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CalCode Implementation & Interpretation Resolution Process

CalCode Implementation & Interpretation Resolution Process March 16, 2010

Introduction

The California Retail Food Safety Coalition (CRFSC) is a coalition of retail food industry and local, State and Federal regulators responsible for assuring food safety practices in the retail food industry. The purpose of CRFSC is to develop and implement food safety regulations using science-based food handling practices to ensure that food provided to the consumer is safe, wholesome and free of harmful contamination. This is accomplished through the coordinated and objective implementation of the Retail Food Safety Code (CalCode).

The CRFSC recognizes that discords or disputes regarding the implementation of CalCode may occasionally arise between the retail food industry and regulators. It is the intent of the CRFSC to provide an objective third party review process for resolving disputes that meet specified criteria in order to provide guidance on the interpretation and implementation of CalCode or recommend revisions to CalCode. The CRFSC intends to only assist in the resolution of disputes when they have a statewide or regional impact on the implementation of CalCode.

It is not the intent of the CRFSC to intervene in the regulatory relationship between the retail food industry and local regulators. The CalCode Implementation & Interpretation Resolution Committee (CCIIRC) of the CRFSC does not have the ability to intervene in a local jurisdiction decision regarding a particular situation. However, the CRFSC/CCIIRC is uniquely positioned to hear issues that arise from disputes/conflicts at the local level and, if needed, make recommendations regarding legislative changes to CalCode or recommend the development of interpretive guidelines. While the CRFSC/CCIIRC cannot intervene in particular decisions made at the local level, it will provide a path to long term solutions to disputes/conflicts that arise at the local level.

Problem

CalCode is a complex set of requirements for the safe handling of food. As with any regulations, differences arise on interpretation and implementation. The retail food industry and regulators have identified the need for a CalCode implementation and interpretation resolution process that will objectively evaluate the public health risks and CalCode requirements; identify potential options to improve CalCode application; develop findings; and, if necessary, recommend reasonable interpretations of CalCode and science based solutions to reduce public health risks.

Overview of the Process

In order to respond to this problem, the CRFSC proposes the following CalCode Implementation & Interpretation Resolution process.

1. When a dispute/conflict arises regarding the implementation of CalCode by a local jurisdiction or jurisdictions that have state-wide or regional impact(s) on consistent enforcement of CalCode requirements, one of the parties of the

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dispute/conflict may refer the conflict to the CRFSC Steering Committee using the specified referral format.

2. The CRFSC Steering Committee will review the referral and evaluate it using specified criteria. If the referral meets the specified criteria, the Steering Committee will refer it to the CCIIRC for consideration.
3. The CCIIRC will make findings of fact and take one of the following actions within a specified timeline:
 - Recommend change(s) to CalCode to improve food safety practices and/or consistency of enforcement and refer the recommendation to the CRFSC Subcommittee B for possible legislative revision of CalCode.
 - Recommend the development of guidelines to improve food safety practices and/or enforcement and refer the recommendation to the CRFSC Subcommittee C for its action.
 - Recommend take no action.

Participants

It is the intent of the CRFSC to have representation on the CCIIRC that is balanced between government regulators and the retail food industry. The CCIIRC will be made up of representatives or their designated alternates from the following:

1. California Dept. of Public Health (CDPH), Food and Drug Branch – Chairperson and potential tie breaker.
2. California Conference of Directors of Environmental Health (CCDEH) Regions 1,2,3 and 4
3. CCDEH Food Safety Policy Committee Chairperson
4. California Restaurant Association
5. Grocers Association
6. Retailers Association
7. Temporary/Mobile Food Facilities
8. Hotel/Motel Association
9. US Food and Drug Administration (Advisory Only)
10. Academia (Advisory Only)

In order for the CCIIRC to consider a dispute/conflict, there shall be a quorum of at least four representatives from the retail food industry and four representatives from regulators (CCDEH).

Conflict of Interest

If a conflict of interest exists among the CCIIRC participants, then that participant shall recuse him/herself from hearing the issue and designate an alternate who does not have a conflict of interest. The conflict of interest should be narrowly interpreted as the participant has a direct involvement with the issue (ie. CCDEH representative is the regulator having authority to make a decision at the local level in this case; the food industry representative owns, or is a direct employee of the particular business/corporation involved in the dispute/conflict).

Criteria for Referral

1. The conflict/dispute is an interpretation of CalCode.

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2. All attempts to resolve the conflict/dispute have been exhausted at the local level.
3. The conflict/dispute has statewide or regional impact.

Format for Referral

The format for the referral will be as follows:

Date of Referral:

Title:

Health and Safety Code Sections:

Background/Issue:

- Summary of issue
- History at the local level
- Documentation regarding the events
- Justification for meeting the “Criteria For Referral”
- Written response from local jurisdiction (when provided)
 1. It is incumbent upon a business seeking a recommendation from the CCIIRC to provide documentation that he/she has given the local jurisdiction (EH Director) the opportunity to respond in writing to his/her concerns.

Justification:

- Peer reviewed documents
- References to laws and regulations including interpretations of Cal Code regulations.
- Relevant information from individuals/organizations/agencies other than the two parties involved.
- Public Health Significance

Submitter Information:

- Name
- Organization
- Address
- City/State/Zip
- Telephone
- E-mail

Note: I will be working on an actual form that will be available on the CRFSC website and able to be completed online.

The individual submitting the referral (petitioner) will be responsible for providing background, framing the issue and providing documentation that is based on facts and science. It is critical that science based justification is supported by peer reviewed documents. In the event that the dispute/conflict is based on interpretations of CalCode, the petitioner shall identify the Health and Safety Code sections that are at issue and provide facts that support their position. The responsibility for providing the justification to hear the facts of the dispute by the CCIIRC is with the petitioner. The regulatory agency/agencies or individuals/organizations involved in the issue may also submit factual information regarding the current enforcement action or related information.

Referral Submission

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CalCode Implementation & Interpretation Resolution Committee referrals shall be submitted by the petitioner to the CRFSC Steering Committee with a copy sent to the other individual/organization/agency involved in the dispute/conflict. The Steering Committee shall review the referral for completeness and forward it to the CCIIRC if it is determined to be complete. If the referral is incomplete, the Steering Committee shall return it to the individual/organization/agency that submitted the referral for revision.

Timeline

The CCIIRC shall meet quarterly, if needed, in the months of March, June, September and December. Specific dates shall be determined by the Chairperson of the CCIIRC. From the day the referral is received by the CRFSC Steering Committee until the CCIIRC makes findings and recommendations will not exceed 60 days. However, the CCIIRC Chairperson may extend the deadline for completion of the findings and recommendations to 90 days if in his/her opinion the circumstances warrant it. Timelines for major milestones are as follows:

Milestones

Referral from the petitioner received by the CRFSC Steering Committee	At least 45 days prior to the CCIIRC meeting
CRFSC Steering Committee makes the referral to the CCIIRC	30 days prior to the CCIIRC meeting
Other involved individuals/organizations/agencies submit written documentation supporting their positions to the CCIIRC	At least 15 days prior to the CCIIRC meeting
CCIIRC makes finding and recommendations	15 days after the CCIIRC meeting

CCIIRC Meeting Process

The CCIIRC meeting shall be conducted by the Chairperson. Each party to the dispute will have the opportunity to make a 10 minute presentation outlining their position on the issue. The petitioner shall be the first to make a presentation. Following the presentations, there will be a question and answer period. The CCIIRC participants may ask questions and seek points of clarification. At the conclusion of the question and answer period, each party to the dispute will have the opportunity to make a 5 minute closing presentation.

Findings and Recommendations

Each CCIIRC participant will have one vote on the referral after considering the facts as presented. In the event that the outcome of the voting on the referral is a tie among the

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CCIIRC participants, the Chairperson shall cast the deciding vote. A majority/ minority report based on facts and/or science will be developed. The majority opinion will be drafted by a CCIIRC participant representing the majority recommendation. The minority opinion shall be drafted by a CCIIRC participant representing the minority recommendation. The majority/minority report will be provided to the petitioner and the local jurisdiction. The majority/minority report will be presented to the CRFSC Steering Committee and then to the CRFSC general membership. The CRFSC Steering Committee may refer the issue to Subcommittee B for possible legislative revisions to CalCode or to Subcommittee C to develop interpretive guidelines. If the CCIIRC recommendation is to take no action, the CRFSC Steering Committee will confirm the recommendation or refer the issue to Subcommittee B or Subcommittee C.

Format for Findings and/or Recommendations

Date:

Title:

Discussion and Rationale and Considerations:

- Majority opinion
- Minority opinion

Findings:

- Majority findings
- Minority findings

Recommendation:

- Majority recommendation
- Minority recommendation