

Comments for the NSTC Subcommittee on Standards

International Code Council

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These comments respond to the following questions:

- Should the government re-commit to greater involvement in private sector standards creation activities, including the delegation of government representatives to participate in the work of private-sector led standards development?
- What role, if any, can the U.S. government play in matters involving intellectual property rights and standards?
- How can we best continue the public/private partnership and interactions via various forums?
- What are some specific successful or non-successful examples of government engagement in private-sector standardization activities and/or reliance on private sector-led solutions?

The Federal government should re-commit to the principles expressed in P.L. 104-113, The National Technology Transfer and Advancement Act, and in OMB A-119, that encourage government agencies to utilize standards and model codes developed by private sector standards organizations, and to actively participate in the development of such standards.

The international Code Council (ICC) has been fortunate to have consistent and in-depth involvement in the processes it uses to develop its model codes and standards. ICC uses the governmental consensus process to develop its model codes and the ANSI process to develop its standards. In both of these processes, representatives from a range of Federal agencies who own and operate, manage, regulate and or have interests in the characteristics and performance of residential and commercial buildings have been involved as both committee members and as commenters and advocates for proposals that would benefit the agencies and the citizens the agencies serve.

From the comprehensive set of comments and proposals generated by the National Institute of Standards and Technology-led group that investigated and analyzed the World Trade Center attack, to the extensively researched and documented energy saving proposals regularly made by the Department of Energy and its national laboratories, there is no doubt that the commercial

and residential buildings that are governed by the International Building Code(IBC), the International Residential Code(IRC), the International Energy Conservation Code (IECC) and the other model codes published by ICC are better built and higher in performance across a number of metrics today, as a result of the involvement of the many Federal agency representatives who participate in the ICC model code development process. The benefits to the Federal government, and to the citizens in every state, far outweigh the modest cost of participation, and have advanced the technology and quality of construction in a more efficient manner, and far more rapid timeframe, than is sometimes possible in the highly structured and regulated Federal rulemaking environment.

ICC appreciates the support and involvement of its many Federal government participants. ICC further believes that the NSTC Subcommittee on Standards could support this important Federal involvement, by taking the following actions:

- Urge the Congress to explicitly authorize and endorse, in all agency re-authorizations, engaging with the private sector to continually improve the quality and usefulness of private sector model building codes and standards.

- Encourage agencies to highlight the positive results of their involvement in private sector codes and standards development, in their reports to the public, and during oversight hearings.

- Convening representatives of Federal agencies for cross-functional meetings and best practices discussions, to allow the good work being done by some agencies to be shared with others that have yet to become fully engaged in private sector standards development activities.

- Issue a set of Frequently Asked Questions that answers typical questions such as, "Can Federal agencies pay dues in order to participate in private sector standards development activities? (Answer:Yes)" and similar questions that often arise within agencies due to staff turnover and the presence of some older, conflicting and usually out-of-date policies or opinion documents.

With respect to Intellectual Property rights and standards, the NSTC Subcommittee on Standards could also play a leading role.

ICC recommends that the Subcommittee lead efforts to have the U.S. government take the following actions:

- Respect and protect the IP rights of private sector SDO's.

-Encourage state and local governments, as well as other stakeholders and the general public, to do the same.

-Discourage unauthorized reproduction and distribution of copyrighted standards.

-Actively work to promote international respect and legal protection for the IP rights of U.S. standards in foreign jurisdictions. This will make it easier for American companies – whose businesses are geared to comply with domestic standards – to do businesses in those jurisdictions. It will also be good for U.S. SDO's themselves by providing additional opportunities to generate revenue outside the U.S.

-Help educate state and local governments, as well as other stakeholders and the general public, about the U.S. system of private sector standards, including the following points:

-The system has historically worked well and has produced high quality standards that reflect a consensus view of what substantive provisions those standards should contain.

-The ability of private sector SDO's to develop such standards relieves government at all levels of the burden and cost of doing the job themselves.

-Widespread disrespect for and violation of SDOs' IP rights may undermine the ability of those SDO's to continue to produce standards – thereby pushing the cost and burden onto the public sector, and potentially diminishing the quality of the standards themselves.