



International Code Council
500 New Jersey Avenue, NW
Sixth Floor
Washington, DC 20001
tel: 888.icc.safe (422.7233)
fax: 202.783.2348
www.iccsafe.org

August 24, 2017

Docket No. HUD-2017-0045-0001

Manufactured Home Regulations; Request for Recommended Changes

**COMMENTS OF:
THE INTERNATIONAL CODE COUNCIL, INC. (ICC)
500 New Jersey Ave, NW
Washington, DC 20001**

**Contact:
David Karmol, dkarmol@iccsafe.org**

The International Code Council, Inc. (ICC) offers the following comments on **Manufactured Home Regulations; Request for Recommended Changes**, published in the Federal Register on July 27, 2017.

Background

The International Code Council, Inc. (ICC) is a non-profit membership association dedicated to building safety, fire prevention, and energy efficiency. The International Codes, or I-Codes, published by ICC, provide minimum safeguards for people at home, at school and in the workplace. 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 other jurisdictional levels. Federal agencies including the Architect of the Capitol, General Services Administration, National Park Service, Department of State, U.S. Forest Service and the Veterans Administration also use the I-Codes for the facilities that they own or manage. The Department of Defense references the International Building Code for constructing military facilities, including those that house U.S. troops, domestically and abroad. Puerto Rico and the U.S. Virgin Islands enforce one or more of the I-Codes.

The International Code Council, Inc. (ICC) was established in 1994 as a non-profit organization dedicated to developing a single set of comprehensive and coordinated national model construction codes that could be used nationwide. The founders of the ICC were the Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI). Since the early part of the last century, these non-profit organizations developed three separate sets of model codes used throughout the

United States. Although originally regional code development was effective and responsive to our country's needs, the time came for a single set of codes. The nation's three model code groups responded by creating the International Code Council, Inc. (ICC) and by developing codes without regional limitations: the International Codes.

ICC's members are the code officials who adopt and enforce building, fire and energy codes, and the architects, engineers, builders and contractors who build and maintain structures in the built environment. Over 50,000 code officials are active members of ICC. www.iccsafe.org

Most recently, the International Residential Code (IRC) and International Building Code (IBC) were recognized as key components in the new Federal Earthquake Safety Standard to assure the safety of Federal owned and leased buildings, in Presidential Executive Order 13717, signed February 2, 2016.

ICC Comments

OMB A-119, recently revised and re-issued on January 27, 2016, requires all Federal agencies to use voluntary consensus standards in both procurement and regulatory activities.

The OMB requirement is stated clearly and unequivocally, in Section 5 of the circular:

“5. What is the Policy for Federal Use of Standards?

Consistent with Section 12 (d)(1) of the NTTAA, all Federal agencies must use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. In these circumstances, your agency must submit a report describing the reason(s) for its use of government-unique standards in lieu of voluntary consensus standards as explained in Sections 9-11.”¹

The circular is clear that use of voluntary consensus standards is not simply a suggestion, but a REQUIREMENT, unless the agency can articulate its specific reasons for NOT using or adapting an available voluntary consensus standard.

In addition, the circular is very clear on how agencies should reference standards, when they are proposed to be used by an agency for a regulatory or procurement purpose. Section 5.g. spells out how agencies should reference standards.

“g. How should my agency reference standards?

Where your agency seeks to incorporate a standard by reference, **your agency should reference the standard, along with sources from which a copy of the standard may be obtained**, in relevant publications, regulations, and related internal documents. The Office of the Federal Register's regulations at 1 CFR Part 51 govern the use of incorporation by reference in regulation. For all other uses, your agency must determine the most appropriate form of reference. **If a standard is used and published in an agency document, your agency must observe and protect the rights of the**

¹ https://www.whitehouse.gov/omb/inforeg_infopoltech, accessed, July 14, 2016

copyright holder and meet any other similar obligations, such as those relating to patented technology that must be used to comply with the standard.”(*Emphasis added*)²

In the instant proposed rule, DOE states that it intends, consistent with “its statutory mandate under EISA”, to publish energy conservation standards for manufactured housing based on the *2015 International Energy Conservation Code* (IECC), the most recent version of the IECC. While the proposed rule acknowledges that the IECC is a model voluntary consensus code, produced through a voluntary consensus process by the ICC, and published by the ICC, the proposed rule fails to mention that the IECC is copyrighted by ICC, and as such, DOE is required to “observe and protect the rights of the copyright holder [ICC]” in its proposed use of the content of the IECC.

Within the proposed standard, DOE references provisions it is proposing to use from the IECC in a number of different ways. In several places it indicates that pursuant to the recommendations of its working group it is “incorporating” certain provisions from the IECC; in others it says it is “adopting” provisions from the IEC; and in other cases it says it is “modifying” or otherwise using IECC provisions with some changes. Finally, in several cases, DOE states that it is proposing not to include certain provisions from the IECC, as either inapplicable or inappropriate for manufactured housing. Further, it is clear that DOE is proposing to publish a standard that uses the same structure, organization and most of the definitions in the 2015 IECC, with some additions, deletions and modifications.

Reading the proposed standard, it is clear that dozens of sections of the standard are simply copied, some with minor changes, from the 2015 IECC copyrighted document, and incorporated into the proposed standard.

What is most surprising is that, despite DOE’s copying of ICC’s copyrighted IECC, DOE does not even list the 2015 IECC as a reference standard, in its list of referenced standards in Sec.460.3. DOE does list several other standards, from the Air Conditioning Contractors of America and from HUD, but makes no mention of dozens of references and incorporations by reference from the copyrighted IECC published and owned by ICC. Whether this is an oversight, or an intentional omission, it must be corrected in the final rule.

At a very minimum, in order to comply with OMB-A119 DOE must: (a) expressly acknowledge that the IECC is a copyright protected document, published and owned by ICC; (b) explicitly state that any reproduction or copying of the standard (other than for personal, non-commercial purposes) requires express written permission or license from ICC; and (c) state that copies of the IECC are available for purchase from ICC at its website, www.iccsafe.org.

If DOE or the standard does not comply fully with OMB-A119, ICC is prepared to appeal DOE’s adoption of the standard based on such non-compliance.

² https://www.whitehouse.gov/omb/inforeg_infopoltech, accessed July 14, 2016