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CMS ISSUES MORE CATEGORICAL WAIVERS TO DECADE-OLD REQUIREMENTS

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Waivers address selected life safety, medical gas master alarm, emergency power testing, and fire safety equipment testing requirements.

The Centers for Medicare & Medicaid Services (CMS) issued a new Survey & Certification memorandum # S&C: 13-58-LSC to its State Survey Agency Directors on August 30, 2013. This new S&C memo identifies several areas where 8 separate rules more than a decade old are being relaxed for (and only for) those facilities that take the necessary steps to elect to use the waivers.

In its S&C memo, CMS referenced more recent code changes in NFPA 101, NFPA 99, NFPA 110 and NFPA 25 that resulted in the relaxed requirements. Many healthcare facilities are expected to take advantage of at least some of these changes. Note that these categorical waivers only deal with the specific requirements detailed therein, and do not fully adopt the more recent standards.

Additionally, many of the relaxed requirements require compliance with stipulated paragraphs or sections within the newer NFPA standards. Facilities electing to use any waiver must comply with all conditions of that waiver. CMS stated it intends to confirm that the facility is complying with all applicable categorical waiver provisions associated with each elected waiver.

One MedGas master alarm may be a centralized computer system:

- This categorical waiver allows a centralized computer system (first permitted in the 2005 edition of NFPA 99) to substitute for one of the required Category 1 medical gas master alarms, providing that the facility complies with all other applicable NFPA 99-1999 medical gas master alarm provisions, as well as with section 5.1.9.4 of NFPA 99-2012.

Annual generator load test duration reduced:

- This categorical waiver allows the annual load test

requirement to be shortened from the previous 2 hours to not less than 90 minutes (this 30 minute reduction was first permitted in the 2010 edition of NFPA 110, when the first 30 minutes at 25% of rated load was eliminated.) Note that this annual load test is only required at all as a measure to mitigate potential wet stacking when the monthly diesel generator testing does not comply with the stipulated minimum loading requirements. CMS will permit this waiver only if the facility is in compliance with all other applicable NFPA 110-1999 operational inspection and testing provisions, as well as with paragraph 8.4.2.3 of NFPA 110-2010.

NFPA Disclaimer: Although the author is Chairman of the NFPA Technical Committee on Emergency Power Supplies, which is responsible for NFPA 110 and 111, the views and opinions expressed in this newsletter are purely those of the author and shall not be considered the official position of NFPA or any of its Technical Committees and shall not be considered to be, nor be relied upon as, a Formal Interpretation. Readers are encouraged to refer to the entire text of all referenced documents.

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Fire protection system testing frequencies reduced:

- This categorical waiver will permit reducing the testing frequencies for sprinkler system vane-type and pressure switch type waterflow alarm devices from quarterly to semi-annually, and testing of electric motor-driven pump assemblies (commonly known as the fire pump churn test) from weekly to monthly. These changes were first permitted by the 2011 edition of NFPA 25. CMS states it will only permit this waiver if the facility is in compliance with all other applicable NFPA 25-1998 testing provisions (as referenced in section 9.7.5 of the 2000 LSC) as well as with sections 5.3 and 8.3 of NFPA 25-2011.

Waivers to specific NFPA 101-2000 requirements:

- **Openings in exit enclosures:** This categorical waiver will allow existing openings in exit enclosures to mechanical equipment spaces that are protected by fire-rated door assemblies (first permitted in the 2003 edition of NFPA 101.) However, those mechanical equipment spaces must be used only for non-fuel-fired mechanical equipment, must contain NO storage of combustible materials, and must be located in sprinklered buildings. Note that the absolute combustible material storage restriction may be problematic for many storage-challenged facilities. CMS will permit this waiver only if the facility is in compliance with all other applicable NFPA 101-2000 exit provisions, as well as with section 7.1.3.2.1(9)(c) of NFPA 101-2012.
- **Door locking arrangements:** This categorical waiver allows door locking arrangements (first permitted in the 2009 edition of NFPA 101) where there are clinical needs justifying them, where patients pose a security risk, or where patients require specialized protective measures for their safety, but only if the facility is in compliance with all other applicable NFPA 101-2000 door provisions, as well as with sections 18/19.2.2.2.2 through 18/19.2.2.2.6 of NFPA 101-2012.
- **Multiple delayed-egress locks:** This categorical waiver allows more than one delayed-egress lock in the egress

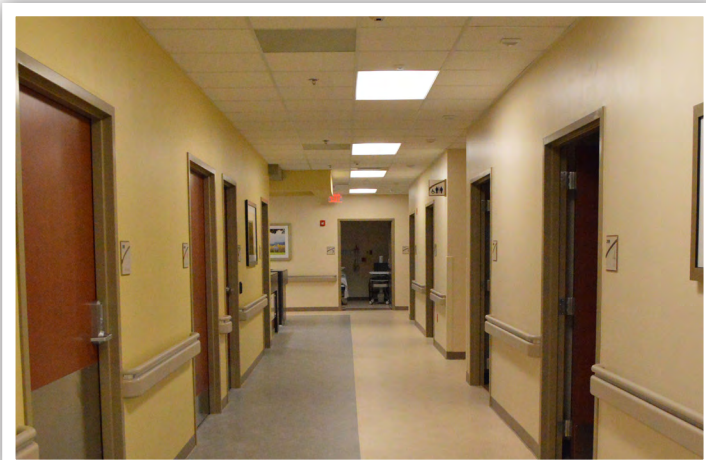
path (first permitted in the 2009 edition of NFPA 101) but only if the facility is in compliance with all other applicable NFPA 101-2000 door provisions, as well as with sections 18/19.2.2.2.4 of NFPA 101-2012. Those sections require compensating safety measures to facilitate rapid removal of occupants.

- **Suites:** The categorical waiver further accommodates the use of suites as initially permitted in the 2006 edition of NFPA 101. CMS will permit this waiver only if the facility is in compliance with all other applicable NFPA 101-2000 suite provisions, as well as with sections 18/19.2.5.7 of NFPA 101-2012. The waiver allows:
 - » One of the required means of egress from sleeping and non-sleeping suites to be through another suite, provided adequate separation exists between suites
 - » One of the two required exit access doors from sleeping and non-sleeping suites to be into an exit stair, exit passageway, or exit door to the exterior
 - » An increase in sleeping room suite size up to 10,000 sq. ft.
- In a waiver that only applies to containers used solely for recycling clean waste or for patient records awaiting destruction outside a hazardous storage area, CMS is going along with a change that first appeared in the 2012 edition of NFPA 101. CMS will allow these containers to be increased to 96 gallons maximum, only if the facility is in compliance with sections 18/19.7.5.7.2 of the NFPA 101-2012.

Facilities will not need to apply for these waivers or wait until they are cited by CMS or by state validation surveyors representing CMS. However if facilities choose to take advantage of any of categorical waivers offered by S&C memo # S&C: 13-58-LSC, they are required to document their prior decision to do so (such as within Safety Committee meeting minutes) before they start using it. The facility is also required to advise every Life Safety Code survey team at the entrance conference for any survey assessing Life Safety Code compliance of its prior decision to use the CMS waiver, and that it meets the applicable waiver provisions. ASHE recommends that organizations provide documentation at the entrance conference and also advise the survey team verbally of those elections.

Although not explicitly stated in this S&C memo as it was stated in a similar S&C memo issued a few months ago, it is expected that these CMS waivers do not overrule more stringent state or local laws or regulations.

The categorical waiver S&C memo contains 5 pages of details that should be reviewed closely by any organizations considering electing to use any of the categorical waivers. The URL for the full CMS S&C Memo is: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/Downloads/Survey-and-Cert-Letter-13-58.pdf>



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TJC ADDRESSES CMS CATEGORICAL WAIVERS

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ASHE recently discussed in its Listserv TJC's response to the CMS categorical waivers.

According to ASHE, TJC requested that organizations indicate in the eBBI's Additional Comments field the acceptance of any categorical waivers as well as so noting those decisions in the EOC Committee minutes. TJC Life Safety Code surveyors will field-verify that the CMS conditions are being met for any accepted waiver, similarly to the CMS onsite field-verification approach.

JOINT COMMISSION DISCUSSES FIRE SAFETY EQUIPMENT INVENTORIES AT ASHE CONFERENCE

By David Stymiest, PE,
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The Joint Commission (TJC) Engineering Director George Mills addressed the issue of fire safety equipment inventories at his 2013 ASHE Annual Conference plenary in July.

Mr. Mills stated that with respect to Standard EC.02.03.05, Elements of Performance (EPs) # 1 through # 20 inclusive, every device required to be tested must be documented in an inventory. He further stated that TJC surveyors will expect the facility to be able to identify specific variances in devices tested from year to year, and that simply having the total quantity of devices without more specific definition will not be adequate. Finally, Mr. Mills stated that lack of a written, electronic, or other form of inventory addressing the devices covered by any of the 20 EPs could result in a finding against that EP. Needless to say, Organizations who have yet not finalized their EC.02.03.05 inventories can be subject to numerous RFIs during survey.



UPCOMING SEMINARS

October 7-8

Florida Agency for Health Care Administration (AHCA) Seminar, Orlando, FL "Expanding the Concept of Emergency Power Reliability"

October 9-11

Alabama Society for Healthcare Engineering (AlaSHE) Fall Conference, Orange Beach, AL "Managing Emergency Power Expectations and Realities" and "Continuous Compliance – Maintaining Constant Survey Readiness"

October 23-25

Decision Health 17th Annual EC Summit in Las Vegas, NV "After the Storms-A New Paradigm in Emergency Power Reliability"

