

**Variance from Rule 290-5-14.04(8)(b)**

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Brenda Fitzgerald, MD, Commissioner

Nathan Deal, Governor

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## **SYNOPSIS OF PROPOSED VARIANCE**

### **RULES OF DEPARTMENT OF HUMAN SERVICES: PUBLIC HEALTH**

#### **CHAPTER 290-5-14.04**

#### **FOOD SERVICE**

### **NOTICE OF PROPOSED VARIANCE**

The Department of Public Health (Department) intends to consider a proposed variance to the current Rules of the Department of Human Services: Public Health 290-5-14.04 Food Services. The Department is authorized to grant a variance or waiver to a rule in the manner prescribed in Chapter 13 of Title 50 of the Official Code of Georgia.

### **STATEMENT OF PURPOSE AND MAIN FEATURES OF PROPOSED VARIANCE**

The Department of Public Health's Environmental Health Program is proposing a variance from Rule 290-5-14.04(8)(b) with conditions, at the request of the Georgia Department of Education, to be considered by the Department's Board, to allow schools to freeze sandwich bread so that they can be used beyond the expiration or "sell-by" date, for use on the first day of school and during emergencies.

Rule 290-5-14.04 (8)(b) provides that packaged, commercially processed foods that are for sale to the consumer shall be removed from sale immediately after the manufacturer's expiration date or the sell-by date. The Georgia Department of Education would like schools to be able to freeze sandwich bread so that they can be stored beyond those dates for use in case of emergencies and on the first day of school after a break, when bread deliveries cannot be made to all schools in time for the preparation of meals.

Pursuant to O.C.G.A. § 50-13-9.1, the Department is authorized to grant a variance or waiver to a rule when a person subject to that rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means. The Department proposes to grant the variance as it believes that the alternative plan put forth by the Georgia Department of Education's School Nutrition Program will not pose a food safety risk to children and school staff.

## SCHEDULE

Interested parties who desire to do so may submit data, views, or arguments concerning the proposed variance in writing to the Department no later than **4:00 p.m. on February 7, 2012**. Comments should be sent to:

Simone Brathwaite  
Associate General Counsel  
Georgia Department of Public Health  
2 Peachtree Street, 15<sup>th</sup> Floor  
Atlanta, Georgia 30303

The Department shall hear public comment and then consider approval of the variance on **February 14, 2012 at 1:00 p.m.** at 2 Peachtree Street N.W., 5<sup>th</sup> Floor Boardroom, Atlanta, Georgia, 30303.

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# CURRENT LAW

## 290-5-14-.04 Food. (8) Contaminated Food. (a) Discarding or Reconditioning Unsafe, Adulterated, or Contaminated Food. (cont.)

4. Food that is contaminated by food employees, consumers, or other persons through contact with their hands, bodily discharges, such as nasal or oral discharges, or other means shall be discarded.

(b) **Expired Foods.** Packaged, commercially processed foods that are for sale to the consumer shall be removed from sale immediately after the manufacturer's expiration date or the sell-by date.

### (9) Special Requirements for Highly Susceptible Populations. (Pasteurized Foods, Prohibited Re-Service, and Prohibited Food)

In a food service establishment that serves a highly susceptible population:

1. The following criteria apply to juice:

(i) For the purposes of this paragraph only, children who are age 9 or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;

(ii) Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR, 101.17(g) Food labeling, warning, notice, and safe handling statements, juices that have not been specifically processed to prevent, reduce, or eliminate the presence of pathogens, or a packaged juice or beverage containing juice, that bears a warning label may not be served or offered for sale; and

(iii) Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified under Rule .02 subsections (5)(b) – (e) and as specified in 21 CFR Part 120 – Hazard Analysis and Critical Control Point (HACCP) Systems, Subpart B Pathogen Reduction 120.24 Process controls.

2. Pasteurized eggs or egg products shall be substituted for raw eggs in the preparation of:

(i) Foods such as Caesar salad, hollandaise or Béarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages, and

(ii) Except as specified in 6 of this subsection, recipes in which more than one egg is broken and the eggs are combined;

3. The following foods may not be served or offered for sale in a ready-to-eat form:

(i) Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare,

(ii) A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw eggs, and meringue; and

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**MEMORANDUM**

**TO:** Tamika Z. Matthews, Administrative Assistant  
Legal Department  
Georgia Department of Public Health

**FROM:** Giles Roberts, Director *Giles F. Roberts*  
Food Service Program  
Environmental Health Branch

**DATE:** September 16, 2011

**RE:** Variance Request – Georgia Department of Education, School Nutrition Program

Attached you will find a variance request from Mrs. Melinda Scarborough, representative for the Petitioner, the Georgia Department of Education's School Nutrition Program, concerning the Department's Rules and Regulations Food Service Chapter 290-5-514, a support plan entitled, "Sandwich Bread Plan" submitted by the Petitioner, and a variance register outlining the Environmental Health Branch's position on the variance request. The Environmental Health Branch is recommending that the variance be granted with conditions set by the Department.

## Rules Waiver Register

**Chapter Number:** 290-5-14

**Rule Number:** Rule 290-5-14-.04(4) (8) (b) Expired Foods

**Date:** September 16, 2011

**Action Requested:** Variance from Rule 290-5-14-.04(4) (8) (b) Expired Foods

**Name of Petitioner:** Georgia Department of Education, School Nutrition Program  
1658 Twin Towers East  
205 Jesse Hill Jr. Drive, SE  
Atlanta, GA 30334

**Petitioner's**

**Representative:** Melinda Scarborough  
Phone number: 404-617-7576

**Reason for Request:** The Petitioner<sup>is</sup> states that schools have breaks during the school year, both planned and because of emergencies, in which no meals and snacks are served. These breaks may include fall break, spring break, winter break, and others that last one week or longer. There may be an emergency such as a fire or flood that requires the closing of a school for several days. Some schools are designated shelters for local people in the event of disasters such as hurricanes, tornadoes, etc. All such closures and events usually cause a break in delivery service of food products. Schools have enough food storage space to allow multiple products to be stored in advance so that price breaks can be achieved, USDA foods in large quantities can be stored, and other products can be stored to accommodate advance menu planning and alterations in case school schedules change or emergencies occur.

The Petitioner alleges that schools can freeze some bread to sufficient levels to meet emergencies and have enough to use on the first day of school after a break without compromising the safety of the bread. See the attached proposed submitted plan entitled, "Sandwich Bread Storage".

**Agency's Decision: GRANT VARIANCE REQUEST WITH CONDITIONS**

**Reason:** The Environmental Health Branch is in support of the Department granting the Georgia Board of Education's variance request from Rule 290-5-14-.04(4) (8) (b) Expired Foods. This recommendation is based on the fact that it believes, if Georgia's School Nutrition Programs follows the proposed alternative plan as put forth by the Georgia Department of Education's School Nutrition Program, that the subject bread will not pose a food safety risk to children and school staff. The only issue might be a quality issue of which is not of a concern to public health.

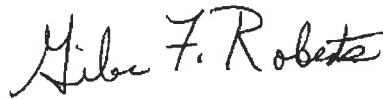
Recommendations for granting the variance are:

1. Local School Nutrition Programs must follow the proposed written plan for freezing and thawing sandwich bread entitled, "Sandwich Bread Storage" as received by the Department. Failure to do so will revoke the variance.

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2. The Petitioner shall report to the Department annually detailing its compliance activities with the conditions of this variance. At that time, the Department will determine whether the variance will remain in affect for an additional time period. All incidents involving conditions granted under this variance shall be immediately reported to the Department by the Petitioner and/or County Health Department having jurisdiction of school food service programs.

Submitted by:



Giles Roberts, Program Director  
Food Service Program  
Environmental Health Branch  
Phone: (404) 657-6534  
E-Mail: [gfroberts@dhr.state.ga.us](mailto:gfroberts@dhr.state.ga.us)



(4)

## Sandwich Bread Storage

### Resource:

The Georgia Rules and Regulations for Food Service – Chapter 290-5-14.04 (8)

(b) *Expired Foods. Packaged, commercially processed foods that are for sale to the consumer shall be removed from sale immediately after the manufacturer's expiration date or the sell-by date.*

### Explanation:

The "Rules" consider "Expiration dates," "Sell-by dates," "Use-by dates," and "Best if used-by dates" the same. It is a critical violation (9 points) if any food, whether potentially hazardous or not, is found beyond the date stamped on the package. It does not matter whether the food is frozen; refrigerated; in dry storage; potentially hazardous or not potentially hazardous, the violation is the same.

### Background:

Schools have breaks during the school year, both planned and because of emergencies, in which no meals and snacks are served. These breaks may include fall break, spring break, winter break, and others that last one week or longer. There may be an emergency such as a fire or flood that requires the closing of a school for several days. Some schools are designated shelters for local people in the event of disasters such as hurricanes, tornadoes, etc. All such closures and events usually cause a break in delivery service of food products. Schools have enough food storage space to allow multiple products to be stored in advance so that price breaks can be achieved, USDA foods in large quantities can be stored, and other products can be stored to accommodate advance menu planning and alterations in case school schedules change or emergencies occur.

### Problem:

Sandwich bread commonly has only a few days before the "use by" date comes. Most of the time, this limited time is no problem for day to day operations. Schools can rotate food products so that the bread received first is used first. However, it has been customary for schools to freeze some bread to have in the case of emergencies; and so that there is enough to use on the first day of school after a break. This is necessary because bread deliveries cannot be made to all schools in time for preparation of meals on the first day that schools resume operation. Keeping bread



beyond the "use-by" date is a violation of the Georgia Rules and Regulations for Food Service as stated earlier under "Resource."

**Alternative Plan:**

Since sandwich breads are not potentially hazardous and there is a need, as explained above, to store bread beyond its "use-by" date in schools, the Georgia Department of Education, School Nutrition Program request that schools be allowed to store sandwich breads under the following criteria and procedure:

- Definition - Sandwich bread: A staple food made from flour or meal mixed with other dry and liquid ingredients, usually combined with a leavening agent, and kneaded, shaped into loaves or buns of various sizes and shapes, and baked. Loaves and buns are then sliced so that meat, cheese and other ingredients can be placed between two slices or parts of a bun.
- Sandwich breads will be purchased before the "use-by" date.
- Sandwich breads can be frozen prior to the "use-by" date when the following guidelines are adhered to:
  - Mark with tape or pen, the date that the bread is put into the freezer. This can be done on individual packages, trays or containers that bread is stored in.
  - Stored, frozen bread will be used or discarded within two months beyond the date it is frozen.
  - When removing bread from the freezer, it must be used or discarded within two days. (This is necessary to avoid growth of mold on bread that may occur due to condensation that forms on the outside of the bread as it thaws.)