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To: Local Health Departments & Other Indiana Food Regulatory Agencies  
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Subject: Guidance for regulation of "Micro Markets"

### **Purpose**

This document is to provide guidance to local health departments, other regulatory agencies, and interested individuals regarding retail food establishments called "micro markets."

### **Background**

Micro Markets are an emerging market concept being advanced by the automated food vending industry where consumers can open coolers and select from a variety of products without actuating a traditional vending mechanism. Customers take selected products to an automatic pay kiosk and then leave or consume the product on site. Common vending machines may or may not be present in addition to items which are freely accessed by customers. There are no company staff onsite to accept payment or monitor the operation. There is no "person-in-charge" as required in 410 IAC 7-24-117. Products are stocked, maintenance & cleaning occurs routinely, but not necessarily every day. Companies operating these facilities expect them to function on an honor system, assuming consumers will voluntarily pay for the goods they've selected.

### **Definitions**

"Micro markets" means an unstaffed, self-checkout retail food establishment:

1. with displays that do not exceed 75 linear feet in total length across the front of all displays;
2. which contains an automated payment kiosk;
3. which is located within a business and can be accessed only by customers who are known by the business, such as escorted guests and employees of the business ; and
4. which is not accessible to the general public.

"Micro Market Display" means any of the following in which food is displayed such as:

1. an open rack;
2. a refrigerator;
3. a freezer;
4. vending machines; or
5. beverage dispensers

“Vending Machine” means:

1. means the same as the same term defined in 410 IAC 7-24-102; and
2. means a self-service device that, upon activation, such as through the insertion of a coin, paper currency, token, card, key, or by manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

“Person-in-charge” means, as defined in 410 IAC 7-24-60, the individual present at a retail food establishment who is responsible for the operation at the time of inspection.

### **Discussion**

The regulation of vending operations is included in Indiana State Department of Health (ISDH) Rule 410 IAC 7-24, “Retail Food Establishment Sanitation Requirements”; however, micro market operations may not be recognized by all regulatory agencies if they do not routinely regulate vending operations.

A micro market does not meet the definition of a vending machine, so unless individual vending machines are present in the micro market, the vending requirements would not apply to these operations. The operations typically have been located in a factory setting or in other closed environments where the general public does not have access. While micro markets are considered “retail food establishments” under the retail food rule, by design, they do not comply with Section 117 as stated below:

410 IAC 7-24-117 Assignment of supervision responsibility

Sec. 117. (a) The owner or operator of a retail food establishment shall have a person-in-charge present at the retail food establishment during all hours of operation.

(b) For purposes of this section, a violation of subsection (a) is a critical item.

These operations are routinely maintained by service individuals who restock and clean/maintain the facilities, but who are not there at all times as is required. The ISDH Food Program is aware of no complaints of illness or injury from the operation of these units, but recently, they began operating in new venues that are more accessible to the general public. When inspected, these facilities had been correctly cited as not being compliance with section 117. Several vending companies then reached out to the ISDH voicing their concerns that the current food code restricts their ability to effectively operate this new concept. They were encouraged to follow the variance process provided in law to seek a change to the code with which they could not comply. As an alternative, they sought a solution to address their concerns from the Indiana State Legislature.

A Senate bill was drafted; however, the sponsoring Legislator called for a meeting between ISDH and the Indiana Vending Council to address issues between the affected parties and ISDH. It was decided that the best course of action would be to work with ISDH on upcoming food code revisions to find middle ground to address both sides of the issue. Meanwhile, ISDH has agreed to provide interim guidance to local health departments and other regulatory agencies on how to address micro market operations on routine inspections.

It has been agreed that, for the immediate future, micro markets shall provide the following measures:

- Each facility shall be indoors and shall not have more than 75 linear feet of sales space in any one location.
- These units will not be placed in facilities that are generally open to the public and must remain in limited access facilities, such as in a factory, restricted access business office or warehouse.
- Operators shall provide 24/7 video surveillance records consumers viewing, selecting, handling and purchasing products from the micro market; and provides sufficient resolution to identify these

consumers. The video surveillance recordings are maintained and available for inspection upon request by the state department or other regulatory agency within 24 hours of a request.

- The video surveillance recordings are maintained and available for inspection upon request by the state department for fourteen (14) days after the date of the surveillance.
- The automated self-checkout equipment used in the micro market has the capability to match a purchase with the consumer who made the purchase.
- The only food sold at the micro market is commercially prepackaged food or ready-to-eat fruit.
- Packaging shall be tamper evident.

Prepackaged food sold at the micro market contains the following information on its packaging:

- (A) Except as exempted in the Federal Food, Drug, and Cosmetic Act sections 403(Q)(3)-(5), nutrition labeling for the food as specified in 21 CFR 101 – Food Labeling and 9 CFR 317 Part B Nutrition Labeling.
- (B) A freshness or expiration date.
- (C) The standard mandatory labeling requirements for packaged food products as stated in 410 IAC 7-24-146.
- The refrigerated/frozen food sold in a micro market is stored in a refrigerated cooler or freezer that:
  - (A) maintains an internal product temperature of 41° F or less necessary for food safety, as established by the state department;
  - (B) has self-closing doors;
  - (C) allows the food to be viewed without opening the door to the refrigerated cooler or freezer; and
  - (D) has an automatic self-locking feature that prevents a consumer from accessing the food upon the occurrence of any condition (including a power failure or mechanical failure) that results in the failure of the refrigerated cooler or freezer to maintain the internal product temperature of 41° F necessary for food safety, as established by the state department.
- (E) Each micro market shall have a sign readily visible from the automated payment kiosk stating:
  - (1.) the name of the business responsible for the micro market to whom complaints/comments shall be addressed;
  - (2.) the address of the business responsible for the micro market;
  - (3.) the responsible business' telephone number and email or web information, when applicable.

The entire contents of the sign shall be in English and may additionally be in any other prevalent language of customers.

When a retail food establishment operating as a micro market incorporates these items, the units will not be required to maintain a “person-in-charge” onsite at all times as specified under Section 117 of ISDH Rule, 410 IAC 7-24, Retail Food Establishment Sanitation Requirements. It is recommended as a routine part of their inspection of these facilities, regulatory agencies should regularly request and review available video surveillance records.

### **Conclusion**

It is anticipated that the “micro market” concept will be addressed in future versions of the FDA Model Food Code and some states, such as Ohio, have already adopted rules to legalize and regulate these entities. It is anticipated that the Indiana Vending Council will participate in upcoming revisions of the food code. Please use this guidance to regulate these entities until further notice.