

**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.