

# FLORIDA BUILDING COMMISSION



## FACILITATOR'S SUMMARY REPORT OF THE SEPTEMBER 21, 2009 TELECONFERENCE MEETING

*TALLAHASSEE, FLORIDA*

Facilitation and Process Design By



CONSENSUS CENTER

Report By Jeff A. Blair  
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# FLORIDA BUILDING COMMISSION

## SEPTEMBER 21, 2009 TELECONFERENCE MEETING REPORT

**MONDAY, SEPTEMBER 21, 2009**

### Opening and Meeting Attendance

The meeting was opened at 10:00 AM, and the following Commissioners participated:

Raul L. Rodriguez, AIA (Chair), Hamid Bahadori, Bob Boyer, Dick Browdy, Ed Carson, Herminio Gonzalez, Jim Goodloe, Jeff Gross, Jon Hamrick, Nicholas Nicholson, Rafael Palacios, John Scherer, Jim Schock, Jeff Stone, Tim Tolbert, and Randall Vann.

### DCA Staff Present

Joe Bigelow, Suzanne Davis, Rick, Dixon, Ila Jones, Mo Madani, Marlita Peters, and Jim Richmond.

### Meeting Facilitation

The meeting was facilitated by Jeff Blair from the FCRC Consensus Center at Florida State University. Information at: <http://consensus.fsu.edu/>



### Agenda Review and Approval

The Commission voted unanimously, 15 - 0 in favor, to approve the agenda as presented including the following objectives:

- To Consider Regular Procedural Issues: Approval of Agenda
- To Conduct Hearing on Rule 9B-72.100
- To Consider Other Old and New Business as Approved by the Commission Chairman
- To Consider Commissioner and Public Comments

### Draft of Amendments to Rule 9B-72.100, Product Approval

Following is the draft of amendments to Rule 9B-72.100, Product Approval as adopted by the Commission at the August 11, 2009 meeting, and noticed in the August 28, 2009 FAW:

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 Evaluation Services (IES); and.

7. The International Association of Plumbing and Mechanical Officials Evaluation Service (IAMPO).

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

(c) Evaluation entities and certification agencies accredited as meeting the requirements of ISO/IEC Guide 65, other than architects and engineers registered in this state, shall apply to the Commission for approval as an evaluation entity by submitting correspondence to the Commission substantiating accreditation and independence. Upon approval by the Commission, paragraph 9B-72.100(1)(a) above shall be amended to include the applicant 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.

(2) through (6) No change.

Rulemaking Specific Authority 553.842(8)(9) FS. Law Implemented 553.842(8)(9) FS. History—New 5-5-02, Amended 9-4-03, 3-9-04, 11-22-06, 4-10-08,\_\_\_\_\_.

### **Rule Adoption Hearing on Rule 9B-72.100, Product Approval**

After determining a quorum was present, Jeff Blair, Commission Facilitator, provided the Commission with an overview of the status of the rule development as follows:

The Product Approval POC reviewed the issue and provided recommendations to the Commission to add IAPMO to the list of approved evaluation entities, and the criteria of meeting the requirements of ISO/IEC Guide 65, and substantiating accreditation and independence. Subsequently, a rule development workshop was conducted on July 20, 2009 on Rule 9B-72.100 Product Approval, for the purpose of soliciting feedback regarding adopting criteria by which the Commission can approve additional product approval evaluation entities, including adding IAPMO to the list of approved evaluation entities. In addition, at the August 2009 meeting the Commission voted to adopt criteria (meeting requirements of ISO/IEC Guide 65, and substantiating accreditation and independence) for approval of evaluation entities and including the International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO ES) to the list of approved evaluation entities, and to notice the adopted language and proceed with rule adoption without a hearing, unless requested in which case a hearing will be conducted via teleconference during the third week of September 2009, and authorizing the Secretary of DCA to sign-off on any required rule certification(s). The Commission agreed that once the current rule adoption process was complete to re-open Rule 9B-72 for the purpose of evaluating the criteria for approval of evaluation entities. Jeff Blair noted that a rule adoption hearing was requested, and the September 21, 2009 hearing was conducted for the purpose of soliciting additional public comment.

*(Attachment 1—Background Documents)*

The Rule Adoption Hearing was opened by Jim Richmond, FBC Attorney, and an opportunity was presented for public comment.

*(Attachment 2—Summary of Public Comments Provided During Hearing)*

*(Attachment 3—Written Comments)*

Mo Madani reviewed the comments submitted during the rule notice period (August 28 - September 18, 2009), and 15 members of the public provided comments during the Hearing. At the conclusion

of public comment an opportunity was offered for Commission discussion, and then the Commission took the following action:

***Commission Actions:***

**Motion**—The Commission voted, 5 - 10\* in favor, to conduct an additional rule adoption hearing at the December 2009 Commission meeting, and to charge the Product Approval POC with developing recommendations regarding criteria for approval of evaluation entities.

*\* The motion failed since the vote did not achieve the 75% or greater level of support required for approval (33% in favor).*

**Motion**—The Commission voted, 10 - 5\*\* in favor, to proceed with rule adoption for Rule 9B-72.100, Product Approval, by filing the Rule for adoption as drafted, and authorizing the Secretary of DCA to sign-off on any required rule certification(s).

*\*\* The motion failed since the vote did not achieve the 75% or greater level of support required for approval (67% in favor).*

**Motion**—The Commission voted, 12 - 3\*\*\* in favor, to proceed with rule adoption for Rule 9B-72.100, Product Approval, by filing the Rule for adoption as drafted, and authorizing the Secretary of DCA to sign-off on any required rule certification(s). In addition, the Commission agreed that once the current rule adoption process was concluded, to initiate rule development for Rule 9B-72.100 for the purpose of evaluating the criteria for approval of evaluation entities.

*\*\*\*The motion passed since a 12 - 3 in favor vote is equal to 80% in support, exceeding the Commission's 75% or greater approval threshold requirement for approval.*

**Commission Adopted Rule Language**

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 Evaluation Services (IES); and.
7. The International Association of Plumbing and Mechanical Officials Evaluation Service (IAMPO).

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

(c) Evaluation entities and certification agencies accredited as meeting the requirements of ISO/IEC Guide 65, other than architects and engineers registered in this state, shall apply to the Commission for approval as an evaluation entity by submitting correspondence to the Commission substantiating accreditation and independence. Upon approval by the Commission, paragraph 9B-72.100(1)(a) above shall be amended to include the applicant 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.

**Adjourn**

The Commission voted unanimously to adjourn at 11:30 AM.

**ATTACHMENT 1**  
**BACKGROUND DOCUMENTS**

**History/Background Pertinent to the Proposed Rule 9B-72.100**

Subject: To adopt criteria by which the Commission will approve additional evaluation entities for the State Product Approval System.

Background:

**(1) HB 697 – 553.842 (17)(a), Florida Statutes** - The Florida Building Commission shall review the list of evaluation entities in subsection (8) and in the annual report required under s.553.77, shall either recommend amendments to the list to add evaluation entities the commission determined should be authorized to perform product evaluation or shall report on the criteria adopted by rule or to be adopted by rule allowing the Commission to approve evaluation entities that use the Commission's product evaluation process. If the Commission adopts criteria by rule, the rule making process must be completed by July 1, 2009.

(b) Notwithstanding paragraph (8)(a), the International Association of Plumbing and Mechanical Officials Evaluation Service is approved as an evaluation entity until October 1, 2009. If the association does not obtain permanent approval by the Commission as an Evaluation Entity by October 1, 2009, products approved on the basis of an association evaluation must be substituted by alternate, approved entity by December 31, 2009. and on January 1, 2010, any product approval issued by the Commission based on an association evaluation is void.

**(2) 553.842, Florida Statutes - Product Evaluation and Approval – F.S.**

(8) The commission may adopt rules to approve the following types of entities that produce information on which product approvals are based. All of the following entities, including engineers and architects, must comply with a nationally recognized standard demonstrating independence or no conflict of interest:

(a) Evaluation entities that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the National Evaluation Service, the international Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, the Southern Building Code Congress International Evaluation Services the International Code Council Evaluation Services, and the Miami-Dade County Building Code Compliance Office Product Control. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

**(3) Rule 9B-72.100 (1) approved Product Evaluation Entities**

(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 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.

**(4) Rule 9B-72.100 (4) approved Certification Agency criteria.**

(a) An entity shall be approved by the Commission as a certification agency if it complies with one of the following. Approval shall be limited to those procedures listed on the certificate of accreditation or accreditation listing issued by the accreditation body:

1. Certification Agencies accredited by ANSI that meet the requirements of ISO/IEC Guide 65: General Requirements for Bodies Operating Product Certification Systems or other standard certified as equivalent by the accrediting entity pursuant to Rule 9B-72.180, F.A.C., and approved by the Commission.
2. Certification Agencies accredited as meeting the requirements of ISO/IEC Guide 65: General Requirements for Bodies Operating Product Certification Systems or other standard certified as equivalent by the accrediting entity pursuant to Rule 9B-72.180, F.A.C., and approved by the Commission.
3. Lumber grading or inspection agencies approved by the American Lumber Standards Committee (ALSC) or other agency approved by the Commission as equivalent, in accordance with United States Department of Commerce “Voluntary Product Standard: DOC PS 20-99,” “American Softwood Lumber Standard.”

(b) Certification Agencies shall apply to the Commission for approval by filing an application as provided by 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.

(c) Approvals shall be valid until such time as Commission approval requirements change, the certification agency no longer qualifies under current requirements; the accreditation expires, or is removed, or is both expired and removed; or the approval is suspended or revoked.

**(5) 2009 Legislative Session - proposed legislation to change the law to read as follows:**

(a) Evaluation entities that meet the criteria for approval adopted by the commission by rule. The commission shall specifically approve the, the International Association of Plumbing and Mechanical Officials Evaluation Service, the International Code Council Evaluation Services, the Miami-Dade County Building Code Compliance Office Product Control and National Evaluation Service, the international Conference of Building Officials Evaluation Services, the Building Officials and Code Administrators International Evaluation Services, the Southern Building Code Congress International Evaluation Services. Architects and engineers licensed in this state are also approved to conduct product evaluations as provided in subsection (5).

SB/HB proposing the above stated change to the law did not pass.

(7) There is no national accreditation standard / criteria program in existence for approval and accreditation of “evaluation entity” – the closest accreditation standard available which could be used on the basis for determination of competency and qualification of an “evaluation entity” is ISO Guide 65 (General requirements for bodies operating product certification system).”

(8) The International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO - ES) is accredited by ANSI as a certification agency meeting ISO 65.

(9) Under the State Product Approval System:

IAPMO is approved as a certification entity.

IAPMO is approved as an evaluation entity until December 1, 2009.

(10) Florida Statutes - If the association “IAPMO” does not obtain permanent approval by the Commission as an Evaluation Entity by October 1, 2009, products approved on the basis of an association evaluation must be substituted by alternate, approved entity by December 31, 2009. and on January 1, 2010, any product approval issued by the Commission based on an association evaluation is void.

## ATTACHMENT 2

### SUMMARY OF PUBLIC COMMENTS PROVIDED DURING RULE ADOPTION HEARING

#### Summary of Public Comment Submitted During Rule Adoption Hearing

1. Shahin Moinian (IAPMO): indicated support for the proposed rule amendments as drafted, and expressed that IAPMO should be added to the list of approved evaluation entities. He noted that both IAPMO and ICC-ES are accredited by ANSI as per ISO Guide 65.
2. Kari Hebrink (Florida Building Material Association): indicated support for the proposed rule amendments as drafted, and expressed that IAPMO should be added to the list of approved evaluation entities.
3. Jack Glenn (FHBA): FHBA is in support of the proposed rule amendments as drafted.
4. Doug Harvey (BOAF): stated he would cede his time to John O'Connor, president of BOAF.
5. Jennifer Hatfield (FPSA): expressed support for the proposed rule amendments as drafted.
6. John O'Connor (BOAF): BOAF is not in support of the proposed rule amendment and requests the Commission delay proceeding with the rule. BOAF does not support including IAPMO as an approved evaluation entity pending additional review. BOAF offered proposed criteria for approving product evaluation entities as follows:

It is the position of the Building Officials Association of Florida that the adoption of criteria for approval of future Evaluation Entities should include the following items:  
A Product Evaluation Entity shall

  - a. develop proprietary acceptance criteria that is approved by an evaluation committee comprised of code officials, or code officials and industry experts
  - b. develop proprietary acceptance criteria that is approved using an open public hearing process
  - c. use only their own proprietary acceptance criteria
  - d. be accredited as meeting the requirements of ISO/IEC Guide 65
7. BJ Peters: speaking as a retired fire official, felt more study was needed before proceeding with the rule. Concerned with ensuring life safety especially regarding fire safety issues.
8. Gary Nichols (ICCES): indicated he had provided written comments, and stated that ISO Guide 65 was too broad to serve as the only requirement for approval as an evaluation entity. Expressed concern that proposed rule blurs the distinction between evaluation entities and certification bodies.



9. Joe Holland (Hoover Treated Wood Products): expressed that the Commission should withdraw from rulemaking at this point, and take additional time to develop criteria and to determine whether IAPMO should be approved as a Commission approved evaluation entity.
10. Olin Green: spoke as a retired fire professional and retired state fire marshal. Indicated that more study was needed before proceeding with the rule. Concerned with ensuring life safety especially regarding fire safety issues.
11. Randy Shackleford (Simpson Strong-Tie): spoke in support of the Commission's action and in support of the proposed rule amendments as drafted.
12. Reinaldo Figueiredo (ANSI): indicated that IAPMO is accredited by ANSI to ISO Guide 65 and should be approved as an evaluation entity.
13. Ted Devitt (consultant): stated the Commission should not proceed forward with the rule as drafted because it is too non-specific.
14. Craig Wagner (architect): spoke in favor of the rule as drafted. The scope of accreditation provides for the specific scope regarding what an entity may evaluate (e.g., whether they are accredited to evaluate building products), and accreditation is not an open door to evaluate everything.
15. Kari Hebrink (Florida Fire Marshals and Inspectors Association): indicated the Florida Fire Marshals and Inspectors Association is in support of the proposed rule amendments as drafted.

## ATTACHMENT 3

### PUBLIC COMMENTS SUBMITTED IN WRITTING

#### **Public Comments Submitted Prior to Rule Adoption Hearing**

Comments submitted prior to the rule adoption hearing are available at the following link:

[http://www.dca.state.fl.us/fbc/commission/FBC\\_0909\\_Conf\\_Call/FBC\\_Agenda\\_Conf\\_call\\_0909.htm](http://www.dca.state.fl.us/fbc/commission/FBC_0909_Conf_Call/FBC_Agenda_Conf_call_0909.htm)

#### **Joe Holland Submittal**

Request a hearing on proposed changes to Rule 9B-72.100.

Purpose: Withdraw rule from consideration until substantial revisions are made to insure the safety of the citizens of Florida. Delete the reference to IAPMO until the rule has been revised to satisfy concerns with the process and validity of the reports being issued. Product Approval Agencies evaluate products that must perform under the most adverse conditions possible in Florida.

It is unfortunate the Commission doesn't have a process allowing for a full debate on a issue, especially one as important as recognizing organizations for approving products in the State where life safety and building safety are in question. During the public hearing the commission was given erroneous information, by the proponents, and staff. It was made clear by the moderator that debate was not possible. Individuals who could have corrected the misinformation were not permitted to do so.

Length of business: See attachment. The press release is dated September 24, 2007. The third paragraph states the IAPMO-ES is an alternative source for approvals for two years before hiring the current director. As we testified the IAPMO-ES has been in business for about four years not the 80 years stated by proponents. In those four years they have issued 25 reports, one of which is a listing of approvals for one company. There are 17 companies using the ES. Most are regionals doing business in California. They have developed three evaluation criteria with another under development. Compare that with the organizations currently listed in the rule. Certainly not the track record one should expect for a national agency requesting approval to be recognized as one allowed to evaluate products that must perform under the most adverse conditions possible in our state.

Impact on approvals: The Commission only took action after testimony by staff that inaction would create an untenable situation. It was apparent from the lack of a motion to approve the revision and move it forward that the Commission recognized the proposed rule was flawed. It is still flawed. Fatally so. As stated, the one organization to be added to the list does not have the track record. They have 24 reports of which four could possibly be used in Florida. Delaying the rule to insure the safety of the citizens of Florida will not jeopardize the acceptance of a product with adequate review from an agency with a proven track record. Lets get it right.

ISO Guide 65: The commission recognized the rule will allow any organization with ISO Guide

approval to be considered a product approval entity. Think Chinese drywall. Possibly that is reason for no motion, initially. As stated by members of the commission familiar with the different levels of standards promulgated by organizations, a guide is just that. It provides basic information to a potential user. A guide is typically a compendium of information or series of options that does not recommend a specific course of action. A guide increases the awareness of information and approaches in a given subject area. It typically does not contain an explicit set of requirements to be satisfied by a material, product, system, or service. The rule does not provide the additional information necessary to insure the agency can perform in a manner that will insure the safety of the citizens of Florida.

The press release is silent on how the report will insure building and life safety. It does stress, in the fourth paragraph, speed, cost saving, and suggests the ES wants to build close ties to the manufacturer. One could question whether this is in keeping with insuring the product will not compromise building and life safety. The last paragraph confirms their rationale for creating the ES.

Also, attached is a report issued by the IAPMO-ES. The issue is not whether this product is one of the seven that needs product approval recognition, but one of adequacy. The owner of the intellectual property on which the report was issued has gone on record stating their property was "used inappropriately" and was "unauthorized". So out of 24 reports, we know of at least one that is not adequate and could jeopardize building and life safety. Does the Commission want to put the State in a position of recognizing an organization that will use the intellectual property of another without authorization and that the unauthorized use results in the product being used inappropriately. We sincerely hope not.

Do not move the rule forward. The safety of the people of Florida is more important than the possible inconvenience of one company.

Sincerely,

Joe Holland

--

Joseph T. Holland, III  
Hoover Treated Wood Products  
1225 N. Halifax Avenue  
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Phone: (706) 755-4811  
Fax: (706) 595-6600  
E-mail: [jholland@frtw.com](mailto:jholland@frtw.com)

## IAPMO Submittal

FOR IMMEDIATE RELEASE      Contact: Duane Huisken  
(909) 472-4215  
duane.huisken@iapmo.org

### IAPMO Evaluation Service Brings in New Director

Ontario, CA (September 24, 2007) — The International Association of Plumbing and Mechanical Officials (IAPMO) Evaluation Service (ES) announced today the hiring of Amir Zamanian, Professional Engineer as the Business Unit Director. Prior to joining IAPMO, Mr. Zamanian has held increasingly responsible positions with the California Department of Transportation, various large public works contracting and engineering firms and the County of Allegheny, Pennsylvania -Department of Capital Projects.

These assignments have provided Amir with a strong background in coordinating multiple projects with high-expectation performance criteria. These skills will assist IAPMO's building products customers in deriving the most rapid benefit from their formal Evaluation Service reports complying with the International Building Code (IBC).

For the last two years, IAPMO has provided an alternative source for fully ANSI accredited ISO/IEC guide 65 product reports for items other than plumbing and mechanical products. These reports carry a trusted Mark of Conformity and are recognized by building officials nationally as complying with all building code exception criteria.

Zamanian joins will lead the Evaluation Service team using his background in project management to ensure value-conscious, rapid completion of product ES reports. He will work with client manufacturing firms in determining their requirement documentation through their adherence to quality management systems and needed management reviews of their systems in order to provide the most efficiently processing of Evaluation Service listings. He will play a critical role in fully implementing this service of IAPMO.

Shahin Moinian, IAPMO's Senior Director of R&T, commented that "Amir will bring solid leadership strength to the ES team. He is extremely familiar with the dynamic needs our customers place evaluation services and the importance of having these very important compliance documents in hand prior to their product launches. He will significantly strengthen our commitment to this extremely competitive opportunity for our customers."

# # #

*LAPMO ES evaluates building products, materials and designs according to all applicable codes and standards, ensuring continuous compliance to such documents. LAPMO ES is part of The LAPMO Group's family of companies.*

*Learn more about LAPMO ES at [www.iapmo.org/es/](http://www.iapmo.org/es/).*

## **ICC Evaluation Service Submittal**

### **Unauthorized Usage Notice to Building Regulatory Agencies**

ICC-ES is aware of a recent report published by a Product Certification Agency (PCA) that makes unauthorized and inappropriate use of an ICC-ES Acceptance Criteria. The Acceptance Criteria in question is AC264 (Wood Structural Panels Laminated with an Inert, Inorganic Fire Shield), dated October 2004. We have been made aware that AC264, which is directed to laminates, has been used by a PCA to recognize a coating that is factory-applied to OSB panels.

As was determined by the ICC-ES Evaluation Committee, there are clear differences between a coating and laminate requiring a separate acceptance criteria. To date, the Committee has conducted four open hearings addressing this issue. Development of the new criteria has been subject to significant scrutiny by industry and the regulatory community. Information on the status of the new criteria (AC405) can be viewed on the ICC-ES web site:

[http://www.icc-es.org/News/ac405\\_note.shtml](http://www.icc-es.org/News/ac405_note.shtml).

ICC-ES acceptance criteria are intended solely for use in the development of ICC-ES evaluation reports, and have not been approved by ICC-ES for use by others in publishing code compliance reports or for product certification activities. Regulatory agencies are urged to check with ICC-ES before considering listings issued by PCAs, other than ICC-ES, that use ICC-ES Acceptance Criteria as the basis for their listing. The incorrect use of AC264 demonstrates the need to limit the use of ICC-ES Acceptance Criteria to ICC-ES evaluation reports, which is the purpose for which they were intended.

Questions should be directed to Michael O'Reardon, P.E., Regional Manager, at (800) 423-6587, extension 3289, or at [es@icc-es.org](mailto:es@icc-es.org).

### **Gary Nichols Submittal**

Mo,

I am writing in response to your e-mail of September 17, 2009 (see below) concerning a hearing on the proposed rule that adds criteria by which the Commission will approve additional evaluation entities and adds the International Association of Plumbing and Mechanical Officials as an approved evaluation entity. We would like to offer the following comments on the subject:

ICC Evaluation Service is opposed to the proposed changes that came out of the Commission meeting on August 11, 2009.

As noted in comments I made to the Commission on August 11, 2009, we believe that, although evaluation entities and certification bodies are both often accredited to ISO Guide 65, it is in the interest of the State of Florida and its product approval system to maintain a distinction between them in the rules. We are concerned that the proposed rule changes blur that distinction. Please consider the following points:

1. It should be noted that ISO Guide 65 is quite general in nature so that it can cover a broad range of product certification activities,

building products being a relatively minor area. For this reason, ISO Guide 65 certification alone should not be used as a basis for an authority having jurisdiction's decision to approve an evaluation service. Since evaluation entities will be involved in evaluating alternative materials not specifically addressed in the FBC for use in high wind areas, we believe the State of Florida should consider other important issues that are necessary to insure code compliance of products evaluated by a given entity. We believe two main issues to consider are to what degree input from code officials are involved in an entity's evaluation process (such as whether the body has an evaluation committee comprised of code officials that conducts public hearings and who are experts in the codes for which their committee service is rendered) and whether the body has a viable process for developing the requirements for the evaluation of alternative materials (instead of relying on criteria developed by other evaluation entities). It is important to note that the introduction to ISO Guide 65 supports our position when it says:

*The requirements of this Guide are written, above all, to be considered as general criteria for organizations operating product certification systems; they may have to be amplified when specific industrial or other sectors make use of them, or when particular requirements such as health and safety have to be taken into account.*

2. The scope of services and how any findings relative to the evaluation or certification process are published typically differ between these two types of agencies. Few certification bodies state that the products they certify meet building codes and the findings of these agencies are usually published through publication of a listing rather than an evaluation report. While product certification by a certification agency works well under Method 1 of Florida's product approval process, we do not think it is appropriate for Method 2 of the system.

3. The scope for which an evaluation service is accredited is usually different from the scope of accreditation granted to a certification body, even in cases where they are accredited by the same accreditation body. We believe it is very important for the Commission to look at the scope of an agency's accreditation before it approves them as an evaluation entity so that the Commission can verify that their accreditation is compatible with Method 2 of the product approval system. Evaluation entities are typically accredited to evaluate a wide range of products for conformance to building codes and publish their findings in evaluation reports. Certification bodies are usually accredited to issue listings for products falling into certain areas of specialty and those listings are usually based on conformance to certain standards, not building codes.

We appreciate the opportunity to comment on the proposed changes. I would be happy to answer any questions that you or the Commission might have.

Sincerely,

Gary G. Nichols, PE  
Vice President/Birmingham Operations  
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800-423-6587, x5684  
205-599-9800 phone  
205-599-9850 facsimile  
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### **Aggregate Interlock Submittal**

**From:** Aggregate Interlock [aggregateinterlock@gmail.com]  
**Sent:** 09/18/2009 01:57 PM AST  
**To:** Mo Madani  
**Subject:** Rule 9B-72.100 Evaluation Entities Comments

The concept of evaluation entities in 9B-72.100 seems to violate numerous aspects of Florida Engineering Statutes (Chapter 471) and 61G15, Florida Administrative Code. Several such issues are outlined herein for your review:

1. With respect to existing Florida Statutes, how is a code report (such as those by ICC-ES or IAPMO-ES) classified? Is it an engineering report governed by Chapter 471?

Applicable Code Sections: Chapter 471.005, Florida Statutes; Chapter 61G15-36, FAC

Section 471.005 explicitly includes the act of “evaluation ... for the purposes of determining ... compliance ... specifications ...” in the definition of “professional engineer”. Product evaluation is also specifically addressed in Chapter 61G15-36, FAC. Code evaluation reports, which evaluate compliance to the building code, summarize this type of evaluation except that the evaluation is issued outside the scope of any specific construction project. Regardless, the decision to issue a code evaluation report based solely on the engineering judgment of the evaluation agency staff and the evaluation report applicant oftentimes must hire a consulting engineer to render professional judgments important to the evaluation process.

Evaluation reports are not developed or issued under a consensus process generally used for the development of nationally recognized codes and standards. Instead, code evaluation reports are issued solely based on the judgment of the evaluation agency staff. Moreover, many 'Acceptance Criteria', contain numerous violations of the building code. Most commonly, testing code recognized structural materials, such as dimensional lumber, light-gauge steel members, and mechanical fasteners, in lieu of designing the materials in accordance with code adopted reference standards. Instances where the minimum requirements of the building code are not met inherently require engineering judgment.

2. 9B-72 permits "evaluation entities" but from the standpoint of Chapter 471, what is the classification of an entity like ICC-ES or IAPMO-ES? Do these organizations have special recognition to practice truly "corporate" engineering? And, if so what credentials are required for a firm to practice in such a manner?

Applicable Code Sections: Chapter 471.023.

Existing statutes permit individual practicing engineers to offer to practice under the name of a business; however, they do not permit the corporate practice of engineering. It is important to note that while ICC-ES and IAPMO-ES are subsidiaries of standards writing organizations the evaluation process and issuance of code evaluation reports is NOT a standards development function. Furthermore, adoption of the International Codes by a jurisdiction does not grant ICC-ES or IAPMO-ES special authority or recognition as a corporate entity.

Furthermore, existing statutes prohibit engineering businesses to offer to practice outside the scope of their license. In the case of IAMPO-ES, it has retained an outside engineering firm, VanDorpe Chou Associates, Inc., to provide engineering evaluation services beyond the scope of their expertise. Similarly, ICC-ES oftentimes requires applicants to hire consulting engineers for the purposes of rendering professional judgments important to the evaluation process. Again, engineering services are being offered to the public through an organization without the engineering expertise in-house.

3. For organizations such as ICC-ES and IAPMO-ES that perform engineering evaluation outside of a specific project or jurisdiction, at what point do documents prepared by such organizations need to conform to board rules? At what point does the engineer having responsible charge for the product evaluation need to be identified? Who has responsible charge over such evaluations?

Applicable Code Sections: Chapter 61G15-27.001 FAC

ICC-ES and IAMPO-ES don't offer "evaluation" services for any specific project or jurisdiction making it unclear which, if any, engineering rules or ethical standards apply to these organizations. As a result, when code evaluation reports are used as the sole basis of product approval by local code officials or design professionals, ICC-ES and IAMPO-ES have effectively circumvented the laws and rules that govern professional engineering while providing such services defined and professional engineering to the public. Responsible charge CANNOT exist for code evaluation report because under ICC-ES and IAMPO-ES process the evaluation report applicant has control over the selection of testing laboratories and design professionals. As a result, the evaluation agency has no idea whether the information provided was obtained through "lab-shopping" or "opinion-shopping". The applicant has an inherent conflict of interest, yet the applicant has control of the evaluation through control of the information provided. ICC-ES has no internal laboratory and no means to confirm the validity of submitted data.