



Michael R. Pence
Governor

Jerome M. Adams, MD, MPH
State Health Commissioner

CERTIFIED MAIL #7009-2820-0003-8637-9899

July 15, 2016

Nathan Aukerman, District Manager
Greer Companies
866 Malabu Drive Suite 250
Lexington, KY 40502

RE: Variance Request # 932016

Order to Approve a Variance

You are hereby notified that based on the recommendation of the Indiana State Department of Health (ISDH) Food Protection Program, and as authorized by Indiana Code (IC) 16-19-3-4.3 and IC 16-42-5-5.2, the State Health Commissioner hereby orders that a variance be approved to Nathan Aukerman, District Manager, representing Greer Companies.

On January 14, 2016, this office received a request from you representing Greer Companies to vary section 195 of 410 IAC 7-24, "Retail Food Establishment Sanitation Requirements," relating to the use of reduced oxygen packaging (ROP). Letters requesting additional information were sent to you on March 9 and March 31 of 2016. You provided additional supporting materials, received on March 21 and April 6, 2016. The supporting materials in the form of a company HACCP Plan manual are the basis for the requirements in this variance.

This **VARIANCE APPROVAL** is based on the following criteria:

- The subject location for this variance is:

Cheddar's Restaurant, 91 N. 36th Street, Lafayette, Indiana.

- US Food & Drug Administration 2013 Model Food Code section 3-502.12 (F) is hereby incorporated into this variance, and the requirements of that section become the requirements of this agreement for all foods which will be placed in reduced oxygen packaging (ROP) for a period not to exceed 48 hours.

Section 3-502.12(F) says, " A HACCP Plan is not required when a food establishment uses a reduced oxygen packaging method to package time/temperature control for safety food that is always:

- (1) Labeled with the production time and date,
- (2) Held at 5C (41F) or less during refrigerated storage, and
- (3) Removed from its package in the food establishment within 48 hours after packaging".

For purposes of this Variance Order, the term "Time/Temperature Control for Safety Food", as defined in the 2013 FDA Model Food Code, shall be used instead of the term "potentially hazardous food," defined in 410 IAC 7-24.



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essential public health services.

Page 27 of the submitted company manual states the standard for labeling of ROP foods. Items which are not labeled, are labeled in a manner inconsistent with the above section, or exceed the time frame stated on page 11 of the manual shall be discarded.

- The items to be cook/chill ROP processed are: Alfredo Soup, Black Beans, Baked Potato Soup, Queso, Red Beans and Rice, Sauteed Mushrooms, Tortilla Soup, Taco Meat, Marinara Sauce, and Meat Sauce.

Items to cold bagged without a vacuum, but treated as if they are in a reduced oxygen package are: Buttered Corn, and Southern Green Beans.

Fish, as defined in the 2013 FDA Model Food Code is not authorized for ROP under this Variance Order, except as stated in 410 IAC 7-24-195 (c).

There are no sous vide processed items included under this variance.

- All activities related to the foods listed above shall be conducted in accordance with the submitted HACCP Plan manual and as stated in this variance.
- A certified food handler, as described in 410 IAC 7-22, shall be on duty during all periods when ROP processing is being conducted.
- Tippecanoe County Health Department (TCHD) and ISDH shall be notified of any substantive changes in the production process that may affect the conditions and criteria in this Variance Order.
- This variance does not extend to locations not described above.
- Greer Companies shall be in substantial compliance with all other requirements of 410 IAC 7-24, as determined by ISDH and/or TCHD, except as stated above. Any change to the management or structure of the operation could invalidate this Variance Order.
- Temperature control failures of refrigeration equipment in which ROP foods are stored can be cause for revocation of this Variance Order.
- This Variance Order is limited to Greer Companies and the current scope of the existing operations as indicated in submitted materials. This Variance Order is not transferable to a new owner.
- Modifications to this Variance Order may be made by submitting a request in writing to the ISDH Food Protection Program.
- This Variance Order is limited to being in compliance with all other applicable state and local regulations.
- Any provisions not adhered to may result in the revocation of this order.
- Some of the submitted materials may be considered confidential or proprietary for Greer Companies. It is a condition of this approval that Greer Companies agrees to obtain copyright permission, if necessary, and to allow copying and transmittal of submitted materials to Indiana food regulatory authorities for regulatory purposes.

If you wish to request an administrative review or stay of effectiveness of this decision pursuant to Ind. Code §40-21.5-3-7(a), you must petition for such review in writing. The petition must state facts demonstrating that:

- a. you are a person to whom the decision is specifically directed;
- b. you are aggrieved or adversely affected by the decision; or,
- c. you are entitled to review under any law.

Your request for review or stay of effectiveness must be filed in writing and addressed to:

**Indiana State Department of Health
Attn: Court Administrator
Office of Legal Affairs
2 North Meridian Street, Section 3H
Indianapolis, Indiana 46204**

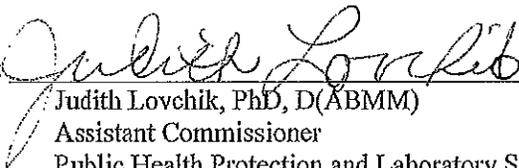
on or before August 15, 2016. If no request for review or stay of effectiveness is filed by August 15, 2016, this decision shall become final.

DATED AT INDIANAPOLIS, INDIANA THIS 15th DAY OF JULY 2016.

PURSUANT TO IC 16-19-3-4.3 AND IC 16-42-5-5.2, I HEREBY APPROVE A VARIANCE OF FOOD PROTECTION RULES AS STATED ABOVE.

JEROME M. ADAMS, MD, MPH
STATE HEALTH COMMISSIONER

By:



Judith Lovchik, PhD, D(ABMM)
Assistant Commissioner
Public Health Protection and Laboratory Services Commission

cc: ISDH Executive Board
ISDH Food Protection Staff
ISDH Office of Legal Affairs
Tippecanoe County Health Department