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Emergency Regulation Agency Background Document

Agency name	Board of Housing and Community Development
Virginia Administrative Code (VAC) Chapter citation(s)	13 VAC 5 - 63
VAC Chapter title(s)	Virginia Uniform Statewide Building Code (USBC)
Action title	Emergency Regulations to Amend USBC Related to NFPA 13R Sprinkler Systems
Date this document prepared	April 2025

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The intent of this action is to promulgate emergency regulations related to the Uniform Statewide Building Code (USBC), specifically Section 903.3.1.2 of the Virginia Construction Code (VCC) related to NFPA 13R sprinkler systems. The VCC was updated during the 2021 code development cycle and became mandatory in January 2025. The 2021 edition of the VCC included changes regarding when a NFPA 13R sprinkler system is permitted to be installed in Group R occupancy buildings. The changes were intended to address podium buildings, but the changes also resulted in significant impacts on other Groups R-2 and R-3 occupancy buildings. If unresolved, this issue would negatively impact residential construction by increasing costs and creating unnecessary delays.

The State Building Code Technical Review Board (TRB) requested the Board of Housing and Community Development (the Board) consider emergency regulations to address this recently identified issue. Following coordination with and consensus from relevant stakeholders, the Board approved emergency

regulatory action and language for 13VAC5-63-240 that will resolve the NFPA 13R sprinkler systems requirement issue. This issue will be permanently resolved during the 2024 code development cycle, which is currently underway.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- IBC – International Building Code
- ISO – International Organization for Standardization
- NFPA – National Fire Protection Association
- TRB – State Building Code Technical Review Board
- USBC – Uniform Statewide Building Code
- VCC – Virginia Construction Code

Mandate and Impetus (Necessity for Emergency)

Explain why this rulemaking is an emergency situation in accordance with § 2.2-4011 A and B of the Code of Virginia. In doing so, either:

- a) *Indicate whether the Governor’s Office has already approved the use of emergency regulatory authority for this regulatory change.*
- b) *Provide specific citations to Virginia statutory law, the appropriation act, federal law, or federal regulation that require that a regulation be effective in 280 days or less from its enactment.*

As required by § 2.2-4011, also describe the nature of the emergency and of the necessity for this regulatory change. In addition, delineate any potential issues that may need to be addressed as part of this regulatory change.

The requirements of the 2021 edition of the VCC, and subsequently the new requirements associated with NFPA 13R sprinkler systems, became mandatory in January 2025. The unintended changes of VCC Section 903.3.1.2, if unresolved, would have a significant impact on multifamily residential construction in Virginia. Some code officials have interpreted the current building code to require heavy-duty commercial grade sprinkler systems in duplex condominiums, which is not necessary. In order to meet the new requirements, builders are being required to undertake unreasonable and costly design and construction upgrades, midway through construction in some cases. These recently identified changes would result in: unreasonable and costly upgrades to sprinkler systems being required for certain types of multifamily residential buildings; needed upgrades to utility infrastructure in existing multifamily developments to support the increased sprinkler requirements; and housing developers being required to redesign buildings to reduce the number of stories and/or units in order to avoid the increased sprinkler requirements. If unresolved, it is estimated that there would be an additional cost of \$5,000 per unit.

These unintended consequences would significantly delay housing production in the Commonwealth, while also increasing the cost of housing production. These production delays and cost increases are then passed on to consumers. When Virginia is already facing a housing shortfall and rising housing costs, all actions that can be taken to avoid further exacerbating the situation should be taken. This issue is an emergency and cannot wait to be resolved during the 2024 code development cycle.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Board of Housing and Community Development is promulgating this emergency regulation pursuant to §2.2-4011 of the Code of Virginia (emergency authority) and §§36-98 and 36-102 of the Code of Virginia (standard regulatory authority).

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board of Housing and Community Development (the Board) is responsible for promulgating building and fire regulations to ensure the construction of buildings and structures that incorporate critical structural and life safety features and ensure public health, welfare, and safety. Furthermore, the requirements imposed by these regulations should be at the least possible cost consistent with recognized standards (§ 36-99.). The emergency action and language approved by the Board would result in a cost savings of approximately \$1-2 per square foot for each residential building impacted by this change. This reflects a significant cost savings for housing developers.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

In the 2018 IBC/VCC, an NFPA 13R sprinkler system was permitted to be installed in Group R buildings not exceeding 60 feet in height above grade plane. A code change proposal amended the 2021 IBC, limiting the use of NFPA 13R sprinkler systems to Group R buildings where the floor level of the highest story is 30 feet or less above the lowest level of fire department vehicle access. The reduced height of 30 feet was selected to correlate with the threshold for requiring standpipes. Testimony during the IBC code change hearing also included that the 30 feet limit was derived from ISO standards which require a 35 feet ground ladder (with an effective height of 30 feet) to be carried on ISO certified fire trucks.

As reasoned by the 2021 IBC code change proposal, the proposal was intended to address concerns associated with Group R-2 buildings of podium construction, where a 35-foot ladder may not reach the upper stories. However, the changes to the 2021 IBC affected all Groups R-2 and R-3 buildings by greatly reducing the allowed building height, which in certain cases may limit construction to three stories. This issue, as it relates to R-2 occupancies, was identified and resolved in the 2024 IBC. The issue, as it relates to R-3 occupancies, was partially addressed in the 2024 IBC and additional code change proposals are currently being considered for the 2027 IBC to fully address the issue.

The emergency action and language approved by the Board will resolve this issue in Virginia by amending the current NFPA 13R sprinkler systems requirements within the 2021 edition of the VCC to apply the Group R-2 limitations of 2024 IBC Section 903.3.1.2 to Group R-2 occupancies, and allowing Group R-3 occupancies up to 60 feet above grade plane to be protected by a NFPA 13R sprinkler system, as they were under the 2018 VCC, and in line with what is being considered for the 2027 IBC.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

This emergency action will prevent unnecessary delays and cost increases in the housing production process. If this issue were to be unresolved, developers would be required to undertake costly design and construction upgrades to include heavy-duty commercial grade sprinkler systems in duplex condominiums, which is not necessary. In addition, there would be added costs for upgrades to utility infrastructure in existing multifamily developments to support the increased sprinkler requirements, or housing developers will be required to redesign buildings to reduce the number of stories and/or units in order to avoid the increased sprinkler requirements. If unresolved, it is estimated that there would be an additional \$5,000 per unit cost increase.

There are no disadvantages to the public or the Commonwealth.

Alternatives to Regulation

Describe all viable alternatives to the proposed regulatory action that have been considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The alternative to this emergency action would be to adopt this change during the 2024 code development cycle (normal regulatory process). Such a change would likely not go in effect for at least two years, proving detrimental to the residential construction industry, and subsequently residents in need of housing.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the emergency regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
13VAC5-63-240	N/A	Where automatic sprinkler protection is required in Group R occupancy buildings, allows a NFPA 13R sprinkler system to be installed throughout, with a maximum of four stories, and a building height limitation of 30 feet or less above the lowest level of fire department vehicle access to the floor level of the highest story.	<p>This change amends the height limitation for Group R-2 occupancies to 45 feet above the lowest level of fire department access to the roof assembly, and the height limitation for Group R-3 occupancies to 60 feet above grade plane to the roof.</p> <p>This change addresses a change in the 2021 International Building Code, that was incorporated into the 2021 Virginia Construction Code, that reduced the building height where NFPA 13R sprinkler systems were allowed to be installed. The 2021 change effectively limits construction of some Group R-2 and R-3 buildings to three stories, reducing the number of residential units that can be built, at a time when housing availability is a critical issue in Virginia.</p> <p>As the 2021 IBC requirements are being implemented across the country and the impact of the changes are being realized, other states and jurisdictions are taking action to address the issue, and changes have been made to the 2024 IBC and are proposed for the 2027 IBC, increasing the height limitations for Groups R-2 and R-3 occupancies, in line with the limitations that will result from these emergency regulation changes.</p> <p>This change ensures that overly burdensome and costly upgrades are not necessary in R-2 and R-3 occupancy buildings.</p>

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements