



**TOM GALLAGHER
CHIEF FINANCIAL OFFICER
STATE FIRE MARSHAL
STATE OF FLORIDA**

In re the Matter of

**KENNETH PERKINS, FIRE CHIEF,
ESCAMBIA COUNTY FIRE RESCUE**
Petitioner.

Case No.: 82335-05-FM

Petition for Declaratory Statement
to the Florida Department of
Financial Services

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon the Petition for Declaratory Statement received on July 12, 2005, by the Department of Financial Services, hereinafter referred to as the Department, from KENNETH PERKINS, FIRE CHIEF, ESCAMBIA COUNTY FIRE RESCUE, hereinafter referred to as Petitioner. Upon consideration thereof, and being duly advised, the Chief Financial Officer as State Fire Marshal, finds as follows:

1. 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 question relates to a new building to be located in an industrial park, and concerns a new storage occupancy.

B. The response will determine whether a sprinkler system must be required by the authority having jurisdiction for the occupancy.

C. NFPA 1, subdivision 13.3.2.23.2, in the 2004 Florida Fire Prevention Code states, "**General Storage**. An automatic sprinkler system shall be installed throughout

all occupancies containing areas greater than 12,000 square feet for the storage of combustibles.”

QUESTION:

5. Does the 12,000 square feet refer to the square footage of the constructed storage area, or only to the actual square footage used by the occupant for the storage of combustibles?

DISCUSSION

6. NFPA 101, subdivision 13.3.2.23.2, **General Storage**, states that “.an automatic sprinkler system must be installed *throughout* all occupancies containing areas greater than 12,000 ft.² (1115 m²) for the storage of combustibles.” (Emphasis provided). Thus, the language of this section clearly contemplates that the sprinkler system serve the entire occupancy.

7. Additionally, if the 12,000 square feet only referred to the “actual square footage used by the occupant for the storage of combustibles,” it would be impossible to enforce because each time an inspection is made and the owner is cited for not having the sprinkler system, the owner could remove the stored combustibles and claim that now it is only a portion of the structure that is used for the storage of combustibles and, therefore, sprinklers are not required.

8. After the inspection, the owner could then replace the combustibles being stored and therefore defeat the intent of the standard as well as again be in violation of the requirement.

9. Finally, this response is also based in part on NFPA 101, subdivision 4.5.2, **Appropriateness of Safeguards**, also made a part of the Florida Fire Prevention Code by Rule 69A-60.004, Florida Administrative Code. That subdivision states:

Every building or structure shall be provided with means of egress and other safeguards of the kinds, numbers, locations, and capacities appropriate to the individual building or structure, with due regard for the following:

- (1) Character of the occupancy
- (2) Capabilities of the occupants
- (3) Number of persons exposed
- (5) Height and type of construction of the building or structure
- (6) Other factors necessary to provide occupants with a reasonable degree of safety.

(Emphasis supplied).

10. The intent of subdivision 13.3.2.23.2 of NFPA 1 is to provide reasonable safety for areas used for the storage of combustibles.

11. If the sprinkler requirements were to apply only to those areas which were allocated or used for storage, at any time other areas in the same building could be used for storage without regard to the Florida Fire Prevention Code requirements.

12. Therefore, the only meaningful and enforceable manner in which to interpret the standards relating to sprinkler requirements for storage occupancies over 12,000 square feet is to include the entire structure which may be used for storage.

DECLARATORY STATEMENT

WHEREFORE, it is the position of the State Fire Marshal that the 12,000 square feet in NFPA 1, subdivision 13.3.2.23.2, refers to the square footage of the entire constructed storage area.

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 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 _____, 2005.

Karen Chandler
Deputy Chief Financial Officer

Copies furnished to:

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