

We also note that the 2000 LSC permits the use of the FSES as an alternative approach that may also reduce the cost of compliance significantly. The FSES is an equivalency system. The FSES may allow a facility to comply with the LSC without having to make changes to the facility due to other offsetting or compensating fire protection features that exist in the facility.

We do not know the amount that any of the above waivers or alternatives may save a health care facility because each facility must be reviewed on a case-by-case basis to determine whether the facility will be granted a waiver for a specific provision of the LSC or use its State fire and safety code or if the facility chooses to use the FSES.

While we expect a revised edition of the LSC to be published in 2003, we believe it is imperative to publish this final rule, which incorporates the 2000 edition of the LSC in response to the needs of the providers, States, accrediting organizations, and the public for clarity and consistency with the current regulatory and accreditation setting. The 2000 edition of the LSC includes new provisions that we believe are vital to the health and safety of all patients and staff. This final rule is intended to ensure that beneficiaries continue to experience the highest degree of fire safety possible. We believe by adopting the 2000 edition of the LSC now instead of waiting for the release of the 2003 edition will (1) minimize the burden on health care providers because the standards we currently require most of the providers to follow are at least 15-years old and (2) increase the level of safety for patients and staff. Once the NFPA adopts the 2003 edition of the LSC, we will quickly begin the process of reviewing the revised edition with the intent to publish a proposed rule to set forth requirements we think would be beneficial to the providers, States, accrediting organizations, and the public. Providers, States, accrediting organizations, and the public are requesting that we publish this rule now rather than wait because many of the providers can only comply with our regulations by using older fire safety techniques.

D. The Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$110 million. This rule will not have an effect on the

governments mentioned, and the private sector costs will not be greater than the \$110 million threshold. We discuss specific private sector costs in section VI.C of this rule.

E. Federalism

Executive Order 13132 establishes requirements that an agency must meet when it publishes a final rule that imposes substantial direct requirement costs on State, local, or tribal governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule and have determined that this rule will not have a substantial effect on State, local, or tribal governments.

F. Anticipated Effects

While all health care facilities are affected by this regulation, most health care facilities will be affected minimally. Most changes that would occur would be minor and should not adversely impact patients. Each new edition of the LSC builds on prior editions; changes from one edition to the next have been relatively minor since 1985. Many health care providers have updated their facilities since 1985 and already meet most of the provisions in the 2000 edition of the LSC. In fact, most health care providers stated that they are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

By adopting the 2000 edition of the LSC, we will eliminate confusion as to which edition a health care facility must follow. The use of a single edition of the code should also contribute to lowering the cost of complying with the requirements for testing and maintenance of fire protection systems under multiple editions of the LSC.

1. Effects on Specific Entities

This rule will affect hospitals, LTC facilities, ICFs/MR, ASCs, hospices that provide inpatient services, RNHCIs, CAHs, and PACE Centers.

2. Effects on Other Providers

We do not expect this regulation to affect any other providers.

3. Effects on the Medicare and Medicaid Programs

If facilities decide to use the performance-based option to meet the requirements of the LSC, we estimate that it could cost approximately \$3.5 million in the aggregate for States to survey facility plans using the performance-based option. We estimate that 25 states will be affected by the use of the performance-based option. Our estimate is based on the hiring of one fire protection engineer at an average of \$60,000 annual salary and one engineer technician at an average \$40,000 annual salary plus minimal travel and training expenses. We expect that we would have to additionally fund the States in order for them to be able to have the expertise to survey any facility using the performance-based option.

G. Alternatives Considered

The statutory basis for incorporating the NFPA's code for nursing homes is specific authority in the Act at sections 1819(d)(2) and 1919(d)(2). For hospitals, the statutory authority to adopt fire safety provisions is section 1861(e)(9) of the Act. To be consistent and to avoid confusion among health care providers, we incorporated the NFPA's 2000 edition of the LSC for all Medicare inpatient facilities under the Secretary's general rulemaking authority.

Alternatively, we could have chosen not to update the fire safety code. This is not an acceptable alternative because many health care facilities are exposed to additional work and expense without any gain in fire safety by continuing to abide by the 1985 edition of the Life Safety Code. For example, the JCAHO requires all its accredited facilities to meet the 1997 edition of the LSC, while Medicare requires all facilities to meet an earlier edition of the LSC. This has caused confusion, as well as additional burden to the health care facility in requesting waivers or changing some of the renovations to meet both editions of the LSC. Updating the LSC will not only relieve burden for health care providers but also assist in ensuring the health and safety of patients and staff.

Please note that while we incorporate the NFPA's 2000 edition of the LSC, all health care providers have other options besides the prescriptive requirements of the LSC. Health care facilities may choose the Fire Safety Evaluation System (FSES) and a facility may apply for a waiver of a specific provision of the LSC if it is unable to meet a specific