

**STATE OF FLORIDA
BUILDING COMMISSION**

In the Matter of

JOSEPH HETZEL, P.E.,
DOOR AND ACCESS SYSTEMS
MANUFACTURERS ASSOCIATION

Case #: DCA05 DEC-245

Petitioner.

_____ /

DECLARATORY STATEMENT

The foregoing proceeding came before the Florida Building Commission (the "Commission") by a petition from Joseph Hetzel, P.E. of Door and Access Systems Manufacturers Association ("DASMA"), (the "Petitioner"), which was received on December 27, 2005. Based upon the statements in the Petition and the materials subsequently submitted, it is hereby ORDERED:

Findings of Fact

1. The petition is filed pursuant to § 120.565, Florida Statutes, and must conform to the requirements of Rule 28-105.002, Florida Administrative Code.
2. DASMA is an association of manufacturers whose members produce products subject to product approval pursuant to Chapter 9B-72, Florida Administrative Code.
3. Petitioner is interested in the application of Rule 9B-72.070(4)(d), Florida Administrative Code, to evaluation report and test report documentation requirements because in obtaining a state product approval for one of their garage door product lines, Petitioner compiled a considerable amount of information through testing and rational

analysis, the total amount of information from which, if printed out, would amount to multiple 3" binders, making it overly burdensome to upload onto a website.

4. The Petitioner asks whether the language of the Rule, which became effective January 1, 2006, means that all substantiating data must be uploaded to the Department of Community Affairs ("DCA") website. If the answer is "No," Petitioner asks whether substantiating data will be handled by both manufacturers and the DCA the same way as under the old Rule.

CONCLUSIONS OF LAW

1. The Florida Building Commission has the specific statutory authority to interpret the provisions of Chapter 9B-72 of the Florida Administrative Code by entering a declaratory statement.

2. Rule 9B-72.070(4)(d), Florida Administrative Code provides the requirements for data to be submitted in support of an approval based upon an evaluation report and a test report, and includes:

Technical documentation, including all substantiating data, supporting the compliance statement. Substantiating data shall include all test reports and calculations which may be referenced within the evaluation report; and....

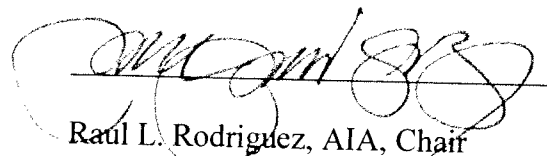
3. Reading Rule 9B-72.070(4)(d) to require all substantiating data to be uploaded leads to an incorrect result. The rules of statutory construction, which govern generally the interpretation of rules, mandate that effect should be given to the plain language of a rule unless to do so would yield an absurd result. The intent of Rule 9B-72.070(4)(d) is that the data itself not be submitted, but identified within the evaluation report with sufficient specificity to allow a user of the system to locate the materials if desired. *See*

Facilitator's Report, March 28-29, 2005, Meeting of the Product Approval Work Group, page 1).

4. With regard to compliance using an evaluation report from an approved evaluation entity, substantiating data such as testing data or rational calculations are not required to be included in the evaluation report as long as they are referenced within the evaluation report.

Petitioner and all other interested parties are hereby advised of their right to seek judicial review of this Order in accordance with § 120.68(2)(a), Fla. Stat. (2004), and with Fla. R. App. P. 9.030(b)(1)(C) and 9.110(a). To initiate an appeal, a Notice of Appeal must be filed with Paula P. Ford, Clerk of the Commission, Sadowski Building, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, and with the appropriate District Court of Appeal not later than thirty (30) days after this Order is filed with the Clerk of the Commission. A Notice of Appeal filed with the District Court of Appeal shall be accompanied by the filing fee specified by section 35.22(3), Fla. Stat. (2004).

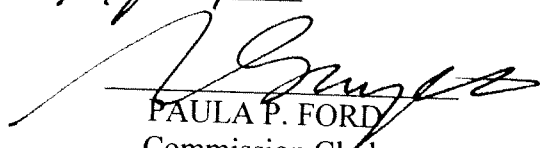
DONE AND ORDERED this 12th day of April, 2006, in Coral Gables, Miami-Dade County, State of Florida.



Raul L. Rodriguez, AIA, Chair
Florida Building Commission
Department of Community Affairs
Sadowski Building
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to the following by the method indicated on this 14 day of April, 2006.


PAULA P. FORD
Commission Clerk

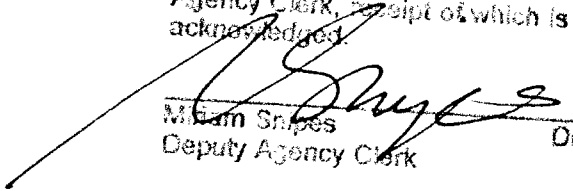
Via U.S. Mail:

Joseph Hetzel, P.E.
DASMA
1300 Sumner Avenue
Cleveland, OH 44115

Via Hand Delivery

Mo Madani, Planning Manager
Codes and Standards Section
Department of Community Affairs
2555 Shumard Oak Boulevard
Tallahassee, Florida 32399-2100

FILING AND ACKNOWLEDGEMENT
FILED, on this date, with the designated
Agency Clerk, receipt of which is hereby
acknowledged.


Miriam Snipes
Deputy Agency Clerk

4/14/06
Date