



**Indiana
Department
of
Health**



Eric J. Holcomb
Governor

Kristina M. Box, MD, FACOG
State Health Commissioner

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To: Local Health Department and Other Indiana Food Regulatory Agencies

From: Manda Clevenger, J.D., Director *MC*
Food Protection Division

Subject: Guidance for "Micro Markets" Under Indiana Code 16-42-5-32

This guidance document is provided to promote consistency among regulators at local health departments and other Indiana food regulating agencies regarding 2021 legislative changes to Indiana Code 16-42-5-32, the statute that regulates micro market food sales.

New Requirements

Under Senate Enrolled Act 20 (included as Attachment A), effective July 1, 2021, an "automated payment kiosk" is now called an "automated payment system" and allows the use of a software application on a smartphone for payment. Hot beverages are now allowed to be sold by the addition of a "hot beverage brewer" to the "micro market display." However, all food at the micro market must be sold unheated except for hot beverages.

The primary change to the statute was the addition of subsection (e), which excludes the owner or operator of a micro market from having to submit documents or be subject to pre-plan review, inspection process, or an approval process by regulators of retail food establishments before the installation of a micro market. The subsection states that the owner or operator of a micro market must notify the regulating agency where the micro market is located not later than ten (10) days after the installation of the micro market. It adds that micro markets will not be subject to fees associated with this notification. This means that the regulatory agency shall not charge notification fees for a micro market, but the annual permit fee may continue.

Sanitation Standard

Subsection (d) of Indiana Code 16-42-5-32 should continue to be used as a sanitation standard for micro markets. An error in the passage of the micro market statute failed to address interpreting the use of vending machines as a micro market. Please note, while the definition of a "micro market display" includes vending machines, our current guidance is that the presence

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of only one or more vending machines in a location does not constitute a micro market.

Questions related to this document or topic may be directed to dmiller@isdh.in.gov, your IDOH Food Protection Division field staff, or to the Food Protection Division Office at 317-234-8569.



Attachment A

First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in this style type, and deletions will appear in this style type.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in this style type. Also, the word NEW will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in this style type or this style type reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 20

AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 16-42-5-32, AS ADDED BY P.L.46-2017, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 32. (a) As used in this section, "micro market" means an unstaffed, self-checkout retail food establishment that:

- (1) consists of one (1) or more micro market displays that do not exceed seventy-five (75) linear feet in total length across the front of all displays in any one (1) location;
- (2) contains an automated payment kiosk; system;
- (3) is located indoors and within a business;
- (4) is accessible only to an:
 - (A) owner or employee of the business; or
 - (B) escorted guest; and
- (5) is not accessible to the general public.

(b) As used in this section, "micro market display" means any of the following in which food is displayed:

- (1) An open rack.
- (2) A refrigerator or a refrigerated cooler.
- (3) A freezer.
- (4) A vending machine.
- (5) A beverage dispenser.
- (6) A hot beverage brewer.

(c) As used in this section, "vending machine" means a self-service



device that, upon activation, such as through by the insertion use of:

- (1) a coin;
- (2) paper currency;
- (3) a token;
- (4) a card; or
- (5) a key; or
- (6) a software application on a smartphone;

or by optional manual operation, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation.

(d) Notwithstanding any other state law or administrative rule, the owner or operator of a micro market is not required to have a person in charge present at the micro market, as otherwise required under 410 IAC 7-24 or under any successor rule adopted by the state department, if the following requirements are met:

- (1) The following security measures are used for the micro market:

(A) The micro market location includes video surveillance that operates on a twenty-four (24) hour per day, seven (7) day per week basis and:

- (i) records consumers viewing, selecting, handling, and purchasing products from the micro market; and
- (ii) provides sufficient resolution to identify consumers described in item (i).

(B) The video surveillance recordings described in clause (A) are:

- (i) maintained; and
- (ii) available for inspection upon request by the state department or another applicable regulatory agency;

for fourteen (14) days after the date of the surveillance.

(C) A video surveillance recording requested for inspection under clause (B) is made available to the state department or other requesting regulatory agency not later than twenty-four (24) hours after the time the request is received by the owner or operator of the micro market.

(D) The automated self-checkout equipment used in the micro market has the capability to match a purchase with the consumer who made the purchase.

- (2) The only food sold at the micro market is commercially prepackaged food, or ready to eat fruit, and hot beverages. **Except for hot beverages, all food must be sold unheated.**

- (3) Prepackaged food sold at the micro market is contained in



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tamper evident packaging.

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

(A) Except as exempted under the federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), nutrition labeling for the food as specified in 21 CFR 101 and 9 CFR 317, Subpart B.

(B) A freshness or expiration date.

(C) The labeling requirements set forth in 410 IAC 7-24-146 or in any successor rule adopted by the state department.

(5) Refrigerated or frozen food sold in the micro market is stored in a refrigerated cooler or freezer that:

(A) maintains an internal temperature:

(i) of forty-one (41) degrees Fahrenheit or less; or

(ii) as otherwise 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 temperature set forth in clause (A).

(6) There is a sign that:

(A) is posted at the location of the micro market;

(B) is readily visible from the automated payment kiosk; system; and

(C) contains the following information that is printed entirely in English and that may also, at the discretion of the owner or operator of the micro market, be printed in any other prevalent language of the customers of the micro market:

(i) The name of the owner or operator of the micro market to whom complaints and comments concerning the micro market may be addressed.

(ii) The business address of the owner or operator of the micro market.

(iii) The telephone number of the owner or operator of the micro market.

(iv) The electronic mail address and Internet web site information for the owner or operator of the micro market, as applicable.

(e) Notwithstanding any other law, administrative rule, or local



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ordinance, an owner or operator of a micro market shall not be required to:

- (1) submit any documentation; or**
- (2) be subject to any:**
 - (A) pre-plan review;**
 - (B) inspection process; or**
 - (C) approval process;**

by the state department, corporation, or local health department before the installation of a micro market.

An owner or operator of a micro market must notify the corporation or local health department where the micro market is located not later than ten (10) business days after the installation of the micro market. An owner or operator of a micro market shall not be subject to any fee associated with the notification described in this subsection.