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March 5, 2007

OSHA Docket Office
Docket No. S-778-B
Room N-2625
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Re: Advance Notice of Proposed Rulemaking, Docket S-778B

In review of public comments filed in this rulemaking the ICC observes that comments offered by the National Fire Protection Association (NFPA) are based on a misstatement by NFPA of the purpose of this rulemaking and an effort to redirect the questions put forward for public comment. In this respect it would be not be appropriate to permit those comments to have a bearing on a determination to proceed to a final action on Item A of Part II of the rulemaking.

In the opening paragraph of its comments, NFPA states that “This part [Item A of Part II] of the ANPRM proposes to accept the proposition that use of the International Building Code (IBC) and International Fire Code (IFC), when used together, are equivalent to use of NFPA 101.” The ANPRM, however, does not offer this proposition. Nothing either in §1910.35¹ (including its title), or §§1910.34, 1910.36, and 1910.37, support NFPA’s interpretation of OSHA’s proposal. The question specifically put forward in the rulemaking is “Do the combined egress provisions of the IBC and IFC offer equivalent protection to OSHA’s Subpart E.”

The issue at hand is whether the egress provision of the IBC and IFC satisfy the intent of OSHA’s egress requirements at §§1910.34, 1910.36, and 1910.37, a matter which is evaluated through a straight-forward comparison of these two sets of requirements. A comparison of the egress provisions of the IBC and IFC with those of the NFPA 101, therefore, is unresponsive to OSHA’s request for public comment on this matter, and is not properly focused on this rulemaking. In support of ICC’s filing a 35 page review is presented that comprehensively lays side by side the egress provisions of the IBC/IFC (2003 editions) with those of OSHA’s rules at Subpart E. In the only other comprehensively focused analysis offered, the New York Department of State also

¹ §1910.35, which would be amended by this proposal reads in whole (emphasis on title added):
“**Compliance with NFPA 101-2000, Life Safety Code.** An employer who demonstrates compliance with the exit route provisions of NFPA 101-2000, the Life Safety Code, will be deemed to be in compliance with the corresponding requirements in §§1910.34, 1910.36, and 1910.37.” It is expected that this section would be re-titled to represent the recognition of an additional manner of demonstrating compliance with §§1910.34, 1910.36, and 1910.37.

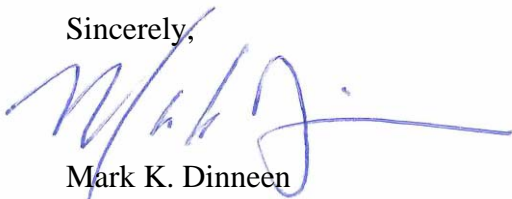
presented a provision by provision analysis, remarking, as a part of the public comment, on each difference found. As in ICC's comparative analysis, New York State finds that there may be differences worth noting, but also concludes that the IBC and IFC (2006 editions) "provide an equivalent level of protection to all occupants, including employees in covered businesses." New York State also offered that "these codes are substantially more detailed in their requirements than Subpart E. The provisions of the IFC are also more restrictive in many respects than the provision of sections 1920.35 and 1910.37..." Consistent with OSHA's own preliminary finding, these analyses, on point to a comparison of the IBC/IFC with Subpart E, conclude that OSHA's regulatory interest and those of the public in the workplace are satisfied through compliance with the combined egress provisions of the IBC and the IFC.

The scope of the IBC and IFC are also raised in NFPA's comments. The scope of the IBC, the scope of the IFC, and the scope of the NFPA 101, in the manner in which they apply generally to new and existing building, is not relevant to this rulemaking. The scope of the application of OSHA's egress rules is administered directly by OSHA and in administering its egress rules under §1910 OSHA has and would continue to independently establish the scope of applicability of any referenced standard.

Though restriction of OSHA's independent judgment in recognition of voluntary consensus development processes is also not a question in OSHA's requests for comments, we wish to make a general reply to NFPA's arguments to that effect. Apparently reasoning to limit OSHA's authority under P.L. 104-113 (the National Technology Transfer and Advancement Act of 1995), NFPA suggests that ICC's code development procedure is not properly federally recognized as a consensus process. In its argument NFPA suggests a singular private sector method for recognition of consensus development; the same method now exclusively relied upon by the NFPA to balance competing commercial interests in its standards development process. We observe that the NTTAA prescribes no such need or requirement, and, as a matter of standing and recognition, the IBC and IFC are already widely utilized and acknowledged by federal agencies as consensus documents developed in a process which meets or exceeds the requirements of the NTTAA. True to the letter and spirit of the law the ICC Governmental Consensus Process 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 public comments.

With respect to editions selected the ICC notes that its own analysis, from which it founded the request for OSHA recognition in 2004, is based on the 2003 editions of the IBC and the IFC. The New York State analysis utilized the 2006 editions of the IBC and IFC.

Sincerely,



Mark K. Dinneen
Vice President
Congressional Relations