



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, 15th 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., 5th Floor Boardroom, Atlanta, Georgia, 30303.

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