

**Issue: HB 663, Section 39**

Time line for updating Rule 9B-72 based on HB 663:

Discuss and draft proposed rule revision	June 7-8, 2010
Hold rule workshop	August 10, 2010
Hold rule hearing	October 12, 2010
File with the Department of State (if no notice of change)	October 21, 2010
Effective date	November 12, 2010

553.842 Product evaluation and approval:

(1) The Commission shall adopt .....The Commission's rules and any applicable contract may provide that the payment of fees related to approvals be made directly to the administrator. Any fee paid by a product manufacturer shall be used only for funding the product evaluation and approval system.....

(4)..... A product evaluation report or a certification mark or listing of an approved certification agency which demonstrates that the product or method or system of construction complies with the Florida Building Code for the purpose intended shall be equivalent to a test report and test procedure as referenced in the Florida Building Code. An application for state approval of a product under subparagraph 1. must be approved by the department after the commission staff or a designee verifies that the application and related documentation are complete. This verification must be completed within 10 business days after receipt of the application. Upon approval by the department, the product shall be immediately added to the list of state-approved products maintained under subsection (13). Approvals by the department shall be reviewed and ratified by the commission's program oversight committee except for a showing of good cause that a review by the full commission is necessary. The commission shall adopt rules providing means to cure deficiencies identified within submittals for products approved under this paragraph.

(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 approved pursuant to this paragraph ~~that meet the criteria for approval adopted by the commission by rule.~~ The commission shall specifically approve the National Evaluation Service, the International Association of Plumbing and Mechanical Officials Evaluation Service ~~the International Conference of Building Officials Evaluation Services,~~ the International Code Council Evaluation Services, ~~the Building Officials and Code Administrators International Evaluation Services,~~ the Southern Building Code Congress International 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).

(e) Validation entities that comply with accreditation standards established by the commission by rule.

~~(17)(a) 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 determines should be authorized to perform product evaluations 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 rulemaking process must be completed by July 1, 2009.~~

~~(b) Notwithstanding paragraph (8)(a), the International Association of Plumbing and Mechanical Officials Evaluation Services 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 an alternative, 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.~~

**Plan of action:** Revise the Building Code Information System (BCIS) and Rule 9B-72

**BCIS:**

1. Update payment screen(s) to provide for split payment screen necessary to allow payment of fees to be made directly to the Administrator and the Department.
2. Update the BCIS system to add a provision for approval of product by DCA :  
“Approved by DCA subject to review and ratification by the POC and/or the Commission if necessary”

**Update - Rules 9B-72.010, 9B-72. 090, 9B-72.100 and 9B-72.130:**

Revise Rule 9B-72.010, Definitions, as follows:

**9B-72.010 Definitions.**

The following terms have the meanings indicated:

Item (1) – (14) No Change.

Add new definition for the terms “Department” as follows:

(15) Department means Florida Department of Community Affairs.

Revise item #23, Product Approval, as follow:

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 9B-72.070, F.A.C. In addition, this includes the approval of a product by the Department pursuant to Rule 9B-72.090(1) (d).

Revise Rule 9B-72.090, Product Approval by the Commission, as follows:

**9B-72.090 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) Through (b) No change.

(c) With exception to product applications submitted pursuant to Rule 9B-72.070(1)(a), F.A.C., Upon Commission acceptance of the required documentation pursuant to Rule 9B-72.070, F.A.C., and validation of compliance with the Code pursuant to Rule 9B-72.080, 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 contain 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 as follows:

(1) An application of a product submitted for state acceptance pursuant to Rule 9B-72.070(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 9B-72.07.080, 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 significant;

(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;

(d) The manufacturer shall notify his or her customers of the comment received and the change in the status of the product approval; and

(e) The Department shall send a mass email to all interest group available from the BCIS informing them of the change in the product approval status.

( ~~e~~ ) No change to text.

( ~~f~~ e ) No change to text.

(g f) No change to text.

(h g) No change to text.

(2) No change

**Revise 9B-72.100 as follows:**

**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);~~

5-2. The Miami-Dade County Building Code Compliance Office Product Control Division (MDCBCCOPCD);

~~6~~ 3. The International Code Council, International Evaluation Services (IES); and

~~7~~ 4. The International Association of Plumbing and Mechanical Officials Evaluation Service (IAPMO).

(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, adopted by reference in Rule 9B-72.190, 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 9B-72.100(1)(a), F.A.C., above shall be amended to include the applicant as an evaluation entity.~~

(2) Approved Validation Entities. No change.