



FEDERAL USE OF ICC CODES

Often times we refer to the use of the I-Codes by Federal agencies such as the Department of Defense, Department of State, Architect of the Capitol, General Services Administration, and others as “adoptions.” In reality, federal agencies do not “adopt” ICC codes in the same manner as state and local governments incorporate model codes into their statutes or laws for the purpose of regulating construction within their jurisdictions. Instead, the Federal agencies “use” the I-codes, or specific I-codes, in several different ways, which we will describe here.

Use by agencies for design and construction of Federal agency facilities

Many Federal agencies build, own, operate and/or lease buildings of various types, to allow them to carry out the functions that Federal law assigns to the agencies and their staff. The General Services Administration (GSA) has a large portfolio of buildings, mainly office type facilities that it builds, owns and operates as a service to other agencies. Likewise, agencies like the Department of Energy (DoE) and NASA own and operate a variety of building types, including laboratories, and research facilities, in addition to office buildings. The Veterans Administration (VA) operates medical facilities like hospitals, ambulatory care centers, and nursing and long term care facilities. The Architect of the Capitol builds and maintains a portfolio of buildings in Washington, including historically important buildings such as the U.S. Capitol, and the House and Senate office buildings. The Department of Defense constructs and operates thousands of buildings – commercial, office, and residential in nature – to support the equipment and personnel of the armed forces, both within the U.S. and in foreign countries. In each of these cases, and others like them, the agencies do not literally or legally “adopt” the IBC, IRC or other documents as regulations, as at the state level. But they do use the I-codes as requirements when they request bids to construct, renovate or maintain properties and facilities. The building managers and operators also use the I-codes, such as the IFC, to inform their maintenance and upkeep of the buildings in their portfolios, to insure the safety of Federal employees in the buildings, as well as members of the public who may utilize the buildings. In these cases, it is correct to say the Federal agencies “use” the I-codes and require them to be followed in the construction of new and renovated structures. The difference is that since the Federal agencies have a direct, contractual relationship with either their own employees, or with the contractors they designate to build, operate and maintain their buildings, they can require use of the codes without the need to formally “adopt” the codes into law or regulations.

Use of the codes as requirements, pursuant to Federal Law

Some agencies, charged with protecting the public health, safety or other Federal interests, use various codes and standards as Federal requirements for regulated entities through the process referred to as “incorporation by reference” or IBR. We are not aware of any specific instances of Federal agencies using any current I-code through incorporation by reference, although many do use various I-codes in a similar way, as alternative means of compliance (AMC) documents, or a part of minimum qualifications for the receipt of Federal funding or other Federal benefits (MQ).

The most well-known example of the use of I-codes as alternative means of compliance is the use by OSHA of the “means of egress” requirements in the International Fire Code, as alternatives to complying with the actual regulatory requirements in OSHA’s CFR 1910, Subpart E “Exit Routes and Emergency Planning.” In this example, OSHA allows employers to show proof of compliance with either the NFPA Life Safety Code or the ICC International Fire Code to show that they are in compliance with the OSHA Exit Routes and Emergency Planning requirements.

The most prominent example of the “minimum qualifications” use of the codes is the use by the Department of Energy (DoE) of the International Energy Conservation Code (IECC) as the benchmark for measuring whether states comply with requirements in the Energy Independence and Security Act (EISA). The Act that requires DOE to make a determination that each published version of the IECC will result in higher energy efficiency in residential buildings than the previous edition, and if so, to notify the states, and recommend that the states update their energy codes to meet or exceed that new edition of the IECC. Thus, a state does not necessarily have to adopt the IECC to meet the legal requirements of EISA (although adoption is easy, and does meet the requirements), but the state could adopt its own energy code, as long as it results in residential buildings at least as efficient as the version of the IECC recommended by DoE. In this case, DoE also uses the IECC as an “alternative means of compliance” since by law (EISA) it must require states to measure their commercial energy codes against the current ASHRAE 90.1 Standard for Buildings except Low-Rise Residential Buildings. For the 2004, 2007 and 2010 ASHRAE 90.1, DoE has determined that the IECC provisions for Commercial Buildings meet or exceed the efficiency required by the ASHRAE document, and therefore are accepted as an alternative means for states to show they are in compliance with the energy code requirements for commercial buildings.

In a similar fashion, as a result of specific provisions in the Environmental Policy Act of 2005 (PL 109-58), and the Energy Independence and Security Act of 2007 (PL 110-140), the Department of Housing and Urban Development (HUD) requires, as a condition for eligibility for Federal Housing Administration (FHA) loan insurance, that builders of homes certify that new homes comply with all local and state building codes, as well as with the requirements of the 2006 International Energy Conservation Code (IECC), or its successor publication. (The current certification requires compliance with the 2006 IECC- see HUD Form- 92541, revised January 31, 2013)

There are other permutations of this type of use of the I-Codes, but all share one common characteristic: only when an agency has specific authority in Federal law to regulate a particular issue or activity can the use of a code or standard by reference, incorporation or as part of a set of minimum requirements be undertaken. In these cases, both Federal executive branch orders (primarily OMB A-119) as well as Federal law (primarily P.L.104-113, The National Technology Transfer and Advancement Act) allow, and in fact encourage, agencies to use standards (and codes) developed through a voluntary consensus process, to be used in lieu of agency-specific, and government unique requirements, where the standard or code meets agency needs, and achieves agency objectives.

In cases where the Federal agency has authority to regulate a specific issue, and either direct or implied authority to utilize a private sector-developed code or standard, the agency must follow the Administrative Procedures Act (APA), and issue a Notice of Proposed Rulemaking (NPR), receive and address any comments on the NPR, and then issue a Final Rule, that lays out the specific Federal requirement, and a reference to the code or standard, as well as any specific interpretation, limitations or alternatives to the use of the standard or code. Again there are many instances of this kind of regulation, incorporating codes and standards, such as the Occupational Health and Safety Act of 1970 that authorizes the regulation mentioned previously, and the Social Security Act of 1964 provisions that authorize the Center for Medicare and Medicaid (CMS) regulation requiring hospitals to meet Life Safety Code requirements to be eligible for Federal reimbursements. In the case of OSHA, the agency has determined that both the Life Safety Code and the International Fire Code, if met by an employer, will satisfy the OSHA Emergency Exit Route requirements. In the case of CMS, hospitals and some other facilities must demonstrate compliance with the Life Safety Code to a third party inspection body, in order to qualify for Federal Medicare or Medicaid reimbursement. While the law authorizes CMS to accept compliance with equivalent state or local codes, CMS has not recognized any state, local or other model codes at this time.