

7000.7000 VARIANCES.

Subpart 1. **Scope.** This part governs the procedure for issuance of all variances by the board or commissioner, except to the extent otherwise specifically provided by statute or rule.

Subp. 2. **Written application.** In no case shall the board or commissioner grant a variance unless a written application has been made to the board or commissioner. The application must be served upon the commissioner.

The written application must contain:

A. the name and address of the applicant and the person who prepared the application;

B. the signature of the applicant or authorized representative;

C. a description, including the location, of the business, plant, system, or facility for which a variance is sought;

D. the nature of the variance sought, including an identification of the applicable rules or standards from which a variance is sought, the period of time for which it is sought, and the reasons relied upon by the applicant in requesting the variance;

E. if the applicant seeks a variance primarily on grounds of economic burden, financial statements prepared or approved by a certified public accountant, or other person acceptable to the agency, which shall fairly set forth the status of the business, plant, system, or facility for each of the three financial years immediately preceding the year of the application, and an analysis of the effect of such financial status if the variance is not granted (if the business, plant, system, or facility has not been in operation for this period, then the financial statements and analysis must be based on the most complete data available);

F. if the applicant seeks a variance on grounds that compliance is not technologically feasible, a report from a registered professional engineer, or other person acceptable to the agency, stating fully the reasons why compliance is not technologically feasible;

G. other additional data or information that is required by any applicable agency rule or standard; and

H. any other relevant data or information that the board or the commissioner deems essential to a determination on the application, including but not limited to the following:

(1) a general description of the materials handled or processed by the applicant that are pertinent to the subject application, and a statement of the nature and

quantity of the materials being discharged, emitted, or disposed of, and that can reasonably be expected to be discharged, emitted, or disposed of during the period of the proposed variance, and proposed methods for the control of these materials;

(2) a comprehensive proposed plan indicating the steps to be taken by the applicant during the period of the variance, even if the applicant is seeking a permanent variance, to reduce emission levels or discharges to the lowest limits practical;

(3) a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from board or commissioner approval of the requested variance;

(4) a statement of the alternatives to the proposed operation under the variance which have been considered by the applicant; and

(5) a concise statement of the effect on the establishment, maintenance, operation, and expansion of business, commerce, trade, traffic, and other economic factors that may result from approval and from denial of the requested variance.

Subp. 3. **Review of applications.** The commissioner shall review all variance applications for completeness. If the commissioner finds that the application is incomplete or otherwise deficient, the commissioner shall promptly advise the applicant of the incompleteness or deficiency. The commissioner shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

Subp. 4. **Preliminary determination; preparation of public notice.** After a variance application is complete, the commissioner shall make a preliminary determination as to whether the variance should be issued or denied. The commissioner shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may serve a request pursuant to part 7000.0650, subpart 4 or 7000.1800, asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

Subp. 5. **Availability of public notice.** The commissioner shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

Subp. 6. **Mailing of public notice.** The commissioner shall mail a copy of the public notice to the applicant, to all persons who have registered their names on the mailing list established under Minnesota Statutes, section 14.14, subdivision 1, and to any person upon request.

Subp. 7. **Circulation of public notice.** The commissioner shall circulate the public notice within the geographical area of the facility or activity that is the subject of the variance request. The commissioner shall designate the geographical area, which shall as a minimum include the county in which the facility or activity is or will be located.

The commissioner shall circulate the public notice in one or more of the following ways: posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area; posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the variance application; or publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

Subp. 8. **Board decision.** The board shall make all final decisions on variance applications pursuant to Minnesota Statutes, section 116.02, subdivision 6, clause (6), or subdivision 8. The board shall approve or deny each application. The board may grant a variance upon such conditions as the board may prescribe.

If a contested case hearing has been held, the board shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's report and recommendation, or after submission of the application if no hearing is held. Any person may submit to the board an oral or written statement or recommendation regarding a variance application in accordance with part 7000.1800.

Subp. 8a. **Commissioner decision.** The commissioner shall make final decisions on variance applications for those matters where the board does not have authority pursuant to Minnesota Statutes, section 116.02, subdivision 6, clause (6), or where the board does not exercise authority pursuant to Minnesota Statutes, section 116.02, subdivision 8. The commissioner shall approve or deny each application. The commissioner may grant a variance upon conditions the commissioner may prescribe, in accordance with Minnesota Statutes, chapter 14. If a contested case hearing has been held, the commissioner shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's report and recommendation, or after submission of the application if no hearing is held, but no later than 60 days after receipt of the report or submission of the application. Any person may submit to the commissioner a written statement or recommendation regarding a variance application in accordance with part 7000.1800. Any such submission shall be made within ten days following the receipt of the administrative law judge's report, or within ten days after submission of an application where no hearing is held.

Subp. 9. **Notification.** The commissioner must serve every decision of the board or commissioner on a variance application on the applicant and upon all interested persons who have submitted to the agency a request to receive a copy of the decision.

Subp. 10. **Remedies preserved.** During the pendency of a variance application, the board or commissioner may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of Minnesota Statutes or rules.

Subp. 11. **Amendment or modification.** In the event a variance has been granted by the board or commissioner, the person holding the variance may file with the board or commissioner at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the board's or commissioner's consideration of the application, shall comply with the requirements of this chapter. This provision shall not apply to a time extension of an existing variance.

Subp. 12. **Assignment.** No variance may be assigned or transferred by the holder without the approval of the board or commissioner.

Subp. 13. **Violation by variance holder.** Any variance holder who violates a provision of the variance is subject to revocation or suspension of the variance, or other sanction as authorized or provided by law. No revocation, suspension, or other sanction may be imposed before notice to the variance holder and opportunity for a contested case hearing.

Statutory Authority: *MS s 14.06; 116.07*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629; 28 SR 1249*

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