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**HEALTH AND SAFETY CODE - HSC**

**DIVISION 104. ENVIRONMENTAL HEALTH [106500 - 119406]** ( *Division 104 added by Stats. 1995, Ch. 415, Sec. 6. )*

**PART 7. CALIFORNIA RETAIL FOOD CODE [113700 - 114437]** ( *Part 7 repealed and added by Stats. 2006, Ch. 23, Sec. 2. )*

**CHAPTER 13. Compliance and Enforcement [114380 - 114437]** ( *Chapter 13 added by Stats. 2006, Ch. 23, Sec. 2. )*

**ARTICLE 4. Variance [114417 - 114417.7]** ( *Article 4 added by Stats. 2006, Ch. 23, Sec. 2. )*

**114417.** The department may issue a variance for only the provisions set forth in Section 113936, if in the opinion of the department, the alternative practice or procedure is equivalent to the respective requirements of this part and the alternative practice or procedure does not result in a health hazard.

(*Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.*)

**114417.1.** (a) Within 180 days after the effective date of this part, the department shall develop the form of application that an applicant for a variance must submit. The department may amend the form as it deems appropriate. The application shall contain, at a minimum, the following information:

(1) A detailed description of the requested variance, including citation to the relevant subdivisions specified in Section 113936.

(2) An analysis of the science-based rationale upon which the proposed alternate practice or procedure is based, to include, if and as appropriate, microbial challenge and process validation studies demonstrating how potential health hazards dealt with in those subdivisions that are relevant to the requested variance will be addressed.

(3) A description of the specific procedures, processes, monitoring steps, and other relevant protocols that will be implemented pursuant to the variance to address potential health hazards dealt with in those subdivisions specified in Section 113936 that are relevant to the requested variance.

(4) An HACCP plan, if required pursuant to Section 114419, that includes all applicable information relevant to the requested variance.

(b) An application for a variance shall be submitted to the department, and must be accompanied at the time of submission by the fees specified in subdivision (c).

(c) Each application for a variance shall be accompanied at the time of submission by payment of fees sufficient to pay the necessary costs of the department as specified in Section 113717. Any overpayment by the applicant in excess of the recovery rate and other costs incurred shall be repaid to the applicant within 30 calendar days after final action is taken by the department on the application.

(*Amended by Stats. 2007, Ch. 96, Sec. 58. Effective July 20, 2007.*)

**114417.2.** (a) Upon receipt of an application for a variance, the department shall determine whether the application is substantially complete and in compliance with Section 114417.1. Within 45 calendar days after submission of a complete application that complies with Section 114417.1, the department shall determine whether the alternate practice or procedure described in the application is satisfactory and at least the equivalent of the requirements of this part relating to preventing a health hazard.

(b) In the event that the department grants the variance, it shall issue to the applicant a variance letter that shall include, but not be limited to, the information specified in Section 114417.3.

(c) The department shall transmit a copy of its variance letter to all local enforcement agencies.

(*Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.*)

**114417.3.** Each variance letter shall include, have attached to it, or reference each of the following:

- (a) The information specified in Section 114417.1. That information may be presented verbatim, in summary form, or by means of attachment.
- (b) Detailed findings by the department as to the nature and extent of the potential hazards, if any, that might be implicated with respect to the requirements specified in this part, and the manner in which the alternate practice or procedure specified in the variance will address those hazards.
- (c) The specifics of any operating restrictions or requirements upon which the granting of the variance is conditioned.
- (d) If appropriate, the particular events, locations, and operations for which the variance is granted.

*(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)*

**114417.4.** A variance letter shall be valid solely with respect to those food facilities, events, locations, and operations expressly set forth and only on the specific terms and conditions upon which the variance is granted. A variance granted by the department shall be binding on every local enforcement agency.

*(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)*

**114417.5.** The permit holder shall retain a copy of the variance letter on file at the food facility at all times and shall make it available for inspection by the enforcement officer.

*(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)*

**114417.6.** If the department grants a variance, or if an HACCP plan is required pursuant to Section 114419, the permit holder shall do both of the following:

- (a) Comply with the HACCP plan and procedures that are submitted as specified in Sections 114419.1 and 114419.2 and approved as a condition for the granting of the variance.
- (b) Maintain and provide to the enforcement agency, upon request, records specified under a HACCP plan, or otherwise pursuant to the variance letter, that demonstrate that the following are routinely employed:
  - (1) Procedures for monitoring critical control points.
  - (2) Monitoring of the critical control points.
  - (3) Verification of the effectiveness of an operation or process.
  - (4) Necessary corrective actions if there is a failure at a critical control point.

*(Amended by Stats. 2007, Ch. 96, Sec. 59. Effective July 20, 2007.)*

**114417.7.** (a) The department may suspend or revoke a variance if either of the following occurs:

- (1) The department determines that the variance poses a hazard due to changes in scientific knowledge or the nature and extent of any hazard that might result.
- (2) There is a finding that the food facility is not complying with specific terms and conditions pursuant to which the variance was granted.

(b) The department may suspend or revoke a variance upon the grounds specified in this section only after giving the permit holder written notice of the proposed suspension or revocation, which shall include the specific reasons why the variance is proposed to be suspended or revoked. The permit holder shall be given an opportunity to be heard, in person, in writing, or through a representative, at least 24 hours before the variance can be suspended or revoked.

*(Added by Stats. 2006, Ch. 23, Sec. 2. Effective January 1, 2007. Operative July 1, 2007, by Sec. 3 of Ch. 23.)*