



**TEXAS DEPARTMENT OF STATE HEALTH SERVICES  
PUBLIC SANITATION AND RETAIL FOOD SAFETY  
GROUP  
VARIANCE REQUEST PROCEDURES**

**What is a variance?**

A variance is a written document issued by the Regulatory Authority (RA) that authorizes a modification or waiver of one or more of the requirements of the Texas Food Establishment Rules (TFER). A variance may be granted by the regulatory authority if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the required documents for the food establishment.

**When is a variance request required?**

A variance request is required to be submitted when a food establishment would like to make a modification or waiver to the requirements of the TFER. In addition, **Section 228.76 requires a food establishment to obtain a variance for specialized processing methods from the department as specified in 228.243 (a) and (b) of this title before:**

- *Smoking food as a method of food preservation rather than as a method of flavor enhancement;*
- *Curing food;*
- *Using food additives or adding components such as vinegar: to preserve/render non-time/temperature control for safety food;*
- *Packaging time/temperature control for safety food using Reduced Oxygen Packaging method except where the growth of Clostridium botulinum and Listeria Monocytogenes are controlled;*
- *Operating a molluscan shellfish life-support system display tank used to store and display shellfish that are offered for human consumption;*
- *Custom processing animals that are for personal use as food and not for sale or service in a food establishment;*
- *Preparing food by another method that is determined by the regulatory authority to require a variance; or*
- *Sprouting seeds (such as alfalfa or wheat grass) or beans in a retail food establishment.*

**Requirements for submitting a variance request?**

In order to be considered for a variance to these rules, the establishment must submit a statement of the **proposed variance** that includes the section of the rules related to the modification, **rationale** of how the public health hazard will be addressed, and a **HACCP plan** if required by these rules. These requirements are also stated below. The Public Sanitation and Retail Food Safety Group's compliance officer will review all the information submitted and retain the documents in the regulatory authority's file for the food establishment.

1. A statement of the proposed variance of the rule requirement citing relevant rule section numbers. Explain what you would like to do and the section of the law it affects.

2. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rule sections will be alternatively addressed by the proposal. Provide information regarding your new process and how it will still meet the intent of these regulations.
3. A HACCP Plan if required as specified in TFER Section 228.244(c) that includes the contents of the HACCP plan. The details regarding the contents for the HACCP plan and specifications can be found in TFER Section 228.244(d). Please submit a copy of your food establishment's HACCP Plan along with your "variance request" if you are required to have a plan based on these rules.

A "variance request" submitted to the Department of State Health Services (DSHS), Public Sanitation and Retail Food Safety Group that lacks "*part or all*" of the information stated above will not be approved. Please feel free to submit documents and photographs that will help our department verify that a health hazard or nuisance will not result from the variance. DSHS will provide the submitter with the department's decision regarding the waiver request.

The TFER can be found on our website at <http://www.dshs.state.tx.us/foodestablishments> or call the Food Establishments Group at (512) 834-6753 for additional information. If you are interested in submitting a variance request, please mail all the required information to:

**Texas Department of State Health Services  
Public Sanitation and Retail Food Safety Group  
PSQA MC1987  
PO Box 149347  
Austin, Texas 78714-9347  
(512) 834-6753**

Or

You may fax your request to:  
**DSHS Food Establishments Group  
Attention: Compliance Officer  
(512) 834-6683**