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Headquarters

5203 Leesburg Pike, Suite 600 ■ Falls Church, VA 22041-3405 U.S.A.
Tel: +1 (703) 931-4533 ■ Fax: +1 (703) 379-1546
Toll Free: +1-888-ICC-SAFE (422-7233)

www.iccsafe.org

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October 5, 2005

Mr. Allen Weinstein
Archivist of the United States
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Subject: Final Rule on Records Center Facility Standards RIN 3095-AB31 (70 FR 50980 et. sec., August 29, 2005)

Dear Mr. Weinstein:

The International Code Council (ICC) respectfully requests the National Archives and Records Administration (NARA) provide and publish a clarification of the final rule and supplementary information stated above. The ICC supports the objective of ensuring storage facilities are safe from fire, seismic and other natural or man-made disasters and incidents. The relevant safety regulations must also be sound, reasonable and effectively implemented as well as consistent with federal laws and regulations. While we appreciate the time and effort NARA has taken in development of the final rule, we do not believe it can be effectively implemented as proposed; in particular due to deficiencies in the findings used in it as a final rule. The basis for rejection of certain comments submitted by ICC is both improperly founded and at odds with federal guidance and NARA's own practices in usage of voluntary consensus standards.

For these reasons ICC is providing the following response to the final rule and NARA's disposition of ICC's comments.

- Regarding section 1228.224 ICC had commented that NARA should adopt the ICC International Codes because they are a single coordinated set of codes and are used by Federal, state and local government; thereby ensuring consistency and uniformity in building regulations used throughout the U.S. NARA rejected this comment on the basis that the ICC Codes are not "ANSI approved" standards. The presence or absence of ANSI accreditation of ICC's Governmental Consensus Process, which has not been sought by ICC on the ICC model codes, cannot be used by NARA or any other federal agency as a factor in a determination not to reference the ICC Codes. OMB Circular A-119 and Public Law 104-113, the National Technology Transfer and Advancement Act (NTTAA), clearly establish that standards adopted by federal agencies should meet the principles of openness, transparency, balance of interest, due process, appeals process, and consensus. While ANSI does

provide a service to standards developers (including ICC) to certify the use of the abovementioned principles in standards development processes, the Act and the Circular do not reference ANSI nor confer to any specific entity an agency on the part of the Federal government in making or using this certification. Quite to the contrary to NARA's application of accreditation, OMB A-119, in defining the purpose of the Circular, directly states that:

The policies in this Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards. The policies **do not** create the bases for discrimination in agency procurement or regulatory activities among standards developed in the private sector, whether or not they are developed by voluntary consensus standards bodies.

NARA is incorrect and inconsistent with its own practices in making third party accreditation a basis for discrimination in referencing a standard. The ICC Codes are developed under a governmental consensus process that satisfies both the OMB Circular and the public law that codified it. The ICC is a voluntary consensus body and the process used to develop the ICC Codes is open, has a balance of interests involved, provides due process, has an appeals process, provides for consensus, the resolution of objections by interested parties, and the fair consideration of all comments. As noted in ICC's previous comments, numerous federal agencies use the ICC Codes and recognize them as developed under a process consistent with the requirements of the NTTAA.

- Regarding section 1228.226 the term now used by NARA is inconsistent with terms used by federal, state and local regulators and the design and construction community at large. Uniformity is advantageous and the ICC assumes that NARA will take the necessary steps to educate the design, construction and code communities as well as standards developers, testing laboratories and building product manufacturers on NARA's regulations as they relate to fire barrier walls and how they would be applied given the terminology and criteria on the subject in voluntary sector documents.
- Regarding section 1228.228(n)(4) the ICC's comment is not addressed in the final rule. ICC's comment was that the issue of positive air pressure is addressed already in the ICC International Mechanical Code (IMC) and adoption of the IMC by NARA would eliminate the need to continue to develop and maintain government developed criteria. In keeping with the OMB Circular and NTTAA it would seem logical for NARA to adopt voluntary sector standards where they exist, eliminating the need for the agency to duplicate efforts.
- Regarding section 1228.230(l) rejection of the ICC comment concerning conflict, safety concerns, consistency with state and local codes, etc. associated with certain heating equipment solely on the basis that the ICC Codes are not ANSI approved highlights an additional weakness in NARA's issuance of the final rule in this matter. Given NARA's reliance on and reference to local building codes for seismic criteria it seems logical then to simply refer to state or local codes on the issue of open flame equipment and where no such codes exist then refer to the ICC Codes, National Fuel Gas Code or Uniform Mechanical Code as minimum acceptable alternatives.

- Regarding section 1228.232 ICC provided a reasonable suggestion for NARA to reference a more recent edition of certain ASHRAE standards. NARA's response was simply "we declined to act on this comment at this final rule stage". The reason stated is that most records storage buildings are existing buildings. This does not seem to be an appropriate response to what ICC believes is a reasonable comment. Other federal as well as state and local codes refer to the more current ASHRAE standards. Also, with respect to private sector leased storage facilities, the NARA rules require building owners to take a step backwards and face likely violation of state or local law.

Rulemaking is complicated and requires many resources, including staff time to review public comment. ICC is very appreciative of the opportunity to provide comments. However, this final rule reveals a serious weakness in NARA's reliance on ANSI and the application of ANSI accreditation as an exclusive or even discriminatory factor in its findings. ICC has additional concerns in this rulemaking that go beyond this issue, as indicated above. ICC respectfully requests a meeting with appropriate NARA officials to further discuss our concerns.

We look forward to a response by late October and scheduling a meeting soon thereafter. Should you have further questions please feel free to contact either me or Mark Dinneen of my staff.

Sincerely,



Sara Yerkes
Senior Vice President of Government Relations