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Standards Coordination Office  
National Institute of Standards and Technology  
Gaithersburg, MD

*Via regulations.gov*

**Re: Comments of the International Code Council to NIST on Notice of Proposed Rulemaking on Guidance on Federal Conformity Assessment Activities, 15 CFR 287 (Docket Number 191210-0104)**

The International Code Council (ICC) is a nonprofit organization, driven by the engagement of its 65,000 members, that is dedicated to helping communities and the building industry provide safe, resilient, and sustainable construction through the development and use of model codes (I-Codes) and standards used in design, construction, and compliance processes. Most U.S. states and communities, federal agencies, and many global markets choose the I-Codes to set the standards for regulating construction and major renovations, plumbing and sanitation, fire prevention, and energy conservation in the built environment.

ICC's model building codes and standards are "voluntary consensus standards" under Office of Management and Budget (OMB) Circular A-119 and the National Technology Transfer Advancement Act (NTTAA), meaning they are developed in an open forum—with a balance of interests represented and due process—that, ultimately, ensures a consensus outcome. Federal agencies, communities, developers, and manufacturers and designers are active participants in the code development process, ensuring the final consensus result balances cost, safety, and other public interest considerations. State and local governments adopt, amend, and enforce model building codes to advance policy goals and to ensure the health, safety, and welfare of their residents.

The I-Codes are widely utilized and supported at the federal, state, and local levels. All 50 states use the International Building Code (IBC) as the basis for commercial and multifamily housing construction and safety regulation. The International Residential Code (IRC) is in use or adopted in 49 states. The General Services Administration (GSA) requires the I-Codes for civilian governmental buildings<sup>1</sup> and the Department of Defense (DOD) requires the IBC and IRC for all U.S. military bases.<sup>2</sup>

The Code Council also provides conformity assessment services through the ICC-Evaluation Service (ICC-ES) and accreditation through the International Accreditation Service (IAS). ICC-ES conducts technical evaluations of building products, components, methods, and materials for compliance with building codes and standards. ICC-ES marks are widely accepted and recognized in North America and other regions around the world.

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<sup>1</sup> GSA, Facilities Standards for Public Buildings Service ("GSA P-100") (July 2018).

<sup>2</sup> DOD, Unified Facilities Criteria, DoD Building Code (General Building Requirements) (Nov. 2018).

IAS accredits a wide range of companies and organizations including governmental entities, commercial businesses, and professional associations. IAS accreditation programs are based on recognized national and international standards that ensure domestic and/or global acceptance of its accreditations. As one of the leading accreditation bodies in the United States, IAS is a signatory to the three primary international organizations that form a unified system for evaluating and recognizing competent accreditation bodies worldwide.

The Code Council appreciates the opportunity to submit the following comments on the National Institute of Standards and Technology's (NIST) notice of proposed rulemaking on 15 CFR 287, Guidance on Federal Conformity Assessment Activities. We commend NIST's effort to keep its conformity assessment guidance up to date and in line with requirements outlined in the NTTAA and OMB Circular A-119. While efforts to develop concise and streamlined guidance is appropriate, several of the proposed changes in this notice of proposed rulemaking (NOPR) go too far, removing some of the important direction agencies need to adequately support the development and use of conformity assessment processes. In many of these instances, the proposed language appears to direct agencies away from using private-sector developed solutions or being involved in their development (counter to existing U.S. policy and the fundamentals of the U.S. standards process).

**Definitions (§287.2)** – Removing key conformity assessment concepts including accreditation, certification, inspection and testing from the definition of conformity assessment and subsequently from this guidance document could result in confusion for federal agencies and others who consult this guidance. The recommended language retains information on what conformity assessment does not include, but should also explicitly identify and define what is included. We understand that these definitions have largely been transferred to NIST Special Publication 2000-01, ABCs of Conformity Assessment which does allow for more in-depth presentation of conformity assessment topics. However, we note that this special publication is not subject to public comment and may not be updated with the same level of scrutiny or frequency as this guidance. Key terms including accreditation, certification, inspection and testing should be added back into the definition of conformity assessment and their definitions included within this guidance.

**NIST Responsibilities (§287.3)** – As indicated in new subsection (d), the participation of NIST in the codes and standards development process is essential to assure that both federal viewpoints and the interests of the American people are captured. However, such responsibility should not be limited exclusively to NIST. A parallel requirement should be included in §287.4 requiring all federal agencies to participate in such processes related to their expertise and priorities. While NIST retains expertise on the standards process, it does not possess the broad range of technical expertise represented within the diversity of federal agencies. Where specific expertise is required, the relevant federal agency should participate in that standards development process.

New subsection (e) captures the important role of NIST in increasing awareness on the importance of conformity assessment. However, this subsection should clearly state that such responsibility covers both public- and private-sector education.

The proposal to remove current subsections (a) and (e) where NIST is responsible for collecting and disseminating information on federal, state and private sector conformity assessment activities shirks NIST's role in increasing awareness of conformity assessment and reducing duplication and inefficiencies

in conformity assessment activities. The preamble attempts to justify removing such requirements because, “Information about Federal, State and private sector conformity assessment activities is electronically discoverable and available from many sources.” While such materials may be discoverable, many federal agencies and members of the public may not have the resources or the expertise to discover such items and be able to synthesize their content. Further, if NIST does not provide such a service, federal agencies and Standards Executives will have to undertake such efforts as they engage in conformity assessment activities, thus resulting in a duplication of effort across agencies and potential inconsistencies in information. NIST’s responsibility for collecting and disseminating federal, state and private sector conformity assessment activities should be retained.

**Responsibilities of Federal Agencies (§287.4)** – As identified in the section above, federal agency participation in voluntary consensus standards, recommendations and guidelines related to conformity assessment in their mission areas is fundamental to the U.S. standards development and conformity assessment process. Removing subsection (j) from the current guidance removes federal responsibility to participate in these important activities. Federal agencies and their Standards Executives need explicit direction that participation in standards and conformity assessment development is expected.

New subsection (e) is intended to capture the content of multiple subsections in the current document, resulting in an oversimplification of the concepts and the removal of key federal agency responsibilities. Both OMB A-119 and the NTTAA encourage federal agency use of private sector standards and conformity assessment processes. The new subsection (e) directs agencies to “consider leveraging the activities and results of other governmental agency and private sector programs. . .” This language could be interpreted to mean that an agency can make a high-level, blanket decision whether to look at federal or private sector conformity assessment activity with very little analysis. The current guidance in subsection (e) directs agencies to “identify appropriate private sector conformity assessment practices and programs and consider the results of such practices and/or programs as appropriate in existing regulatory and procurement actions.” The identification and consideration of existing programs directs agencies to look at individual conformity assessment programs and evaluate their appropriateness for use by the agency. This is more in line with the intent of OMB A-119 and the NTTAA.

The proposed rewrite of the international provision within the guidance results in the removal of several important concepts. The proposed subsection (h) is so boiled down as to lose any direction to federal agencies. As the preamble identifies, there are several ways for agencies to support U.S. interests internationally, but this guidance is on how federal agencies should support conformity assessment. Removing specific language from this document on how conformity assessment should be used to further U.S. interests internationally could result in conformity assessment opportunities not being recognized at all. Of particular importance is the proactive encouragement of international recognition of U.S. conformity assessment results. The U.S. Standards Conformity Assessment Principles articulates the need for clear and concise use of specific principles in order to facilitate increased acceptance of US products within the US and global markets.<sup>3</sup> This provides both market access for U.S. made products and allows U.S.-based conformity assessment providers to serve customers globally.

**Responsibilities of Standards Executives (§287.5)** – Through a proposed rewrite of the Standards Executives’ goals, the guidance again loses important concepts. This includes agency participation in conformity assessment related activities. Along with an explicit expectation for agency participation in

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<sup>3</sup> <http://www.ansi.org/ncap>.

§287.4, the Standards Executives should be charged with coordinating such participation. Further, having a Standards Executive “encourage” (proposed subsection (h)) agency participation is much different than participation requirements being directed to the agency itself.

The Interagency Committee on Standards Policy (ICSP) plays a valuable role in supporting coordination of standards-related activities across federal agencies. Directing increased participation in the ICSP is important. However, in shifting coordination efforts to the ICSP, some of the key reporting and consultation requirements are lost. Directing Standards Executives to “participate” in the ICSP is incredibly vague and would allow a large degree of variation in how Standards Executives engage. The current language in subsection (d) regarding consultation on the development and implementation of internal agency policies is an important element of NIST’s coordination responsibilities and should not be lost under the vague concept of participation in the ICSP.

Finally, removing the request to submit information on agency conformity assessment activities in support of NIST’s reporting requirements would limit the content and value of the resultant reports. NIST may be assuming that such requests would flow through the ICSP, but without a specific direction in that regard, the necessary information may remain uncaptured and unreported.

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Thank you for the opportunity to comment. The Code Council looks forward to continued work with NIST on supporting standards and conformity assessments, particularly where such activities support the safety and resilience of buildings and communities.

Sincerely,

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