



## FLORIDA DEPARTMENT OF FINANCIAL SERVICES

**TOM GALLAGHER**  
**CHIEF FINANCIAL OFFICER**  
**State Fire Marshal**

In re the Matter of

Eric A. Neilinger,  
Petitioner

Case No.: 69985-03-SP

Petition for Declaratory Statement  
to the Florida Department of  
Financial Services

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### DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on July 31, 2003, by the Department of Financial Services, hereinafter referred to as the Department, from Eric A. Neilinger, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. Except as set forth below, the Chief Financial Officer 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.

BACKGROUND and FACTS ASSERTED

4. Petitioner asserts that:

A. The condominium in question is in the process of upgrading their elevators to include firefighter's service.

B. As part of this requirement, the initiating device must be installed in elevator lobbies and associated machine rooms to initiate recall functions per ASME.

C. Their existing fire alarm is not capable of expansion to accommodate the additional elevator functions.

D. Petitioner is proposing to install an additional addressable FACP to accommodate the required elevator functions.

E. The building has a constantly attended location where a remote annunciator will be installed and labeled elevator recall control and supervisory panel.

F. The devices are not required to sound the building alarm, so an interconnection with the existing fire alarm may not be required.

G. High rise condominiums upgrading their elevators in this particular city are being told that they cannot activate their new elevators until they upgrade their fire alarms, which could cost hundreds of thousands of dollars which they did not prepare or assess for, causing undue hardship.

H. Due to the magnitude of this situation, and the costs to these building owners and others like them, Petitioner is requesting from the State Fire Marshal's office in the form of a declaratory statement responses to the following questions.

#### QUESTIONS

5.A. Does installing a separate FACP to control elevator functions meet the intent of the code without the need to replace the building's fire alarm?

B. Since the elevator initiating devices are not required to sound the building alarm, do the panels have to be interconnected when annunciators are installed at a constantly attended location?

C. Are automatic initiating devices required to be installed in open unenclosed elevator landings?

## DISCUSSION

6.A. Question 5.A.: The question in paragraph 5.A. is in essence two distinctly different issues, one having no bearing on the other.

B. Subdivision 3-8.1 of NFPA 72, 1999 edition, the National Fire Alarm Code, adopted by Rule 4A-60.005, Florida Administrative Code, that was cited in the Petition permits the use of sub-panels under certain conditions.

C. The explanatory text of this subdivision lists several examples of when this may be allowed, including such times as the incompatibility with an existing panel or an existing panel's inability to be modified.

D. The use of a separate FACP to control elevator functions is therefore permissible.

E. The response to Part I of the question is, "Yes," a separate FACP to control elevator functions does meet the intent of the code.

F. The second part of the question, regarding the issue of when a fire alarm system must be replaced, calls for a decision that is reserved to the authority having jurisdiction and will, therefore, not be addressed.

7.A. Question 5.B.: The elevator initiating devices are not required to sound the building's general evacuation fire alarm signal.

B. This limitation is permitted as a means of reducing false alarms.

C. The issue of constantly attended location is of no bearing, however, on the interconnection requirement.

D. While subsection 3-8.1 of NFPA 72, 1999 edition, does permit the use of sub-panels, and further permits their operation as a stand-alone subsystem, it requires that they be arranged to function as a single system along with any separate required fire alarm components.

E. Subdivision 3-9.3.1 of NFPA 72, 1999 edition, permits such systems to only sound at a staffed location when the building is not equipped with a fire alarm system.

F. When a building is equipped with a fire alarm system, it is required to be connected to that system.

G. The response to this question, therefore, is, "Yes," the panels must be interconnected.

8.A. Question 3.: The governing Uniform Fire Safety Rule is Section 4A-47.011, Florida Administrative Code.

B. This rule requires the compliance with Chapter 65C-5, Florida Administrative Code, the Florida Elevator Safety Code, for smoke detector requirements.

C. Section 65C-5.001(1) adopts the ASME A17.1, 1996 edition, for smoke detectors used in elevator recall.

D. The appropriate subsection, 211.4b clearly answers this question and will not be included as a part of this declaratory statement because it is required by authority not within the jurisdiction of the Department of Financial Services.

WHEREFORE, it is the position of the State Fire Marshal that:

(I)(a) A separate FACP to control elevator functions does meet the intent of the code.

(b) The issue of when a fire alarm system must be replaced calls for a decision that is reserved to the authority having jurisdiction and will, therefore, not be addressed.

(II) When a building is equipped with a fire alarm system, the panels must be interconnected when annunciators are installed at a constantly attended location

(III) The question of whether automatic initiating devices are required to be installed in open unenclosed elevator landings is clearly answered by a rule or code section not administered by this agency and therefore will not be included as a part of this declaratory statement.<sup>1</sup>

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<sup>1</sup> . (Please see Section 211.4b of ASME 17.1, 1996 edition, adopted by Section 61C-5.001(1), Florida Administrative Code, or contact the Department of Business and Professional Regulation).

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 \_\_\_\_\_, 2003.

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Karen Chandler  
Deputy Chief Financial Officer

Copies furnished to:

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