Food Code Adoption Survey

July 2020- Results

Overview

A July 2020 survey was disseminated to 221 State, Local, Tribal, and Territorial (SLTT) retail food regulatory programs to assess their jurisdiction's food code adoption process, challenges, and successes. Forty-nine surveys were completed for a 22% response rate. The information gathered in this survey will be used to inform the development of a Food Code Adoption Toolkit, which will provide resources, tools, and information for jurisdictions seeking to adopt the most current versions of the FDA Food Code. Although the response rate was lower than hoped for, possibly due to COVID-19, the results that are being reported out provide content that may be useful to the broader audience. Future surveys will be conducted to obtain additional information.

Survey Results
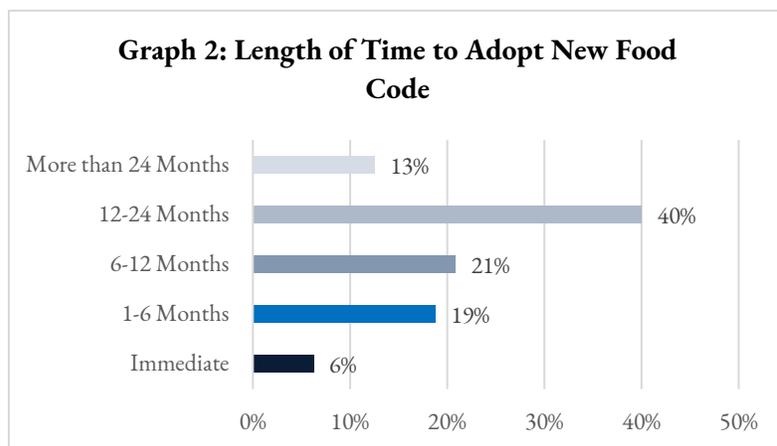
Demographics of Respondents

Twenty-eight (57%) respondents were from the Local level (city or county) and 21(43%) were from the State level. There were no respondents from Territorial or Tribal groups. Most respondents held the roles of Manager, Director, Coordinator, Chief, Specialist, Supervisor, or Administrator.

General Information on Food Code Adoption

Most survey respondents indicated their jurisdiction adopts the FDA Model Food Code. A small percentage adopt their State Code. None of the respondents reported adopting their Local Code. Graph 1 shows the percent of jurisdictions to adopt the FDA, State, or Local Food Code. There were some nuances in how the FDA Model Food Code and State codes are utilized. Ten respondents commented they use the FDA Food Code with local modifications or include sections of the FDA model code in their State Code. For example, a local level respondent stated they use the FDA Food Code and add local jurisdiction requirements. A state level respondent noted their state level retail food code included more detail and specifics than the FDA Model Code. Lastly, one respondent indicated their state requires its counties to adopt the State Code with no authority for county specific variation.

Graph 2 illustrates there was a range in the time it took jurisdictions to complete the process to adopt a new food code. The greatest percentage of survey respondents (40%) indicated it took 12-24 months. The next common lengths of time were 6-12 months (21%) and 1-6 months (19%). A small percentage of respondents indicated it took more than 24 months (13%). Very few respondents experienced a quick process, only 6% of the respondents indicated an immediate adoption process.

Graph 2: Length of Time to Adopt New Food Code

Category	Percent
More than 24 Months	13%
12-24 Months	40%
6-12 Months	21%
1-6 Months	19%
Immediate	6%

Of the respondents who faced timeframes longer than 24 months for adoption, one respondent at the state level revealed it took seven years. In another state it took 20 years to adopt the food code at the state level however, the respondent commented they adopted the food code locally within months of starting the Voluntary National Retail Food Regulatory Program Standards (Retail Program Standards). Another respondent shared it took their state a year to draft and propose the code, it was denied by legislation in year two, and finally adopted in year three of the process. Lastly, a local level respondent commented it took their state years to update the code, which was based on the 2009 FDA Food Code, and required intense lobbying for a successful update.

Table 1. Year Recent Food Code Effective

Year	Number	Percent
1999	1.00	2%
2003	1.00	2%
2009	1.00	2%
2011	1.00	2%
2012	4.00	9%
2013	1.00	2%
2014	4.00	9%
2015	5.00	11%
2016	4.00	9%
2017	2.00	4%
2018	2.00	4%
2019	15.00	34%
2020	3.00	7%
2021	1.00	2%

Of the respondents who answered the question (N=44), approximately one third (35%) updated their food code effective in 2019. There was a wide range related to when the other jurisdictions most recent food code adoption took effect ranging from the year 1999 to a future effective date of 2021. One jurisdiction had not updated their food code since 1999. Table 1 shows the years in which jurisdictions most recent food code took effect.

When asked if their jurisdiction was planning to update their food code, 70% of the respondents said yes. Of those that answered yes, most (43%) indicated they will update their food code in 2021. Others said they plan to update when the next version of the FDA Model Food Code is released (23%).

A small percentage of jurisdictions (16%) said they will update their food code in 2022 and a few predicted they will update their food code even further out in 2023 (6%) and 2024 (3%). One jurisdiction said they are

currently working on their next update and another jurisdiction (local) said they will update their code as soon as the state adopts a new code.

Lastly, graph 3 shows over half (63%) of the respondents indicated they use "rules and regulations" to adopt food code. A bit over a quarter (26%) of respondents use "adoption by reference" and a small percentage (11%) utilize "statutory change." A few respondents explained modifications and exceptions made to the adopted code to meet state/local need such as instituting certain statutory changes at the local level and items lined out due to statute conflict.

Graph 3: Adoption Process to Update Food Code

Category	Percentage
Adoption by reference	26%
Statutory change	11%
Rules and regulations	63%
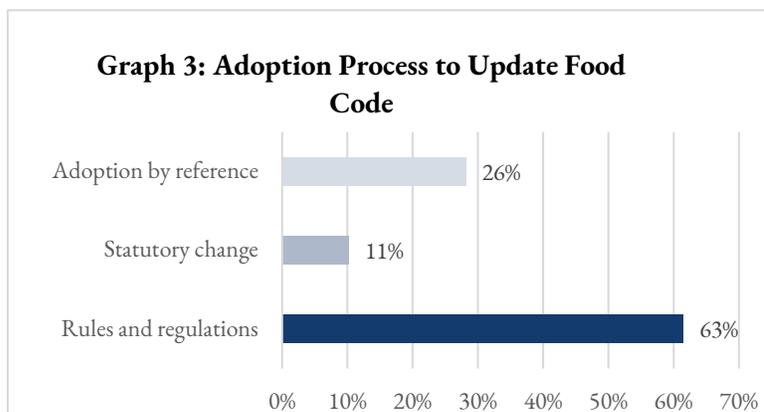
Open-Ended Questions

Respondents were asked a series of open-ended questions to learn more about the processes and experiences in adopting a new food code. The following sections provide a general summary of key themes for the open-ended questions and comments.

Adoption and Implementation of Food Code

The first few open-ended questions ask about the role of the respondents' jurisdiction in the adoption and implementation of their food code. Respondents' jurisdictions played a variety of roles in the food code adoption process. Most of the state-level jurisdictions are the lead agency on the food code adoption process. They are held responsible to draft, propose, and adopt the food code often through administrative rule and legislature. Some local-level jurisdictions can draft and propose changes to the code to then present for consideration. Many local level jurisdictions indicated there is a public comment process in which they participate to provide feedback. Even so, there are a few local-level jurisdictions who noted they play no role in the food code adoption process. However, a couple respondents noted they can adopt the state food code with local additions only if the regulations are stricter than the state code.

Local-level respondents stated they are responsible for implementation and enforcement of the food code locally. In addition, they coordinate training for inspectors and the industry. Various state-level respondents mentioned they are solely responsible for the food code enforcement within their state and for creating Rules and Regulations for statewide use. Furthermore, these jurisdictions often engage in a lead role in training of inspectors, stakeholder outreach, and to partner with local public health for implementation of certain aspects of the food code.

Stakeholders and Their Role in Adoption and Implementation of Food Code

Respondents identified key stakeholders in their food code adoption process. The stakeholders most identified were food regulatory agencies, industry, restaurant/food service associations, and the general public. Other

notable stakeholders mentioned include advisory committees/councils, FDA, academia, legislators, food safety branches, departments of education, environmental health departments/services, and legal teams.

These stakeholders were involved in the food code adoption process in a variety of ways. In many jurisdictions, public meetings, work groups, and public comment were ways in which stakeholders could provide input on the food code. Stakeholders provided review, draft language, and general feedback on proposed food code adoption. Some were recruited for representation on a task force or advisory committee. Advocacy, training participation, and implementation guidance were crucial areas for stakeholders to engage in the process. Stakeholders, after food code adoption, also provided feedback from industry and regulators, assisted with compliance, and ensured consistency of the food code adoption between agencies.

Benefits, Improvements, or Positive Outcomes

When asked what benefits, improvements, or positive outcomes jurisdictions have experienced as a result of adopting their food code, respondents overwhelming commented using the FDA Model Food Code offers uniformity across the industry, increases buy-in because it is scientifically-based, and provides consistency in how it is interpreted, implemented, and enforced not only within states and local jurisdictions but across states. Many respondents commented they have better relationships with the industry now as a result of adopting the FDA Model Food Code. In addition, training and resources are more streamlined resulting in improved outcome. As one respondent commented, "After implementation of the FDA Code, our inspectors did a significant amount of education and, of course, enforcement which has improved compliance, and public health in our jurisdiction." The selected comments below illustrate the benefits of adopting a new food code across jurisdictions represented in the survey.

Science

"Staff is more confident that they are enforcing a modern code that is scientifically informed, stakeholders appreciate using a model food code that is scientifically informed and has a thorough process for making modifications and updates, stakeholders appreciate using a model food code because its interpretation and application is similar in different jurisdictions and can be easily found online."

"Provides all stakeholders with consistent regulatory foundation based on science. Provides consistency with training - Regardless of the agency or discipline an individual works in (retail grocery, food service, etc.), Food Code training can be uniform among all food regulators and industry stakeholders."

"The ability to have a local food code which adopts the most recent version of the FDA Food Code allows us to incorporate the most current scientific knowledge and new technologies in the food service industry. It allows us to stay current and have codes that allow for the most current trends in food service. We are also surrounded by jurisdictions in our geographical area who also locally adopt the most current version of the Food Code, thus allowing us to have similar requirements to them, making it easier for establishments that may have facilities in the surrounding jurisdictions."

Better Relationship with Industry

"By having industry representation on the Food Safety Advisory Council, concerns can be condensed and brought before [our agency]. The industry also helps put out the information on the changes. Since we use regulations/code, instead of adoption, items specific to [our state] can be addressed. Having current code rules assists with the FDA Voluntary Retail Program Standards. We can also use the FDA annex for reasons behind changes or rules."

"Public Health Annex in my opinion is the best thing about the food code. Following that uniformity with other states, modern science-based code requirements, and the availability of training materials."

"Increased revenue due to substantial increases in permit fees, which led to additional FTE's, fully electronic inspection system, smart phones, hot spots, no cap on training opportunities. The food establishment placarding program has significantly reduced occurrence of food illness risk factors during routine inspections."

Consistency

"[We are] now more consistent with other states. This has been a benefit for the sharing of resources. Industries who also operate in other states under the food code can have consistent processes nationally. Additionally, when we hire staff from out of state who have food code experience the training locally is more streamlined."

"Provides all stakeholders with consistent regulatory foundation based on science. Provides consistency with training - Regardless of the agency or discipline an individual works in (retail grocery, food service, etc.), Food Code training can be uniform among all food regulators and industry stakeholders."

"Helpful to have the majority of content be equivalent with the model code. The areas that have been challenging from a regulatory perspective are where predecessors adjusted language in the model code or added state specific provisions".

"One of the great benefits is the consistency for our regulated businesses. Corporations that have locations across multiple jurisdictions appreciate a universal set of rules. It is also beneficial when measuring a program's effectiveness against other jurisdictions as well as the ability to incorporate effective strategies that were developed by other departments."

Resources Used, Resources Needed, and Food Code Adoption Process Suggestions

Respondents were asked a series of questions to learn about the resources used during their food code adoption process, resources that would have been helpful during the process, and suggestions for what could make the process go more quickly/smoothly.

The most common resources used were the FDA Model Food Code and Annex. Several people mentioned using the Voluntary National Retail Food Regulatory Program Standards. Others cited resources from the National Environmental Health Association (NEHA), the Association of Food and Drug Officials (AFDO), the National Association of County and City Health Officials(NACCHO) mentorship program, as well as

resources and program reviews from other states. In one state, grant dollars were used to create signage ahead of the food code changes and in another FAQs were developed and sample polices were shared.

Respondents suggested a gamut of resources they would have found helpful at the beginning of the process after now having gone through the food code adoption process. Better use of data was mentioned in the comments. One respondent would have liked data on cottage food or home-based food establishments so to have better answered questions. A few respondents wished to have had information and data on the importance and effectiveness of manager certification. Another person valued studies on the FDA Model Food Code adoption and compliance rates. Documentation of information and processes such as the legal process for county/state, lessons learned from others, and guidance on how to address exceptions and nuances in their food code would have been helpful to some. One respondent suggested a repository for key quality resources instead of having to gather these from multiple agencies. Lastly, there was an identified need for training tools and materials that are updated and align with the current FDA Model Food Code.

Suggestions to improve the food code adoption process included broad improvements relevant at both state and local levels, as well as very specific recommendations related to respondents' experiences. First, clear expectations from both the county and state and a thorough understanding of the process are necessary for a smoother process. Likewise, accessible information for the public such as information about opportunities for public comment. Clear communication between agencies, internally, and with legislators would benefit the process. A few individuals suggested it would be a much quicker process if they were able to adopt a food code without legislative procedures and authority. Other suggestions included education for those in charge of the rule-making process on the importance of the FDA Model Food Code. Similarly, another person suggested an FDA training course on the adoption and implementation process. Lastly, one state wants a modification to the requirements for the Retail Program Standard 1 as certain aspects of the code do not apply to their department and there is not a way to indicate in Standard 1 that it does not (and therefore) should not apply to their "Standard 1 conformance."

Challenges and Barriers and Strategies to Overcome

Themes of challenges related to buy-in, resistance to change, push-back, and communication were common in the data. The food code adoption process is time consuming for many but as one individual conveyed, if you take the time the "end result [is] a better rule." To gain buy-in from key stakeholders it is important to build relationships and confidence, educate, and communicate the changes and why they are needed. Many experienced pushback from industry or legislators and a strategy to overcome this in some cases was compromise. For instance, changing the language from "shall" to "may" or modifying requirements or in one case deleting a mandate from the language so not to lose progress in the adoption process. Below are example comments to show challenges and barriers encountered by jurisdictions throughout the food code adoption process, and strategies used to overcome.

Buy-in
"One of the challenges we faced was convincing stakeholders that adopting the amended food code was necessary and would benefit all stakeholders. We overcame these barriers by building confidence with

all stakeholders in advance of the process, providing a detailed presentation of the proposed changes and by partnering with our colleagues at the FDA."

"We had huge pushback about the Manager Certified Training. We were forced to delete that from our current code to get buy in for all of the other updates".

Time
"Challenge first time majority of the staff participated in the process. Learn as you go. Very time consuming. We have overcome these barriers by building a competent food safety team who is prepared to adopt the next food code quickly and effectively while working with stakeholders and the public. Working as a team to get feedback taking the most logical approach."

"The primary challenge was shifting from a state regulation which was more prescriptive to the food code. There were significant concerns with making this shift and maintaining a strong food safety program statewide. It took two years of intensive discussions to get to the ultimate adoption by reference."

Compromise
"Our biggest challenge was when the Department codified the CFPM [Certified Food Protection Manager] requirement. We conducted conference calls with industry associations, and our Commissioner met with representatives of the [state]Food Industry Association and the [state] Convenience Store Association. We had to implement a phase-in period of one (1) year before we would start documenting violations for the lack of CFPM's. Industry pushed back, due to the cost to train employees, as well as the consistent turnover which proved a major issue for convenience stores. We ultimately modified the requirement so that a firm only has to have one (1) CFPM per establishment, and most recently we did not take the 2017 requirement that the PIC [Person in Charge] had to be a CFPM. We're still trying to make inroads on the topic, and did not want to undo the progress we have made by broadening the CFPM requirements at this time."

"Industry groups tend to push against any mandates that impose additional fees or certificates. Worked on explaining the reasons behind the regulation. Some areas we had to include the language, but instead of "shall" used "may". Helped lay the foundation for change at a later date".

Communication
"The primary challenge was shifting from a state regulation which was more prescriptive to the food code. There were significant concerns with making this shift and maintaining a strong food safety program statewide. It took two years of intensive discussions to get to the ultimate adoption by reference."

"There were some external challenges that impacted the speed of adoption because we updated the administrative sections of the rule as well as the food code. We continued to meet as a group with the stakeholders to come to common solutions. Although this slowed down the process, the end result was a better rule".

"Addressing fears from the public and local restaurant association. Held public meetings to explain adoption of new food code does not translate to additional enforcement".

Future Food Code Adoption and Lessons Learned

Numerous respondents indicated they plan to change aspects of their food code adoption process in their next round, while many feel they have an effective process in place. One change is to keep a better timeline such as staying up to date with food code changes (every four-year edition), start the process sooner, allow time for multiple reviews, read the entire code and prepare information to share and communicate with stakeholders and facilities before the code is effective, and allow a grace period for implementation of changes and new requirements. The use of data and evidence-based information to support and explain changes is a further strategy to inform and increase buy-in from stakeholders in the food code adoption process. Lastly, industry support, partnership, and advocacy are vital. A respondent commented, "Ensure all state and local agencies are on board. Make sure to have industry representation who can speak in support of the adoption."

Despite the challenges and barriers, the food code adoption process and FDA Model Food Code inherently provide a positive path for jurisdictions to follow. The following statement sums it up best, "We have found that the key to successful adoption and implementation is to involve industry and stakeholders often and listen to their needs and concerns. To be flexible where you can and modify food code to fit your stakeholders and to make big changes incrementally with delayed implementation. Also, to not wait 20 years to update the regulation, frequent small changes are better digested by industry."