

FLORIDA BUILDING COMMISSION



FACILITATOR'S SUMMARY REPORT OF THE SEPTEMBER 21, 2010 TELECONFERENCE MEETING

TALLAHASSEE, FLORIDA

FACILITATION, MEETING AND PROCESS DESIGN BY



CONSENSUS CENTER

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*This document is available in alternate formats upon request to Dept. of Community Affairs,
Codes & Standards, 2555 Shumard Oak Blvd., Tallahassee, FL 32399, (850) 487-1824*

FLORIDA BUILDING COMMISSION
SEPTEMBER 21, 2010 TELECONFERENCE MEETING
SUMMARY REPORT

TUESDAY, SEPTEMBER 21, 2010

Opening and Meeting Attendance

The meeting was opened at 10:00 AM, and the following Commissioners participated: Raul L. Rodriguez, AIA, (Chair), Bob Boyer, Dick Browdy (vice-chair), Herminio Gonzalez, Ken Gregory, Dale Greiner, Jon Hamrick, Scott Mollan, Rafael Palacios, Jim Schock, Chris Schulte, Jeff Stone, Tim Tolbert, Mark Turner, and Randall Vann.

DCA Staff Present

Suzanne Davis, Rick Dixon, Ila Jones, Mo Madani, 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/>



Project Webpage

Information on the project, including agenda packets, meeting reports, and related documents may be found in downloadable formats at the project webpage below:

<http://consensus.fsu.edu/FBC/index.html>

Agenda Review and Approval

The Commission voted unanimously, 14 - 0 in favor, to approve the agenda as presented including the following objectives:

- To Approve Workshop Agenda
- To Conduct a Rule Adoption Hearing on Rule 9N-3, Product Approval

Rule Adoption Hearing on Rule 9N-3, Product Approval

At the June 2010 meeting the Commission voted to proceed with rule adoption for Rule 9N-3 (9N-3.002, 9N-3.007, 9N-3.008), Product Approval {f.k.a. Rule 9B-72}, to implement HB 663 product approval provisions, including expedited product approval for the certification method and revision to the list of approved evaluation entities. At the August 2010 meeting the Commission conducted a rule development workshop, and voted unanimously to proceed with rule adoption for Rule 9N-3 (9N-3.002, 9N-3.007, 9N-3.008), Product Approval, subject to the POC's recommendations, by conducting a rule adoption hearing by teleconference only if requested, otherwise proceeding without a hearing, and filing the rule with the Secretary of State and authorizing the Secretary of DCA to sign-off on any required rule certification(s).

Subsequently a request was made for a rule adoption hearing for the purpose of providing additional clarity to the web-based product approval screen.

The September 2010 rule adoption hearing provided an additional opportunity for public comment before the Commission voted to proceed with rule adoption.

The Rule Development Workshop was opened and an opportunity was presented for public comment. Members of the public provided comment, primarily in support of the written comments provided by Kari Hebrank (*See Attachment 1—Public Comment*). At the conclusion of public comment, the public comment portion of the hearing was closed, an opportunity was offered for Commission discussion, and the Commission took the following action:

Commission Actions:

Motion—The Commission voted unanimously, 15 - 0 in favor, to proceed with rule adoption for Rule 9N-3 (9N-3.002, 9N-3.007, 9N-3.008), Product Approval, incorporating the suggested language changes*, publishing a Notice of Proposed Change, proceeding with rule adoption without an additional hearing, authorizing the Rule to be effective on November 1, 2010, filing the rule with the Secretary of State, and authorizing the Secretary of DCA to sign-off on any required rule certification(s).

* Adopted changes: revise the web-based product approval screen language as follows:

“Approved by DCA.”

“Approvals by DCA shall be reviewed and ratified by the POC and/or the Commission if necessary.”

(*Attachment 2—Proposed Rule Draft*)

Adjourn

The Commission voted unanimously, 15 – 0 in favor, to adjourn at 10:22 AM.

ATTACHMENT 1
SUBMITTED PUBLIC COMMENT

September 16, 2010

Mo Madani, CBO, Technical Unit Manager
Building Code and Standards
Florida Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, FL 32399-2100

Dear Mr. Madani,

The purpose of this letter is to formally express concerns with the proposed changes to Rule 9N-3, relating to the product approval rule. Specifically, my clients have concerns with the proposed subscript wording that would be included on the Building Code Information System (BCIS) for those products which receive state product approval through the new expedited product approval process. Additionally, there are concerns with respect to manufacturers having to split the credit card payments for product approval between the department and the program administrator. First, the proposed subscript wording-- "*Approved by DCA subject to review and ratification by the POC and/or the Commission if necessary*"-- implies that the product is approved by the department upon review and ratification by the Product Approval Program Oversight Committee (POC) or Commission which is totally counter to the law. Products are to be approved by the department and then subsequent to approval, ratification occurs; products are not approved "subject to" ratification. It is imperative that the subscript wording on the BCIS reflects that the product is approved for use immediately upon department approval; otherwise, building officials could interpret the wording to indicate that the products may not be used until ratification occurs. **We suggest that the subscript wording on review and ratification be changed to reflect the law by stating: "Approved for use by DCA. Approvals by DCA shall be reviewed and ratified by the POC and/ or the Commission if necessary."**

Our suggested language clearly indicates that an action will occur, but the product approval is not "in limbo" until review and ratification. Moreover, we respectfully request that the department prepare a memorandum clearly explaining to the building officials and other

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stakeholders the new expedited product approval process, emphasizing that the products are available for use immediately upon department approval. It is extremely critical that we educate the building officials so as not to cause unnecessary delays in getting approved products to market. Secondly, with regards to the split payments for product approval, we believe that this could potentially become an onerous process for the product manufacturers. It is unclear as to whether all of the credit card information will have to be input more than once in order to split the payments between the department and the program administrator.

As always, I appreciate your willingness to heed the concerns of those most impacted by these changes and I look forward to working with you and the department to craft a workable solution.

Sincerely yours,

Kari Hebrank

ATTACHMENT 2

PROPOSED RULE DRAFT

Notice of Proposed Rule

DEPARTMENT OF COMMUNITY AFFAIRS

Florida Building Commission

Rule No.: RULE TITLE

9N-3.002: Definitions

9N-3.007: Product Approval by the Commission

9N-3.008: Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies

9N-3.011: Forms

PURPOSE AND EFFECT: The purpose of the rule development workshop is to implement section 39, chapter 2010-176, Laws of Florida, and create an expedited method of product approval for products certified to comply with the Florida Building Code and repeal means by which the Florida Building Commission approves evaluation entities in addition to those identified in statute. To update the forms/BCIS (Building Code Information System) to update the payment screens and to add provision for approval of product by DCA

SUMMARY: To update the forms/BCIS (Building Code Information System) to update the payment screens and to add provision for approval of certain products by DCA subject to ratification by the Florida Building Commission.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: No Statement of Estimated Regulatory Cost was prepared.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

SPECIFIC AUTHORITY: 553.77(1)(i), 553.842(1), (8) FS.

LAW IMPLEMENTED: 553.842(1), (8) FS.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: Participation by communications media technology available as follows: Conference call, telephone number 888-808-6959, Conference Code: 1967168

September 21, 2010; 10:00 a.m.

PLACE: Room 250L, Sadowski Building, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 7 days before the workshop/meeting by contacting: Mo Madani, Planning Manager, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)921-2247. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Mo Madani, Planning Manager, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100,

(850)921-2247.

THE FULL TEXT OF THE PROPOSED RULE IS:

9N-3.002 Definitions.

The following terms have the meanings indicated:

(1) through (14) No change.

(15) Department means Florida Department of Community Affairs.

(15) through (22) renumbered; (16) through (23) No change.

~~(24)(23)~~ Product Approval:

State product approval means the approval of a product or system of construction by the Commission for acceptance of a product on a state or regional basis consistent with an evaluation conducted pursuant to Rule 9N-3.005, F.A.C. In addition, this includes the approval of a product by the Department pursuant to Rule 9N-3.007(1)(d).

(24) through (30) renumbered; (25) through (31) No change.

(32) Technically relevant means in accordance with this rule and or the applicable provisions of the Florida Building Code.

(32) through (35) renumbered; (34) through (37) No change.

Rulemaking Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History—New 5-5-02, Amended 9-4-03, 11-22-06, 4-10-08, Formerly 9B-72.010 Amended.

9N-3.007 Product Approval by the Commission.

(1) Approval of a product or system of construction for state acceptance shall be performed by the Commission through the following steps:

(a) and (b) No change.

(c) With exception to product applications submitted pursuant to Rule 9N-3.0035(1)(a), F.A.C., Upon Commission acceptance of the required documentation pursuant to Rule 9N-3.005, F.A.C., and validation of compliance with the Code pursuant to Rule 9N-3.006, F.A.C., the Commission may approve the product for use statewide in accordance with its approval and limitations of use unless credible evidence is provided questioning the validity of the documentation submitted in support of the application for approval.

(d) Product Application that rely upon a product certification mark or listing from an approved certification agency shall be approved for use statewide in accordance with its approval and limitations of use to demonstrate compliance with the Code as follows:

1. An application of a product submitted for state acceptance pursuant to Rule 9N-3.005(1)(a), F.A.C., shall be approved by the Department after the Program System Administrator (the Administrator” verifies that the application and required documentation as per Rule 9N-3.006, F.A.C., are complete.

2. The verification by the Administrator must be completed within 10 business days after receipt of the application.

3. Upon approval by the Department, the Administrator shall add approved products to the list of the state-approved products maintained by the BCIS. Approvals by the Department shall be reviewed and ratified by the Commission’s Program Oversight Committee (“POC” except for a showing of good cause that a review by the full Commission is necessary.

4. For the purpose of curing deficiencies identified within product applications approved under this section, the following steps will be undertaken:

a. If a comment is received on a Department approved Product, the Administrator shall immediately evaluate the comment and determine whether the comment is technically relevant;

b. If the comment as determined by the Administrator is technically significant, the Administrator shall post the comment received in the comment box for the application;

c. The Administrator shall immediately notify the manufacturer of the comment received on his or her application requesting that the manufacturer respond to the comment and revise the application as deemed necessary; and

d. An outstanding comment(s) shall be subject to review and determination by the POC, except for a showing of good cause that a review and determination by the full Commission is necessary.

(d) through (g) renumbered (e) through (h) No change.

(2) Fees for state approval of products.

(a) through (3) No change.

Rulemaking Authority 553.77(1)(i), 553.842(1) FS. Law Implemented 553.842(1) FS. History—New 5-5-02, Amended 9-4-03, 11-22-06, 5-21-09, 10-28-09, Formerly 9B-72.090, Amended _____.

9N-3.008 Approval of Product Evaluation Entities, Product Validation Entities, Testing Laboratories, Certification Agencies, Quality Assurance Agencies and Accreditation Bodies.

(1) through (a)1. No change.

~~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);~~

2.5. The Miami-Dade County Building Code Compliance Office Product Control Division (MDCBCCOPCD);

~~3.6.~~ The International Code Council, International Evaluation Services (IES); and

~~4.7.~~ The International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO).

(b) No change.

~~(c) Evaluation entities and certification agencies accredited as meeting the requirements of ISO/IEC Guide 65, adopted by reference in Rule 9N-3.016, F.A.C., 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 9N-3.008(1)(a), F.A.C., above shall be amended to include the applicant as an evaluation entity.~~

(2) Approved Validation Entities.

(a) through (c) No change.

(3) through (6) No change.

Rulemaking Authority 553.842(8) FS. Law Implemented 553.842(8) FS. History—New 5-5-02, Amended 9-4-03, 3-9-04, 11-22-06, 4-10-08, 12-9-09, Formerly 9B-72.100.

9N-3.011 Forms.

The following forms are adopted for use in reference to the Product Evaluation and Approval System. Copies of these forms are available from the Department of Community Affairs, Codes and Standards Section, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399, and via the Building Codes Information System on the Internet, www.floridabuilding.org.

(1) Florida Building Commission, Application for Organization/Entity Approval, Form No. 9B-72.130(1), effective _____ ~~November 10, 2009~~ (electronic version).

(2) Florida Building Commission, Application for State Product Approvals, Form No. 9B-72.130(2), effective _____ ~~November 10, 2009~~ (electronic version). New and revised applications received after January 11, 2010 shall be limited to a maximum of 150 product sequence numbers. This limitation shall not be applicable to editorial revision or affirmation of an existing application.

(3) No change.

Rulemaking Authority 553.842(1) FS. Law Implemented 553.842(1) FS. History—New 5-5-02, Amended 9-4-03, 11-22-06, 4-10-08, 3-2-10, Formerly 9B-72.130, Amended.

NAME OF PERSON ORIGINATING PROPOSED RULE: Mo Madani, Planning Manager, Department of Community Affairs, 2555 Shumard Oak Boulevard, Sadowski Building, Tallahassee, Florida 32399-2100, (850)921-2247.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Florida Building Commission

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: August 10, 2010

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: July 23, 2010