. a detailed statement addressing each of the applicable variance criteria contained in this chapter, and setting forth the reasons as to why the variance request is in conformance with those criteria.

Subp. 3. **Disposition of variance requests.** The commission shall grant or deny a variance pursuant to the following procedures and standards:

A. Upon receipt of a variance request, the commission shall send written notice of the time, date, and place of the variance hearing to all persons who have registered their names with the commission for that purpose. The commission shall not act upon the variance request for ten calendar days after it has issued the notice.

B. If, after receiving the variance request, the commission determines that additional information must be submitted by the requesting person, it may direct the person seeking the variance to submit additional data regarding the variance request to the commission, or appear before the commission to provide additional information thereon.

C. To facilitate full consideration of a variance request the commission may, in its discretion, request that the person seeking the variance and other persons who have submitted written comments regarding the variance appear before the commission and make arguments to the commission. In such event, the commission shall provide the aforementioned persons notice of the appearance request at least seven days before the commission meeting at which the variance request is to be considered. This procedure shall not constitute a contested case as defined in Minnesota Statutes, section 14.02, subdivision 3.

D. If a person requesting a variance fails to follow the variance procedures specified in this chapter, the variance shall be denied.

E. The commission shall set forth in writing and submit to the person requesting the variance and other persons who have submitted written comments thereon the reasons why it has granted or denied the variance request within 30 days after its disposition of the request.

Subp. 4. **Standards for granting and denying variance requests.** The commission shall grant a variance to the application of any of its rules except those in subpart 1 only if it determines that all of the following criteria have been met:

A. strict application of the rule to which a variance is being requested would cause undue and substantial hardship to the person applying for the variance;

B. the granting of the variance does not confer a benefit on the person requesting the variance which is not enjoyed by other persons similarly situated;

C. the granting of the variance does not substantially impair the intent and purposes of the commission's rules;

D. the variance may be granted without material detriment to the integrity of racing or the public health, welfare, or safety;

E. the granting of the variance does not allow violation of the standards or requirements in Minnesota Statutes, chapter 240; and

F. with respect to variances concerning part 7870.0500, subpart 5, demographic or geographic evidence supports the variance request.

Subp. 5. **Exceptions.** In order to fully comply with the provisions of the ADA, exceptions to all rules requiring submission of documentation "in writing on a form prescribed by the commission" will be granted for those persons who, because of a disability, are unable to write. Submission of the required documentation will be allowed through alternative means agreed upon between the commission and the individual.

Statutory Authority: *MS s 240.23; 240.24*

History: *9 SR 2527; 14 SR 332; 15 SR 2307; 16 SR 2684; 19 SR 2307; 34 SR 1135*

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