

Rule 9B-72.090 Product Approval by the Commission

Minutes from the February 17th 2009 Rule Hearing

Post March 16, 2009 Commission meeting

Proposed Rule Change	Comments by the Public: Written Comments received as of February 13 th 2009	POC Comments to the Hearing Feb 2 2009:
(1)(a) through (d) No change.		
<p>(e) When a new edition of the Code does not require a material or substantive change for an approved product, the manufacturer of the approved product shall affirm that his or her approved product meets the new edition of the Code. <u>As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from the original evaluation entity necessary to certify that the product complies with the subsequent code version via an attachment uploaded and submitted through the BCIS.</u> Self-affirmation is subject to review and verification by the Program Administrator.</p>	<p>After much discussion between the Florida Building Materials Association representative the FMA, WDMA members and numerous individual window manufacturers, it was concluded that our industry would like to request time before the Florida Product Approval POC on Monday, Feb. 2 to explain why our industry cannot accept the proposed language as advertised in the Florida Administrative Weekly.</p> <p>We will be more than happy to provide proposed compromise language prior to the hearing scheduled for Feb. 17, 2009. However, it is imperative to resolve these differences before the teleconference. As you are painfully aware, to take the time to flesh out these issues on a Commission conference call is not practical nor fair to other folks with a different set of issues.</p> <p>Specifically, we oppose the requirement to have the "engineer of record" (evaluation entity) be the only party to sign -off on the affirmation and</p>	<p>Revise 9B-72.090(1)(e) to read as follows:</p> <p>(e) When a new edition of the Code does not require a material or substantive change for an approved product, the manufacturer of the approved product shall affirm that his or her approved product meets the new edition of the Code. <u>As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from an approved evaluation or original validation entity that the product complies with the subsequent code version via an attachment uploaded and submitted through the BCIS.</u> Self-affirmation is subject to review and verification by the Program Administrator.</p> <p>Note: Commission approved the above language as noted at the 3/16/09 Commission meeting</p>

	<p>would like to add the validation entity to the list of certifiers.</p> <p>Regards: Dick</p> <hr/> <p>I am writing to offer a suggested improvement to the proposed revision to Rule 9B-72.090, regarding self-affirmation of State Product Approvals when the evaluation report refers to the previous edition of the Florida Building Code.</p> <p>I believe only permitting uploading of additional documentation from the original evaluating entity is overly restrictive. Evaluation entities may not want to provide this service or may not provide it at an affordable cost. I suggest that, in addition to allowing the original evaluation entity, that the original validation entity can also provide the documentation. The original validator should be familiar with the product being evaluated, and of the code requirements for that product, so should be able to tell if the new code contains provisions that would limit the applicability of that product. I also propose deleting the words “necessary to certify” because it is not clear who is certifying. The uploaded document should just be a statement that the product complies with the new code.</p> <p>So what I propose is this (new wording in blue): (e) When a new edition of the Code does not require a material or substantive change for an</p>	<p>Via a conference call.</p>
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approved product, the manufacturer of the approved product shall affirm that his or her approved product meets the new edition of the Code. As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from the original evaluation entity **or original validation entity** necessary to certify that the product complies with the subsequent code version via an attachment uploaded and submitted through the BCIS. Self-affirmation is subject to review and verification by the Program Administrator.

Thank you for your consideration.

Sincerely,
Simpson Strong-Tie Co.
Randall Shackelford, P.E.

As query proposed text insertions above what would happen if the testing laboratory, the engineer, or other certifying entity were not in business anymore or are unavailable or the Manufacturer did not want to use them again. If the testing laboratory were truly independent that in essence the test results are unbiased and need just be interpreted by a professional engineer. In the context as defined above, the manufacturer due to code changes would then have to retest

	<p>their systems even though nothing or minor changes were implemented.</p> <p>As the codes keep changing the code forms a guide in which the design is applied. In my experience as a structural engineer, when designs are calculated for tall structures in accordance with ASCE7 the wind loads are significantly higher than those that have been designed in accordance with the loading that are derived for wind tunnel testing. Not all projects can be wind tunnel tested. Testing and retesting due to code changes becomes time consuming and a financial burden to the manufactures of which they have to pass onto the consumers. An argument could be made that required maintenance would be delayed making the structure less safe instead performing as originally intended. I recommend the following:</p> <p>As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from the original evaluation entity or a professional engineer licensed in the State, necessary to certify that the product complies with the subsequent code version via an attachment uploaded and submitted through the BCIS. Minor changes could be made to systems that would improve the performance of the system could be approved with the changes provided they are performed by the Licensed Professional Engineer.</p>	
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Mark deStefano

Dear Commission:
We are writing to express concerns that ICC Evaluation Service has with changes being proposed to Rule 9B-72.090 that you will be considering at your hearing on February 17, 2009. More specifically, we have concerns with changes being proposed by the Product Approval Process Oversight Committee (POC).
In the paragraph below we have reproduced section 9B-72.090(1)(e) as proposed by the POC with changes we are proposing (in underline/strikeout format) that will resolve our concerns.
(e) When a new edition of the Code does not require a material or substantive change for an approved product, the manufacturer of the approved product shall affirm that his or her approved product meets the new edition of the Code. As part of application for self-affirmation, if the evaluation report refers to the previous edition of the Code, the manufacturer of the approved product shall submit a statement from an approved the evaluation entity that issued the evaluation report or the original validation entity, if there was one, that the product complies with the

	<p>subsequent code version via an attachment uploaded and submitted through the BCIS. Self-affirmation is subject to review and verification by the Program Administrator.</p> <p>The reason for our proposed change is that we do not believe it is appropriate for an evaluation entity to advise the State of Florida about the suitability of an evaluation report issued by another evaluation entity as it concerns conformance with a newer edition of the code. There are a number of reasons.</p> <p>Some of those reasons are enumerated as follows:</p> <ol style="list-style-type: none">1. We believe that only the evaluation entity that issues an evaluation report understands the data and issues that formed the basis for its decision to issue a given evaluation report. This is particularly true when the product being evaluated is an alternative material for which there are limited or no code provisions that explicitly apply.2. There are a number of concerns that might arise should parties use evaluation reports for purposes never intended. For example, we believe that an evaluation entity certifying a report prepared by another entity as complying with a newer code edition cannot responsibly do this without access to the technical data on which the report was issued.	
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	<p>We do not believe this would be prudent nor do we believe it advisable for the State of Florida to base approval of a product on such a certification.</p> <p>3. Similar to item 2, we do not believe that users of evaluation reports issued by one evaluation entity that are certified for a newer code by another evaluation entity will have the proper technical Florida Building Commission February 10, 2009 2 support for questions that could arise in using those reports. Any questions concerning the report would have to be addressed by the evaluation entity that certified the report under the newer code edition. We question whether that entity would possess adequate information to respond to questions in an effective manner and whether users of the evaluation report would know who to contact for proper answers to their questions.</p> <p>4. The evaluation requirements related to alternative materials must be current with recent knowledge gained since first recognized. Since this type of information is not necessarily contained in newer code editions, it is inappropriate for an evaluation entity to judge whether a given product complies with a newer edition of the code solely on the basis of comparing the two editions of the code. We believe comparing code editions will be the likely means by which an evaluation entity certifying</p>	
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	<p>another entity's report to a newer code edition will perform this task since it will likely not have adequate knowledge of the evaluation report, the data on which it is based, and the current state of knowledge that the entity who wrote the report would have relative to a given alternative material.</p> <p>Please feel free to contact me if you have any questions. I plan to participate in the hearing on February 17, 2009, by telephone and will be available to respond to questions if requested to do so.</p> <p>Thank you in advance for considering our comments.</p> <p>Sincerely, Gary G. Nichols, PE Vice President</p> <hr/> <p>Comments from Kari Hebrank and Robert Lutz are below. See page # 9</p> <p>See also the verbal comments received at the Rule Hearing on page # 18</p>	
(f) and (g) No change.		
(2) and (3) No change.		

February 13, 2009

Azar Khan

Product Approval

Florida Department of Community Affairs

2555 Shumard Oak Boulevard

Sadowski Building

Tallahassee, FL 32399-2100

RE: Comments on Proposed Changes to Rule 9B-72.090, Self-Affirmation

Dear Mr. Khan,

The purpose of this letter is to comment on the proposed revision to Rule 9B-72.090, relating to self-affirmation of state product approvals when the evaluation report refers to the previous edition of the Florida Building Code (Code).

The initial idea for self-affirmation was for product manufacturers to be able to self-affirm that their approved product meets the new edition of the Code when such edition does not require a material or substantive change, with the understanding that they risk having their product approval revoked if the information submitted to the Program Administrator is incorrect. Keep in mind that the manufacturer must still provide certification data when self-affirming that their approved product complies with the Code. Additionally, manufacturers are only “self-affirming” products that have already received state approval; hence, they are not seeking a new product approval, and thus should not have to submit a statement from the *original evaluation entity* as indicated in the proposed rule change.

Clearly, it makes no sense to require the *original* evaluation entity to affirm for the manufacturer that the approved product meets the Code. The original evaluation entity may no longer exist—people change vocations, move locations and unfortunately, even die—how is a product manufacturer supposed to address those issues if forced to use the *original* evaluation entity?

Furthermore, an engineer's work is bound by his license, so any engineer serving as the evaluation entity should be able to self-affirm for a manufacturer when the evaluation report references a previous edition of the Code that the product complies with the newer

Mr. Azhar Khan

February 13, 2009

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Code edition. Moreover, many times product manufacturers will acquire a company and they do not want to utilize the original engineer for business purposes, nor should they be forced to do so. Additionally, a validation entity should also be able to self-affirm for the manufacturer when the evaluation report specifically references a previous code edition, as should the manufacturer's listed technical director who is most familiar with the approved product.

Self-affirmation should not be a costly, complex process. For example, if the 2004 Code references a specific product standard and if the 2007 Code references the same standard for the same approved product, even though the date of the code differs, there is no variance with the product's compliance with the Code. Requiring additional layers of review by the *original* evaluation entity for self-affirmation just drives up an already exorbitant costly product approval process without any added benefit. The manufacturer has already paid to have his product designed, developed, manufactured, tested, evaluated, reviewed, validated and then paid to have it

checked all over again by the Product Approval Program Oversight Committee, the Program Administrator and the Florida Building Commission!

On behalf of product manufacturers and building material suppliers, I respectfully request that you revise Rule 9B-72.090 to strike the term “*original evaluation entity*” and instead allow an evaluation entity, a validation entity or a manufacturer’s listed technical representative to self-affirm that an approved product complies with the subsequent code edition. The “hammer” for the Commission is the threat of revocation for any product for manufacturers that fail to self-affirm in a manner that clearly demonstrates code compliance.

Thank you for your consideration.

Sincerely yours,

Kari Hebrank

Cc: Senator Mike Bennett

Representative Carlos Lopez-Cantera

Illa Jones, Program Administrator, Florida Department of Community Affairs

11 February 2009

Florida Building Commission
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399

Subject: Product Approval Rule 9B-72.090 and 9B-72.180 proposed workshop changes

Ref: Comments concerning proposed changes

To the Committee, Commission, and whom it may concern:

This proposed change is an attempt to provide some workable language whereby an approved product can maintain its status as an approved product when some change has been made to the Florida Building Code, or any of its referenced standards, that may or may not impact the suitability of the product to the new Code or Standard. Reviewing the Comments thus far submitting, and the comments of those in attendance at the last meeting, makes it apparent that we are often talking at cross-purposes. Consequently, specific concerns of particular groups impacted by this and other changes to the Product Approval System are not being given proper consideration. All participants approach this process with specific points of view.

For example, Mr. Gascon and Mr. Kidwell seem to view the product approvals as Engineered Solutions that are provided by Florida Licensed Professional Engineers. Their comments concerning “Successor Engineers” providing modifications to reports not issued by the originator of the report reflect one view. This may be true for reports using the Evaluation Report by Professional Engineer, and reports with NOA’s by Miami-Dade Building Code Compliance Office. Both of these reports require SIGNED/SEALED documents from FLORIDA REGISTERED Professional Engineers.

As such, these reports are subject to the Rules of the Florida Board of Professional Engineers. These clearly show the Engineer who wrote the report, along with a copy of the original signature and seal. These would be subject to the Rules of the Board or Engineers. For the Test Report Method, the LAB must be an approved Lab, and I believe in some cases requires a Florida Professional Engineer to provide the report, so these reports may also reflect reports subject to those rules.

However, ICC-ES, Underwriter Labs, and Agencies like AAMA, don’t provide reports signed/sealed by a Florida Professional Engineer. Instead, they are “Entities” recognized by the Florida Building Commission that provide independent evaluations of products with agents which may or may not be Florida Professional Engineers (in most cases not). Nonetheless, these Entity’s reports are recognized as sufficient proof of meeting the Florida Building Code. As such, there is NO “Successor Engineer”, as there is no engineer who Signs/ Seals the final report or drawing.

In other cases, as with AAMA, a Florida Professional Engineer may have provided Installation Instructions and Drawings, but the Certification is signed by AAMA and/or their Lab representatives. Therefore, a “successor engineer” case could be made for the

Installation portion of the submittal, but not for the Certification of the product. These Certifications and Evaluations are considered Engineered Designs by virtue of their recognition by the Florida Building Commission, but they have not been signed and sealed by a Licensed Florida Professional Engineer. Additionally, Entities providing Engineered Reports (Corporation/partnership/ or sole proprietorship) require REGISTRATION with the Florida Board of Professional Engineers as an Engineering Company (Certificate of Authorization). These do not. They are recognized as special “ENTITIES” by the Florida Building Commission with the privilege of providing reports or listings of products complying with the Florida Building Code. Consequently, the case for a “Successor Engineer”, licensed by the State of Florida is moot. There was not an Engineer that signed and sealed the submitted report.

The “successor engineer” viewpoint is that someone “REVISING” an engineering report. This is may not be a valid assumption. Engineers are responsible under the Licensing Laws to be responsible for the content of their reports. If an engineer Signs/Seals any document, they are certifying that it meets whatever Code/Standard or Rule would apply to the document at the time it was executed. Usually the Document will specify the specific codes/standards that govern the report. Once released, if it is a published document for filing with a government agency, the report becomes Public Domain. Other persons can rely on the information in the report and the Engineer signing the report can be held liable for any errors or omissions in the report. They cannot “rescind” the report, except by filing another successor report. In the absence of any new report published, it should be assumed that all information contained in the report can be relied upon as true and accurate. Therefore, if the report references a specific Standard, regardless of whether it specifies a specific Code Version, then the report should be accurate to the Standard, until the Standard is revised. It is reasonable to assume that the report can be relied upon until those changes take effect. The question then becomes whether a change in a Standard would be significant enough to impact the report. If not, then the report should still be valid.

It is currently being accepted that a change in a Standard invalidates the report. I believe this should not always be the case. In many referenced standards, such as the Publications of the American Forest and Paper Association’s National Design Specification for Wood Construction , year-to-year changes in sections of the publication have not been made, most particularly the load capacity tables for fasteners used for shear capacities with steel side plates. It is therefore unreasonable to invalidate an existing report based on changes that do not impact the original document. Some knowledge of the impact of changes in Standards is required.

It may therefore be appropriate to have a Professional Engineer review the documents to determine if they are still valid based on changes in the Code or specific Standards within the Code. This is not REVISING an existing report, and therefore the concept of a “successor” should not be applicable. It is simply reviewing the standards explicitly outlined in a report and providing a professional opinion as to whether those Standards are still applicable. This is very much the same concept in using a “VALIDATOR” as currently exists in the Product Approval System. The Validator is not a “successor engineer”. He is not modifying, and “taking over” an existing engineers report. He is simply providing his opinion that the report, as written, meets the current standards and Code version for which it is submitted. I disagree that the ORIGINAL Validator needs to provide this review. He simply must be familiar with the documents submitted and the current requirements of the code and how the two compare.

The other issue is specific Code Versions. Some Entities, such as ICC-ES prefer to list specific Code Versions. While they list specific Standards in the Acceptance Criteria Section of their reports, their position is the report is only good for the Code version referenced. Therefore, whenever a new Code is issued, they must review the report to determine if the new Code changes will affect the report. In many cases it will not. Even so, they have set a limitation on the use based on Specific Code versions. ICC-ES has been ambivalent about certifying products to the FLORIDA BUILDING CODE. In the first edition of the Florida Code in 2001, ICC-ES issued 2 reports to our company stating compliance with the 2001 Florida Building Code.

Later, ICC-ES decided that they would not issue code compliance statements specific to the Florida Building Code due to actions that could be taken by the Florida Building Commission. Nonetheless, volumes of reports have been submitted and approved based on various versions of the ICC Codes, none of which specified the Florida Building Code. What this clearly means is that these reports do, in fact, meet the Florida Building Code, even though not implicitly stated in the report. Therefore, it is a matter of interpretation as to whether or not any published report should be accepted as meeting specific Florida Building Codes.

ICC-ES has recently rescinded their earlier decision to write into their reports compliance with the Florida Building Code 2007. If so, then why it would be acceptable to submit any reports that do not specifically state that they are Florida Building Code Compliant? Obviously, we are doing so based on the Standards used in the report, given in the Acceptance Criteria Section of their reports. Since this is allowed, it should be reasonable to assume that any report that ICC-ES issues that references specific standards should be

acceptable, so long as those Standards are part of the latest Florida Building Code. If the Standards listed in the report and the new Standards are the same or could be proven as “equivalent”, then there should be no reason to not accept the report.

ICC-ES has taken the position that they “will not stand by the report”. I am uncertain what that means. Does ICC-ES issue reports for engineered products, or does ICC-ES simply provide a listing that can be removed from its “listed” status at their discretion? Once a report is issued, is the information retained in the report the sole property of ICC-ES, or does it become public domain? In reality, they simply publish a report that says they have reviewed the information submitted and agree with the published loads and the Standards used. Miami-Dade BCCO functions in much the same way. Additionally, while MDBCCO supports only Standards within the Florida Building Code, ICC-ES is not so constrained.

Recently, ICC-ES has gone from using Acceptance Criteria written by Standards Writing Agencies such as ASTM, to writing Standards themselves. While various members of the building community were invited to participate in the drafting of these Acceptance Criteria (Specifically AC155 and AC398), these are not Standards that are recognized by any entities, other than ICC-ES. These Acceptance Criteria specifically relate to Hold-down Anchors in general, and Hold-down Anchors in Concrete. Previously, no Standard existed to specifically test these type products and they were tested under ASTM D1761. That is the Standard that has been used by MDBCCO and other entities and used in ALL versions of the Florida Code, including the current one. With the development of these Acceptance Criteria in late 2008, ICC-ES has withdrawn all of our company products, (along with other companies), from all our previous ICC-ES reports that had such products and issued new reports without these products. In effect, ICC-ES is retro-actively removing products that were previously acceptable to the IBC 2006 Code, the same code that is the basis of the Florida Building Code 2007. They are now requiring all manufacturers to begin new testing under these new criteria for Acceptance to the latest I-Codes.

Unfortunately, the Florida Building Commission has not accepted AC155 or AC398, nor have they ever accepted any of the ICC-ES Acceptance Criteria reports as a basis for complying with the Florida Building Code. All Product Approvals have been based on Standards outlined in the reports. There is no equivalent Standard by any recognized STANDARDS WRITING AGENCY. We believe that the new reports, under the new Acceptance Criteria, will eventually be accepted when submitted by virtue of their source

of Origination, ICC-ES, however, the Florida Building Commission will need to find an basis for acceptance. This, of course, begs the question as the validity of the reports from which products were removed, or were not renewed.

In spite of ICC-ES's contention that they will not "stand by" their original reports, it is our belief that these reports should still be allowed as the basis for meeting the 2007 Florida Building Code, by virtue of the fact that they would have been Acceptable to ICC-ES had a new Acceptance Criteria not been written and retro-actively imposed. Engineers, Architects, other evaluation entities and MDBBCO are still using the Standards referenced in the Florida Building Code, to wit: ASTM D1761 (2000). Because of this conflict, we believe the "Affirmation:" process of submitting the "old" reports as current to the Florida Building Code 2007 should be acceptable. These reports are simply submitted as evidence of meeting the current code. To re-iterate the previous points, these are not reports Signed/Sealed by a Professional Engineer. Therefore there is no "successor engineer". They are being submitted as public domain reports that specifically state what Standards were used to determine acceptable load capacities at the time these reports were issued. There is still room to debate the process whereby "affirmation" would be allowed, but I would submit that this method should be allowed.

Regards,

Robert W. Lutz, P.E.

Eastern Region Engineering Manager

USP Structural Connectors

Largo, Florida 33773

Verbal Comments received at the Rule Hearing

Kari Hebrank – FBMA: Recommends that an engineer should be able to verify if there are no changes and applicants shouldn't be paying money if there are no changes in the code that affect the application. Report from the original evaluation entity should not be required.

Jaime Gascon: In support of the original language that was proposed. However, he will also support language that incorporates validator to be able to supply documentation as per Randy's comments.

Gary Nichols: It is not appropriate for one entity to advise on another's evaluation entity product. The issue is not only that a standard has changed as there might be other issues when no standard is available in the code, which might affect product approval and compliance with the code.

Randy Shackelford: Supports POC's comments. Manufacturers should have an option other than the original evaluation entity in case there is a time crunch or if they are no longer around and supports language from the POC.

Steve Strawn: Supports Kari and Randy and would also like to see manufacturer's technical representative included as an option.

Bob Lutz: Agrees with Kari as there has to be a way to look at it other than the original evaluation entity. One option would be to a PE to look at it. He supports another person validating the prior submission.

Chuck Anderson: Two comments: Language applies to certification method. Mo answered as affirmative. This is applied across all methods. He stated that at a previous FBC meeting it was decided that if a manufacturer has code reference, documentation would not be required and that applicants would be okay to submit affirmation. For example, applicants were being told they were needed to have a note and that PE's might be requiring a note that the product complies with the new code. This does not make the application ineligible.

Discussion was around standards while the language proposed talks about previous code versions and doesn't reference the standards that are referenced in the code.

Bud Bulley: Proposal refers to evaluation report that has references to previous editions of the code. This terminology does not cover other methods. He agrees with ICC original third party affirmation of a certified product should not be done by the original entity. For certification mark or listing that covers the product, that entity should be the only entity to validate and if the entity is no longer available, the question is, is the validation report valid? If the listing expires or is withdrawn, then the approval is no longer valid.

Refers to standards referenced in the code and a simple solution would be to add to .180, the different standards such as E330 and so on.

Dick Wilhelm FMA WDMA: Supports Anderson with AAMA also agrees with Shackelford, Strawn and Hebrank as most applicants do the certification methods. Perhaps this is a much more detailed subject if it's causing confusion. Bulley made a good point that if the original evaluation entity cannot be found, is the evaluation still valid. Presently, employees are being lost and it shouldn't have to be the original engineer who provides documentation. He proposes to add validation entity as those who can sign off on the application.

Kari Hebrank: Self affirmation is not a whole new product approval as it only looks at what has changed from the previous edition. She supports evaluation, validation and technical representative to make that determination.