

**Conference for Food Protection
2014 Issue Form**

**Internal Number: 090
Issue: 2014 I-019**

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

All information above the line is for conference use only.

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.