



CALIFORNIA RETAIL FOOD CODE
SECTION 114380 (c)(2)
**GRANDFATHER CLAUSE FOR PRE-EXISTING,
NON-CONFORMING STRUCTURES AND EQUIPMENT**



On July 1, 2007, the California Uniform Retail Food Facilities Law (CURFFL) was repealed and replaced with the California Retail Food Code (CRFC). The CRFC, based on sound scientific principles that accommodate new food safety and security technologies, has provisions that are a blend of CURFFL and the U.S. Food and Drug Administration (FDA) Model 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 the 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 in 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.