

Conference for Food Protection - Committee FINAL Report

Template approved: 08/14/2013

Committee Final Reports are considered DRAFT until deliberated and acknowledged by the assigned Council at the Biennial Meeting

COMMITTEE NAME: Unattended Food Establishments

COUNCIL or EXECUTIVE BOARD ASSIGNMENT: Council I

DATE OF REPORT: January 29, 2016 (Rev 2/11/16)

SUBMITTED BY: Co-Chairs Ric Mathis and Larry Eils

COMMITTEE CHARGE(s): Unattended Food Establishments Issue 2014-I-019

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.

COMMITTEE ACTIVITIES AND RECOMMENDATIONS:

1. Progress on Overall Committee Activities:

The committee's activity began by the Co-chairs emailing the committee information describing and depicting micro markets and their operation in order to familiarize them with this new type of food service. (See attachment "NAMA Technical Bulletin Micro Market" November 2012). After several very productive email meetings, our first conference call was held on February 12, 2015. The committee had a great deal of meaningful discussion. A consensus was reached regarding the initial approach to Food Code Section 2-101.11 in that these establishments would not be required to have a person-in-charge present during all hours of operation.

Next, the committee sought to develop a name for this type of operation. A lengthy discussion followed about how the operation should be characterized/defined. It was agreed that the Co-chairs along with a sub-committee would use existing information from Indiana (Guidance for Regulation of "Micro Markets" June 6, 2013) and Ohio (3717 Ohio Uniform Food Safety Code, OAC 3717-1-01) and other available resources to develop a composite definition to be discussed during the next call. The agreed upon name was Unattended Food Establishment. Using the composite definition as a template, the committee developed its final definition which is as follows:

Unattended Food Establishment means an operation that provides packaged foods or whole fruit using an automated payment system; and has controlled entry not accessible by the general public.

Controlled Entry means selective restriction or limitation of access to a place or location.

After reviewing existing guidance from FDA and other jurisdictions, the committee identified those components or activities indicative of an establishment of this type which were not in the Food Code. These activities were: definitions, plan review, location, nature and source of food and beverages offered for sale, refrigerated display cases, food service equipment limitations, security, routine maintenance, oversight, and designation of responsibilities.

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Another sub-committee reviewed Food Code Section 2-103.11 *Person-In-Charge* (PIC) Items (A) through (O) to determine the food safety risk levels of the various responsibilities of the PIC listed in this Section relating to Unattended Food Establishments. (See attached "Person in Charge Duties Unattended Food Service Establishments") It was determined that Item (E) of this attachment was the only activity with a medium risk level for this type of operation if there was no person in charge present. All other designated responsibilities of the Person in Charge were deemed a low or no risk with regards to the operation of an Unattended Food Establishment.

2-103-11 Person in Charge (E) 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, UNADULTERED, and accurately presented, by routinely monitoring the EMPLOYEES' observations and periodically evaluating FOODS upon their receipt.

In an Unattended Food Establishment operation the route driver is responsible for the following activities: obtain the food from an approved source (company kitchen or commercial product); maintain the food at 41 F or below from receipt, during transportation and placement in the display refrigerator at the location; all food must be pre-packaged; and all food must be protected from potential sources of contamination from receipt, transportation and their final display at the location. Item (E) covers all these activities done by the route driver.

The committee agreed that Unattended Food Establishments should be addressed in the Food Code and initially sought to identify where and how the Food Code should be modified. However, given the charge of the committee and available time, the members elected to focus on developing a guidance document that could assist state and local agencies when considering the regulation of Unattended Food Establishment. This document contains recommended minimum requirements when approving a waiver or variance for the operation of an Unattended Food Establishment. (See attached "Guidance Document for Unattended Food Establishments") This guidance document completes the second charge given to the committee.

Throughout the committee's work our FDA advisors provided input regarding possible concerns for an operation without a person-in-charge. At the same time they answered the many questions raised by the committee concerning how various sections of the Food Code related to items being included in the guidance document. See attached Memo to FDA National Retail Food Team 12/12/1024 as one example.

2. Recommendations for consideration by Council:

The Co-chairs, on behalf of the members of the Conference for Food Protection Unattended Food Establishment Committee, recommends:

1. Acknowledging the work of the Unattended Food Establishment Committee; and
2. Re-creating the Unattended Food Establishment Committee following the CFP 2016 Biennial Meeting to develop a guidance document and recommendations on how the Food Code should be modified to address Unattended Food Establishments and present their findings at the 2018 CFP Biennial Meeting.

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CFP ISSUES TO BE SUBMITTED BY COMMITTEE:

1. Issues to be submitted:

a. Title: Report - Unattended Food Establishments

b. Title: Re-create - Unattended Food Establishments

Re-creating the Unattended Food Establishment Committee following the CFP 2016 Biennial Meeting to continue the charges assigned in Issue I-019 and:

1. Develop recommendations on how the FDA Food Code addresses Unattended Food Establishments;
2. Continue to review the “Guidance Document for Unattended Food Establishments” and any existing guidance from FDA and others to update the 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. Present their findings at the 2018 CFP Biennial Meeting.

c. Title: Guidance Document for Unattended Food Establishments

1. Approval of the Unattended Food Establishment Committee document titled *Guidance Document for Unattended Food Establishments*
2. Posting the approved document in PDF format on the Conference for Food Protection website.

COMMITTEE MEMBER ROSTER (attached):

Committee Name:

CFP Unattended Foodservice Establishment 2014-16

Last Name	First Name	Position (Chair/Member)	Constituency	Employer	City	State	Telephone	Email
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Committee Name:

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Guidance Document For Unattended Food Establishments

Prepared by the
Unattended Food Establishment Committee
Conference for Food Protection 2014-2016

Preface

Council I of the Conference for Food Protection (CFP) formed the Unattended Food Establishment Committee which was charged to:

- (A) Develop recommendations on whether and how the Food Code should be modified to address unattended food merchandising operations.
- (B) 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 Food Code.
- (C) Report back to the 2016 Biennial Meeting with a recommendation to Council I.

Charge No. 1: Upon completion of the guidance document the Committee was unsure as to where to place the proposed requirements for an unattended food establishment in the Food Code. The proposed requirements cover a number of different sections of the Food Code and some requirements, such as video surveillance, have never been addressed in the Food Code.

Charge No. 2: The CFP Unattended Food Establishment Committee recommends that this information be placed on the CFP website for use as a guidance document. This document is intended to assist regulatory authorities and the foodservice industry in the review, approval and operation of unattended food establishments.

Introduction

A recent innovation in retail operations is the “unmanned food establishment”. This type of operation is typically located in office buildings or restricted break areas where access by the general public is somewhat restricted. While a wide variety of food items may be provided, these operations frequently offer packaged TCS and non-TCS food products that are displayed via refrigeration units, food racks, baskets and/or countertop display units. “Unmanned food establishments” may also be equipped with microwave ovens or offer automatically dispensed hot and cold beverages. The one common characteristic of these operations is that they lack the presence of an onsite person-in-charge.

As these operations have been observed, various jurisdictions have identified them by a variety of names including, but not limited to, micro-markets, self-service food markets and self-service retail convenience stores. Since this type of establishment is not specifically addressed in the FDA 2013 Food Code, impacted jurisdictions have found it necessary to individually address licensing requirements. Except where otherwise indicated in the document, the requirements of the Food Code for food establishments shall apply. For purposes of this guidance document below, such operations will be referred to as Unattended Food Establishments.

The 2014 Conference for Food Protection Biennial Meeting established the “Unattended Food

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Establishment Committee” which was tasked to develop a CFP guidance document that could assist states and local agencies in their regulation of these new entities. The committee proposes the following requirements need to be in place to allow the operation of an unattended food establishment:

Minimum Requirements for an Unattended Food Establishment

- A) Definitions
 - (1) Unattended Food Establishment means an operation that provides packaged foods or whole fruit using an automated payment system; and has controlled entry not accessible by the general public.
 - (2) Controlled Entry means selective restriction or limitation of access to a place or location.
- B) The plan review and food safety operating permit shall be in accordance with the requirements of the local authority having jurisdiction.
- C) Unattended Food Establishment Location
 - (1) The unattended food establishment shall be located in the interior of a building that is not accessible by the general public. Access to the unattended food establishment shall be limited to a defined population (e.g., employees or occupants of the building where the establishment is located).
- D) Nature and Source of Food and Beverages Offered for Sale
 - (1) Only commercially packaged foods properly labeled for individual retail sale (per Food Code definition of packaged and labeled per section 3-201.11(C) are offered).
 - (2) No unpackaged food is permitted except as provided by section 3-302.11(B) (1), of the Food Code.
 - (3) Food preparation by consumers is limited to heating/reheating food in a microwave oven.
 - (4) No dispensing of bulk food.
- E) Refrigerated Display Equipment
 - (1) An unattended food establishment shall be equipped with refrigeration or freezer units that have the following features:
 - (a) Self-closing doors that allow food to be viewed without opening the door to the refrigerated cooler or freezer; and
 - (b) Automatic self-locking mechanism that prevents the consumer from accessing the food upon the occurrence of any condition that results in the failure of the refrigeration unit to maintain the internal product temperature specified under section 3-501.16(A) (2) or freezer unit to maintain the product frozen.
- F) Food Service Equipment Limitations
 - (1) Dispenses beverages by individual serving only.
 - (a) Beverage dispensers connected to the building water supply must be properly equipped with backflow prevention per section 5-203.14, of the Food Code.

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- (2) Food Contact Surfaces
 - (a) Multi-use food-contact surfaces shall be cleaned on the frequency consistent with the-service per section 4-202. 11, of the Food Code or can be easily removed and replaced with cleaned surfaces.
 - (b) No multi-use food-contact surfaces intended for use with TCS foods.
- G) Security
 - (1) An unattended food establishment shall provide continuous video surveillance of areas where consumers view, select, handle and purchase products that provides sufficient resolution to identify situations that may compromise food safety or food defense.
 - (a) Video surveillance recordings shall be maintained and made available for inspection upon request by a representative of a regulatory agency within 24 hours of a request.
 - (b) Video surveillance recordings shall be held by the establishment for a minimum of fourteen (14) days after the date of the surveillance.
 - (2) The permit holder takes reasonable steps necessary to discourage individuals from returning food and/or beverages that not have been selected for purchase.
- H) Routine Maintenance at an Unattended Food Establishment:
 - (1) The permit holder shall service the unattended food establishment on a scheduled basis and at a frequency acceptable to the regulatory agency. Service may include, but is not limited to the following:
 - (a) Checking food supplies and equipment for signs of product damage and/or tampering.
 - (b) Verifying refrigeration equipment is operating properly including the temperature display and self-locking mechanism.
 - (c) Rotating foods to better ensure first in/first out of food items.
 - (d) Cleaning food service equipment and food display areas.
 - (e) Stocking food and disposable single-use and single-service supplies.
 - (f) Checking inventory for recalled foods.
 - (2) Permit holder shall assure:
 - (a) Food is from an approved source.
 - (b) Packaged food is provided in tamper-evident packaging.
 - (c) Food is protected from potential sources of cross contamination.
 - (d) Food is maintained at safe temperatures during transport and display.
- I) Unattended Food Establishment Oversight
 - (1) Each unattended food establishment shall have a sign readily visible at the automated payment station stating:
 - (a) The name and mailing address of the business entity responsible for the establishment and to whom complaints and comments should be addressed.

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- (b) The telephone, email or web information for the responsible business entity, when applicable.
- J) Designation of Responsibilities:
- (1) The permit holder bears all responsibilities for the operation of the food establishment. Where the permit holder is not the owner or operator of the building where the food establishment is located, a mutual agreement that outlines the responsibilities for cleaning and maintenance of all surfaces and equipment, provision of supportive facilities/services such as janitorial and restroom facilities, pest control and removal of solid waste may be approved by the regulatory agency. This agreement should also outline what actions must be taken by both parties to maintain the establishment in compliance with all requirements.

To: FDA National Retail Food Team
From: Director, Retail Foods and Cooperative Program Coordination Staff - CFSAN
Date: 12/12/2014
Re: Considerations for Permitting Unattended Food Establishments

At the 2014 Biennial Meeting in Orlando, the Conference for Food Protection established an *Unattended Food Establishments Committee* (see Issue 2014-I-019). The Committee is charged with reporting back to the 2016 meeting with recommendations on “*whether and how the Food Code should be modified to address unattended food merchandising operations*” and to “*consider 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 Sections 2-101.11 and 2-103.11 of the 2013 Food Code.*” FDA has appointed a member (Girvin Liggans) and an alternate (Donna Wanucha) to that Committee. We anticipate that the Committee will fulfill its charge and provide sound recommendations to CFP for consideration at the 2016 biennial meeting. FDA will consider all recommendations from the CFP.

Currently, Part 2-1 of the FDA Food Code requires that a food establishment have an appropriate person-in-charge present during all hours of operation. The FDA Food Code does not define specific criteria for the safe operation of unattended food merchandising operations other than those that apply to vending machine locations.

With regard to the potential changes to the Food Code and/or the development of guidance documents for regulatory authorities considering the issuance of a variance or waiver (to Sections 2-101.11 and 2-103.11 of the 2013 Food Code) for unattended food merchandising operations, FDA is recommending that the *CFP Unattended Food Establishments Committee* consider a number of characteristics of unattended food establishments that could impact food safety. FDA is requesting that the Committee consider what, if any, criteria for safe operation should be established with regard to:

1. The nature and source of food and beverages being offered for sale

Food safety risks are dependent on the types of foods being offered for sale.

Considerations include:

- Extent to which sales are limited to packaged foods
- Extent to which sales are limited to commercially prepared foods
- Extent to which sales are limited to foods that do not require temperature control for safety
- Extent to which foods may require on-site preparation by the customer
- Extent to which foods that are date-labeled for safety or quality are merchandised

2. Display equipment and facility design

The nature of the equipment and the facility design may impact food safety risks.

Considerations include:

- Extent to which display equipment is designed and constructed to limit customer access to TCS foods that have been subject to temperature abuse as the result of mechanical failure or other unintended condition
- Extent to which equipment requires connection to a water supply or wastewater connections
- Size and mobility of equipment used in the establishment
- Overall size of the operation
- Availability of seating and other facilities (e.g. restrooms, sinks) for use by customers in the establishment

3. Facility location, oversight and security

The nature of customer access to the location and the level of oversight provided by the operator and others may impact food safety risks.

Considerations include:

- Extent to which the facility is located in a "controlled location" such that access to the food establishment is restricted to a defined group of individuals (e.g. places of employment)
- Extent to which the permit holder or designee is available to service the site, the frequency at which the individual will assess food safety and sanitation and how the permit holder is alerted to problems in the facility that may warrant an immediate response
- Extent to which individuals, including those who may not be employed by the permit holder, are available and authorized to take action if a potential food safety hazard is created in the food establishment (e.g., food spills, cross contamination, vomiting)
- Extent to which surveillance is provided to detect and/or discourage intentional or unintentional acts that may create a food safety hazard
- Extent to which the location is protected from exposure to the outdoors or uncontrolled environments.

Please note that regulatory authorities in some states have already established requirements, either via rulemaking or policy directives, to better define the conditions under which self-service food merchandising operations may operate without the presence of an employee.

Person in Charge as it relates to Unattended Food Service Establishments - October, 2015

2-103.11	Duty of the Person-In-Charge	Applicable to Unattended Market?	Risk Level	Action, Prevention, or Reduction of Risk
(A)	Food operations not conducted in private home, living or sleeping quarters	No		Prepackaged food obtained from commercial, licensed suppliers
(B)	Persons unnecessary to operation are not allowed in food preparation area	No		All foods prepackaged. No food production at unattended market. Only "open" food may be beverages dispensed into a single-use cup.
(C)	People entering the food preparation, storage and warewashing areas comply with the Code.	No		Food is not prepared on-site. Food is stored in secured areas (locked cabinets) or on display in area under continuous electronic surveillance. Entry to unattended market is secured. Warewashing is not done at the unattended market.
(D)	Employees are effectively cleaning their hands. PIC is routinely monitoring the employees' handwashing.	Yes	Low	All food is prepackaged. Hand contact with any food contact surface can be eliminated or minimized. Filling single-service, disposable article dispensers (coffee cups, coffee stirrers, straws) may be accomplished with gloved hands or by using the plastic sleeve wrapping on the cups.
(E)	Employees are visibly observing foods as they are received for <ul style="list-style-type: none"> • Approved source • Delivered at required temperatures • Protected from contamination • Unadulterated • Accurately presented PIC is to routinely monitor employee observations and periodically evaluate food upon receipt	Yes	Medium	Food is obtained from a safe source (vending branch, commercial, licensed suppliers). Route driver/merchandiser must protect the cold chain of the food from receipt, during transportation, and to the display refrigerator. All foods must be pre-packaged (tamper-resistant or tamper-evident packaging). All foods must be protected from all potential sources of contamination from receipt, transportation and storage.

				All packages of food must be properly labeled for individual retail sale. In all likelihood, the route driver/merchandiser is the person in charge and will not be evaluating other employees.
(F)	Verifying that foods delivered during non-operating hours are from approved sources and are placed into appropriate storage locations, maintained at the required temperatures, protected from contamination, unadulterated, and accurately presented	No		N/A Food is not drop shipped at unattended markets. All food is delivered by the route driver/merchandiser.
(G)	Employees are properly cooking TCS foods and using thermometers	No		N/A Food is not cooked at the unattended market
(H)	Employees are properly cooling TCS foods	No		N/A TCS foods are not prepared using a cooling step at the unattended market
(I)	Consumer advisory is provided	Yes	Low	Any raw animal foods offered for sale (prepackaged sushi) must be properly labeled, including the consumer advisory statement on the individual package label.
(J)	Employees are properly sanitizing cleaned multi-use equipment and utensils before they are reused	Maybe	Low	(1) No multi-use utensils or equipment allowed OR (2) any multi-use utensils or equipment is cleaned and sanitized on a frequency in compliance with applicable sections of the Food Code (either Clean-In-Place or parts are removed during the service visit and replaced with clean parts – soiled parts are properly washed-rinsed-sanitized at the vending branch location)
(K)	Consumers are notified	No		No multi-use tableware is

	that clean tableware is to be used when they return to self-service areas such as salad bars and buffets			provided. <i>If there is a concern of customers re-using single-service articles, a sign may be recommended....</i>
(L)	Employees are preventing bare hand contact with ready-to-eat foods	No		All food is prepackaged
(M)	Employees are properly trained in food safety, including food allergy awareness, as it relates to their assigned duties	Maybe	Low	Minimum food safety training for employees of unattended markets would need to be specified. Current Food Code definition of FOOD EMPLOYEE: "Food employee" means an individual working with unPACKAGED FOOD, FOOD EQUIPMENT or UTENSILS, or FOOD-CONTACT SURFACES.
(N)	Food employees and conditional employees are informed in a verifiable manner of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they related to diseases that are transmissible through food	Maybe	Low	Employee health reporting agreement forms (vending companies can use model Forms 1-A, 1-B, 1-C in Annex 7). "RESTRICT" already states that the FOOD EMPLOYEE does not work with exposed FOOD, clean EQUIPMENT, UTENSILS, LINENS, or unwrapped SINGLE-SERVICE or SINGLE-USE ARTICLES.
(O)	Written procedures and plans, where specified by this Code and as developed by the food establishment, are maintained and implemented as required.	No		HACCP plans would not be required for unattended markets.

Micro Market – NAMA Technical Bulletin

A New Innovation in Automatic Merchandising

Introduction

Technology is making possible great changes in the food and beverage vending industry. Today you can purchase a Latte or a Cappuccino from a hot beverage machine and enjoy many of the new bottle drinks from a glass front beverage dispenser. You can also make your purchase using a credit/debit card in addition to using bills or coins.

However, the biggest change has been the introduction of the Micro Market. A Micro Market is a self-checkout retail food establishment that replaces a bank of vending machines. In a Micro Market a customer picks up a product from an open rack display, a reach-in refrigerated cooler or freezer or open air cooler, than scans the UPC bar code or an RFID tag for each product at a payment kiosk. The customer pays with a single payment, be it cash, credit card or stored value card. Another unique feature of the Micro Market is that it operates without an employee present, just like vending machines. All Micro Markets are equipped with a 24 hour a day security system monitoring customers as they make their selections and checkout. Micro Markets are designed to be in “closed locations.” This refers to a business that has a moderately secured facility for a known group of employees where the Micro Market can be located in a designated area away from heavy public traffic.

Micro Market Products Available

In a typical Micro Market you will find:

- Fresh crisp salads and fruit
- Deli sandwiches, subs, soups and meal options
- Premium beverages, sparkling drinks and juice varieties
- Popular snacks, candies, gum and mints
- Low-calorie, low-fat healthy alternatives
- Breakfast sandwiches, pastries and cereals
- Ice cream and other frozen treats
- Some over the counter medicine and sundry items

Micro Market Equipment

To merchandise all the products available in a Micro Market you will typically find:

- Shelving, be it wall or free standing for popular snacks, candies, gum, mints, low-calorie, low-fat healthy alternative snacks and sundry items
- Single or double door glass front reach-in refrigerators for premium beverages, sparkling drinks and juice varieties
- Single door glass front reach-in refrigerator or open air cooler for fresh crisp salads and

fruit; deli sandwiches, subs, soups and other meal options; breakfast sandwiches, pastries and cereals

Single door glass front reach-in freezer for ice cream and other frozen treats.

Equipment Specification for Handling Potentially Hazardous Foods

All glass front reach-in refrigerators and freezers and open air coolers shall be Listed by the National Sanitation Foundation.

How a Micro Market Works

A Micro Market is serviced on a pre-set schedule by a route driver. The route driver arrives at a location, checks the equipment to be sure it is working correctly, cleans the equipment on a set schedule, check products to be sure they are still “in date” and will be until the next service date, pulls any products that will be “out of date” and then stocks the product shelves and refrigerated and/or freezer units with new product. Through the use of on-line software, the route driver brings only what products are actually needed. The “out of date” products are returned to the warehouse for accountability and proper disposal at the end of day.

Today, government agencies at all levels along with businesses are requesting or mandating that healthier food options be available to their employees. Traditional vending has come a long way to improve its’ offerings but is still very limited by column or shelf space size and selections as to what items can be sold in a typical vending machine. A Micro Market expands the number of products that can be sold in the same floor space a typical bank of vending machine would occupy. In addition, a customer can read all the nutrition information on the label of a food product because they can hold it before purchasing.

Public Health Safeguards

Food Safety - Since Micro Markets sell potentially hazardous foods reach-in refrigerated refrigerators maintain a temperature of 41°F and reach-in freezers maintain a temperature of 0°F. All refrigeration equipment have self-closing doors to help maintain the correct temperatures. In addition all refrigeration equipment are equipped with automatic shut-off controls that prevents the equipment from selling food by locking the door when there is a power failure, mechanical failure or other condition that results in an internal temperature greater than 41°F for longer than 30 minutes. Only an authorized service technician or the route driver has the ability to reset the equipment after it is has been determined what caused the temperature failure.

Food Security - Micro Markets are designed to be located in a closed location serving a known set of employees. As mentioned earlier, Micro Markets operate without an employee present. To prevent theft and tampering of food products Micro Markets are equipped with 24/7 surveillance cameras. The time and date products were purchased can

be traced back and matched to the person who made the purchase.

General Sanitation - To perform routine cleaning of the Micro Market the route driver does have access to potable water and a sanitation kit consisting of a cleaning pail, disposable towels, detergent in a spray bottle, sanitizer in a spray bottle and window cleaner.