

ICC EVALUATION SERVICE, LLC, RULES OF PROCEDURE FOR APPEALS CONCERNING EVALUATION REPORTS AND LISTINGS

1.0 PREAMBLE

These rules set forth procedures to establish the basis for appeals of written decisions concerning the issuance of evaluation reports and listings, and the procedures to be followed. The purpose of any hearings provided for under these rules shall be fact finding, and the procedures shall include but not be limited to all of the following:

- 1.1 Testimony under oath.
- 1.2 Right to cross-examine and confront adversary witnesses.
- 1.3 Right to representation.
- 1.4 Issuance of a formal decision.
- 1.5 Right to appeal the decision of the administrative law judge or hearing officer.

2.0 RIGHT TO APPEAL

The applicant seeking issuance of an evaluation report or listing may appeal a written decision of ICC-ES involving the issuance of the report or listing, or refusal to issue the same. This appeal right shall apply to applicants for initial reports and listings, and to applicants seeking reissuance of existing evaluation reports and listings. Only the affected applicant may appeal a decision of ICC-ES regarding the subject application.

3.0 TIMING OF APPEAL

Any appeal under these rules must be received by ICC-ES within sixty days from the date written notification of the decision being appealed was received by the affected applicant. Any appeal that is not filed in a timely fashion in accordance with these rules shall be rejected by ICC-ES.

4.0 STATEMENT OF APPEAL AND FILING FEE

All appeals under these rules shall be in writing, delivered personally or by United States mail, to the Western Regional office of ICC-ES, and shall include the following:

- 4.1 A detailed written statement of the decision of ICC-ES that is being appealed.
- 4.2 A detailed statement of the factual basis for the appeal, including a summary of any relevant technical data or test reports.
- 4.3 A statement of the relevant codes, standards, or ICC-ES technical criteria that relate to the issues to be determined by the appeal.
- 4.4 A filing fee of \$5000. The fee is nonrefundable once the hearing officer selection process has commenced.

5.0 APPOINTMENT AND QUALIFICATIONS OF HEARING OFFICER

5.1 Appointment of Hearing Officer: If it is determined by ICC-ES that formal processing is required for the appeal, within thirty days from receipt of the appeal by ICC-ES, the chairman of the Evaluation Committee of ICC-ES shall select a hearing officer to preside at the hearing. In making this selection, the chairman shall select an individual who is either a retired judge of the United States District Court, the State Supreme Court, the State Court of Appeal or the State Superior Court; an acting or retired state or federal administrative law judge; or, if appropriate, a qualified individual who has particular expertise or experience concerning the issues to be adjudicated at the hearing as formulated by the statement of appeal.

5.2 Scheduling Hearing: Immediately upon appointment, the hearing officer shall arrange for the prompt scheduling of the hearing date. The hearing officer shall ensure that sixty days' written notice of the hearing date is provided to ICC-ES and to the party filing the appeal. Any request for a continuance or rescheduling of the hearing date shall be submitted in writing to the hearing officer and served by mail upon ICC-ES and the party filing the appeal no later than ten days prior to the hearing. The hearing officer shall grant a continuation of the hearing date only upon the agreement of all parties or upon the party's requesting the continuance demonstrating that good cause exists for the continuance.

6.0 SUBMISSION OF EVIDENCE

The party filing the appeal or ICC-ES may, thirty days prior to the date of the hearing, furnish to the hearing officer any written evidence, including documents, reports or affidavits either party intends to enter into evidence at the hearing. The party shall, concurrently therewith, also mail a copy of the written documents, reports or affidavits to the other party. Any such written documents, reports or affidavits shall not constitute evidence unless and until admitted at the hearing by the hearing officer, and either party may offer further and additional written or oral evidence at the time of the hearing irrespective of any submission made to the hearing officer prior to the hearing.

7.0 CONDUCT OF THE HEARING

7.1 Presentation of Evidence and Argument: Evidence shall be presented in a manner consistent with contested hearing, with the party filing the appeal presenting its evidence or argument first, followed by ICC-ES's presenting its evidence or argument. The party filing the appeal shall have the opportunity to rebut any evidence or argument presented by ICC-ES. Deviation from this order of evidence may only be upon the hearing officer's

determining that it is in the interest of justice to do so in order to efficiently conduct the hearing.

7.2 The proceedings of the hearing shall be reported by a court reporter, or shall be recorded, as decided by the hearing officer.

7.3 Evidentiary Rules: The following rules shall apply with respect to the presentation of evidence:

7.3.1 The hearing officer may refuse to consider any evidence which was not provided to or considered by ICC-ES in reaching the decision which is the subject of the appeal hearing.

7.3.2 Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues irrespective of whether that matter was covered in direct examination; to impeach any witness irrespective of which party first called the witness to testify; and to rebut any evidence presented.

7.3.3 The hearing officer need not follow technical rules of evidence in the conduct of the hearing except as follows:

7.3.3.1 Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any evidentiary rules which might make the admission of this evidence improper over objection in civil actions.

7.3.3.2 Hearsay evidence may be accepted for the purpose of supplementing or explaining other evidence. However, hearsay evidence shall not be the sole support for a factual finding unless it would be admissible over objection in civil action.

7.3.3.3 The rules relating to privilege shall be applied, and irrelevant and unduly repetitious evidence shall be excluded.

7.3.3.4 Evidence may be presented only by the party filing the appeal or ICC-ES.

7.3.3.5 Expert opinion testimony shall be considered only upon the hearing officer's determining the qualifications of the witness, and any expert witness testimony must be supported by probative data.

7.3.3.6 Testimony in the form of written affidavits may be considered only if ten days prior to the hearing the party intending to offer the affidavit serves a copy of the affidavit on the opposing party, and the opposing party, within seven days after such mailing, does not mail or deliver to the party offering the affidavit a request to cross-examine the affiant. If, after a request therefore, an opportunity to cross-examine the affiant is not afforded, the affidavit may be introduced into evidence, but shall be given only the effect as other hearsay evidence.

8.0 STANDARD OF REVIEW

In hearing the appeal and reviewing the decision of ICC-ES that is being appealed, the hearing officer shall affirm the decision unless, with respect to questions of fact, there is not substantial evidence to support the factual conclusions reached by ICC-ES. The hearing officer shall

reverse the decision of ICC-ES if the hearing officer determines, based on a review of the entire record, that there is not substantial evidence, contradicted or uncontradicted, to support the decision. In reviewing questions of law or code or standard interpretation, the hearing officer shall independently interpret the applicable code provision or standard.

Any conflicts in the evidence must be resolved in favor of the decision reached by ICC-ES, and the decision must be upheld so long as there is evidence to support the decision. If two or more factual inferences can be drawn from a set of facts, the hearing officer cannot substitute his or her own deductions but must indulge all inferences in support of the decision reached by ICC-ES unless they are rebutted by clear, positive and uncontradicted evidence. If the decision is reversed, the hearing officer shall issue whatever additional instructions or findings are necessary to implement the decision.

9.0 DECISION OF HEARING OFFICER

Within thirty days from the date the hearing is concluded, the hearing officer shall submit a written proposed decision determining the issues presented at the hearing. If necessary, the decision shall include specific findings of fact as determined by the hearing officer. The proposed decision shall be presented to the ICC-ES Board of Managers and served by mail upon the party filing the appeal.

10.0 DECISION BY BOARD OF MANAGERS

10.1 The proposed decision of the hearing officer shall be presented to the Board of Managers of ICC-ES for its independent review and decision. Within thirty days of the presentation of the proposed decision, the Board shall schedule a hearing at which time the party filing the appeal or ICC-ES shall be permitted to present argument but no additional evidence to the Board. The hearing shall be conducted by the Board at either a regularly scheduled meeting or a special meeting of the Board of Managers set for this purpose.

10.2 The Board shall render its decision within sixty days of the date of the hearing. In rendering its decision, the Board shall consider the case on the record, including the transcript and the argument presented. The decision of the Board shall be made by vote on the matter in accordance with the bylaws of ICC-ES. The Board may, in exercising its independent judgment, refer the matter back to the hearing officer for the taking of additional evidence, in which case it shall specify to the hearing officer, in writing, the issues on which additional evidence shall be taken. The action by the Board of Managers on the matter shall be final and shall be effective thirty days after it is delivered or mailed to ICC-ES and the party filing the appeal.

10.3 If the matter is referred to the hearing officer for the taking of additional evidence, the hearing officer shall prepare a final proposed decision as provided in Section 9.0 above, on the additional evidence, the transcript and other papers which are a part of the record of the matter. A copy of the final proposed decision shall be delivered to the Board of Managers of ICC-ES and mailed to the party filing the appeal as provided for in Section 9.0, and shall be acted on by the Board in accordance with Section 10.2. The

Board shall not be required to conduct a hearing or permit argument after referring the matter to the hearing officer for the taking of additional evidence.

10.4 A stay of execution may be included in the final decision or, if not included therein, may be granted by the Board of Managers at any time before the decision becomes effective. The stay of execution may be on such terms as the Board of Managers at its discretion should determine, and may be conditioned upon the party filing the appeal taking certain actions; provided, however, that the terms of any such conditions shall be just and reasonable in the light of the findings and decision in the matter.

11.0 APPEAL BY JUDICIAL REVIEW

Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as otherwise provided in this section, any such petition shall be filed within thirty days

from the date the decision of the Board becomes final. The complete record of the proceedings, or such parts thereof as are designated by ICC-ES, or the party filing the appeal, shall be prepared by ICC-ES and shall be delivered to the affected party within thirty days after request therefor, upon payment of the costs incurred in preparing the record. The complete record includes the pleading, all notices and orders issued by ICC-ES, any proposed decision by the hearing officer, the final decision, the transcript of all proceedings, the exhibits submitted or rejected, the written evidence and any other papers in the case. ICC-ES may file with the court the original of any document in the record in lieu of a copy thereof. ■