



THE TREASURER OF THE STATE OF FLORIDA
DEPARTMENT OF INSURANCE

TOM GALLAGHER

In re the Matter of

MIAMI-DADE COUNTY FIRE
DEPARTMENT, Alfredo Suarez, Fire
Marshal

Case No.: 60696-02-SP

Petition for Declaratory Statement to
The Florida Department of Insurance

_____ /

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on January 18, 2002, by the Department of Insurance, hereinafter referred to as the Department, from the Miami-Dade County Fire Department, Alfredo Suarez, Fire Marshal, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the State Treasurer and Insurance Commissioner, as State Fire Marshal, finds as follows:

1. The State Treasurer and Insurance Commissioner, as State Fire Marshal, has jurisdiction over the subject matter and the parties to this matter.

2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition for Declaratory Statement. Any modification to those assertions of fact could alter the conclusions set forth in this Declaratory Statement. None of the assertions of fact are admitted by the Department as being true and Petitioner's question is being answered purely as a hypothetical one. If any of the facts asserted by

the Petitioner are untrue or materially incomplete the conclusions of this Declaratory Statement could be significantly different.

3. If the Petition for Declaratory Statement contains various legal assertions, conclusions, and arguments, those assertions, conclusions, and arguments are not adopted by the Department and are not used as legal premises or authority for the conclusions of this Declaratory Statement. Legal assertions, conclusions, and arguments are considered only to illustrate the manner in which Petitioner may be an affected person entitled to have the Department issue this Declaratory Statement.

4. Petitioner asserts that:

- A. The Florida Fire Prevention Code in its adoption of NFPA 1, Section 8-15.2.1, provides that existing buildings are an exception to the requirements for the storage of combustibles from the requirements contained therein.
- B. The Florida Fire Prevention Code as written will allow the unregulated storage of combustible and high hazard commodities in existing occupancies.
- C. This unprotected fire load will present a danger to not only the public but firefighting crews as well.

5. Petitioner requests a declaratory statement on the following

question:

- A. Is it the intent of Section 8-15.2.1 of NFPA 1, of the Florida Fire Prevention Code to permit existing occupancies to maintain storage heights of commodities that are in direct violation of the National Fire Protection Association standards in NFPA 13 and 230?
- B. If so, does Section 1-5.4 or 1-5.5 allow the authority having jurisdiction to apply the requirements of the appropriate referenced standard, NFPA 13 or 230, to the occupancies in question?

6. The controlling section of the Florida Statutes relating to Petitioner's questions is Section 633.0215, Florida Statutes. That provision requires the Division of State Fire Marshal to adopt NFPA 1 and 101 as the Florida Fire Prevention Code.

7. Petitioner's assertions are based on the premise that there is a conflict between NFPA 1, 8-15.2.1 and the applicable portions of NFPA 13 and NFPA 230. NFPA 1, Section 1-5.4 states:

Where the requirement differs between this Code and referenced documents, the requirements of the referenced documents shall apply.

NFPA 1, Section 1-5.5 of NFPA 1, states:

Buildings in existence or permitted for construction prior to the adoption of this Code shall comply with the provisions stated herein or referenced for existing buildings.

8. NFPA 1, Section 8-15.2.1 provides the current requirements for the storage of combustibles, and says that they shall comply with NFPA 13 and NFPA 230; however, the *exception* to that provision is for *existing buildings*. By the same token, NFPA 1, Sections 8-15.2.2 and 8-15.4.1 also except existing buildings from the requirements that they comply with NFPA 13, 230, and 231D, respectively.

9. NFPA 1 clearly excepted *existing buildings* from its requirements, which were to comply with NFPA 13 and 230.

10. There cannot be a conflict between NFPA 1 and NFPA 13, 230, or 231D if NFPA 1 refers to NFPA 13, 230, and 231D, and then excepts existing buildings from its requirements.

NOW, THEREFORE, in response to your questions, the following is the position of the Department of Insurance, Division of State Fire Marshal, in response to your questions:

Question A: Is it the intent of Section 8-15.2.1 of NFPA 1, of the Florida Fire Prevention Code to permit existing occupancies to maintain storage heights of commodities that are in direct violation of the National Fire Protection Association standards in NFPA 13 and 230?

Response to Question A: Existing buildings were excepted from the provisions of NFPA 13 and 230 by the exception contained in Section 8-15.2.1 of NFPA 1; therefore, there is no violation of the National Fire Protection Association standards in NFPA 13 and 230, and existing buildings are not subject to their requirements.

Question B: If so, does Section 1-5.4 or 1-5.5 allow the authority having jurisdiction to apply the requirements of the appropriate referenced standard, NFPA 13 or 230, to the occupancies in question?

Response to Question B: No, because it was Section 8-15.2.1 which provided the exception for existing buildings to the requirements of NFPA 13, 230, and 231D; therefore, there was no conflict and NFPA 1-5.4 or 1-5.5 would not apply.

11. The Division of State Fire Marshal recognizes that this Declaratory Statement may constitute a statement of general applicability, and that it may have an impact on many counties, municipalities, special districts, and other persons throughout the state. Therefore, pursuant to the direction of the Florida Supreme Court in *Florida Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 747 So.2d 374 (Fla. 1999), the Division provides this Declaratory Statement and will also engage in rule development proceedings under Section 120.54(2), Florida Statutes. Any comments or concerns from any affected municipality, county, special

district, or other persons are welcome and appreciated, and should be directed to Chief, Bureau of Fire Prevention, 200 East Gaines Street, Tallahassee, Florida 32399-0342.

NOTICE OF RIGHTS

Any party to these proceedings adversely affected by this Declaratory Statement is entitled to seek review of this Declaratory Statement pursuant to Section 120.565, Florida Statutes, and rule 9.110, Florida Rules of Appellate Procedure, because pursuant to Section 120.565, Florida Statutes, a Declaratory Statement constitutes final agency action and is therefore subject to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings must be instituted by filing a petition or notice of appeal with the General Counsel, acting as the agency clerk, at 612 Larson Building, Tallahassee, Florida, and a copy of the same with the appropriate district court of appeal, within thirty days of rendition of this Declaratory Statement.

ENTERED at Tallahassee, Leon County, Florida, this ____ day of _____, 2002.

GREG GAY
Deputy Commissioner,
Treasurer and State Fire Marshal

Copies furnished to:

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