

Docket No. OSHA–2010–0004

Comments of the International Code Council

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The International Code Council (ICC) is a membership association dedicated to building safety and fire prevention. ICC develops the codes and standards used in the United States and elsewhere to construct residential and commercial buildings, including homes and schools.

The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. The I-Codes are a complete set of comprehensive, coordinated building safety and fire prevention codes. Building codes benefit public safety and support the industry's need for one set of codes without regional limitations.

Fifty states and the District of Columbia have adopted the I-Codes at the state or local jurisdictional level.

1. **What can the agency do to enhance and encourage the efforts of employers, workers and unions to identify and address workplace hazards?**

Generally, ICC believes that the best way to enhance and encourage the efforts of all involved in workplace safety is to identify and address workplace hazards through uniformity and consistent communication of proper safety protocol including risks of fire, smoke, and other building related safety measures.

One of the best ways to do this is to insure that there is uniformity and consistency between the standards and codes that address building, fire and egress risks and the standards enforced by OSHA addressing these issues.

Often, this is not the case, as most states are using more recent and up-to-date standards and codes than those referenced by OSHA. We will address specifically how this can be done in our comments under items 5 and 6.

5. **Are there additional measures to improve the effectiveness of the agency's current compliance assistance efforts and the on site consultation program, to ensure that small businesses have the information needed to provide safe workplaces?**

ICC believes it is important to assure small business owners that OSHA understands their frustration with duplicative and conflicting standards, and that OSHA will devote some effort to put an end to the current problem of small businesses complying with current codes and standards, as developed and published by many highly respected codes and standards developers, only to be cited for a “technical violation” as a result of the business not being in compliance with the older, out-of-date (and often out-of-print) standards or codes.

An example of this situation which we are very familiar with is the current referencing of the NFPA 101-2000 (Life Safety Code) as the sole OSHA referenced code for egress issues in buildings. Egress and doorway obstruction violations are some of the most common violations in OSHA inspections, so this is not a small issue.

The NFPA 101-2000 code is ten years old, and has been superseded by three newer editions since the 2000. In addition, the majority of states and almost every local jurisdiction with authority to adopt building codes, now use the International Building Code (IBC) to regulate construction of commercial buildings. Furthermore, 42 states use the International Fire Code (IFC) to regulate upkeep and maintenance requirements for all buildings, as they relate to fire and occupant safety. We understand that the OSHA staff has performed an analysis indicating that the 2003 IBC and IFC provides equal or better safety to occupants and workers than the NFPA 101- 2000 code. To date, the IBC and IFC have not been recognized as equivalent documents and OSHA has not scheduled action for recognition on the OSHA Regulatory Agenda. We understand that the recognition of the IFC and IBC is a part of OSHA’s “Standards Improvement Program, Phase III,” and was contained in an Advanced Notice of Proposed Rulemaking in connection with that program. Furthermore, similar to NFPA 101, we have since published two subsequent editions of the IFC and IBC since the 2003 version that OSHA examined.

Currently, jurisdictions are considering and adopting our 2009 editions of both the IBC and IFC. We are confident that they too will provide equal or a greater level of safety as the ten year old code used as the OSHA reference standard.

It is unfortunate, given the large number of jurisdictions using the IFC and IBC, and the broad enforcement of those codes, that they are not accepted by OSHA. The fact that they are not, and that the small business owner, who already has to comply with the IFC and IBC to keep his doors open to the public, means he must make sure he is in compliance with a ten year old code that offers no advantage over jurisdictional building code requirements. This does not inspire confidence in OSHA, nor does it help the small businessman, especially when he might face a “technical violation” for not being in compliance with an outdated code.

The case of the NFPA 101 and the IBC/IFC is not an isolated problem. Some five years ago, in consultation with the American National Standards Institute (ANSI), OSHA undertook to determine how many of its referenced standards had been superseded by newer versions. The results of the study showed that there were at least 300 standards used by OSHA that had been replaced by newer versions, and in some cases, the OSHA- referenced standards were over 30 years old!

This problem, which OSHA has been aware of since at least 2001, should not be allowed to continue.

We offer our suggestion for correcting the problem under item 6.

6. Given the length and difficulty of the current OSHA rulemaking process, and given the need for new standards that will protect workers from unaddressed, inadequately addressed and emerging hazards, are there policies and procedures that will decrease the time to issue final standards so that OSHA may implement needed protections in a timely manner?

OSHA should adopt a form of “automatic update”, to adopt new versions of existing referenced standards, to allow the agency, and more importantly, the hundreds of thousands of regulated businesses who must comply, to use the latest and most technically accurate codes and standards available. If legislation is required to allow for the automatic adoption of new standards, we believe that an effective coalition of business, labor and the standards community could be assembled to support such an effort.

We believe that automatic adoption makes sense, would be simple to implement, and would be welcomed by the regulated community, as well as OSHA’s staff and other stakeholders.

Simply put, the current system is not working. When OSHA was created in the early 1970’s, Congress gave OSHA fast-track authority to quickly adopt hundreds of standards, through an expedited process. This was provided to insure that the latest standards were used as reference documents to protect workers. That authority was successful, and allowed OSHA to quickly reference many standards that have been the backbone of OSHA’s regulations. However, when the fast-track authority disappeared, so did OSHA’s ability to update these standards, which has only been compounded by the many additional requirements that Congress has layered on to the administrative procedures required to notice and comment a new proposed rule. OSHA staff will (off the record, of course) frankly admit that they do not have the current capacity to update all the hundreds of out-dated standards referenced by OSHA.

In simple terms, this means that hundreds of standards now used by OSHA date as far back as the 1960’s and 1970’s and have never been updated, even though numerous changes, reflecting recent technologies and practices, have been reflected in subsequent versions of these codes and standards. In practice, it means that businesses using current, and safer, codes and standards may be cited for a violation for not complying with a less safe and antiquated OSHA-referenced code or standard. In many cases, a standard or code may have a new name or designation, which makes it even more difficult for businesses to demonstrate compliance with the older OSHA-referenced standard.

OSHA should adopt a simple process by which the developers and publishers of codes and standards send a copy of their new version of current OSHA-referenced documents to OSHA for consideration. OSHA would then publish a notice announcing an update to the referenced standard or code and provide a date certain for adoption of the newly updated version. Any person wishing to object to the update could file comments, stating the reasons for the objection. Objections could then be heard at a properly noticed meeting set by OSHA

and a final hearing to determine whether or not objections were well-founded and if the updated is to be adopted by OSHA. Such a process would ensure due process, would not impinge upon OSHA's authority to adopt standards designed to protect worker health and safety, and would greatly facilitate better compliance with OSHA requirements, especially by the small business community, which is hard pressed to follow the myriad of regulations that affect their operations.