Background of Florida Product Approval Application Validation

The original version of section 553.842, Florida Statutes, enacted in 1998 required:
“(5) Statewide and local approval of products or methods or systems of construction shall be achieved by:
(a) Submittal and validation of a product evaluation report from an approved product evaluation entity…
(b) Submittal and validation of a product evaluation report or rational analysis which is signed and sealed by a professional engineer…”

The first Commission committee to work on implementing rules, the Product Approval Task Group, proposed that an office of product approval be established and staffed by the Department of Community Affairs.

With the change of Administration at the beginning of 1999, came the policy directive to reduce state staffing, and as a result the Commission was advised that DCA would not be able to hire additional staff sufficient to manage the program as originally conceived. At this point the Commission decided not to contract for administrative services (outsource) with state funds, but instead decided to establish a system of private sector validators independent of the manufacturers, who similar to product evaluators, would be hired and paid for directly by the manufacturers.

During this period a second committee was convened, the Product Approval Ad Hoc, to develop recommendations to the 2001 Legislature for proposed modifications to the first implementing law, that in effect further delineated product evaluation reports to require test laboratory reports, certifications by certification agencies, and evaluation reports by evaluation entities, and defined in law what products had to be approved through this system.

The second versions of section 553.842, Florida Statutes, enacted in 2001 required:

(6) Statewide or local approval of product, methods, or systems of construction may be achieved by one of the following methods. One of these methods must be used by local officials or the commission to approve the following categories of products: panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components as established by the commission by rule.
(a) Products for which the code establishes standardized testing or comparative or rational analysis methods shall be approved by submittal and validation of one of the following reports or listings…..
1. A certification mark or listing of an approved certification agency;
2. A test report from an approved testing laboratory;
3. A product evaluation report…from an approved product evaluation entity; or
4. A product evaluation report…developed and signed and sealed by a professional engineer or architect, licensed in this state.

(b) Products, methods, or systems of construction for which there is no specific standardized testing or comparative or rational analysis methods established in the code may be approved by submittal and validation of one of the following:
   1. A product evaluation report…from an approved product evaluation entity…
   2. A product evaluation report…developed and signed and sealed by a professional engineer or architect, licensed in this state, who certifies…

(7) …

(8) For local approvals, validation shall be performed by the local building official. The commission shall adopt by rule criteria constituting complete validation by the local official, including, but not limited to, criteria governing verification of a quality-assurance program. For state approvals, validation shall be performed by validation entities approved by the commission. The commission shall adopt by rule criteria for approval of validation entities, which shall be third-party entities independent of the product’s manufacturer and which shall certify to the commission the product’s compliance with the code.”

During the rule development period for the Product Approval Rule—Rule 9B-72, to implement this second version of the governing law, there was a major discussion regarding what type of certifications would be required for the Commission to accept certification agency listings, laboratory testing reports, and evaluation entity and engineer evaluation reports as demonstration of compliance with the Code. One major point of contention was that the statements of compliance provided by some model code organizations’ product evaluation services, did not constitute a certification that products they evaluated comply with the Florida Building Code. The threshold concern was that if the Commission would not have sufficient staff to verify the adequacy of product evaluations, and would therefore rely wholly on manufacturer selected and contracted private sector product evaluators and validators, one of these entities should be required to issue a statement which constitutes a “certification” that the product complies with requirements of the Code. This issue was resolved by carefully crafting the wording of Rule 9B-72 to require validation entities to certify that the documentation they reviewed indicates compliance with requirements of the Code. Since certification agencies issue certifications of compliance with requirements of the Code, validation of listings was not required. Consequently, there was a concern that engineers are authorized by law to conduct evaluations, and are not subject to approval or discipline by the Commission. As a result, a requirement was established that engineers conducting evaluations must be independent of the validator reviewing their reports as well as the manufacturer, and thus established a level of checks and balances. In contrast, testing laboratories are required to be nationally accredited and approved by the Commission, thereby providing a check and balance via the authority to suspend or revoke approval, and consequently were allowed to validate their own reports.
When the current system began operating in October of 2003, it became apparent from staff review, as well as the review of an outside consultant, that the validators were not performing effectively. During the lull between major code revision cycles, DCA staff was temporarily assigned to review applications for product approval; and thus were able to temporarily provide the necessary effective level of review that was intended to be provided by the “validation entities”. Subsequent to this period where staff was diverted from normal assignments, a contractor was hired to review the “verifiable documentation” provided with the applications.

At this juncture in the process, the threshold question becomes: now that the Commission has a staff contracted to conduct the application reviews, are validation entities still needed. One issue that has been discussed at different points in time but has not been resolved is what level of validation should be required for evaluations establishing that a product complies with the intent of the Code, in instances where the Code does not establish a standard method for evaluating the product. It has been suggested by different parties at different times in the evolution of the Product Approval system, that an engineering review of such evaluations should be required. The rationale expressed regarding this approach is that unlike product evaluations conducted according to standardized tests or other standardized methods, these evaluations involve more engineering judgment and variability than other compliance methods, and therefore warrant an additional independent engineering review.