

**Conference for Food Protection
2014 Issue Form**

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Council Recommendation:	Accepted as Submitted _____	Accepted as Amended _____	No Action _____
Delegate Action:	Accepted _____	Rejected _____	

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Title:

Unattended Food Establishments

Issue you would like the Conference to consider:

Under what conditions is it appropriate to allow a food establishment to operate without an employee present? Unattended food merchandising operations, commonly referred to as micro-markets, are being established around the country. Micro-markets are replacing traditional vending machines in various controlled settings that allow a customer to select food items and pay for them via an onsite self-service pay kiosk. Foods sold in a micro-market do not have the protections afforded by a vending machine. If such an operation sells anything other than prepackaged foods that do not require temperature control for safety, it would be considered a "food establishment" under the current FDA Food Code and would be required to have a person-in-charge at all hours of operation. The Conference is being asked to consider under what conditions, if any, is appropriate to waive the requirements in Food Code Section 2-101.11 and allow a food establishment to operate when there is no employee present. Industry has expressed concerns with the cost associated with having a person-in-charge at the site of a micro-market. Some states have started to implement rules and/or guidance to define acceptable practices, such as requiring equipment in micro-markets to be fitted with a lock-out mechanism like those required on vending machines. Such rules are intended to allow the operation to forgo a person-in-charge, yet still protect the food that is offered for sale. Guidance from CFP and FDA will help to promote uniform and effective controls on the level of protective measures that must be in place for these kinds of operations.

Public Health Significance:

Industry representatives estimate that there are hundreds of these markets that have replaced traditional operations in the US. However since many jurisdictions do not routinely regulate vending operations, it is not clear how many of these would be subject to regulation as a food establishment. Many of the micro-market type operations exist in closed environments, such as factories, with a known employee population and with restricted access reducing the threats of accidental or intentional contamination. If the entity has installed and is using video surveillance this further reduces the public health impact. Additional precautions need to be implemented, such as failsafe systems for a cooler that cannot maintain TCS product at the required temperature. If none of these

measures exist, then the risk to the consumer increases to unacceptable levels and should not be allowed.

Recommended Solution: The Conference recommends...:

that a Committee be formed and charged to:

1. Develop recommendations on whether and how the Food Code should be modified to address unattended food merchandising operations
2. Consider any existing guidance from FDA and others and develop a CFP guidance document that could assist states when addressing the need to have alternative protective provisions in place when approving a waiver or variance for entities that do not meet section 2-101.11 and 2-103.11 of the 2013 Food Code.
3. Report back at the 2016 Biennial Meeting with a recommendation to Council I.

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Attachments:

- α "Guidance for Regulation of "Micro Markets"
- α "3717-1-01 State of Ohio Uniform Food Safety Code and definitions"

It is the policy of the Conference for Food Protection to not accept Issues that would endorse a brand name or a commercial proprietary process.



Date: June 6, 2013
To: Local Health Departments & Other Indiana Food Regulatory Agencies
From: A. Scott Gilliam, MBA, CP-FS
Director, Food Protection Program
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.

3717-1-01 State of Ohio Uniform Food Safety Code and definitions

(B) Definitions

(70)"Micro market" means a retail food establishment that offers the following in displays not more than two hundred and fifty linear feet:

- (a) Prepackaged non-time/temperature controlled for safety food;
- (b) Prepackaged refrigerated or frozen time/temperature controlled for safety food that is stored in equipment that complies with paragraph (H) of rule [3717-1-03.4](#) and paragraphs (LL) and (MM) of rule [3717-1-04.1](#) of the Administrative Code.

3717-1-02.4 Management and personnel: supervision.

(A) Person in charge - assignment of responsibility.

The license holder shall be the person responsible for the food service operation or retail food establishment. The license holder may be the person in charge or shall designate a person or persons in charge and shall ensure that a person in charge with applicable knowledge is present at the food service operation or retail food establishment during all hours of operation. This paragraph does not apply to a micro market as defined in Chapter 3717-1 of the Administrative Code.

(B) Person in charge - demonstration of knowledge.

Based on the risks inherent to the food operation, during inspections and upon request the person in charge shall demonstrate to the licensor the applicable knowledge of foodborne disease prevention, application of the hazard analysis and critical control point principles, and the requirements of this chapter as they relate to the food service operation or retail food establishment at the time of inspection. The person in charge shall demonstrate this knowledge by compliance with this chapter by having no critical violations during the current inspection, or by being certified in food protection as specified in rule [3701-21-25](#) of the Administrative Code, or by responding correctly to the inspector's questions as they relate to the specific food operation. The areas of knowledge include:

- (1) Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;
- (2) Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;
- (3) Describing the symptoms associated with the diseases that are transmissible through food;
- (4) Explaining the significance of the relationship between maintaining the time and temperature of time/temperature controlled for safety food and the prevention of foodborne illness;
- (5) Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;
- (6) Stating the required food temperatures and times for safe cooking of time/temperature controlled for safety food including eggs, fish, meat, and poultry;
- (7) Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of time/temperature controlled for safety food;
- (8) Describing the relationship between the prevention of foodborne illness and the management and control of the following:
 - (a) Cross contamination ;
 - (b) Hand contact with ready-to-eat foods ;
 - (c) Handwashing ; and
 - (d) Maintaining the food service operation or retail food establishment in a clean condition and in good repair .
- (9) Identifying major food allergens including milk, egg, fish, tree nuts, wheat, peanuts, and soybeans as specified in paragraph (B) (66) of rule [3717-1-01](#) of the Administrative Code;
- (10) Explaining the relationship between food safety and providing equipment that is:
 - (a) Sufficient in number and capacity ; and
 - (b) Properly designed, constructed, located, installed, operated, maintained, and cleaned .

- (11) Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;
 - (12) Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;
 - (13) Identifying poisonous or toxic materials in the food service operation or retail food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of properly;
 - (14) Explaining the details of how the person in charge and food employees comply with the HACCP plan that includes identifying the critical control points in the operation and associated critical limits, if a plan is required by this chapter, or an agreement between the licenser and the food service operation or retail food establishment;
 - (15) Explaining the responsibilities, rights, and authorities assigned by this chapter to the:
 - (a) Food employee ;
 - (b) Conditional employee ;
 - (c) Person in charge ;
 - (d) Licensor; and
 - (16) Explaining how the person in charge, food employees, and conditional employees comply with reporting responsibilities and exclusion or restriction of food employees.
- (C) Person in charge - duties.

The person in charge shall ensure that:

- (1) Food service or retail food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under paragraphs (S) and (T) of rule [3717-1-06.1](#) of the Administrative Code;
- (2) Persons unnecessary to the food service operation or retail food establishment are not allowed in the food preparation, food storage, or warewashing areas, except that brief visits and tours may be authorized by the person in charge if steps are taken to ensure that exposed food; clean equipment, utensils, and linens; and unwrapped single-service and single-use articles are protected from contamination;
- (3) Employees and other persons such as delivery and maintenance persons and pesticide applicators entering the food preparation, food storage, and warewashing areas comply with this chapter;
- (4) Employees are effectively cleaning their hands, by routinely monitoring the employees' handwashing;
- (5) Employees are visibly observing foods as they are received to determine that they are from approved sources, delivered at the required temperatures, protected from contamination, unadulterated, and accurately presented, by routinely monitoring the employees' observations and periodically evaluating foods upon their receipt;
- (6) Employees are properly cooking time/temperature controlled for safety food, being particularly careful in cooking those foods known to cause severe foodborne illness and death, such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures using appropriate temperature measuring devices properly scaled and calibrated as specified under paragraph (K) of rule [3717-1-04.1](#) of the Administrative Code and paragraph (Q)(2) of rule [3717-1-04.4](#) of the Administrative Code;
- (7) Employees are using proper methods to rapidly cool time/temperature controlled for safety foods that are not held hot or are not for consumption within four hours, through daily oversight of the employees' routine monitoring of food temperatures during cooling;
- (8) Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under paragraph (E) of rule [3717-1-03.5](#) of the Administrative Code that the food is not cooked sufficiently to ensure its safety;
- (9) Employees are properly sanitizing cleaned multiuse equipment and utensils before they are reused, through routine monitoring of solution temperature and exposure time for hot water

sanitizing, and chemical concentration, pH, temperature, and exposure time for chemical sanitizing;

(10) Consumers are notified that clean tableware is to be used when they return to self-service areas such as salad bars and buffets as specified under paragraph (O) of rule [3717-1-03.2](#) of the Administrative Code;

(11) Except when approved as specified in paragraph (A) (4) of rule [3717-1-03.2](#) of the Administrative Code, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment;

(12) Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties; and

(13) Food employees and conditional employees are informed of their responsibility to report in accordance with this chapter, to the person in charge, information about their health as it relates to diseases that are transmissible through food as specified under paragraph (A) of rule [3717-1-02.1](#) of the Administrative Code.

3717-1-03.4 Food: Limitation of growth of organisms of public health concern

(H) Ready-to-eat, time/temperature controlled for safety food - disposition.

(1) A food specified under paragraph (G)(1) or (G)(2) of this rule shall be discarded if it:

(a) Exceeds the temperature or time specified in paragraphs (G)(1) and (G)(2) of this rule, except time that the product is frozen;

(b) Is in a container or package that does not bear a date or day; or

(c) Is appropriately marked with a date or day that exceeds the temperature and time combination as specified in paragraphs (G)(1) and (G)(2) of this rule.

(2) Refrigerated, ready-to-eat, time/temperature controlled for safety food, dispensed through a vending machine with an automatic shut-off control, shall be discarded if the automatic shut-off control is activated as specified in paragraph (X)(2) of rule [3717-1-04.1](#) of the Administrative Code.

(3) Refrigerated, ready-to-eat, time/temperature controlled for safety food, displayed at a micro market, shall be discarded if the automatic shutoff control is activated as specified in paragraph (LL)(1) of rule [3717-1-04.1](#) of the Administrative Code.

3717-1-04.1 Equipment, utensils, and linens: design and construction

(KK) Food equipment - certification and classification.

(1) Except as provided in paragraph (KK)(2) of this rule, food equipment that is acceptable for use in a food service operation or retail food establishment shall be approved by a recognized food equipment testing agency.

(2) The Ohio department of agriculture, the Ohio department of health, or the licensor may approve the use of food equipment, other than vending machines, bulk water machines, and equipment that displays time/temperature controlled for safety food in a micro market, that have not been approved by a recognized testing agency if the equipment demonstrates compliance with this chapter.

(LL) Micro market display-automatic shutoff.

(1) All micro market display units offering time/temperature controlled for safety food shall have an automatic control that prevents the equipment from opening if:

(a) There is a power failure, mechanical failure, or other condition that results in an internal equipment temperature that cannot maintain food temperatures as specified under rule [3717-1-03.4](#) of the Administrative Code; and

(b) A condition specified under paragraph (LL)(1) of this rule occurs, until the equipment is serviced and restocked with food that has been maintained at temperatures specified under rule [3717-1-03.4](#) of the Administrative Code.

(2) When the automatic shutoff within a display described under paragraph (LL)(1) of this rule is activated the ambient temperature may not exceed forty-one degrees Fahrenheit (five degrees Celsius) for more than thirty minutes immediately after the display is filled, serviced, or restocked.

(MM) Micro market display closure.

All micro market display units offering time/temperature controlled for safety food, shall be equipped with a self-closing door.