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Standards Improvement Project--Phase III

Comments of the International Code Council

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The International Code Council (ICC) is a membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations. The International Code Council also publishes the International Energy Conservation Code (IECC), which is referenced in the Energy Independence and Security Act (EISA) of 2007, and is a national requirement in section 410 of the American Recovery and Reinvestment Act of 2009. Fifty states and the District of Columbia have adopted the I-Codes at the state or jurisdictional level. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also enforce the I-Codes for the facilities that they own or manage. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad. Puerto Rico and the U.S. Virgin Islands enforce one or more of the I-Codes.

The International Code Council (ICC) was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes. The founders of the ICC are Building Officials and Code Administrators

International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). Since the early part of the last century, these non-profit organizations developed three separate sets of model codes used throughout the United States. Although regional code development has been effective and responsive to our country's needs, the time came for a single set of codes. The nation's three model code groups responded by creating the International Code Council and by developing codes without regional limitations; the International Codes.

Our comments are specifically directed at Section 1 of the Notice, revisions to Subpart E (29 CFR 1910).

We agree with the proposed rule to include the 2009 International Fire Code (IFC) as an alternative means of demonstrating compliance with Subpart E. We would point out that the justification section of the Notice, as well as the docket materials, indicate that OSHA actually compared the 2006 IFC and the 2006 NFPA 101, not the 2009 versions, to the Subpart E provisions. However, we believe the same conclusion would be reached in analyzing the 2009 IFC, so we can fully support the current language of the proposed rule. We support including the 2006 IFC as an alternative means of demonstrating compliance with Subpart E.

The IFC is one of 14 codes developed by the International Code Council, using our highly successful "governmental consensus process" to bring together subject matter experts, building owners, engineers, builders and designers, and product and system manufacturers and installers, as well as the code and fire officials who are charged with assuring a safe building environment for all users. Our process is open, transparent, consensus-driven, and meets all due process requirements such as the right of all parties to review, comment and, if necessary, appeal decisions made during the process. The use of this process assures OSHA and Code users that the IFC meets all requirements of Federal law, such as the National Technology Transfer and Advancement Act of 1995, and OMB Circular A-119, requiring the use of voluntary consensus standards from the private sector.

AS OSHA pointed out in the Advanced Notice of Proposed Rulemaking (ANPR), December 21, 2006, OSHA had previously declined to recognize the building codes in 2002, because at that time there were three different building codes used around the country. As the ANPR stated: "That situation has changed significantly. First, the three former building codes have evolved into a single code, the IBC. Secondly, OSHA has made a determination that the egress provisions of the IBC and the IFC, when applied together, offer employee protection equal to the subpart E provisions." Now in this proposed rule, OSHA again reviews the IFC and IBC, and again concludes that the IFC alone will provide a level of safety equivalent to the requirements of Subpart E.

We might add that the situation has continued to change since 2006, in that more states have chosen to adopt the IBC, and the IFC. This continued trend toward the enforcement of these codes indicates that the savings and flexibility through recognition of the IFC as a means of compliance with Subpart E have increased since the original Advanced Notice was published.

ICC believes that since 43 states have currently adopted some version of the IFC at either the state or local levels, that adding the 2006 or 2009 IFC as an additional “deemed to comply” method of demonstrating compliance will achieve several positive benefits consistent with the mission and purpose of OSHA: increased compliance by employers, increased flexibility for employers, lower cost for employers to demonstrate compliance, and finally, a higher level of protection for workers in facilities that demonstrate compliance with the requirements of the IFC.

NFPA, by its opposition to allowing a second compliance alternative for employers, appears to be substituting its proprietary interests for those of employers, facility owners and operators, and employees. NFPA apparently seeks to gain by OSHA fiat what it has been unable to accomplish in the public marketplace – acceptance and use of the NFPA 101 Life Safety Code. In steadily increasing numbers, states that have considered both the NFPA Life Safety Code and the ICC International Fire Code (IFC), have chosen the IFC. The IFC meets the needs of the business community, the code enforcement community, and the fire service, all of whom support the integrated approach to building codes that is the hallmark of the International Code Council’s suite of building, fire, energy and other codes. Jurisdictions have also favored the IFC because of its correlation to the IBC.

In addition to the benefits already described, it should also be noted that because the IFC is reviewed and revised on a consistent, fixed three year cycle, new knowledge and new solutions to emerging or previously unrecognized or unknown risks are constantly being considered, and the safety of building users continually upgraded, with every new edition of the model code that is published. We appreciate that while OSHA in its rulemaking will only specifically name a specific year edition of the IFC as the basis of a “deemed to comply” determination, the benefits of the use of later editions of the code will be a benefit to workers, and will assist OSHA in achieving a higher level of compliance with the Subpart E requirements.

We strongly encourage OSHA to take note of the many jurisdictions and organizations that filed comments in 2007, after this rule was originally proposed in the ANPR, and the unanimous view of those commenters that the acceptance of the IFC as a deemed to comply alternative means of demonstrating compliance with Subpart E would result in significant and ongoing savings to employers. There was no claim or evidence in the docket that would controvert these comments. Even NFPA did not offer any evidence that providing an alternative means of demonstrating compliance would offer savings to employers and building owners and operators.

We also note that there was no comment or claim that the IFC did not provide equivalent worker protection to the protection afforded by compliance with Subpart E, which is the primary, and most appropriate, criteria to use in deciding whether to go forward with the final adoption of this rule. As OSHA correctly noted in its analysis of comments received in response to the ANPR, NFPA comments claiming that the IFC/IBC were not equivalent to NFPA 101 were off-topic, and did not address the real question posed by the ANPR, and answered affirmatively by the OSHA staff analysis: does compliance with the IFC provide a level of safety to employees equal to that provided by compliance with Subpart E of Section 1910.35.

The ICC stands ready to assist OSHA in its mission of enhancing worker safety, as that mission is entirely consistent with, and a subset of, the ICC mission of providing a safer built environment for all the people who work, live and do business in buildings here in the United States, and around the world.

The recent earthquakes over the past year provide graphic proof that the absence of strong and effectively enforced building codes can have devastating and deadly results, while also showing that strong codes, consistently enforced, save lives and property from both natural and man-made disasters.

We would encourage OSHA to regularly review and compare the provisions of each new edition of the IFC to the requirements of Subpart E, and to regularly determine that demonstrating compliance with the latest edition of the IFC will be “deemed to comply” with the Subpart E provisions, in order to assure the latest available protection is in place for the workplaces of all Americans.

Federalism Considerations

With respect to OSHA’s review of this proposed rule under Executive Order 13132, requiring Federal Agencies, to the extent possible, “refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options...”, ICC believes that the change proposed in this rulemaking will clearly not limit State policy options, but will in fact recognize the States that have adopted the IFC, and respect that decision within the context of OSHA regulations. The fact that employers and building managers will now be able to demonstrate compliance with a single code document, to satisfy both their responsibility to maintain safe conditions under state building codes, and simultaneously demonstrate compliance with OSHA Sec. 1910.35, Subpart E, will generate significant saving to states, local governments, OSHA, and the regulated community.

Summary

In the ANPR, in 2006, OSHA posed three questions, all of which can now be definitively answered:

1. Do the combined egress provisions of the IBC and IFC offer equivalent protection to OSHA’s Subpart E? Answer: Yes- for both the 2006 and 2009 IFC.
2. Are there other alternative national building codes that OSHA should consider? No-the IFC and IBC are the choice of nearly every state and local jurisdiction that chooses to adopt a code, and by allowing compliance with either the IFC or NFPA 101 to demonstrate compliance with Subpart E, OSHA will effectively provide an alternative means of compliance in every jurisdiction that adopt and enforces building and fire codes.
3. Would allowing the use of the IBC and IFC as an equivalent to Subpart E help employers reduce cost? Yes- both logic and the comments of large and substantially impacted employers indicate that the savings from this rule will be large and continuous, and will allow employers to avoid allocating scarce resources to demonstrating Subpart E compliance when that compliance is already demonstrated through compliance with the IFC.