



In The Matter Of:

CHIEF ANTHONY ROSEBERRY

Case No.: 91875-07-FM

Petition for Declaratory Statement to the
Florida Department of Financial Services.

DECLARATORY STATEMENT

THIS CAUSE came on for consideration upon receipt of a Petition for Declaratory Statement (hereinafter “Petition”) from Chief Anthony Roseberry (hereinafter “Petitioner”), received by the Department of Financial Services, Division of State Fire Marshal (hereinafter the “Department”), on September 20, 2007. 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 party and subject of this matter.
2. This Declaratory Statement is premised upon the assertions of fact set forth in the Petition. 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 questions are being answered as purely hypothetical. 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 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 is the Chief of the Jacksonville Fire & Rescue Department, Fire Prevention Division, charged with the duty to enforce the Florida Fire Prevention Code (hereinafter the “Code”).

5. The subject of the Petition is the application of Section 633.065(1)(b), *Florida Statutes*, to Petitioner’s questions.

6. Petitioner alleges that in the past, the foregoing provision of statute has always been applied to require that all fire protection systems be tested as a whole by a nationally recognized testing laboratory. He requests to know if the Department has changed its opinion of the relevant statute so that the system testing and approval is no longer required if each component part of the system has been tested and approved.

7. The Department was asked a similar question, specifically as to a gas-fired downdraft commercial cooking appliance, in a petition filed by Alex P. Stuckey, Jr., in case number 90065-07-FM, denied on other grounds. In that case, the Department set forth a short history of recent activity on the question. In January of 2007, after due notice, the Department conducted two hearings regarding the gas-fired downdraft commercial cooking appliance fire protection systems. One of the hearings was a rule development workshop conducted on January 17, 2007 at the Florida State Fire College Auditorium in Ocala, Florida. A draft of proposed rule 69A-21.305 was published and distributed at the workshop for discussion purposes. A representative of Underwriters Laboratory, a nationally recognized testing laboratory, was present at the workshop and indicated that Underwriters Laboratory had not listed a system such as the one that

was the subject of the workshop. The component parts of the appliance had been listed. After consideration of the comments received during the workshops and submitted thereafter, the Department determined that an additional rule on the subject was unnecessary because Chapter 633, *Florida Statutes*, clearly addressed the issue. The Department concluded that if a system is pre-engineered, and installed in accordance with the manufacturer's instructions, it is approvable by the local authority. It is not pre-engineered unless the entire system, not just its component parts, is listed by an approved testing laboratory for the intended use. If the system is not pre-engineered, it must be engineered in accordance with the rules of the Department of Business and Professional Regulations, which regulates the engineering profession.

8. Notice of receipt of the Petition herein was published in Volume 33, Number 40 of the *Florida Administrative Weekly*, on October 5, 2007.

QUESTIONS

9. The Petition poses the following questions:

A. If it is acceptable to combine previously tested parts that have not been tested as a whole system to fabricate a system, what requirements are there for acceptance of such a system?

B. Should this system be considered as an engineered or pre-engineered system?

C. Should it also require sealed drawings from an engineer?¹

DISCUSSION

10. The Department has authority pursuant to Section 120.565, *Florida Statutes*, to issue Declaratory Statements. The State Fire Marshal is required by the provisions of Section 633.01(6), *Florida Statutes*, to issue Declaratory Statements when the Petition relates to the Code, and the Petition is filed by a substantially affected person, or a local enforcement agency.

11. Section 633.065, *Florida Statutes*, sets forth the requirements for installation, inspection, and maintenance of fire suppression equipment. Subsection (1)(b), *Florida Statutes*, states as follows:

The requirements for installation of fire extinguishers and pre-engineered systems are as follows:
Equipment supplied shall be listed by a nationally recognized testing laboratory, such as Underwriters Laboratories, Inc., or Factory Mutual Laboratories, Inc. Equipment supplied for new installations or alterations of existing systems must be currently listed as described in this section.

12. The term “pre-engineered system,” is defined at Section 633.021(1)(20), *Florida Statutes*, as “a fire suppression system which: . . . [m]ust be listed by a nationally recognized testing laboratory.”

NOW, THEREFORE, in accordance with the foregoing, and the statutes and rules cited therein, it is hereby declared that:

1. The Petitioner is substantially affected and entitled to the issuance of this Declaratory Statement.

2. Question A: If it is acceptable to combine previously tested parts that have not been tested as a whole system to fabricate a system, what requirements are there for acceptance of such a system?

Answer: The system must be engineered in accordance with the rules of the engineering profession, in accordance with nationally recognized standards, and function as designed.

3. Question B: Should this system be considered as an engineered or pre-engineered system?

Answer: Engineered.

¹ The question has been rephrased in three parts for clarity.

4. Question C: Should it also require sealed drawings from an engineer?

Answer: The answer is contained in the rules of the Department of Business and Professional Regulations. The Department is without authority to interpret or opine upon those rules.

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 in the City of Tallahassee, Leon County, Florida, this ____ day of _____, 2007.

Eric Miller
Deputy Chief Financial Officer

Copies furnished to:

Anthony Roseberry, Chief
Jacksonville Fire & Rescue
Fire Prevention Division
515 North Julia Street
Jacksonville, Florida 32202

Lesley Mendelson
Division of Legal Services
200 East Gaines Street
Tallahassee, FL 32399-0333