



**VIA EMAIL**

January 28, 2019

**RE: Cause Number DHS-1811-FPBSC-010**

Brief Response regarding FPBSC further review notice related to the Administrative Law Judge's Findings of Fact, Conclusion of Law and Non-Final Order for the Appeal of a Fire Prevention and Building Safety Commission Regulation State Project Release Number 391539  
32 Union Apartments  
State Road 32 and Union Chapel Road  
Noblesville, IN 46060

TO: Douglas J. Boyle, Director  
Fire Prevention and Building Safety Commission  
Indiana Department of Homeland Security  
302 W. Washington Street  
Indiana Government Center South, E208  
Indianapolis, IN 46204  
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Petitioner, Ryan Fireprotection, Inc. submits this Verified Response to the Commission's Intent to Review Issues Related to the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Non-Final Order dated December 11, 2018. This Response explains the Petitioner's position in the same order as the issues are presented in the letter from Douglas Boyle, Director of the Fire Prevention and Building Safety Commission dated January 11, 2019. First, Petitioner submits that the ALJ's conclusion that NFPA 13R is the applicable standard is correct, because the 32 Union project meets all of the requirements for that standard. Second, Petitioner submits that the ALJ's determination that combustibles would not be stored on the third-floor balconies at 32 Union is correct and supported by the evidence. Specifically, the evidence showed that grilling is not permitted on balconies at 32 Union, and there was no other evidence presented regarding any other combustibles on balconies. Furthermore, NFPA 13R does not contain any requirements for sprinkler systems on balconies. Therefore, the Petitioner maintains that it is not in violation of Indiana Fire Code Section 903.3.1.2.1. Petitioner requests that the Indiana Fire Prevention and Building Safety Commission, after considering all the evidence including with this Response, in order to be reliable, exact, correct, precise and accurate in their determination, will issue a Final Order affirming that the Petitioner did not violate the Code, and is therefore not required to comply with the Respondent's Order.

## PROCEDURAL OVERVIEW:

For this proceeding, the Respondent presented its information to the ALJ within the timeframe established by the ALJ. Petitioner filed a verified response within Petitioner's allowed timeframe. Respondent did not file further information with the ALJ, despite having the opportunity to do so. Both the Respondent and Petitioner received a Notice of Non-Final Order dated December 11, 2018 from the ALJ. The Notice of Non-Final Order stated that any party seeking to preserve an objection to the ALJ's Non-Final Order could file an objection with fifteen (15) days of the date of the Non-Final Order. Neither the Petitioner nor the Respondent filed any objection to the ALJ's Non-Final Order. Petitioner respectfully requests that the Fire Prevention and Building Safety Commission affirm the ALJ's Non-Final Order expeditiously, as this matter is causing an undue hardship.

The undersigned, Mark Riffey, CET, is submitting this Response on behalf of the Petitioner. Mr. Riffey's qualifications include:

Certification as a Level IV Fire Sprinkler Layout Technician by the National Institute for Certification in Engineering Technologies. A program sponsored by the Society of Professional Engineers. Certification # 102523 Status: Active

Certification as Fire Inspector by the International Code Council, Certification # 0824023-67. Status: Active

Certification as a Plans Examiner by the International Code Council, Certification # 0824023-B3. Status: Active

Former Chief Deputy State Fire Marshal for the State of Indiana.

Former Director of Training and Education for the National Fire Sprinkler Association.

Former Commission Appointee of the Indiana Fire Prevention and Building Safety Commission.

Past Firefighter for the Wayne Township Fire Department in Indianapolis, Indiana.

Current Licensed Fire Sprinkler Contractor in the Multiple States.

The Petitioner submits the following responses to the Commission's additional issues are as follows:

1. Regarding Item 1 set forth in the Letter from Douglas Boyle Dated January 11, 2019, Petitioner offers the following supplemental information. This information supports the ALJ's (Administrative Law Judge's) Conclusion of Law item 1 which states the Petitioner had the choice of which NFPA standard to follow, and chose to follow NFPA 13R. According to the Indiana Building Code 2014 Edition, Section 903.3.1, Titled "STANDARDS," Sprinkler Systems must be designed and installed

in accordance with one of three (3) NFPA Standards. One option is NFPA 13 as referenced in Section 903.3.1.1; a second option is NFPA 13R as referenced in Section 903.3.1.2; and the third option is NFPA 13D as referenced 903.3.1.3; provided the building meets the scope of the Standard Selected.

As correctly stated in the ALJ's Non-Final Order, 2014 IBC Section 903.3.1.2 permits the use of the NFPA 13R standard in Group R occupancy up to and including four (4) stories in height. The 32 Union apartment project is a three (3) story apartment building. The 32 Union Apartments are also a Group R-2 occupancy, which includes residential units containing sleeping units where the occupants are primarily permanent in nature, and specifically include apartment houses. As such, Petitioner's choice to follow the NFPA 13R standards was appropriate and authorized. Furthermore, the ALJ's analysis of the issues presented by Petitioner's appeal of the Respondent's order, applying the standards set forth on NFPA 13R, was appropriate. The Code permitted Petitioner to utilize the NFPA 13R Standard for the design and installation of automatic sprinkler systems at the Union 32 Apartments.

Furthermore, the buildings for the 32 Union Project met the scope of NFPA 13R. Once NFPA 13R was selected, sections 903.3.1.1 (referencing NFPA 13) and Section 903.3.1.3 (referencing NFPA 13D) were no longer applicable. Additionally, the subsections of 903.3.1.1 (Section 903.3.1.1.1) were no longer applicable. *See, letter from Jeffrey M. Hugo, CBO, dated January 25, 2019, attached hereto as Exhibit 1.* Section 903.3.1.1 (referencing NFPA 13) was not chosen as the Standard for the design and installation of the Fire Sprinkler System and it along with subsections of it had no basis as a regulation applicable to this project. It is important to note that all of the buildings and all portions of the buildings of the 32 Union project meet the intent and scope of NFPA 13R and that the intent of NFPA 13R allows it to be used as a stand alone Fire Sprinkler Design and Installation Standard for these buildings. Given that all portions of the buildings could be designed according to NFPA 13R, Petitioner maintains that none of the other NFPA Standards, specifically NFPA 13 were not and are not applicable or enforceable with respect to this matter.

- 2 Regarding Item 2 of the Letter form Douglas Boyle, dated January 11, 2019, Petitioner offers the following supplemental information that supports the ALJ's conclusions about combustibles. The direct answer regarding "combustibles" is that NFPA 13R (not NFPA 13) is the applicable Standard for the Design and Installation of the Sprinkler Systems for the 32 Union Buildings. NFPA 13R does not require or address the need for sprinkler protection for combustibles on balconies. Contained in item 2(b) of the ALJ's conclusion of law is a statement made by the Respondent acknowledging that NFPA 13 was not an applicable Standard. Petitioner agrees with Respondent's Statement that NFPA 13 is not applicable for this project. Petitioner understood the Administrative Law Judge's opinion to be that NFPA 13 does not apply in this case, but that the Administrative Law Judge's comments pertaining to NFPA 13 were simply to point out that when

NFPA 13 Systems are installed, Section 8-15.7.1 of NFPA 13, 2010 Edition would be the applicable Section for apartment balconies rather than Section 8-15.7.5 of NFPA 13, 2010 Edition because there was no evidence that combustibles would be stored on the balconies. Because no evidence regarding combustibles was presented by the Respondent, the ALJ looked at the common uses of a balcony to determine that combustibles would not be stored there. Therefore, if NFPA 13 applied, the 4-foot standard under Section 8.15.7.1 would apply. Petitioner agrees with the Administrative Law Judges analysis and the ALJ went out of her way to explain that even NFPA 13 regulations (although not applicable) recognize that the presence of patio furniture does not constitute “storage” and therefore would not require sprinkler protection. NFPA 13R is intended to be a less strict standard than NFPA 13, since NFPA 13R applies to structures that are generally smaller in scale, and so if NFPA 13 does not require automatic sprinkler systems in similar situations, then neither would NFPA 13R. Ultimately, the Respondent had the burden of proof on this issue, and the Respondent did not present any evidence that combustibles would be stored on balconies.

In conclusion, NFPA 13R does not require sprinkler protection of balconies. Similarly, NFPA 13R does not require sprinkler protection if a closet is constructed on a balcony, regardless of size, if the closet does not have doors or unprotected penetrations directly into the dwelling unit. And, again, NFPA 13R was the appropriate standard to follow for the 32 Union project. The ALJ concluded that even if one were to consider the NFPA 13 standard, sprinklers would still not be required because the eaves above the balconies are less than 4 feet wide. Under these conditions, sprinklers would only be required under NFPA 13 if there were combustibles being stored on the balconies. There is no evidence of combustibles being stored on the balconies at 32 Union. The ALJ correctly noted that grilling is not allowed on balconies, and that the balconies are not intended to be used for any storage purposes. The ALJ cited to the NFPA standard and the applicable Code sections for the proposition that there is a difference between whether a potential combustible is “stored” and when it is placed in “useful space”. *See, Non-Final Order, p.6 at FN 5*. The ALJ correctly noted that furniture and other similar items placed on a balcony for use by the occupant is not “stored”, and therefore not even any provisions of NFPA 13 would require automatic sprinklers under these circumstances. *Id.* Thus, even under the stricter NFPA 13 standard, sprinklers would not be required over the third-floor balconies at 32 Union, and the same result is reached under the NFPA 13R Standard which does not require sprinklers. The ALJ’s decision is supported by the evidence, and it should be affirmed.

3. The Commission has requested to review two issues regarding the ALJ’s Non-Final Order: (1) the requirements for installation of automatic sprinkler systems under NFPA 13R, and (2) the ALJ’s determination that combustibles will not be stored on the balconies at 32 Union. As stated above, the ALJ’s findings and conclusions with respect to both of those issues is correct. The 32 Union project clearly falls within the NFPA 13R standard requirements, and once NFPA 13R was chosen as the standard to be followed, the requirements of NFPA 13 did not apply. With

respect to the second issue under review, there was no evidence of combustibles being stored on balconies at the 32 Union project. And, the NFPA 13R standard, which was the appropriate standard to be used, contains no requirements for the use of automatic sprinkler systems on balconies. Therefore, Petitioner submits that the ALJ's findings of fact and conclusions of law are correct and supported by the evidence, and that the ALJ's Non-Final Order should be affirmed by the Commission.

The Petitioner requests the following:

That this Response be provided to all members of the Fire Prevention and Building Safety Commission.

That the Petitioner be recognized to provide testimony at the Tuesday February 5, 2019 meeting if there are questions from the Commission or their representatives.

That an emergency exists that has caused the Petitioner unreasonable hardship and that for this reason there be the immediate affirmation of the Non-Final Order at the Tuesday February 5, 2019 meeting of the Fire Prevention and Building Safety Commission.

I AFFIRM UNDER THE PENALTIES FOR PERJURY THAT THE FACTS SET FORTH HEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.



Mark Riffey, CET  
Executive Vice President Ryan Fireprotection

cc: Darrel Cross, Fire Marshal, Noblesville Fire Department (Via Email)  
Hon. Chelsea E. Smith, ALJ (Via Email)  
Justin K. Guedel, Esq. (Via Email)

cc:

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Honorable Chelsea E. Smith  
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January 25, 2019

## Exhibit 1

Mark Riffey, SET  
Ryan Fireprotection, Inc.  
9740 E. 148<sup>th</sup> St.  
Noblesville, IN 46060

RE: 2012 International Building Code

Dear Mr. Riffey,

Thank you for your question and request for an informal interpretation regarding installation requirements for automatic sprinkler systems in the 2012 Edition of the International Building Code.

**Question:**

If Section 903.3.1.2 (NFPA 13R) of the 2012 Edition of the International Building Code is selected as the design and installation standard does section 903.3.1.1 (NFPA 13) of the 2012 Edition of the International Building Code apply?

**Answer:**

No.

**Commentary to answer:**

Assuming the building is a Group R and meets all other building and fire code requirements allowing the use of the NFPA 13R standard, Section 903.3.1.2 is, "...permitted to be installed throughout..." through the authority of Section 903.3.1 (via the code path of 903.2.8 and 903.3) which allows the designer to select and follow a specific standard other than NFPA 13.

It should be recognized that the above is my opinion as a Certified Building Official. This opinion has not been processed as a formal interpretation in accordance with the NFPA Regulations Governing Committee Projects or ICC Policy CP # 11, Committee Interpretations on International Code Provisions, and should therefore not be considered, nor relied upon, as the official position of the NFPA, ICC or its Committees.

Sincerely,

Jeffrey M. Hugo, CBO  
Director, Codes and Public Fire Protection  
National Fire Sprinkler Association



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Package #1

RECEIVED  
IDHS  
JAN 30 2019  
COMMISSION  
STAFF

*By electronic mail  
and hand-delivery  
-DJB*