

**Conference for Food Protection  
2016 Issue Form**

**Issue: 2016 I-047**

<b>Council Recommendation:</b>	Accepted as Submitted _____	Accepted as Amended _____	No Action _____
<b>Delegate Action:</b>	Accepted _____	Rejected _____	

*All information above the line is for conference use only.*

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**Issue History:**

This is a brand new Issue.

**Title:**

Temporary Food Establishment Inspection Intervals

**Issue you would like the Conference to consider:**

The 2013 FDA Food Code Section 8-401.10(C) states that:

The regulatory authority shall periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged potentially hazardous food (time/temperature control for safety food) and that:

- (1) Has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or
- (2) Has inexperienced food employees.

While this is a nondebitable code provision the use of the word "shall" means that the act is "imperative" and constitutes a command to the regulatory authority. However, based on risk, it may not be necessary for the regulatory authority to inspect a temporary food establishment (TFE) more than once even if the conditions stated in 8-401.10(C)(1) or (2) exist.

I propose changing the word shall to may.

**Public Health Significance:**

I do not believe there is a public health rationale for the use of the word "shall" in 8-401.10(C). By changing it to "may" it would still permit/allow the regulatory authority to conduct more than one inspection of the TFE during the operational period if they determine it is necessary.

**Recommended Solution: The Conference recommends...:**

a letter be sent to the FDA requesting the 2013 Food Code be amended as follows (language to be added is underlined; language to be deleted is in strikethrough format):

Section 8-401.10

(C) The REGULATORY AUTHORITY ~~shall~~ may periodically inspect throughout its PERMIT period a TEMPORARY FOOD ESTABLISHMENT that prepares, sells, or serves unPACKAGED TIME/TEMPERATURE CONTROL FOR SAFETY FOOD and that:

(1) Has improvised rather than permanent facilities or EQUIPMENT for accomplishing functions such as handwashing, FOOD preparation and protection, FOOD temperature control, WAREWASHING, providing DRINKING WATER, waste retention and disposal, and insect and rodent control; or

(2) Has inexperienced FOOD EMPLOYEES.

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