

ICC EVALUATION SERVICE, LLC, RULES OF PROCEDURE FOR APPEALS OF EVALUATION COMMITTEE TECHNICAL DECISIONS

1.0 PURPOSE

1.1 These rules set forth procedures for appeals of *technical* decisions made by the ICC-ES Evaluation Committee regarding acceptance criteria (ACs). Appeals of Evaluation Committee *procedures* with regard to ACs are provided for in the ICC-ES Rules of Procedure for Appeal of Acceptance Criteria.

1.2 The technical appeals process is intended to provide fair and objective consideration of technical matters that any appellant may regard as not having been fully deliberated by the ICC-ES Evaluation Committee.

1.3 Results of technical appeals shall be used as a basis for reconsideration of ACs by the ICC-ES Evaluation Committee at its next and earliest opportunity.

2.0 COMPLAINT

2.1 Complaints related to a technical decision shall be filed in writing within 15 days after the ICC-ES Evaluation Committee meeting where the decision was arrived at, or the posting date of an approved AC. The complaint shall state the nature of the objection, including adverse effects; the referenced section or sections of the AC; decisions that are at issue; and specific remedial action that would address the concerns. Previous efforts to resolve the issue at hand, and the outcome of these efforts, shall each be documented.

2.2 Within 30 days after receipt of the complaint, ICC-ES shall respond in writing to the complainant addressing each issue of the complaint and any follow-up actions.

2.3 Efforts shall be made by all parties involved to resolve complaints in a reasonable period of time. If the complaint cannot be resolved through correspondence, the complainant may file a formal appeal in writing to begin the appeal process provided in Section 3.0.

3.0 APPEAL

3.1 Right to Appeal: Persons who have a direct or material interest, and who have been or will be adversely affected by a technical decision of the ICC-ES Evaluation Committee with regard to the approval or disapproval of an AC, have a right to appeal that decision in writing, provided the appellant or a representative of the appellant was present at the Evaluation Committee hearing where the committee decision was made on the AC.

3.2 Appeal Fees and Expenses: A fee of \$3000.00 for an appeal shall be submitted to ICC-ES to cover administrative costs. The fee is nonrefundable once the Appeal Board selection process has commenced. The

appellant shall be responsible also for the expenses associated with the Board of Appeals.

3.3 Board of Appeals:

3.3.1 ICC-ES will work with the appellant within 30 days of the receipt of the written appeal to establish a Board of Appeals.

3.3.2 The Board of Appeals shall consist of three members who are knowledgeable on the technical issues; have not been, whenever possible, directly involved with the matter in dispute; and who will not be materially or directly affected by any decision made with regard to the matter in dispute. At least two of the three members shall be acceptable to the appellant, and at least two of the three members shall be acceptable to ICC-ES. Persons shall be nominated for the Board of Appeals by the appellant, ICC-ES, or both.

3.3.3 The Board of Appeals shall self-elect a chairperson from among themselves.

3.3.4 The chairperson of the Board of Appeals shall preside over the appeal hearing.

3.4 Appeal Hearing:

3.4.1 ICC-ES shall schedule a hearing with the parties to the dispute and the Board of Appeals on a date that is agreeable with all parties and the Board of Appeals, providing a minimum of two weeks advance notice. The hearing shall be conducted following the latest edition of *Robert's Rules of Order*.

3.4.2 ICC-ES shall post the appeals hearing schedule on the ICC-ES web site as soon as practicable after a date is agreed upon.

3.4.3 The appeals hearing shall be open to all interested parties. However, only ICC-ES staff, the appellant, and any expert witnesses brought to the hearing by ICC-ES or the appellant are permitted to testify.

3.4.4 The appellant has the burden of demonstrating adverse effects, improper actions, and the efficacy of the requested remedial action. The expert witnesses' testimonies are not limited to the information presented at the previous ICC-ES Evaluation Committee hearing.

3.4.5 ICC-ES has the burden of demonstrating that the ICC-ES Evaluation Committee actions were in compliance with ICC-ES Rules of Procedure and that the requested remedial action is not technically justified or not in compliance with the code.

3.4.6 Other pertinent arguments and information may be used.

3.5 Board of Appeals Ruling:

3.5.1 The Board of Appeals shall make its ruling in writing within 30 days of the hearing, stating findings of fact and conclusions with reasons. The ruling may consider the following positions, among others:

3.5.1.1 Finding for the appellant, remanding the action to the ICC-ES Evaluation Committee with a specific statement of the issues and facts, or

3.5.1.2 Finding for ICC-ES, with a specific statement of the facts that demonstrate fair and equitable treatment of the appellant and the appellant's objections.

3.6 Actions as a Result of Ruling:

3.6.1 When the ruling is for the appellant, a recommendation of the Board of Appeals shall be submitted to the ICC-ES Evaluation Committee to address the objections raised by the appellant at the next earliest opportunity.

3.6.2 When the ruling indicates agreement with the ICC-ES Evaluation Committee action, no further actions by ICC-ES are required.

3.6.3 Any decision by the ICC-ES Evaluation Committee based on the technical appeals ruling shall be final. ■

Effective April 1, 2011