



MEMORANDUM

To: Mo Madani [mo.madani@dca.state.fl.us]
From: Craig Wagner – Director, Code Compliance
CC: David Moyer – VP Certification Services
Date: 7/24/09
Re: Rule 9B-72 Florida Product Approval

The following proposal is submitted for consideration in changes to Rule 9B-72.100 Part (1), Approved Evaluation Entities.

Commentary to proposed changes:

The Miami-Dade County Building Code Compliance Office Product Control Division is the only Evaluation Entity currently approved that is a government body with jurisdiction over product approval. With this lone exception all other approved Evaluation Entities are independent agencies. All independent agencies wishing to be an approved Evaluation Entity need to be held to a uniform standard and a consistent process for approval. It is important to recognize that these independent agencies provide their services in a free and open enterprise system. No law, rule or regulation should favor the services of one qualified organization over another.

The modifications to Rule 9B-72.100 under consideration need to address two issues:

1. Criteria for approval of additional Evaluation Entities.
2. A fair and equitable means of recognizing approved Evaluation Entities that does not favor the use of one approved Evaluation Entity over another.

Proposed changes to Rule 9B-72.100 for approved Evaluation Entities:

- 1) Section 553.842 of Florida Statutes empowers the commission to adopt rules for approval of Evaluation Entities and criteria for approval. It further mandates that the commission specifically approve the Evaluation Entities that are currently listed under (1a) of Rule 9B-72.100. While the statute mandates approval of the listed Evaluation Entities it does not require that they be individually recognized within the context of the rule. In the process for approval and recognition of new Evaluation Entities, the commission must give due consideration to avoiding rules that could favor one qualified Evaluation Entity over another.

Two options are apparent:

- a) Do not list any approved Evaluation Entities within the context of the rule. The list of approved Evaluation Entities would be maintained within the online product approval system. It would include the Evaluation Entities mandated by Section 553.842, F.S. plus those approved by the commission in accordance with adopted criteria for approval.
- b) Modify the list of approved Evaluation Entities within the context of Rule 9B-72.100 each time an additional Evaluation Entity is approved.

- 2) Other proposals for changes to Rule 9B-72.100 include accreditation to ISO Guide 65 as a requirement for an Evaluation Entity. ISO Guide 65 is internationally recognized for establishing the qualifications of an organization operating a product certification system. It serves as a very creditable foundation for the requirements of an Evaluation Entity. However, the scope of the organizations accreditation under ISO Guide 65 must be given consideration. As an example: an organization with an accredited process to certify toasters and other small kitchen appliances to a safety standard is not necessarily qualified to assess a building products compliance with building codes.

It is important to note that ICC-ES (approved Evaluation Entity by Section 553.842, F.S.) is an ANSI accredited Product Certification Body in accordance with ISO/IEC Guide 65. Their accreditation scope includes building product compliance with building code.

Option 1 (preferred): - Remove the list of approved entities from the context of the rule. Section 563.842, F.S. mandates these organizations be approved. It does not require that they be specifically listed in the rule. The list of all approved Evaluation Entities is maintained on the internet based product approval system.

9B-72.100 Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies.

(1) Approved Product Evaluation Entities. Approval by the Commission is limited to the scope established by Section 553.842, F.S.

(a) Evaluation Entities approved by Section 563.842, F.S.

~~1. The National Evaluation Service (NES);~~

~~2. The International Conference of Building Officials Evaluation Services (ICBO ES);~~

~~3. The Building Officials and Code Administrators International Evaluation Services (BOCA ESI);~~

~~4. The Southern Building Code Congress International Evaluation Services (PST ESI);~~

~~5. The Miami Dade County Building Code Compliance Office Product Control Division (MDCBCCOPCD); and~~

~~6. The International Code Council, International Evaluation Services (IES).~~

(b) Architects and engineers licensed in this state are also approved to conduct product evaluation.

(c) Evaluation entities, other than architects and engineers registered in this state, shall apply to the Commission for approval as an evaluation entity by filing an application in accordance with subsections 9B-72.130(1) and 9B-72.090(3), F.A.C., including a Certificate of Independence in accordance with Rule 9B-72.110, F.A.C., and submitting fees pursuant to subsection 9B-72.090(2), F.A.C. Approved Evaluation Entities shall be accredited in accordance with ISO/IEC Guide 65 for product certification programs. The scope of accreditation for the approved entity shall include building product compliance with code.

Option 2: If the commission deems it necessary to maintain, within the context of the rule, the current list of approved Evaluation Entities, then the rule should be revised each time an additional Evaluation Entity is approved:

9B-72.100 Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies.

(1) Approved Product Evaluation Entities. Approval by the Commission is limited to the scope established by Section 553.842, F.S.

(a) The following entities are approved evaluation entities:

1. The National Evaluation Service (NES);
2. The International Conference of Building Officials Evaluation Services (ICBO ES);
3. The Building Officials and Code Administrators International Evaluation Services (BOCA ESI);
4. The Southern Building Code Congress International Evaluation Services (PST ESI);
5. The Miami-Dade County Building Code Compliance Office Product Control Division (MDCBCCOPCD); ~~and~~
6. ~~The International Code Council, International~~ ICC Evaluation Services (ICC-ES).
7. The IAPMO Evaluation Service (IAPMO-ES)
8. ATI Evaluation Service (ATI-ES)

(b) Architects and engineers licensed in this state are also approved to conduct product evaluation.

(c) Evaluation entities, other than architects and engineers registered in this state, shall apply to the Commission for approval as an evaluation entity by filing an application in accordance with subsections 9B-72.130(1) and 9B-72.090(3), F.A.C., including a Certificate of Independence in accordance with Rule 9B-72.110, F.A.C., and submitting fees pursuant to subsection 9B-72.090(2), F.A.C. Approved Evaluation Entities shall be accredited in accordance with ISO/IEC Guide 65 for product certification programs. The scope of accreditation for the approved entity shall include building product compliance with code.

Please direct any questions regarding this proposal to:

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