

**§ 112.172 How may a State, tribe, or foreign country request a variance from one or more requirements of this part?**

To request a variance from one or more requirements of this part, the competent authority (*i.e.*, the regulatory authority for food safety) for a State, tribe, or a foreign country must submit a petition under § 10.30 of this chapter.

**§ 112.173 What must be included in the Statement of Grounds in a petition requesting a variance?**

In addition to the requirements set forth in § 10.30 of this chapter, the Statement of Grounds in a petition requesting a variance must:

(a) Provide a statement that the applicable State, tribe, or foreign country has determined that the variance is necessary in light of local growing conditions and that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 of the Federal Food, Drug and Cosmetic Act and to provide the same level of public health protection as the requirements of this part;

(b) Describe with particularity the variance requested, including the persons to whom the variance would apply and the provision(s) of this part to which the variance would apply;

(c) Present information demonstrating that the procedures, processes, and practices to be followed under the variance are reasonably likely to ensure that the produce is not adulterated under section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342) and to provide the same level of public health protection as the requirements of this part.

**§ 112.174 What information submitted in a petition requesting a variance or submitted in comments on such a petition are publicly available?**

We will presume that information submitted in a petition requesting a variance and comments submitted on such a petition, including a request

that a variance be applied to its similarly situated persons, does not contain information exempt from public disclosure under part 20 of this chapter and will be made public as part of the docket associated with this request.

**§ 112.175 Who responds to a petition requesting a variance?**

The Director or Deputy Directors of the Center for Food Safety and Applied Nutrition (CFSAN), or the Director, Office of Compliance, CFSAN, responds to a request for a variance.

**§ 112.176 What process applies to a petition requesting a variance?**

(a) In general, the procedures set forth in § 10.30 of this chapter govern our response to a petition requesting a variance.

(b) Under § 10.30(h)(3) of this chapter, we will publish a notice in the FEDERAL REGISTER, requesting information and views on a filed petition, including information and views from persons who could be affected by the variance if the petition were to be granted (*e.g.*, because their farm is covered by the petition or as a person similarly situated to persons covered by the petition).

(c) Under § 10.30(e)(3) of this chapter, we will respond to the petitioner in writing and will also make public a notice on FDA's Web site announcing our decision to either grant or deny the petition.

(1) If we grant the petition, either in whole or in part, we will specify the persons to whom the variance applies and the provision(s) of this part to which the variance applies.

(2) If we deny the petition (including partial denials), our written response to the petitioner and our public notice announcing our decision to deny the petition will explain the reason(s) for the denial.

(d) We will make readily accessible to the public, and periodically update, a list of filed petitions requesting variances, including the status of each petition (for example, pending, granted, or denied).