



State of California—Health and Human Services Agency
Department of Public Health
Food and Drug Branch



Regulatory Advisory
California Retail Food Code
Section 114380 (c) (2)

Effective July 1, 2007, the California Uniform Retail Food Facilities Law (CURFFL) was repealed and replaced with the new California Retail Food Code (CRFC). The CRFC is based on sound scientific principles, accommodates new food safety and security technologies, and is similar to retail food safety legislation already adopted or in the process of being adopted by other states. The CRFC represents a multiyear effort by the California Retail Food Safety Coalition, a group of over 100 representatives from industry, local regulatory agencies, the California Department of Education, the California Department of Aging, and California Department of Public Health (CDPH).

CRFC provisions are a blend of CURFFL and the U.S. Food and Drug Administration (FDA) Food Code. As such, there are structural and operational requirements in the CRFC that were not in CURFFL. Existing retail food facilities with valid local agency issued health permits that were in compliance with CURFFL requirements on June 30, 2007, may not have been in compliance with new CRFC requirements on July 1, 2007. In addition, CRFC Section 113789 (b) specifically includes licensed health care facility and school cafeteria kitchens in the definition of retail food facility. While these two retail food facility categories could and should have been regulated under CURFFL, many local environmental health enforcement agencies, for a variety of reasons, did not conduct inspections of these facilities to ensure compliance with CURFFL. As a result, many school cafeterias and licensed health care facility kitchens are being permitted and inspected by local enforcement agencies for the first time to ensure compliance with CRFC requirements.

It was anticipated that the change in retail food law might pose compliance problems for the impacted industry until such time as both industry and regulators became familiar with the new code requirements, especially those dealing with structural conditions and equipment installation. In the case of existing retail food facilities permitted and inspected under CURFFL, it is not reasonable to expect a facility retrofit to address new CRFC requirements, such as lighting intensity, equipment installation tolerances, etc. Similarly, school cafeterias and licensed health care facility kitchens that were never permitted and inspected under CURFFL will likely have structural and equipment deficiencies that make it difficult, if not impossible, to comply with CRFC requirements. To address this situation, CRFC Section 114380 (c) (2) provides a "grandfather" clause as follows:

"Except where a determination is made by the enforcement agency that the nonconforming structural conditions pose a public health hazard, existing food facilities shall be deemed to be in compliance with the law pending

replacement or renovation. If a determination is made by the enforcement agency that a structural condition poses a public health hazard, the food facility shall remedy the deficiency to the satisfaction of the enforcement agency.”

Unless nonconforming structural and equipment conditions pose a public health hazard, this section prevents local environmental health enforcement agencies from requiring retail food facility structural and equipment retrofit for kitchens that were in compliance with CURFFL as of June 30, 2007, but that are not in compliance with new CRFC requirements. Similarly, school cafeteria and licensed health care facility kitchens that were not inspected and permitted under CURFFL do not have to comply with CRFC structural and equipment requirements unless failure to do so would result in a public health hazard. However, when the facility kitchen is remodeled, all CRFC requirements must be met. Likewise, any replacement equipment must meet current code requirements. It should be noted that the grandfather clause does not apply to CRFC operational requirements.

This document is the first in a series of CDPH *Regulatory Advisories* that will clarify the intent, application, and enforcement of the California Retail Food Code. It is hoped that the *Regulatory Advisories* will be beneficial to both the retail food industry and local regulatory agencies.

Any questions or comments on this document can be directed to:
susan.strong@cdph.ca.gov

Look for future *Regulatory Advisories* and other retail food safety information coming soon to the following website:

<http://www.cdph.ca.gov/programs/Pages/fdbRetailFoodProgram.aspx>