

# *The Authority Having Jurisdiction (AHJ)*

Although it may sound like something from a legal drama, the *Authority Having Jurisdiction (AHJ)* is a very important element in the implementation of codes, standards, and recommended practices. Codes and standards produced in the United States are generally considered voluntary, peer-reviewed consensus documents, with some exceptions. Their implementation is not required, unless mandated by legislative or industry voluntary agreement. The term *authority* is defined as “*A person or group having the right and power to command, decide, rule, or judge; A person with a high degree of knowledge or skill in a particular field ...*” [1]. Jurisdiction is defined as “*the right and power to command, decide, rule or judge*” [2].

Once the requirement for the implementation of certain codes, standards, and recommended practices has been mandated, an individual, group, or government agency must be appointed with the authority to enforce the use of the codes, standards, and recommended practice. The AHJ must also have the authority to either waive specific requirements of their use or allow alternatives, should they prove to be an equally safe method, procedure, or means of providing life safety and protection from fire and injury. The individual, group, or agency designated with that authority would be known as the Authority Having Jurisdiction.

The National Fire Protection Association (NFPA) states in NFPA 70<sup>®</sup>, *National Electrical Code*<sup>®</sup> (NEC<sup>®</sup>) in Article 90-4 Enforcement [3]:

This Code is intended to be suitable for mandatory application by governmental bodies that exercise legal jurisdiction over electrical installations, including signaling and communications systems, and for use by insurance inspectors. The authority having jurisdiction for enforcement of the Code has the responsibility for making interpretations of the rules, for deciding on the approval of equipment and materials, and for granting the special permission contemplated in a number of rules. By special permission the authority having jurisdiction may waive specific requirements in this Code or permit alternate methods, where it is assumed that equivalent objectives can be achieved by establishing and maintaining effective safety.

Based on the NFPA’s use of the term Authority Having Jurisdiction (AHJ), it can be a governmental agency or authority that has been legally appointed to enforce a code or codes regarding life safety or other issues. The authority may be a local (municipality or county), state, or federal governmental entity with the legal mandate to enforce governing building

codes, safe work practices, life safety issues, workplace safety operational procedures, etc. It could also be an insurance inspector or a Nationally Recognized Testing Laboratory (NRTL) with authority for product certification and testing. As noted above, the AHJ may also have the authority to waive specific requirements or authorize alternative methods to establish equivalent life safety protection. The alternatives must be determined to be reasonable, acceptable, and safe.

NFPA 101<sup>®</sup>, *Life Safety Code*<sup>®</sup> (LSC<sup>®</sup>) defines the Authority Having Jurisdiction as

An organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. [4]

It also provides a detailed explanation of the term in the Annex A of the LSC. It explains that

The term Authority Having Jurisdiction, or its acronym AHJ, is used in NFPA documents in a broad manner, since jurisdictions and approval agencies vary, as do their responsibilities. Where public safety is primary, the authority having jurisdiction may be a federal, state, local, or other regional department or individual such as a fire chief; fire marshal; chief of fire prevention bureau, labor department, or health department; building official; electrical inspector; or others having statutory authority. For insurance purposes, an insurance inspection department, rating bureau, or other insurance company representative may be the authority having jurisdiction. In many circumstances, the property owner or his or her designated agent assumes the role of the authority having jurisdiction; at government installations, the commanding officer or department official may be the authority having jurisdiction. [5]

## AHJ Adopted Codes and Standards

It was established above that the AHJ or the legislative entity that created it should have the authority to establish or adopt electrical or other codes, standards, and recommended practices. The AHJ will use those documents to enforce and assure life safety, fire protection, or occupational health and safety issues. There are a number of standards documents that the AHJ may choose to enforce, depending upon the task, occupancy or product or service being regulated. Figure 3.1 illustrates the most common general types of electrically related codes

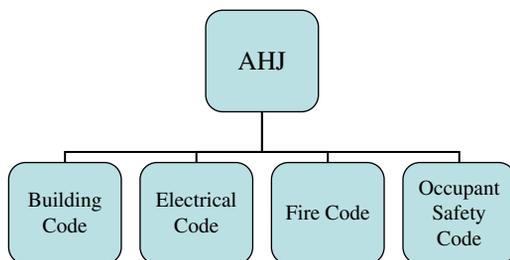


Figure 3.1: Common local, state and municipal AHJ enforced codes

used by local, state or municipal AHJs which involve occupancy construction or renovation. The most common AHJ regulation enforcement involves building codes, which directly affect most individuals. Building codes not only affect people in the homes, apartments, dormitories, condominiums, hotels, etc. in which they may stay, live, and sleep, but also their place of employment, the places where they shop, hospitals and medical buildings, places of entertainment, schools, etc. The construction or renovation of those facilities would be under auspices of municipal, county, or state AHJs.

There are specific personal safety and property protection requirements in each of the general codes and standards in [Figure 3.1](#). They govern electrical design and installation requirements. Each code will generally supplement or support other codes. For instance one code may establish a requirement for a specific life safety system; however, another code will be responsible for the general installation recommendations of that system, supplementing the requirements of the first code.

A review of the states' and municipalities' Fire Marshall and building inspection AHJs in the United States indicates that there are a variety of adopted codes, standards, and recommended practices for various states, cities, and counties. For instance, several large American cities and states have developed their own occupant safety, building, and electrical codes. They may simply use existing national standards with adopted modifications or develop entirely new documents. Some states and municipalities may not have established code enforcement, but may mandate the use of a specific code. Also, the latest edition of a code may not be the edition that has been adopted for enforcement by the AHJ.

### ***Building Codes***

During the 1990s decade, there were three generally accepted regional model building codes in use:

Building Officials Code Administrators International (BOCA) – which developed the *BOCA National Building Code (BOCA/NBC)* for the East Coast and Midwest United States;

International Conference of Building Officials (ICBO) – which developed the *Uniform Building Code (UBC)* for the West Coast of the United States; and

Southern Building Code Congress International (SBCCI) – developed the *Standard Building Code (SBC)* for the Southeast United States.

During the latter half of 2003, the three major American building code organizations merged into the *International Code Council (ICC)*, ceasing to develop regional codes. The organization now publishes the *International Building Code*, the *International Residential*

Code, and the *International Fire Code*. As of 2007 those three codes have been adopted as follows [6]:

- the *International Building Code (IBC)* has been adopted at the state or local level in 50 states plus Washington, DC;
- the *International Residential Code (IRC)* has been adopted at the state or local level in 46 states plus Washington, DC; and
- the *International Fire Code (IFC)* has been adopted at the state or local level in 41 states plus Washington, DC.

In 2002, the National Fire Protection Association released NFPA 5000<sup>®</sup>, *Building Construction and Safety Code*<sup>®</sup> [7]. It was developed through a consensus process and was accredited by the American National Standards Institute (ANSI). The city of Pasadena, Texas adopted NFPA 5000 in 2003.

California adopted the NFPA 5000 codes as a baseline for the future California Building Code, but later rescinded the decision and continued to use the IBC. The main driver for this decision was increased costs involved in training architects and engineers to design for a new code, and the disparity that a different code would cause between California and the majority of other states which have adopted IBC. [8]

The Code recognizes NFPA 70, *National Electrical Code* as its electrical section. It also recognizes NFPA 72<sup>®</sup>, *National Fire Alarm Code*<sup>®</sup> for fire detection and alarm.

### ***Electrical Code***

The most recognized and used electrical code throughout the United States is the National Fire Protection Association's NFPA 70, *National Electrical Code* (NEC). The *National Electrical Manufacturer's Association* (NEMA) reports [9] that 40 states have adopted some edition of the NEC statewide. Ten states have not had statewide adoption of any edition of the NEC; however, municipalities and counties in those states may have a local option adoption. Some states, such as California, and municipalities, such as New York City and Chicago, have established their own electrical code. New York City has adopted a specific edition of the NEC, but includes either an amendment to certain NEC sections and/or chose to not adopt some sections.

In 2006, the City Council of New York City passed the following ordinance [10]:

§14. Section 27-3024 of the administrative code of the city of New York, as amended by local law number 81 for the year 2003, is amended to read as follows:

§ 27-3024. Adoption of the electrical code technical standards. a. The city of New York hereby adopts the [2002] 2005 edition of the National Fire Protection Association NFPA 70 *National*

*Electrical Code* as the minimum requirements for the design, installation, alteration or repair of electric wires and wiring apparatus and other appliances used or to be used for the transmission of electricity for electric light, heat, power, signaling, communication, alarm and data transmission in the city subject to the amendments adopted by local law and set forth in section 27-3025 of this subchapter, which shall be known and cited as “the New York city amendments to the [2002] 2005 National Electrical Code”. Such [2002] 2005 edition of the National Fire Protection Association NFPA 70 National Electrical Code with such New York City amendments shall together be known and cited as the “electrical code technical standards”. The commissioner shall make a copy of the electrical code technical standards available for public inspection at the department of buildings.

An example of one of the amendments to the 2005 NEC adopted by the City [11] is as follows, with the original text of 2005 NEC [12] in italics and the New York City amendment for that section [13] in bold italics at the end of the quote:

2005 NEC Section 210.19(A) (1):

(1) *General*—*Branch-circuit conductors shall have an ampacity not less than the maximum load to be served. Where a branch circuit supplies continuous loads or any combination of continuous and noncontinuous loads, the minimum branch-circuit conductor size, before the application of any adjustment or correction factors, shall have an allowable ampacity not less than the noncontinuous load plus 125 percent of the continuous load. Conductors of branch circuits shall be sized to allow for a maximum voltage drop of 3% at the last outlet supplying light, heat or power and the maximum voltage drop allowable for feeders and branch circuit combined shall not exceed 5%.*

In describing the functions of the AHJ, local interpretation of codes and standards was noted as one responsibility of that position. Procedures have been established to allow requests for *National Electrical Code* interpretation from the NEC Code Committee. NEC Section 90.6 Formal Interpretations discusses the procedures which may be utilized to assist the AHJ or any member of the National Fire Protection Association. It notes that “formal interpretation procedures have been established and are found in the NFPA Regulations Governing Committee Projects” [14]. The *National Electrical Code Handbook* provides some additional explanations regarding NEC interpretations. It notes:

The authority having jurisdiction is responsible for interpreting Code rules and should attempt to resolve all disagreements at the local level. Two general forms of Formal Interpretations are recognized: (1) those that are interpretations of the literal text and (2) those that are interpretations of the intent of the Committee at the time the particular text was issued. [15]

The *NEC Handbook* notes there are limitations to the Code Committee offering interpretations. It indicates:

Interpretations of the NEC not subject to processing are those that involve (1) determination of compliance of a design, installation, product, or equivalency of protection; (2) a review of plans

or specifications or judgment or knowledge that can be acquired only as a result of on-site inspection; (3) text that clearly and decisively provides the requested information; or (4) subjects not previously considered by the Technical Committee or not addressed in the Document ... [16]

### **Fire Codes**

There are several standards providing fire prevention, protection and detection requirements which may be adopted by the AHJ. They include:

Individual state/county/municipal fire codes

NFPA 1, *Uniform Fire Code*<sup>TM</sup>

International Code Council: *International Fire Code*<sup>®</sup>

NFPA 72<sup>®</sup>, *National Fire Alarm Code*<sup>®</sup>

The first three codes in the above list are fire codes. The individual state/county/municipal codes may be entirely written by those entities. The *International Fire Code* or NFPA 1 may be adopted by AHJs, either in their entirety or with amendments and deletions. The last code deals with the installation of fire alarms.

NFPA 1, *Uniform Fire Code*, was jointly written by the Western Fire Chiefs Association (WFCA) and NFPA [17]. It contains provisions and sections from both the (NFPA's) *Fire Prevention Code* and WFCA's *Uniform Fire Code (UFC)*. It contains separate sections for administration and code enforcement. There are also sections on occupancies, processes, equipment, and hazardous materials. To accommodate situations where innovative building solutions may be needed in lieu of specification-based standards, the new Code contains a section on performance-based design. Over 130 NFPA codes and standards are referenced in the document.

The International Fire Code<sup>®</sup> is a merger of the provisions in the National Fire Prevention Code, the Standard Fire Prevention Code and the Uniform Fire Code. So while the International Fire Code itself is new, its provisions are not. They are based on fire codes that have been in use in the majority of the United States for decades. [18]

Table 3.1 presented below is a summary of the states that have adopted either the NFPA *Uniform Fire Code*, the International Code Council *International Fire Code*, have their individual statewide fire code, or allow local option for fire code adoption. States may choose to adopt the NFPA-UFC or ICC-IFC either in total or modified/amended with local state changes. The data were obtained from each state's official Fire Marshall website.

**TABLE 3.1 United States individual state fire code adoptions**

State	Statewide IFC	Statewide NFPA-UFC	State code	Local option
Alabama	X			
Alaska	X			
Arizona			X	
Arkansas	X			
California	X			
Colorado				X
Connecticut	X			
Delaware		X		
Florida		X		
Georgia	X			
Hawaii			1997 Uniform Fire Code	
Idaho	X			
Illinois				X
Indiana	X			
Iowa	X			
Kansas	X			
Kentucky		X		
Louisiana		X		
Maine		X		
Maryland		X		
Massachusetts			X	
Michigan			X	
Minnesota	X			
Mississippi	X			
Missouri				X
Montana		X		
Nebraska		X		
Nevada	X			
New Hampshire		X		
New Jersey			X	
New Mexico		X		
New York	X			
North Carolina	X			
North Dakota	X			
Ohio	X			

(Continued)

TABLE 3.1 United States individual state fire code adoptions—cont'd

State	Statewide IFC	Statewide NFPA-UFC	State code	Local option
Oklahoma	X			
Oregon	X			
Pennsylvania	X			
Rhode Island		X		
South Carolina	X			
South Dakota				X
Tennessee	X			
Texas		X		
Utah	X			
Vermont		X		
Virginia	X			
Washington	X			
West Virginia		X		
Wisconsin		X		
Wyoming	X			

The purpose of National Fire Protection Association's NFPA 72, *National Fire Alarm Code* [19]:

is to define the means of signal initiation, transmission, notification, and annunciation; the levels of performance; and the reliability of the various types of fire alarm systems. This Code defines the features associated with these systems, and also provides the information necessary to modify or upgrade an existing system to meet the requirements of a particular system classification. It is the intent of this code to establish the required levels of performance, extent of redundancy, and quality of installation, but not the methods by which these requirements are to be achieved.

NFPA 72 defines the methods for performance, redundancy, and the quality of installation for fire alarm systems. It does not mandate when or where a fire alarm system should be installed. That requirement is established in the *Life Safety Code*, NFPA 1: *Uniform Fire Code*, and *International Fire Code* or by state/county/municipal fire codes.

### ***Life Safety Code***

NFPA 101, *Life Safety Code* is not in itself a fire code. Its purpose

is to provide minimum requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures for safety to life from fire. Its provisions will also aid life safety in similar emergencies. [20]

Fire detection, notification, and extinguishment requirements are only one small portion of this Code. It also specifies life safety requirements by occupancy type. Some specific life safety

areas covered by the Code include fire detection general requirements, when specified; fire suppression, where called for; fire detector locations required in a limited number of occupancies; alarm and notification of occupants; egress lighting and safety; and notification of emergency services. This Code establishes the type of fire detection and suppression systems required by occupancy type, while NFPA 72 provides the standard for installation, operation, and maintenance of the alarm and detection systems. Fire suppression equipment installation requirements would be covered under a different code.

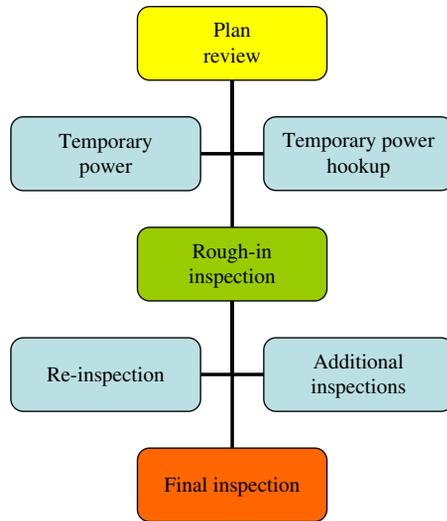
NFPA 101, *Life Safety Code*<sup>®</sup> covers a large number of topics, including structural fireproofing requirements; means of egress; classification of occupancy and content hazards; fire protection features; fire protection equipment and building services; interior furnishings and contents; and occupancy requirements. Of particular interest from an electrical engineering standpoint are the following design areas:

- Fire detection, alarm, and communications systems
- Emergency lighting and power requirements
- Illumination and marking of means of egress
- Means of egress smoke control
- Egress special locking requirements
- Egress door self-closing devices and powered doors

## AHJ Process

The process of building a structure begins with structural, mechanical, and electrical plans being developed, by either an architect and/or professional engineer(s). Those plans would provide details of the structure design, its electrical system, plumbing system, HVAC system, and, depending on the size of occupancy type, could include fire detection and suppression systems, elevators, etc. AHJs with specific education, experience, and training would be responsible for plan approval and site inspections of equipment installation in areas of their expertise. Depending on the size of a municipality, a mechanical inspector may have jurisdiction over plumbing, HVAC, and mechanical systems. In large metropolitan areas, each of those discipline areas might have individual AHJs. Once the structure is designed, the detailed design plans would be submitted to the appropriate AHJ for review and eventual inspection. See [Figure 3.2](#) for the general sequence of AHJ inspection and design review.

An initial inspection may involve establishment of temporary power to the construction site. This might involve installation of a temporary power pole with an electric meter pan, circuit breaker panel, and GFCI outlets. A second inspection may be required for hookup of power



**Figure 3.2: General AHJ inspection sequence**

from the temporary power pole to the structure or to an onsite construction trailer/office. An electrical rough-in inspection would involve the installation of wiring, raceway, outlet boxes, and panelboards and would be completed before the interior walls are installed or underground trenches with raceway/duct banks are covered. Should a code violation problem be identified, a re-inspection might be scheduled after corrective work is accomplished. The AHJ may require additional inspections, depending upon the project complexity. Final inspection would be completed after all wiring and equipment installation is complete.

Plan review may result in the drawings being returned to the project designer for additional clarification, design changes, or additions. It should be noted that the AHJ design review is not necessarily a detailed design review of calculations and design criteria, but is conducted to verify that the design meets the intent and general requirements of the codes and standards that have been adopted by the AHJ or their legislative authorizer. Determining the adequacy of a branch circuit breaker size to feed a particular load might not necessarily be a review item unless the inspector has access to load data; however, verification that GFCI and arc fault circuit breakers are appropriately specified and correctly installed where required would be a concern of the plan review and site inspections. Once the required changes are implemented, the plans are resubmitted to the AHJ for review and approval. Delays could develop if zoning restrictions or setback and easement requirements conflict with the plans. If the contractor retained to do the installation work is separate from the project design engineer(s), the contractor would be responsible for filing for the building permit and requesting the rough-in and final inspections.

## Nationally Recognized Testing Laboratories (NRTL)

A *Nationally Recognized Testing Laboratory (NRTL)* is also considered an Authority Having Jurisdiction (AHJ) for the products or services it certifies. This does not mean that the NRTL would take the place of a municipal building inspector. The authority the NRTL exercises involves the product or service it certifies. When an NRTL certifies that a product meets specified criteria and standards, it affixes its label to that product. It has the authority to reject the product or require changes to meet the criteria it establishes. Random sampling and testing of products and inspection of manufacturing facilities is all part of the NRTLs' monitoring process. The role of NRTLs will be examined in more detail in Chapter 4.

The *National Electrical Code*<sup>®</sup> notes in Article 110.2 Approval that “The conductors and equipment required or permitted by this Code shall be acceptable only if approved” [21]. The *NEC Handbook* explains:

All electrical equipment is required to be approved as defined in Article 100 and, as such, to be acceptable to the authority having jurisdiction (also defined in Article 100). Section 110.3 provides guidance for the evaluation of equipment and recognizes listing or labeling as a means of establishing suitability.

Approval of equipment is the responsibility of the electrical inspection authority, and many such approvals are based on tests and listings of testing laboratories. [22]

Under this scenario, a minimum of three types of AHJs may be involved with an electrical construction design and install project. The first would be the municipal electrical inspector issuing the building permit and inspecting the work. The second would be the NRTL that certifies the electrical equipment and materials being used to construct the project. The third AHJ would be the municipal, state or federal agency charged with employee safety in the workplace.

## Owner Authority Having Jurisdiction

An example of an owner Authority Having Jurisdiction can be found in the Reedy Creek Improvement District in Florida. Walt Disney purchased some 27,800 acres of land between Orlando, Florida and Kissimmee, Florida for the construction of Disney World.

Disney also petitioned with the State of Florida Legislature to give Walt Disney Productions municipal jurisdiction over the land they had acquired. This was to make sure that Walt Disney could have full control over every part of the property, even how the buildings were constructed. Walt was planning new ideas in urban living and did not want the government to interfere. This was the beginning of the Reedy Creek Improvement District (RCID). [23]

To aid in the development of this unique property, Disney created a Department of Building and Safety.

The primary purpose of the Department of Building & Safety is to provide reasonable requirements to safeguard life and property by regulating the design, construction, repair and use of new and existing structures.

Code development began in 1968 and the first EPCOT (Experimental Prototype Community of Tomorrow) Code was adopted in 1970. The District developed codes and standards to both accommodate new and innovative methods and systems, and provide public safety criteria exceeding other available codes and standards. Since that time, RCID has developed and enforced the EPCOT Codes that exceed traditional regulations by setting forth design criteria for such installations as thrill rides and amusement attractions and by requiring complete automatic sprinkler and detector systems in all buildings. Provisions applicable to motion picture and television sound stages, and more extensive than normal requirements for elevators, moving sidewalks and transporting devices have also become a significant part of the EPCOT Codes. [24]

In applications where unique buildings or electrical system applications may not readily fit into a standard specification based code or standard, it may be beneficial for public safety to consider “alternative materials, systems, methods, design calculations or other evidence as an approved alternative” [25] to nationally accepted codes and standards. The EPCOT Codes recognize this alternative use and provide the AHJ with the authority to grant approval of alternatives. However, that approval must be based on documentation which justifies the alternatives.

The AHJ approval of alternative materials and systems has become the hallmark of the Reedy Creek Improvement District (RCID). The District has also established a *Board of Appeals* to consider the unique variances developed through the Disney engineering organization. That Board is staffed by five appointed professionals, with specific training and expertise. The RCID *Department of Building and Safety* consists of:

state licensed and certified inspection personnel and supporting permit processors, [that enforce] the EPCOT Building, Plumbing, Mechanical, Gas, Electrical, Energy Conservation and Accessibility Codes, applicable Florida laws, and other pertinent, local rules and regulations. [26]

Codes and standards developed by the District have a regular review cycle of three years. The Department of Building and Safety has been assigned the task of conducting yearly inspections of all buildings in the District. Those inspections “ensure that all emergency systems are operable and that buildings are maintained in accordance with applicable codes”. [27]

The EPCOT Building Code is an extreme example of owner AHJ development. More common examples might involve owner approval of the codes and standards to be used in the development of their property. Of particular interest involving the EPCOT Building Code was its use by the National Fire Protection Association in developing NFPA 5000, *Building Construction and Safety Code*. The first draft of the NFPA Building Code

combined the NFPA 101 (Life Safety Code®) and EPCT Building Code. Reedy Creek Improvement Districts is a public corporation in Florida 39 square miles (101.4 square kilometers) in Orange and Osceola Counties. The 30-year-old Experimental Prototype Community of Tomorrow (EPCOT) Building Code is credited for EPCOT's low loss rate. [28]

## **Federal Authority Having Jurisdiction**

There are a number of federal agencies with the power to enforce the use of specific codes and standards or may have legislative authority to regulate, inspect, order recalls, issue fines, etc. They include, but are not limited to, Federal Aviation Administration (FAA), United States Corps of Engineers, US Highway Traffic Safety Administration, US Consumer Product Safety Administration, Minerals Management Service (MMS), United States Coast Guard, Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA), Federal Housing Administration (FHA), etc. Since OSHA is one of the largest federal AHJs, its basic operation will be reviewed in more detail below.

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor through the Occupational Safety and Health Administration (OSHA) to set mandatory occupational safety and health standards applicable to businesses affecting interstate commerce through public rulemaking. [29]

This legislation established OSHA as the Authority Having Jurisdiction:

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes. [30]

The Secretary of Labor was ordered by legislative decree to

promulgate as an occupational safety or health standard any national consensus standard, and any established Federal standard, unless he determines that the promulgation of such a standard would not result in improved safety or health for specifically designated employees. In the event of conflict among any such standards, the Secretary shall promulgate the standard which assures the greatest protection of the safety or health of the affected employees. [31]

The OSH Act of 1970 also established a method for the addition, modification, or rescinding of standards. The ACT provides the Secretary of Labor with the authority to “promulgate, modify, or revoke any occupational safety or health standard” [32].

Should written information be submitted indicating that a rule should be promulgated for occupational health and safety reasons, the Secretary may establish an advisory committee,

under Section 7 of the OSH Act, to review the request. Recommendations from that committee are to be submitted to the Secretary. Should those recommendations mandate the need to establish a rule, it *must* be promulgated within 90 days from the date of the appointment of a committee. The Secretary has the authority under the Act to extend or shorten the reporting date, but in accordance with the Act, it cannot be longer than 270 days.

The Secretary is required to “publish a proposed rule promulgating, modifying, or revoking an occupational safety or health standard in the Federal Register and shall afford interested persons a period of thirty days after publication to submit written data or comments” [33]. The Act requires that should the committee submit a recommendation that a rule be promulgated and should their recommendation be approved by the Secretary, then the Secretary is required to publish the proposed rule within 60 days after its submission or the expiration of the period prescribed for the submission by the Secretary.

The Act allows written objection or data supporting or opposing the proposed rule to be filed within 30 days of the publishing of the proposed rule in the Federal Register. The objections must state the grounds for the opposition and request a public hearing on the objections. The Secretary is required to publish a notice in the Federal Register outlining the proposed occupational safety and health standard against which objections have been filed. The Secretary must also specify a time and place for the formal hearings on the objections. This must be done within 30 days after the final date for submitting objections.

The Act sets time constraints for issuing or rejecting “a rule promulgating, modifying, or revoking an occupational safety or health standard or make a determination that a rule should not be issued” [34]. This must occur within 60 days of the expiration of submission of written data or comments on the rule or within 60 days of the completion of any hearing on the rule. The Act allows setting of a grace period, delaying the rule implementation, not to exceed 90 days. The delay necessity will be determined by the Secretary. It is designed “to insure that affected employers and employees will be informed of the existence of the standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the standard” [35].

The Act allows the Secretary to grant a temporary variance from the standard or any other provision thereof promulgated. An employer must follow specific rules in applying for a temporary variance, including establishment that their inability to comply by the established effective date is based on the lack of the availability “of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date” [36]. Further, the employer must attest that all necessary and available steps will be taken to safeguard employee health and safety against the hazards governed by the standards. Lastly, the employer must establish that he has established an effective program for the implementation of the standard as soon as it becomes practical.

The employer's variance application must contain the following information:

A description of the standard or the portion thereof for which a variance is being sought.

A detailed statement explaining why compliance cannot be met with supporting statements from knowledgeable, qualified individuals with discrete knowledge of the situation.

Explanation of the steps taken and those that will be taken to ensure employee protection against hazards mitigated by the standard. Specific dates for implementation must be included with the statement.

A statement of when the employer expects to be able to comply with the standard as well as the steps already implemented and those that will be implemented to meet compliance with the standard. Specific dates for implementation must also be included with the statement.

Proof must be provided that the employer has notified their employees of the application for compliance variance. Notification means must include providing copies of the variance application to employee representatives and posting a summary statement describing the application and instructions with a detailed copy of the information that can be made available. The information notice can be placed where employee notices are normally placed and by other appropriate means. Employees must also be notified that they have the right to petition the Secretary for a hearing on the variance. A description of the employee notification steps are required to be included in the variance application.

The Occupational Safety and Health Act allows OSHA, as the Authority Having Jurisdiction, to issue citations against employers:

[when an OSHA] representative believes that an employer has violated a requirement of section 5 of this Act, of any standard, rule or order promulgated pursuant to section 6 of this Act, or of any regulations prescribed pursuant to this Act, he shall with reasonable promptness issue a citation to the employer. [37]

The Act establishes specific requirements and procedures regarding the issuance of citations as follows:

Written format of citation and content directives.

Establishing a maximum reasonable time for abatement implementation.

Issuance of a notice in circumstances where there is no direct or imminent health or safety issue.

Maximum time limit on the issuance of a citation after the violation occurrence.

Before any citation can be issued for safety violations, an extensive inspection, investigation, and recordkeeping process must be followed, as established by the Act. An abbreviated review of those procedures is as follows [38]:

- (a) The Secretary of Labor's representative, after presenting appropriate credentials to the authorized business representative shall:
  - (1) Have authority to enter a workplace, construction site, etc. at reasonable times and without delay, where employees perform work for an employer, and
  - (2) Reasonably inspect and investigate any place of employment, pertinent conditions, equipment, and materials therein and privately interview any and all appropriate individuals.
- (b) Investigative and inspection procedures may require witness testimony and evidence production under oath, through the authority of any United States District Court or any US Court where a witness may live, work, or transact business under the threat of contempt of court for failure to comply.
- (c) Establish employer record keeping requirements as:
  - (1) Employers are required to maintain records prescribed by Department of Labor or Health and Human Services regulations as may be necessary or appropriate for the Act enforcement or for establishing information regarding causes and prevention of accidents and illness with occupational relationships and to keep employees informed by appropriate means, of the employee protection and obligation under this Act.
  - (2) Require employer recordkeeping and reports on work-related injuries, illness, or deaths, other than those involving minor injuries. Minor injuries are described as those not requiring medical treatment, loss of consciousness, motion or work restrictions, or transfer to another job.
  - (3) Require employers to maintain records of employee exposure to toxic materials or harmful physical agents; provide notification of employees of exposure; and allow employees or their representatives' access to records.
- (d) Protection from undue burden on small businesses providing information under this Act.
- (e) Provide OSHA access to both employer and employee representatives during an onsite inspection to aid in the investigation.
- (f) Procedures for the disposition of investigations shall:
  - (1) Allow employees or their representatives to request an inspection by the Department of Labor for health and safety standards violations that have the potential for physical harm or elements of danger. The individual(s) making those requests will not be identified to the employer. The Secretary of Labor will determine if an inspection and investigation are warranted or if there are no reasonable grounds for those requests.
  - (2) Before or during any workplace inspection, employees or their representatives may present written notice of any workplace violations of safety and/or health standards. Should the Secretary of Labor's representative decide that there are no violations of safety and/or health standards, procedures shall be established for an informal review of that decision, with a written explanation being provided to the employees or their representative of the Secretary's final disposition of the alleged allegations.

- (g) Additional duties for the Secretaries mandated by the Act include:
  - (1) The Secretaries of Labor and Health and Human Services are authorized to compile, analyze, and publish all reports or information on the investigation. That information can be presented in either a detailed or summary form.
  - (2) The Secretaries of Labor and Health and Human Services are authorized to establish any necessary rules and regulations to permit them to implement the enforcement of the OSH Act, including the inspection of an employer's establishment.
- (h) Department of Labor employees directly involved in enforcement and investigations of this Act shall not have their work performance evaluation based on the number of citations issued or penalties issued. The Department shall not impose or establish any goals or quotas regarding citations or penalties.

## The Occupational Safety and Health Review Commission

The OSH Act establishes a three-member commission entitled the *Occupational Safety and Health Commission (OSHRC)* [39]. The OSHRC

is an independent Federal agency created to decide contests of citations or penalties resulting from OSHA inspections of American work places. The Review Commission, therefore, functions as an administrative court, with established procedures for conducting hearings, receiving evidence and rendering decisions by its Administrative Law Judges (ALJs). [40]

The duties of the *Administrative Law Judges* as outlined in the Act include:

[to] hear, and make a determination upon, any proceeding instituted before the Commission and any motion in connection therewith, assigned to such administrative law judge by the Chairman of the Commission, and shall make a report of any such determination which constitutes his final disposition of the proceedings. The report of the administrative law judge shall become the final order of the Commission within thirty days after such report by the administrative law judge, unless within such period any Commission member has directed that such report shall be reviewed by the Commission. [41]

Should any employer be issued a citation or assessed a penalty for violation of any Department of Labor established safety or health standard by the Occupational Safety and Health Review Commission, they

may obtain a review of such order in any United States Court of Appeals for the Circuit in which the violation is alleged to have occurred or where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit, by filing in such court within sixty days following the issuance of such order a written petition praying that the order be modified or set aside. [42]

The Secretary [of Labor] may also obtain review or enforcement of any final order of the Commission by filing a petition for such relief in the United States court of appeals for the circuit in which the alleged violation occurred or in which the employer has its principal office ... [43]

## State Jurisdiction and State Plans

The Act allows any state to enforce health and safety standards not established and enforced under the OSH Act of 1970 and its amendments [44]. It does allow any state to

assume responsibility for development and enforcement therein of occupational safety and health standards relating to any occupational safety or health issue with respect to which a Federal standard has been promulgated under section 6 shall submit a State plan for the development of such standards and their enforcement. [45]

The Act establishes rules, procedures, and actions which must be implemented in order for this to occur. It also establishes procedures and mechanisms [46] by which the Secretary of Labor shall approve or reject a state plan.

As of July, 2008 there are 26 states and jurisdictions operating complete state plans, which cover both private sector and state and local governmental employees. There are four states which cover public employees only. Eight other states were originally approved for the program, but have subsequently withdrawn. Reference Table 3.2 for those states.

There are four stages through which a state must progress, before it can be accredited to assume all OSHA labor health and safety regulatory responsibilities under Section 18 of the OSH Act of 1970. They include:

Developmental Plan

Certification

Operational Status Agreement

Final Approval

Detailed discussion on those stages can be found on the OSHA website: <http://www.osha.gov/dcsp/osp/faq.html#oshaprogram>; “How does a State establish its own program?”

The *Final Approval* stage is the ultimate accreditation of a state’s occupational health and safety plan. Under Section 18(e) of the OSH Act of 1970, in this stage OSHA “relinquishes its authority to cover occupational safety and health matters covered by the State” [48]. It indicates that the state’s worker protection regulation is at least as effective as that of OSHA. There are requirements that the state must have 100% compliance with staffing levels and implement a computerized inspection data system before OSHA can grant Final Approval. Table 3.2 illustrates state participation levels in the program, illustrating which states and jurisdictions have received Final Approval [49].

TABLE 3.2 States with OSHA Approved Safety and Health Plans [47]

State	Operational status agreement <sup>1</sup>	Different standards <sup>2</sup>	21(d) on-site consultation agreement <sup>3</sup>	On-site maritime coverage	Date of initial approval	Date certified <sup>4</sup>	Date of 18(e) final approval <sup>5</sup>
Alaska			X		07/31/73	09/09/77	09/28/84
Arizona			X		10/29/74	09/18/81	06/20/85
California	X	X	X	X	04/24/73	08/12/77	
Connecticut <sup>6</sup>			X		10/02/73	08/19/86	
Hawaii		X	X		12/28/73	04/26/78	04/30/84
Indiana			X		02/25/74	09/24/81	09/26/86
Iowa			X		07/20/73	09/14/76	07/02/85
Kentucky					07/23/73	02/08/80	06/13/85
Maryland			X		06/28/73	02/15/80	07/18/85
Michigan	X	X	X		09/24/73	01/16/81	
Minnesota			X	X	05/29/73	09/28/76	07/30/85
Nevada			X		12/04/73	08/13/81	04/18/00
New Jersey <sup>6</sup>			X		01/11/01		
New Mexico	X		X		12/04/75	12/04/84	
New York <sup>6</sup>			X		06/01/84		
North Carolina			X		01/26/73	09/29/76	12/10/96
Oregon	X	X	X	X	12/22/72	09/15/82	05/12/05
Puerto Rico	X				08/15/77	09/07/82	
South Carolina			X		11/30/72	07/28/76	12/15/87
Tennessee			X		06/28/73	05/03/78	07/22/85
Utah			X		01/04/73	11/11/76	07/16/85
Vermont	X		X	X	10/01/73	03/04/77	
Virgin Islands <sup>6</sup>			X		08/31/73	09/22/81	04/17/84 <sup>7</sup>
Virginia			X		09/23/76	08/15/84	11/30/88
Washington	X	X		X	01/19/73	01/26/82	
Wyoming			X		04/25/74	12/18/80	06/27/85
Total: 26	7	5	23	5	26	24	17

<sup>1</sup>Concurrent Federal OSHA jurisdiction suspended.

<sup>2</sup>Standards frequently not identical to the Federal.

<sup>3</sup>On-site consultation is available in all states either through 21(d) Agreement or under a State Plan.

<sup>4</sup>Developmental steps satisfactorily completed.

<sup>5</sup>Concurrent Federal jurisdiction relinquished (superseded Operational Status Agreement).

<sup>6</sup>Plan covers state and local government employees only.

<sup>7</sup>Voluntary withdrawal of private sector jurisdiction and retention of public sector jurisdiction on July 1, 2003 (68 FR 4345).

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