



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Jason S. Miyares
Attorney General

202 North 9th Street
Richmond, Virginia 23219
804-786-2071
804-371-8946 TDD

MEMORANDUM

To: Chase Sawyer
Policy & Legislative Services Manager
Department of Housing and Community Development

From: Justin I. Bell
Assistant Attorney General

Date: May 7, 2025

Subject: Emergency Regulations to Amend USBC Related to NFPA 13R Sprinkler Systems

I have reviewed the Board of Housing and Community Development's (the "Board") emergency regulations regarding the NFPA 13R sprinkler systems requirements in the Uniform Statewide Building Code (USBC), 13 VAC 5 - 63.

Based on that review, it is my view that the Board, pursuant to § 36-98 of the Code of Virginia, has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act and has not exceeded that authority. The authority for this emergency action is found in Va. Code § 2.2-4011, which provides that emergency regulations are "[r]egulations that an agency finds are necessitated by an emergency situation." The regulations eliminate costs and delays that were an unintended consequence of the previous update of the USBC which went into effect in January 2025. The Department explains that these delays further exacerbate the current housing shortage and cannot wait for the next USBC update cycle to be resolved.

Accordingly, with the prior approval of the Governor, these regulations qualify for the “emergency” exemption from Article 2 requirements. Please be advised, however, that under Va. Code § 2.2-4011(A), the Board must state in writing the nature of and necessity for such emergency action, and this appears to have been accomplished in the Agency Background Document found on Virginia’s Regulatory Town Hall. In addition, the regulations shall be effective for no more than 18 months from the emergency regulatory action on this subject matter. If the Board intends to continue regulating the subject matter governed by this emergency regulation beyond 18 months, it will be necessary to replace these emergency regulations with regulations duly promulgated under Article 2 of the Administrative Process Act.

A Notice of Intended Regulatory Action relating to the proposed replacement regulations must be filed with the Registrar within 60 days of the effective date of the emergency regulations. The proposed replacement regulations must be filed with the Registrar within 180 days after the effective date of the emergency regulations.