

Standards Development Organizations and the Code Adoption Process

The food and food service industry may be the most heavily regulated industry in the U.S.. There are more rules pertaining to food and food service operations and more authorities having jurisdiction (AHJ's) in food operations than in any other industry or specialty.

The vast number of rules and standards associated with food and food service is understandable given the size and variability of the commercial food and beverage industry. Since everyone needs to eat and drink, it impacts everyone every day. Understanding how new rules and standards are developed, implemented and enforced is foreign to most people. Yet the impact of adopted rules and the standards they reference on what is permitted and how things are done in our industry is immense.

A starting point to our discussion about codes and standards is a review of dictionary definitions:

Code: **Main Entry:** ¹**code** 
Pronunciation: 'kOd
Function: *noun*
Etymology: Middle English, from Middle French, from Latin *caudex*, *codex* trunk of a tree, document formed originally from wooden tablets
1 : a systematic statement of a body of law; *especially* : one given statutory force
2 : a system of principles or rules <moral *code*>
3 a : a system of signals or symbols for communication **b** : a system of symbols (as letters or numbers) used to represent assigned and often secret meanings

Standard: **3** : something established by authority, custom, or general consent as a model or example : CRITERION
4 : something set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality

“Standards” in this discussion relate to a set of performance criteria used to test equipment to assure its safety when used as intended. Standards set forth threshold limit values and other measurable criteria for minimum safety. The American National Standards Institute (ANSI) is the North American partner to the International Standards Organization (ISO). When standards are established using their published criteria they can be certified as ANSI standards. Such ANSI standards are often referenced in model codes.

Codes are sets of rules that when adopted by governmental units become law. Authorities having jurisdiction (AHJ's) then are the enforcers, the cops hired by the governmental unit to police the regulated industry to assure its minimum safety criteria is actually applied. Codes are developed by model using the industry consensus standards process. There exists an international standard for this process known as ISO65/IEC. It defines the composition of the industry consensus standards development organization (SDO) as having fair, equal and competent representation from at least three different industry vantage points:

1. Regulators
2. Consumers
3. Industry

In our industry, those SDO members filling the consumer's role may be consumer advocates or community leaders. The National Sanitation Foundation (NSF) has a Joint Committee for Food Equipment that fits this model, and a separate Environmental Public Health Council, which fills the regulators role. Industry members could be contractors, manufacturers, distributors, consultants or other private sector professionals who specialize in some manner in the regulated industry or trade.

These SDO members then are responsible for developing minimum criteria for protecting public health and safety for specific circumstances that would otherwise pose a hazard to the public. They do this by developing specific language detailing those critical elements needed for safety. They then vote on the language of their proposed standard and if there is consensus, it sticks.

One of the criterion that is supposed to be in place before any new or revised rule is to be considered for adoption by a governmental unit is what is known as a Statement Of Need and Reasonableness, or "SONAR". This is a statement that articulates how the recommended language of the new or revised rule (ie., code section) correlates to mitigating a hazard to public health and safety. The rationale for SONAR are supposed to be measurable and documented. This is a critical step to prevent adoption of rules without merit which assure trade restraint and squelch innovation. It is often the step that is forgotten or glossed over as sometimes there is more bluster beneath strong opinions than fact.

When governmental units undertake rule revision they look to model codes to find a reasonable set of criteria for regulating industries and affecting public health and safety. If the agency is the health department and they are working on a food code they turn to the FDA Food Code which is a model sponsored by the twin federal agencies of Health and Human services; USDA and US FDA.

If the agency is the State building code section, they would consider one or more of a number of model code families. Each of the code families has different sections. There is the building code, the mechanical code, the plumbing code, the fire code, the fuel gas code, the residential code and so forth.

One of the code family's they could consider is called the "I-Code's" which are developed by the International Code Council, an organization comprised of the former BOCA, SBCCI and ICBO UMC groups. Another code family is developed by the International Association of Plumbing and mechanical Officials (IAPMO) which authors the Uniform Building Code the Uniform Mechanical Code (UBC and UMC) and the Uniform Plumbing code.

IAPMO has been collaborating with NFPA as of late which is interesting because NFPA has its own a family of construction codes called the NFPA 2000 Life Safety Code. Most folks in our industry think of NFPA pamphlet 96 when they think of NFPA. It is referenced in many of the model code families, but not all. Each of these model code developer groups competes to have governmental units use their models to form their adopted rules as they then can sell code books or downloads for fee; it's the life blood of the organization.

Fire codes are unique among the construction codes as they are adopted as statutory rules. Other codes (health, building and mechanical) are typically adopted using the administrative law process. State agencies retain jurisdictional authority with statutes, whereas local governmental agencies have jurisdiction for administrative rules. A State Fire marshal's agency will sign delegation agreements with local fire departments for various enforcement services, but whenever there is a question of interpretation or enforcement it's the State agency that has jurisdiction.

Not so with other construction codes. Even though there is a State agency involved in the selection of the building and mechanical (construction) codes in a State, they ultimately become rules adopted and enforced by local governmental units or municipalities. These municipal governments then issue construction permits (for a fee) and if their adopted rules are violated they can hold up the project and withhold issuance of the certificate of occupancy (CO).

Where fire agencies constantly have jurisdiction for plan review and inspection to assure compliance with fire rules, building and mechanical officials exercise their authority through licensure and the issuance of permits. Unlike fire code authorities or environmental health agencies (aka, board of health), building and mechanical code enforcement agencies have no jurisdiction after issuance of the CO.

In our society of strict liability it's the stakeholders of private companies that bear the burden for public health and safety. Regulators (inspectors, plan reviewers, etc) have discretionary immunity (eg, inspectors immunity) and though their employers expect that they will be effective in enforcement, when things go bad they are not the ones whose assets are on the line. Even though an inspector may have demanded something be done or alternately, let you get away with something which ultimately results in injury, when the finger pointing starts they are immune. They are not attorneys and the advice they offer is not intended to speak to the scope of your potential liability. Their advice is merely a guide to obtaining that individuals approval. If you want advice about your potential liability you need competent legal

counsel, NOT an inspector. Due diligence will help reduce potential damage claims, but it does not remove liability.

Every dealer, rep, service agency, designer, manufacturer and user has a role in the solution. It's about education and training for best practices and optimized operations. But when innovation runs into poorly written rules its market momentum stalls out. Since industry innovates and implements new and better ways to do things safely it makes sense that industry would provide the education and training to all of those influenced or impacted by their products and services, including regulators, users and designers.

When industry innovates and then surprises regulators with their products in the marketplace there is a great likelihood that their approvals will be withheld and projects will be delayed. Conversely, when regulators know about an optimization or innovation and understand how it is accommodated in their rules there is no resistance.

It stands to reason that industry would work to find ways to educate and inform the regulatory community. This includes the model code writers, the standards developers, and the many governmental units responsible for recommending revised rules and enforcing (through plan review and inspection) those that are adopted. So too is it important for we in industry to understand the role of governmental regulation and the critical difference between minimum safety criteria, best practice and due diligence and strict liability where prevention is king. As products and systems take on technology and complexity the importance of education and training to the health of our industry grows exponentially. Spending a little time to better understand the process and to gain deeper insight into the public health and safety concerns is time well spent.

The best place to start is at home and with the trade associations that represent our common interests. Though National Restaurant Association (NRA) members are primary beneficiaries to well written rules and uniform interpretations, NAFEM, MAFSI, FEDA, FMI, NAMA and FCSI members all feel the pain of denials, change orders and variability of interpretation. We do not have to take it as it is. We can change things for the better but we have to make our opinions known and somehow we MUST find a way to get our associations to collaborate and strategize on these items that are crucial to optimization and eliminating waste in our business.

Do you know what your trade association does to encourage rule uniformity and standards with integrity? Does your association ever share ideas and strategies with other associations whose members are similarly affected? Do you really think that UL, ASHRAE, NSF, ANSI or any one other group or association has your segments best interests at heart and is using its best efforts to advocate accordingly? If so, who among its members attends the code revision hearings, or the standard development meetings, or the conference for food protection, or the UL advisory group and reports back to its membership? Is anyone paying attention?

Why is it that we assume that somebody else is responsible for making sure our standards are relevant and our adopted rules optimized and our governmental agencies well informed and uniform in their interpretation?

The best way to assure well written rules that protect the public and encourage trade is to cause our trade associations to make a commitment to work together and strategize code revisions that are optimized and speak directly to the hazard. The upcoming I-Code annual meeting in Detroit in September provides a near term opportunity to affect change. Without your voice (and presence) and the support of your association it is likely that all cooking equipment will need revision in order to enable it to automatically actuate the hoods exhaust fan.

This is but one example of what happens to rule making when we are not involved and paying attention. By standing together and being proactive we can make a difference and impact codes and standards to the extent that they do a better job of protecting public health and safety whilst encouraging trade and innovation. It starts with a dialog and discussion by and between industry associations and the decision that we can, and, *I will* make a difference.

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