

Submitter : Mr. James Deluisi
Organization : Sprinkler fitters Local 692
Category : Long-term Care

Date: 12/18/2006

Issue Areas/Comments

GENERAL

GENERAL

I strongly support the proposal and that the affected facilities should be given no more than 5 years to comply with the new requirements. The elderly in this country should get better treatment and this rule will help ensure that they get basic protection they deserve by requiring long-term care facilities have proper fire sprinkler systems in case of a fire hazard. Thank you for your attention in this matter.

Submitter : Mr. Benjamin Peacock
Organization : Sprinkler Fitters Local 692
Category : Long-term Care

Date: 12/18/2006

Issue Areas/Comments

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Submitter : Mr. William Richter
Organization : Sprinklerfitters Local 692
Category : Long-term Care

Date: 12/18/2006

Issue Areas/Comments

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Submitter : Mr. Richard Hodavance
Organization : Sprinkler Fitters Local 696
Category : Other Association

Date: 12/18/2006

Issue Areas/Comments

GENERAL

GENERAL

See attachment

CMS-3191-P-34-Attach-1.DOC

December 18, 2006

Centers for Medicare & Medicaid Services
Department of Health & Human Services
Attn: CMS-3191-P, P.O. Box 8012
Baltimore, MD 21244-8012

RE: File Code CMS-3191-P/Sprinkler Requirements for
long-term Care Facilities

Dear Sir or Madam:

Please accept this letter of support for the above-referenced regulation on behalf of our United Association Local 696, Newark, NJ. Our Local Union represents over 600 sprinkler fitters, who are the trades men and women who install, repair and maintain fire suppression systems in our area.

Given our experience and expertise in this field, we know the health and safety risks that exist in facilities that lack adequate fire suppression systems. We can also fully attest to the fact that sprinkler systems SAVE lives. This matter is long overdue and we applaud your agency for taking the action and initiative to propose this regulation.

We strongly support the proposed rule and submit that affected facilities should be given no more than 5 years to comply with the new requirements. This should provide the industry with ample time to address this situation, plan the needed work and arrange for the appropriate installation projects. From our considerable experience in planning and building these systems, this is clearly an adequate time frame; any longer would pose undue and unacceptable risks for the persons living in these facilities.

The elderly in this country should get better treatment and this rule will help ensure that they get the basic protection they deserve by requiring long-term care facilities have proper fire sprinkler systems in case of a fire hazard. Thank you for attention to this matter

Sincerely,

Richard C. Hodavance
Business Manager

Submitter :

Date: 12/18/2006

Organization :

Category : Individual

Issue Areas/Comments

Background

Background

This section lacks recognition of the all-important role of model building and fire codes and their enforcement by state and local governments for the improvement of fire safety in health care facilities. Having performed many inspections on these facilities during construction and renovation, the safety services provided by local governments are comprehensive, cost effective and commendable.

GAO Report

GAO Report

There is a common objective among various levels of government - that being safety. The agency is strongly encouraged to work with state and local building and fire officials to better achieve this goal by recognizing the International Building and Fire Codes. A cooperative approach would effectively eliminate duplication and conflicting requirements.

GENERAL

GENERAL

As a building safety professional working for a local government, I support that nursing homes be fully sprinklered. In fact, the ICC building and fire codes used by state and local governments have required sprinkler systems for new and major remodels of long-term care facilities since the 1970s - - long before the federal government.

Phase-in

Phase-in

Cost Estimates: Retrofitting sprinklers in this age of buildings will certainly require testing for asbestos prior to any work beginning. The figures provided (\$4.10 to \$6.15 per square foot) do not appear to reflect that asbestos will likely be found in many, if not most locations. Asbestos abatement is an expensive undertaking.

Submitter : Mr. Tom Zadroga

Date: 12/19/2006

Organization : Sprinkler Fitters Local 692

Category : Long-term Care

Issue Areas/Comments

GENERAL

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Submitter : Mr. Kevin Szychulski
Organization : Sprinkler Fitters Local 692
Category : Long-term Care

Date: 12/19/2006

Issue Areas/Comments

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Submitter : Mr. Michael Cabry

Date: 12/19/2006

Organization : Sprinkler Fitters Local 692

Category : Long-term Care

Issue Areas/Comments

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Submitter : Mr. Joseph Verello

Date: 12/19/2006

Organization : Sprinkler Fitters Local 692

Category : Long-term Care

Issue Areas/Comments

GENERAL

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Submitter : Mr. Matthew Malone
Organization : Sprinkler Fitters Local 692
Category : Long-term Care

Date: 12/19/2006

Issue Areas/Comments

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Submitter : Mr. Owen Gallagher
Organization : Sprinkler Fitters Local 692
Category : Long-term Care

Date: 12/19/2006

Issue Areas/Comments

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Submitter : Mr. Russell Fleming
Organization : National Fire Sprinkler Association
Category : Device Association

Date: 12/19/2006

Issue Areas/Comments

Background

Background

The National Fire Sprinkler Association is the trade association that represents the entire fire sprinkler industry, including manufacturers, suppliers, and installing contractors. We have been active in the building code arena for decades, and have been gratified by the gradual recognition of the ability of automatic sprinkler systems to provide fire protection for both life and property. This recognition has led to requirements for sprinkler systems in a broad range of new and existing occupancies, especially where occupants can be trapped by fast developing fires or are not capable of self-preservation.

CMS Action

CMS Action

GAO Report - The fires in Hartford and Nashville in 2003 speak to the wisdom of protecting all long-term care facilities with automatic sprinkler systems.

Current Fire Safety Status

Current Fire Safety Status

Current Fire Safety Status - As you have observed, the death rate in fires in facilities without sprinklers far exceeds the corresponding death rate in sprinklered facilities.

GAO Report

GAO Report

CMS Action - We agree with your proposal to pursue the retrofit of sprinklers independent of the decision to update to the 2006 edition of the NFPA Life Safety Code. However, we would not object to a parallel effort to evaluate the 2006 edition of the Life Safety Code since we would not expect that effort to delay the sprinkler retrofit program.

Your notice indicated that you are soliciting public comment regarding the decision to regulate the installation of sprinkler systems through Federal rulemaking rather than deferring to State and local jurisdictions. A number of states have already taken the step of requiring sprinkler protection in all existing facilities, and virtually all states are now requiring sprinkler in all new facilities. As such, this would not be perceived as a drastic action contrary to the direction of State and local jurisdictions, but would provide a proven level of baseline protection.

There are many combinations of other factors affecting fire safety, including some at the local level such as fire department response times. However, automatic sprinklers are appropriate in all situations due to their ability to make up for a wide range of other fire protection deficiencies.

GENERAL

GENERAL

The National Fire Sprinkler Association supports the proposed rulemaking that would require the installation of automatic sprinkler systems in the small percentage of long-term care facilities not currently protected, and would propose that the phase-in period not exceed 5 years.

The proposed rulemaking will result in a significant increase in fire protection of longterm care facilities. We applaud this effort of the Department of Health and Human Services to ensure the safety of the recipients of Medicare and Medicaid services.

Thank you for the opportunity to comment.

Installation

Installation

Sunset Provision - no comment

Maintenance

Maintenance

Installation - The 1999 edition of NFPA 13 is not the most recent edition of the nationally-recognized automatic sprinkler design and installation standard. Although the sprinkler industry generally favors the use of the most recent edition, we recognize that the above standard is that incorporated by reference in the currently-used 2000 edition of the Life Safety Code. Since the overall technology has not changed significantly in more recent editions this should not present a problem except where use of other editions is mandated by locally adopted building codes. If possible we would prefer that the words or later edition be added.

Phase-in

Phase-in

Phase-in - The National Fire Sprinkler Association suggests a phase-in period not exceeding five years in length. This compliance period was endorsed by the American Health Care Association and other supporters of the Nursing Home Fire Safety Act of 2005 (H 4491) and its Senate counterpart (S 3489). In addition, we recommend that an earlier deadline, perhaps 180 days, be established as a date by which owners would be required to file an intent to comply. This concept has been applied in the high-rise retrofit provisions of NFPA 1, and helps moves owners toward early compliance.

Regulatory Impact Statement

Regulatory Impact Statement

Maintenance - We strongly support the proposal to incorporate NFPA 25 by reference, mandating proper attention to system inspection, testing and maintenance. Proper inspection, testing and maintenance have been demonstrated to be key factors in ensuring reliable performance of automatic sprinkler systems. Although the 1998 edition of NFPA 25 is not the most recent edition of the standard, we recognize that it is incorporated by reference in the currently-used 2000 edition of the Life Safety Code. Since newer editions are not significantly different, use of the 1998 edition should not present a problem. However, as with NFPA 13, we would prefer that the words or later edition be added.

Sunset Provision

Sunset Provision

Regulatory Impact Statement - With regard to the costs associated with the retrofit of sprinklers in currently unsprinklered and partially sprinklered facilities, we would encourage the exploration of innovative means to assist owner financing. For example, the Fire Sprinkler Incentive Act introduced in the most recent congressional session (HR 1131 and S 512) would have reduced the depreciation period for fire sprinkler systems retrofitted into commercial buildings from 39 years to 5 years.

Submitter : Mr. William Amor
Organization : Amor Architectural Corporation
Category : Individual

Date: 12/19/2006

Issue Areas/Comments

Background

Background

Health and Human Services Proposed Rule CMS-3191-P

The Federal Department of Health and Human Services has proposed a rule that would require all existing long term care facilities (primarily nursing homes) to install sprinkler systems. The agency is seeking public input on its decision to adopt this retroactive requirement.

GENERAL

GENERAL

I support retroactively requiring fire sprinklers within elderly housing. They have limited mobility and need this extra life safety provision. I believe it is our duty to protect our elderly.

Submitter : Mr. Rick Weiland
Organization : International Code Council
Category : Association

Date: 12/19/2006

Issue Areas/Comments

Background

Background

Please see attached statement.

CMS Action

CMS Action

Please see attached statement.

Current Fire Safety Status

Current Fire Safety Status

Please see attached statement.

GAO Report

GAO Report

Please see attached statement.

GENERAL

GENERAL

Please see attached statement.

Maintenance

Maintenance

Please see attached statement.

Phase-in

Phase-in

Please see attached statement.

Regulatory Impact Statement

Regulatory Impact Statement

Please see attached statement.

Sunset Provision

Sunset Provision

Please see attached statement.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR MEDICARE AND MEDICAID SERVICES
OFFICE OF STRATEGIC OPERATIONS & REGULATORY AFFAIRS

Please note: We did not receive the attachment that was cited in this comment. We are not able to receive attachments that have been prepared in excel or zip files. Also, the commenter must click the yellow "Attach File" button to forward the attachment.

Please direct your questions or comments to 1 800 743-3951.

Submitter : Mr. Rick Weiland
Organization : International Code Council
Category : Association

Date: 12/19/2006

Issue Areas/Comments

Background

Background

Please see attachment.

CMS Action

CMS Action

Please see attachment.

Current Fire Safety Status

Current Fire Safety Status

Please see attachment.

GAO Report

GAO Report

Please see attachment.

GENERAL

GENERAL

Please see attachment.

Maintenance

Maintenance

Please see attachment.

Phase-in

Phase-in

Please see attachment.

Regulatory Impact Statement

Regulatory Impact Statement

Please see attachment.

Sunset Provision

Sunset Provision

Please see attachment.

CMS-3191-P-45-Attach-1.PDF

December 19, 2006

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-3191-P
P.O. Box 8012
Baltimore, MD 21244-8012

Re: Comments on Proposed Rule CMS-3191-P
*Including comments on Background, GAO Report, Current Fire Safety Status,
CMS Action, Installation, and Maintenance*

The International Code Council® (ICC®) supports the clear enhancement in public safety proposed through this rulemaking by the Department of Health and Human Services (HHS), and offers its observations on issues to be addressed in adopting a final rule.

The ICC is an association of building safety and fire prevention professionals whose membership of 40,000 includes broad representation from local, state and federal public and private sector interests. The ICC mission is to provide the highest quality codes, standards, products, and services for all concerned with the safety and performance of the built environment. This mission and the activities of the ICC directly relate to providing a safe physical environment through the adoption, implementation and use of codes and standards developed by our membership, and through the robust supporting infrastructure ICC provides to aide the effective use of our codes and standards. These codes and standards, and the infrastructure ICC provides, are key means by which the design and building industries work together with building safety and fire prevention authorities in protecting America's built-environment.

The codes developed under the auspices of the ICC, with the participation of all interested and affected parties, serve as a baseline for the design, construction, operation and maintenance of the majority of both public and private sector buildings in the U.S. They are readily recognized and understood by building owners, product manufacturers, designers, contractors, insurance interests, policy decision-makers, code officials and all others involved in building design, construction, approval, and operation. Through their adoption and implementation by federal, state and local government, new and existing buildings are increasingly safer and more responsive to both natural and man-made disasters and other building safety and performance related issues.

For convenience, our comments below are identified with the section titles requested in the Federal Register Notice.

Background and GAO Report:

Amendments made in 1967 to the 1965 statute cited in the rulemaking¹ instructed HHS to apply the Life Safety Code (LSC) in the establishment of uniform minimums in fire-safety and building egress. In 1967, the LSC was employed in the statute to ensure a minimum nationwide level of safety in these basic concerns, but the LSC was not offered as, or recognized to be, a comprehensive building code. In terms of modern regulatory action based on this statute, it is important to recognize that between 1967 and 1994, construction in this country became increasingly guided by comprehensive building codes developed by one of the three U.S. model code development organizations². Since 1994, through the code development partnership and eventual consolidation of those three organizations, commercial construction in the U.S. has grown to be now predominantly guided by a single nationally recognized model building code, creating near national unanimity in model building code use that did not exist in 1967. The ICC believes that the findings used by HHS in demonstrating the development in U.S. policymaking on sprinklering requirements should accurately recognize the leadership in this public safety issue through the comprehensive building codes used in governance of the built-environment by state and local jurisdictions. More specifically, HHS must recognize that State and local jurisdictions were requiring sprinkler systems in long term care facilities decades before the federal government adopted the same requirement.

The Background section includes the statement *“Since adopting and enforcing the 1967 and subsequent editions of the LSC, there has been a significant decline in the number of multiple death fires, indicating that the LSC has been effective in improving fire safety in health care facilities.”*³ As we explain, this statement is unduly presumptive in ascribing cause and effect, and is also prejudicial to the analysis of input HHS has invited regarding the impact on the authority and concerns of state and local jurisdictions. Multiple-death fires have declined over this period, but this result is more attributable to code adoption and enforcement actions at the state and local level. This achievement is also more attributable to application of a comprehensive building and fire code than to application of the LSC. In the central issue of this rulemaking, the efficacy of automatic fire sprinklers, it was recognized in the Government Accounting Office’s 2004 report on Nursing Home Fire Safety, that an automatic sprinkler system is “regarded as the single most effective fire protection feature.”⁴ The proposed rule cites data from that GAO report that there is an “82 percent reduction in the chance of death occurring in a sprinklered building when compared to the chance of death occurring in an unsprinklered building.”⁵ The rulemaking omits, however, that this conclusion is drawn from data from 1994 through 1998, a period starting nearly a decade before HHS adopted a sprinkler

¹ Public Law 97, 89th Cong., 1st sess. (30 July 1965)

² Building Officials and Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), and Southern Building Code Congress International, Inc. (SBCCI)

³ *Federal Register* 71, no. 208 (27 October 2006): 62958

⁴ Government Accountability Office, *Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight* (16 July 2004), 13.

⁵ *Federal Register* 71, no. 208 (27 October 2006): 62959

requirement⁶, and a period when LSC requirements could have only begun to have an effect in mandating sprinkler installations in long term care facilities⁷. This rulemaking should recognize and attribute the predominant source of model building codes used by this country's federal, state and local jurisdictions. Acting on this recognition would also assist HHS in exacting the maximum effectiveness and expediency in combined federal and state administration of Medicare & Medicaid systems.

It is important to recognize that the LSC, authored by the National Fire Protection Association (NFPA), as well as the comprehensive building safety and fire prevention codes developed by our organization, are each offered as model legislation for state, local and federal adoption. As model legislation, the model codes have no effect until adopted by an authority with a defined jurisdiction over building safety and fire prevention. Adopting agencies are those having authority over broad classes of occupancy, such as state and local governments, as well as those, like HHS, whose responsibilities are focused on a limited scope of occupancy and use. Both the ICC and the NFPA are non-governmental organizations which develop model codes and standards that are consistent with the purpose and requirements of the National Technology Transfer and Advancement Act⁸, and, as such, are suitable for federal government adoption.

In terms of HHS' intent to regulate to achieve maximum efficient administration of provisions for building safety, the same 1967 law authorizes HHS to accept a state request to avoid federal/state regulatory overlap and inefficiency through recognition of a state administered fire and safety code as encompassing the same purposes of the federal law. On this point, in HHS' regulatory action in 2003 to adopt the 2000 edition of the Life Safety Code⁹, the agency responded to numerous comments regarding recognition of state adopted codes. In its replies, HHS repeatedly recognized its authority, and in each instance remarked that HHS would responsibly evaluate and respond to requests for this recognition. At present the ICC has a request for recognition by HHS of the adequacy of the I-Codes, the State of Michigan has an application that has been pending HHS review since 2004, and the State of Alaska, in November of 2006, initiated a similar renewal of its request for recognition. For its own part, ICC has met repeatedly with HHS-CMS regarding its request, and is familiar with the multi-year efforts of the State of Michigan regarding timely consideration of its request, but has not been advised of a process or timetable for the review and response to these applications.

⁶ HHS first adopted this requirement in 2003. *Federal Register* 68, no. 7 (10 January 2003): 1374

⁷ "In 1991, the NFPA code began requiring full sprinkler coverage for newly constructed nursing homes or for any portion of a home that underwent a substantial renovation." Government Accountability Office, *Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight* (16 July 2004), 13. Given a general lag of approximately 18 months for adoption of newly released model codes, the 1991 edition of the LSC, where adopted, could have only begun to have an impact on newly constructed facilities in the time period at question. The 1985 edition of the LSC did include an installation requirement, but was limited in application to new construction of facilities over 75 feet tall. *Federal Register* 66, no. 208, (26 October 2001): 54183

⁸ Public Law 113, 104th Cong., 2nd sess. (7 March 1996)

⁹ *Federal Register* 68, no. 7 (10 January 2003): 1374

At the end of the *Background* section of the proposed rule, HHS requests comment on the "...necessity, advantages, and disadvantages of deferring to State and local jurisdictions."¹⁰ The ICC is encouraged that HHS is specifically requesting comments on the issue of federalism, but is concerned about the presumptively conclusive nature of the statement at the end of Section IV that "Federal regulation is the most efficient and expedient manner for achieving the goal of uniform nationwide minimum fire safety standards; therefore, we chose to pursue Federal regulation rather than depending on State and local governments."

ICC recognizes that code requirements are only a part of the overall systems of life safety in a community, and resources and components of life safety system can vary from one jurisdiction to another. These resources include fire response capabilities (staffing, response times, training, etc.), water supply, and other emergency and non-emergency programs. For any federal agency to assume that all jurisdictions have the same overall capability, and, therefore, need the same level of built-in protection, seems unresponsive to those communities that have chosen to provide services in a different manner than a federal agency envisions.

Current Fire Safety Status:

We agree with this section's assessment that "...the low number of fire-related fatalities each year is attributable to the increasing use of automatic sprinklers systems in long term care facilities as a fire protection method."¹¹ The discussion here, however, offers a sweeping and potentially misleading attribution of this development to the addition of a sprinkling requirement in the 1991 edition of the LSC. If HHS wishes to offer a record for establishment of sprinkling policy it should do so definitively and accurately, and the observations regarding state and local application of the LSC offer conclusions not supported by the data presented or referenced in this rulemaking. HHS itself did not adopt this sprinkling requirement until 2003. As early as 1975 state adopted building codes not only included this provision for new construction, but some were beginning to require existing facilities to be retrofitted with sprinklers. Here it is also important to recognize, in the context of federal rulemaking, that HHS rules did not incorporate a sprinkling requirement for new construction until 2003, thus lagging state policy developments in this area by several decades.

The rulemaking does not present a complete or accurate picture of the policies historically mandating the installation of fire sprinkler systems. Instead, the rulemaking offers simplistic and perhaps misleading assumptions regarding state and local adoptions of the LSC. One example is the assertion that "...a building constructed in 1991 likely met the requirements of the 1991 edition of the LSC."¹² This conclusion is built on the also unsubstantiated observation that "State and local jurisdictions often adopt new

¹⁰ *Federal Register* 71, no. 208 (27 October 2006): 62960

¹¹ *Federal Register* 71, no. 208 (27 October 2006): 62959

¹² *Federal Register* 71, no. 208 (27 October 2006): 62959

editions of the LSC when they are published.”¹³ To suggest conclusions based on state and local adoptions HHS should offer specific data regarding those adoptions rather than anecdotes. HHS should also accurately represent that any edition of the LSC, like any model code, will not be widely applied in the year of its initial publication given the considerable process that any jurisdiction must undertake in a regulatory or legislative adoption. Additionally, when enacted, most new code edition adoptions have a future effective date so as not to unduly effect projects already permitted, and seldom are made to impact construction already underway.

Although inaccurate in portraying the impact of state and locally adopted building codes, the rulemaking is correct in observing that modern building and fire safety requirements have dramatically reduced incidents of fire fatalities at long-term care facilities. In its consideration of this rulemaking HHS should recognize that these achievements are historically founded on the building safety and fire protection features of comprehensive state and local building and fire codes. In utilizing data presented in this rulemaking, and data from the GAO’s 2004 report on nursing home fires, ICC estimates that 90% of today’s fully sprinklered long term care facilities were newly constructed under state and locally adopted codes before federal rules first reflected a requirement for the installation of automatic fire sprinkler systems in newly constructed or substantially renovated facilities.

CMS Action:

The proposed rule would create for the first time a federally imposed requirement for all nursing homes to be fully sprinklered in order to receive compensation for treating Medicare and Medicaid beneficiaries. HHS estimates that of 18,005 facilities across the country, 14,317 (76%) are fully sprinklered, 2,687 (15%) are partially sprinklered and 782 (4%) are not presently sprinklered, and the condition of 5% is unknown. HHS observes that not all states and localities have adopted requirements for all older facilities to be retrofitted, and that the ‘variability’ in this requirement across the country creates a lack of uniformity in protection, thus necessitating this federal action. The ICC recognizes that states and localities do face differing levels of need and ability in addressing the renovation of older facilities with sprinklers, and we encourage considerable attention on comments to be received regarding the “necessity, advantages, and disadvantages of deferring to State and local jurisdictions.”¹⁴

In overall requirements, as ICC has observed to HHS in this and other comments, the ICC model codes incorporate comprehensive requirements for public safety and property protection that exceed the requirement of the referenced statutes, provide comprehensive governance for the construction and use of the built-environment, and have historically equaled and exceeded the requirements of HHS regulations affecting long term care facilities.

¹³ *Federal Register* 71, no. 208 (27 October 2006): 62959

¹⁴ *Federal Register* 71, no. 208 (27 October 2006): 62960

We agree and support the actions of code adopting authorities – such as HHS - to legally enhance the model code with provisions that purposefully and affordably move beyond minimum requirements of the code. This is the very manner in which, historically, the member jurisdictions of model code development organizations have progressively infused voluntary model code development and adoption processes with superior provisions for public safety and building science. It is in this manner that requirements for full sprinklering of long term care facilities, and most other commercial occupancies, was first incorporated in the model building codes as early as 1975. In 2003, HHS regulations first adopted the already long-standing and widespread state and local requirements for full sprinklering of new facilities. Although HHS regulation may not have been a predominant factor in first advancing requirements for sprinklering new and substantially renovated occupancies, this proposed rule does take the lead, in the greatest reach of HHS' regulatory authority, in provoking the long term health care industry to renovate or retire America's non-sprinklered and partially sprinklered facilities.

As a stand alone action, this rulemaking does propose a measure designed to enhance fire safety in long term care facilities. The ICC agrees that for expedience and maximum potential for adoption, this provision should be treated separately from a rulemaking to expansively consider adoption of the 2006 edition of the Life Safety Code. The ICC agrees that a full evaluation of the 2006 LSC is an extensive undertaking, and will involve consideration of numerous and potentially problematic issues far beyond the scope and intent of this rulemaking. ICC observes that "long term health care facilities" are not defined as such in the LSC; we also encourage HHS to fully describe the occupancy classifications of the presently adopted 2000 edition of the LSC with those it will characterize as "long term health care facilities". This clarification is important in specifically identifying the occupancies addressed in this rulemaking.

Installation:

The ICC notes that, consistent with the continued general application of the 2000 edition of the Life Safety Code, HHS proposes to retain that document's reference to the 1999 edition of NFPA 13. It should be observed that, to a considerable degree, state and locally adopted model codes reference an edition of this standard issued later than the edition proposed to be applied in this rulemaking.

Maintenance:

The ICC notes that, consistent with the continued general application of the 2000 edition of the Life Safety Code, HHS proposes to retain that document's reference to the 1998 edition of NFPA 25. It should be observed that, to a considerable degree, state and locally adopted model codes reference an edition of this standard issued later than the edition proposed to be applied in this rulemaking.

Regulatory Impact Statement:

We believe that the proposed rule is incomplete in its research and presentation of analysis on Federalism as required by President Clinton's Executive Order 13132.¹⁵ The Order states, in part, that "Where there are significant uncertainties as to whether national action is authorized or appropriate, agencies shall consult with appropriate State and local officials to determine whether Federal objectives can be attained by other means." In its representation on this point, HHS, in a perfunctory statement, simply offers that "This proposed regulation would not have any Federalism implications."¹⁶ This conclusion is belied by the statement in the rulemaking such as "There has been discussion within the larger long term care community about the advantages and disadvantages of Federal, State and local regulation in this area."¹⁷ In this proposed rulemaking, especially in light of statements prejudicial to the role and interests of State and local authority, we believe that HHS should complete its consultation with State and local officials, to review carefully the commentary received on this point, and perfect its analysis in constructing a final rule.

In presenting calculations on the impact of this proposed rule HHS discounts the economic impacts of a federal rule based on a presumption regarding future state adoptions of the 2006 edition of the LSC. The rulemaking asserts that 12 states with present adoptions of the 2003 edition of the LSC will "continue to adopt the most recent version of the LSC."¹⁸ Thus, this federal rule will have no economic impact in those states. We are troubled by the defensibility of analysis in a federal rulemaking that draws conclusions based on presumptions of future independent action by State and local authorities.

The calculation presented under the heading "Decreasing Loss of Life" may also require reevaluation. In this calculation a loss of life percentage (10.8 deaths per 1,000 fires) is derived from historical fire events occurring in unsprinklered facilities¹⁹. In calculating the expected benefit of this proposed rule, however, this historical percentage for fire-event deaths in unsprinklered facilities is multiplied against a prediction of future annual fire events in a combination of facilities that are unsprinklered, partially-sprinklered, and for which the status is unknown.²⁰ It should be made clear if the historical data is comparably derived from events at both unsprinklered and partially sprinklered facilities. Even if that is so, the GAO report itself questioned estimates based on counting facilities

¹⁵ President. Executive Order. "Federalism." *Federal Register* 64, no.153 (10 August 1999): 43255

¹⁶ *Federal Register* 71, no. 208 (27 October 2006): 62965

¹⁷ *Federal Register* 71, no. 208 (27 October 2006): 62960

¹⁸ *Federal Register* 71, no. 208 (27 October 2006): 62967

¹⁹ "In unsprinklered facilities, there are 10.8 deaths per 1,000 fires. In sprinklered facilities, there are 1.9 deaths per 1,000 fires." *Federal Register* 71, no. 208 (27 October 2006): 62965

²⁰ *Federal Register* 71, no. 208 (27 October 2006): 62965

characterized as “partially sprinklered”, given that the term “covers homes that have very few sprinklers as well as homes that are almost completely sprinklered.”²¹

Conclusion:

The ICC reiterates its support for code adopting authorities, such as HHS, to actively investigate and promote the enhancement of the model codes they adopt with affordable provisions that serve to best protect their constituencies. The ICC is encouraged that within the last four years HHS has moved to adopt requirements for sprinklering in new facilities, and is now acting to advance the application of this requirement in all older facilities that are impacted by its governance. The purpose of this proposed rule is consistent with HHS’ duties, and the expenses are arguably then afforded by Medicaid program in reimbursements for Medicaid provided services. The benefits of this enhanced requirement will accrue directly to the safety and well-being of those that reside in, work in and visit these facilities, and will, as well, provide peace of mind for all with loved ones housed in long term care facilities. On the ambition of this proposed rulemaking, and in all measures, the ICC encourages HHS to fully employ and enforce its statutory authority to efficiently and effectively administer the Medicaid & Medicare programs. Consistent with our above stated comments, the ICC encourages the perfection of this rulemaking, and the subsequent adoption of this requirement to its existing rules.

Once again, ICC thanks you for the opportunity to provide input on this important document. Should additional information be needed, or should HHS-CMS want to involve ICC further through our relationship with state and local officials and the building community, please do not hesitate to contact us.

Respectfully submitted by the International Code Council
Rick Weiland
Chief Executive Officer

²¹ Government Accountability Office, *Nursing Home Fire Safety: Recent Fires Highlight Weaknesses in Federal Standards and Oversight* (16 July 2004), 16

Submitter :

Date: 12/19/2006

Organization :

Category : Local Government

Issue Areas/Comments

GENERAL

GENERAL

As a professional in the field of public safety through building and fire prevention codes, I support an objective to require America's remaining nursing homes to be fully protected with fire sprinkler systems.

Submitter : Mr. Ronnie Duval
Organization : City of Lake Jackson Building Inspector
Category : Long-term Care

Date: 12/19/2006

Issue Areas/Comments

Background

Background

Long term facilities should have a sprinkler system in place. For some patients that are dependant upon someone else for mobility. A sprinkler system would give the responder a few more seconds/minutes to get to them. If the fire can't be suppressed by the sprinkler head in that zone. Remember that a sprinkler system also gives the fire dept. a head start on the fire. because it will work before the fire dept. responds or even gets the alarm.

Submitter : Mr. Robert Pierce
Organization : City of Plano
Category : Local Government

Date: 12/19/2006

Issue Areas/Comments

Background

Background

Today's elderly deserve to be protected by every possible means available. The number of facilities that are now locking the doors when they are not designed to an I-3 standard will ultimately cause a disaster.

Current Fire Safety Status

Current Fire Safety Status

If buildings are designed correctly and the owners and architects were honest with the way the building is going to be used. It would be safe to relay on the building code to make sure the building is correctly protected.

Submitter : Mr. Steve Thorp
Organization : Mr. Steve Thorp
Category : Local Government

Date: 12/19/2006

Issue Areas/Comments

Background

Background

As a professional in the field of public safety through building and fire prevention codes, I support an objective to require America's remaining nursing homes to be fully protected with fire sprinkler systems.

In putting this proposal forward, HHS should recognize and discuss the critical role of State and local application of comprehensive building codes in the history of establishment of fire sprinkler requirements in long term care facilities. The rulemaking also does not describe or discuss any efforts the agency has made or contemplated to work cooperatively with State and local building and fire enforcement authorities in achieving this objective.

In portraying the history of the integration of fire sprinkler standards in nationally recognized building codes, HHS should recognize that State and locally applied building codes began requiring installation of sprinklers in new construction decades before HHS included a similar requirement in federal regulation.

HHS should recognize the extensive degree to which the International Building Code is now adopted as a model building code by local, State and Federal jurisdictions across the entire country.

Nearly 40 years ago Congress granted HHS the authority to recognize a state enforced building code in lieu of creating regulatory overlay in applying the Life Safety Code. HHS should discuss why the agency has not yet acted on this authority to eliminate unnecessary regulation that duplicates and complicates provisions of State and local building safety and fire prevention code.

Current Fire Safety Status

Current Fire Safety Status

This rulemaking should correctly recognize the contribution of model codes other than the Life Safety Code on the establishment of fire sprinkler requirements in new facility construction and renovation of existing facilities.

GAO Report

GAO Report

I support a phased-in approach to ensuring that all pre-existing long-term care facilities are fully protected with fire sprinkler systems as would be required in new construction under America's predominant building safety and fire protection codes.

With respect to the effects of Federalism through this national regulation, HHS should more fully review and discuss its regulatory obligations under Executive Order 13132. This requirement addresses prior consultation with sub-federal authorities before taking actions that have considerable impact on State and local governmental authority.

Maintenance

Maintenance

HHS should recognize that the edition of NFPA 13 cited in this rulemaking is older than that cited by jurisdictions using the latest editions of the International Building Code and International Fire Code, thus creating additional conflict in jurisdictions utilizing this country's predominantly applied comprehensive building code.

Regulatory Impact Statement

Regulatory Impact Statement

HHS should recognize that the edition of NFPA 25 cited in this rulemaking is older than that cited by jurisdictions using the latest editions of the International Building Code and International Fire Code, thus creating additional conflict in jurisdictions utilizing this country's predominantly applied comprehensive building code.

Sunset Provision

Sunset Provision

I request that HHS present a full analysis of Federalism as required by Presidential Executive Order 13132.

In assessing the cost of imposing this regulation as a Federal rule, HHS should not presume the nature of future state and local code adoptions of the 2006 edition of the Life Safety Code in reducing the calculation of the costs attributable to this requirement as a Federal rule.