

ICC EVALUATION SERVICE, LLC, RULES OF PROCEDURE FOR BUILDING PRODUCT LISTING REPORTS

1.0 PURPOSE

The purpose of these rules is to set forth procedures for the ICC Evaluation Service, LLC (ICC-ES), listing program for construction and building products.

The main purpose of the ICC-ES listing program is to assist those enforcing model codes to determine whether a given subject complies with applicable standards and applicable codes. A listing is not to be construed as representing a judgment about aesthetics or any other attributes not specifically addressed in the listing report, nor as an endorsement, assurance, or guarantee, or recommendation for use of the subject of the listing. Approval of use of a listed product is by the code official.

2.0 DEFINITION

A "listee" is a person or organization having a product or products listed by ICC-ES, and who is identified in the Application for Building Product Listing Report.

3.0 BASIS OF EVALUATION

Evaluation of data is based on applicable standards referenced in the most current edition of the *International Building Code*® and/or the *International Residential Code*®.

4.0 APPLICATIONS

4.1 General

Applications for new listing reports or renewals, and for changes to existing listing reports, shall be filed on forms provided for that purpose. The applicant must have the rights to the materials, products, or methods of construction on which a listing report is sought and must have the legal rights to all evidence and data. Applications for new listing reports that are held for more than 30 days without receipt of the application/evaluation fee or supporting documentation are subject to cancellation, unless such term is extended by the ICC-ES president or his designated representative.

4.2 Additional Listing

Any manufacturer or distributor other than the primary listee may be included in the listing report as an additional listee upon submission of an application and payment of required fees by the primary listee. The primary listee shall provide ICC-ES with the name and address of each additional listee and shall provide a cross-reference of models between the primary listee's models and the additional listee's models. The primary listee shall also notify ICC-ES when additional listees are to be added to the listing report, or deleted.

4.3 Private Label Listing Report

The primary listee may authorize the issuance of a separate listing report under the name of a distributor (also known as a "private label listing report"). A separate listing report application and a completed Application for Private Label Listing form shall be submitted. The application shall include a cross-reference of models between the primary listee's models and the models of the private label listing report applicant. The

private label listing report shall be inextricably linked to the primary listing report. Any relevant information in the primary listing report shall be included in the private label listing report. The private label listing report shall have the same issue date as the primary listing report. Revisions to the private label listing report shall be made through a separate application for revision, when revisions relevant to the private label listing report are made to the primary listing report.

5.0 DATA TO BE SUBMITTED IN SUPPORT OF LISTING REPORTS

5.1 General

Applications for new listing reports and for changes to existing listing reports shall be accompanied by one complete set of relevant test reports, drawings, installation instructions, calculations, and/or other supporting data which fully describe the subject of the application and substantiate its performance as being in compliance with the applicable model codes and standards. In cases where, in addition to testing, evaluation of product samples is required by the applicable codes and standards, product samples shall be submitted to the ICC-ES technical staff for evaluation.

Quality documentation for each facility manufacturing the listed product shall be submitted. Qualifying inspections are used to verify that the applicant's quality system ensures the listed product will not change from the product described in the original qualifying data.

5.2 Test Reports

5.2.1 Accredited Laboratories

Laboratory tests shall be performed at the expense of the applicant by a testing laboratory complying with ISO/IEC Standard 17025. Testing laboratories must be accredited by an accreditation body that is a signatory to the Mutual Recognition Arrangement (MRA) of the International Laboratory Accreditation Cooperation (ILAC). The scope of the laboratory's accreditation shall include the type of testing that is to be reported to ICC-ES.

5.2.2 Nonaccredited Laboratories

Reports from nonaccredited laboratories may be accepted by ICC-ES for the processing of a listing report upon submission of evidence (including evidence from an on-site assessment conducted by an authorized ICC-ES representative) that the laboratory is an independent, qualified laboratory conforming to applicable sections of ISO/IEC Standard 17025 for the work in question.

5.2.3 Manufacturer's Testing Facility

An applicant may submit data resulting from tests conducted at the manufacturer's testing facility. In most cases, such testing shall be done under the supervision of an accredited laboratory (as described in Section 5.2.1), and the accredited laboratory shall issue the test report. The test report must be accompanied by a declaration from the accredited laboratory that steps were taken to ensure that the integrity of test

specimens was maintained and that the specimens were not altered during periods when a laboratory representative was not present; and that the manufacturer's testing facility demonstrated, to the satisfaction of the accredited laboratory, its competence to perform the testing.

At the discretion of ICC-ES, a test report may be accepted from a manufacturer's testing facility without the involvement of another, accredited laboratory, so long as the manufacturer's facility is itself accredited as complying with ISO/IEC Standard 17025 by an accreditation body that is a signatory to the ILAC MRA. The scope of the laboratory's accreditation shall include the specific type of testing covered in the test report.

5.3 Inspections at Manufacturing Facilities

See Section 10.0 of these rules for information concerning inspections, including provisions for qualifying inspections before a listing report can be issued, and for follow-up inspections of the facilities designated to manufacture the products covered in the listing report.

5.4 Additional Information

ICC-ES may require the applicant to conduct further tests and/or provide additional information considered relevant to the product evaluation.

6.0 ISSUANCE OF A LISTING REPORT

6.1 General:

6.1.1 ICC-ES will review the data submitted; request additional information necessary to evaluate the product; and prepare a final listing report, provided ICC-ES requirements as communicated in staff correspondence have been satisfied.

6.1.2 The applicant and any listees will be notified when the listing report is issued. The listing report will also be made available on the ICC-ES website. See Section 14.0 of these rules for permitted uses of any listing report.

6.2 Changes to Listing Report Requirements:

6.2.1 Before implementing significant changes to its listing report requirements, ICC-ES shall post the proposed changes to its website for a minimum of 30 days of public comment. Resulting public comments shall be given due consideration before ICC-ES decides on the precise form and effective date of the changes to its requirements.

6.2.2 In the event of significant changes to the code or applicable standards, or ICC-ES rules or policies, affected listees will be notified and will be given a grace period to show compliance with the changes, but no more than a year from the time the changes are adopted by ICC-ES unless this period is extended by the president or his designated representative.

7.0 FEES

7.1 General:

7.1.1 The ICC-ES application fee covers one category of products (covered by the same standard). A separate application is required for products that are covered by other standards. All fees are set forth in the applicable ICC-ES fee schedule. All fees shall be paid in U.S. funds drawn from a U.S. bank.

7.1.2 Where products covered by a listing report are distributed by companies other than the applicant, such other companies' names shall appear on the listing report as additional listees. A fee will be charged for each listee as set forth in the fee schedule.

7.2 New Listing Report Application:

7.2.1 Each new application shall be accompanied by the application fee set forth in the applicable ICC-ES fee schedule. This fee is not refundable unless authorized by the president or his designated representative. Upon completion of the evaluation, the applicant will be invoiced for additional fees, as described in the fee schedule.

7.2.2 The new listing report shall be valid for one year from the date of issue. An application for renewal shall be filed prior to the expiration date of the listing report if renewal is desired.

7.2.3 Applications that are open for one year without the issuance of a listing report are subject to additional fees or to cancellation, as determined by the president or his designated representative.

7.3 Renewal:

Listing reports shall be renewed every year. An application for renewal shall be accompanied by applicable renewal fees as set forth in the fee schedule.

7.4 Application to Revise Listing Reports:

A listee may request to revise a listing report at any time. Revisions may include technical or editorial changes to a listing report, and/or adding models to a listing report or deleting models. Revisions shall not extend the expiration date of the existing listing report. Fees for revisions are as set forth in the fee schedule.

7.5 Private Label Listing Reports:

The fee for a private label listing report, as defined in Section 4.3, shall be the same as the fee for a primary listing applicant, as set forth in the fee schedule.

7.6 Inspections:

The fees for qualifying and surveillance inspection activities, as defined in Section 10.0, are as set forth in the fee schedule. The applicant shall reimburse ICC-ES for all expenses related to qualifying inspection activities. If the inspector is unable to gain entry to a manufacturing facility covered by the listing report, the listee shall agree to pay ICC-ES the inspection fee as shown in the ICC-ES fee schedule. The listee is responsible for covering the costs associated with shipping selected samples to an accredited laboratory as part of a surveillance inspection, and having the samples tested.

8.0 MODIFICATION OF LISTED PRODUCTS

Listees must notify ICC-ES prior to modifying products covered by the listing report. Product modifications include significant changes in the manufacturing process, change in manufacturer, change in raw material specifications, or significant changes to the quality control program. Listees shall also notify ICC-ES when significant changes occur regarding the listee. Significant changes include company name change, change of address, change of ownership, or change in legal status. When deemed necessary by ICC-ES, the listee must

discontinue use of the listing report until a listing report revision addressing the changes has been issued.

9.0 PRODUCT IDENTIFICATION

9.1 Listee's Name, Registered Trademark, or Registered Logo:

The listed products shall be permanently identified with the listee's name. The listee's registered trademark or registered logo is permitted in lieu of the listee's name when a facsimile of the registered trademark or registered logo is included in the listing report. The listing report shall include additional identification provisions when required by the code or the applicable standard.

9.2 ICC-ES Listing Mark of Conformity:

Where applicable, the listee shall mark the listed product with the ICC-ES listing mark of conformity (mark). If the listee reasonably believes that such marking will affect the aesthetic appearance of the listed product, ICC-ES will consider issuing a written permit allowing the listee (1) to affix the ICC-ES listing mark to other items acceptable to ICC-ES, such as on packaging or installation instructions, and/or (2) to affix the ICC-ES listing mark by means of a label or sticker, acceptable to ICC-ES, to be placed at a location or on an area of the listed product which is not exposed or visible to the consumer.

ICC-ES will not consider any product, which would otherwise be a listed product, to be listed if it does not somehow bear the ICC-ES listing mark.

Electronic labeling may be used in lieu of the ICC-ES listing mark. Examples of electronic labeling are the ICC-ES web address (www.icc-es.org); specific URL related to the listing report; or the ICC-ES machine-readable code placed on the aforementioned items.

9.3 Listing Report Number:

The ICC-ES listing report number may be placed on the listed product, or on the product's packaging or installation instructions.

10.0 INSPECTIONS OF MANUFACTURERS

Qualifying inspections are required for new listing report applications and for additional manufacturing facilities being added to an existing listing report. Qualifying inspections will be conducted by ICC-ES representatives. Any third-party inspection body representing ICC-ES for purposes of inspections must have a contract with ICC-ES, and must be accredited by a signatory to the ILAC MRA as complying with ISO/IEC Standard 17020. The purpose of the qualifying inspection is to determine whether the manufacturer's quality system has been successfully implemented and/or to verify that the manufactured product is the same as the product to be described in the listing report. As a condition of maintaining an ICC-ES listing report, the listee shall grant ICC-ES or its designated representative the right to conduct, at a minimum, one annual surveillance inspection of manufacturing facilities, to verify compliance with the listing requirements.

ICC-ES or its designated representative shall make every effort to visit manufacturing locations during normal business hours.

At the manufacturing facility, the listee shall assign an appropriate representative to accompany the inspector, to

grant access to applicable manufacturing and storage locations, to help with review of applicable records and documents, to observe as the inspector selects samples randomly for testing, and otherwise to accommodate the inspector as necessary. If the inspector selects samples for testing by an accredited laboratory, the listee shall authorize the laboratory to send a copy of the test results directly to ICC-ES headquarters for review.

In general, the decision to choose samples for testing by an accredited laboratory is at the discretion of the inspector and may depend on the availability of the listed products during the inspection. However, sampling and testing may be mandatory in the event of the following: modification of the listed products as defined in Section 8.0; complaints or legal actions pending related to the code compliance of the listed products; the standard or the code governing the listed products having undergone a revision; or the applicable Rules of Procedure or ICC-ES policies having changed in such a way as to require retesting. Even in the absence of such circumstances, however, there must be retesting of listed products, to show their continued compliance with applicable standards, at least once every five years.

The listee shall agree that if such testing shows the product failing to meet the requirements of the specified testing standard, ICC-ES may remove the product from the listing.

11.0 REVOCATION OR MODIFICATION OF LISTING REPORTS WITH RIGHT TO A HEARING

11.1 Any listing report, and the authorization to use the ICC-ES listing mark or the ICC-ES machine-readable code, may be revoked or modified for cause. "Cause" shall include: repeated failure of the material, method of construction or equipment to conform with the specifications upon which the listing report was based; repeated failure of the material, method of construction or equipment to perform properly although meeting the specifications upon which the listing report was based; failure to comply with any condition to the issuance of the listing report; any misstatement, whether intentionally or unintentionally made, in the listing report application or in any data submitted in support thereof; failure to comply with any provision of the application form; failure to pass any test required by ICC-ES; or any other grounds considered as adequate cause in the judgment of ICC-ES.

11.2 Before ICC-ES revokes or modifies any listing report, the listee shall be given reasonable notice and an opportunity to file an appeal pursuant to the ICC-ES Rules of Procedure for Appeals Concerning Evaluation Reports and Listings.

12.0 REVOCATION/CANCELLATION/SUSPENSION OF LISTING REPORTS WITHOUT RIGHT TO A HEARING

12.1 A listing report may be canceled upon ICC-ES's receiving a written request to do so from the listee. A file for a new listing report may be closed upon receipt of a written request from the applicant.

12.2 Notwithstanding anything in these rules to the contrary, any listing report or additional listing may be suspended for a period not to exceed 90 days, revoked, or canceled by the ICC-ES president or his designated representative, without notice or a hearing, for any of the following reasons: required fees having not been received by ICC-ES within 30 days from the

date of mailing by ICC-ES of a written demand for payment; failure of the listee to maintain a current quality control program; failure to perform any test, or furnish any material or data, required by ICC-ES within the specified time limit, unless extended by the ICC-ES president or his designated representative; receipt of information that the product has been modified in violation of Section 8.0 of these rules; denial of ICC-ES access to manufacturing facilities for purposes of inspecting and evaluating quality control procedures; or failure to comply with any rule for maintaining listings as adopted or amended from time to time by ICC-ES.

12.3 Notwithstanding anything in these rules to the contrary, any listing report may be suspended by action of the ICC-ES Board of Managers for such period or periods as the Board determines, without notice or a hearing, for the following reason: failure of the product, material, method of construction or equipment to perform properly or conform with the specifications upon which the listing was based, either condition presenting a threat to public safety or property.

13.0 PROPRIETARY DATA

Data in any listing report file or application file is considered proprietary. The data may be disclosed by ICC-ES upon written consent of the applicant or, with notice to the applicant, pursuant to a subpoena issued by a court or other governmental agency of competent jurisdiction. Proprietary data may also be disclosed to a staff member of ICC-ES or the International Code Council (ICC), or an authorized representative of ICC-ES or ICC having a legitimate interest therein; any member of the ICC-ES Board of Managers. Additionally, upon the written consent of the applicant, any Governmental Member of ICC may be granted access in the interest of public safety or preservation of property as it relates to enforcement of building and other applicable laws.

From time to time, ICC-ES records and files are audited by national and international bodies on a random basis to establish conformance with international accreditation and conformity assessment standards. It is understood that, by executing a listing report application, listees grant ICC-ES the authority to allow such access.

14.0 PERMITTED USE OF LISTING REPORTS AND THE ICC-ES NAME AND ICC-ES LISTING MARK OF CONFORMITY

14.1 Listees must comply with these Rules of Procedure in their use of the ICC-ES name, listing mark, ICC-ES machine-readable code, their ICC-ES listing report and listing report number, and any communications associated with the listing report. If it is determined that identification is being applied to materials or products that do not comply with the current listing report, is being applied before authorization or applied after a listing report has been closed, ICC-ES will immediately disseminate a notice of violation of the ICC-ES Rules of Procedure and take any and all actions necessary to secure compliance with the rules.

14.2 No listee shall use the ICC-ES listing mark or ICC-ES machine-readable code until authorized by ICC-ES.

14.3 The then-current listing report as provided to the listee by ICC-ES and also available on the ICC-ES website, may be reproduced in its entirety by the listee in the listee's literature, advertising, or promotional materials. No reference to ICC-ES, the listing report, the ICC-ES listing mark, or the ICC-ES

machine-readable code shall be included with such reproduction in a manner which could be misleading.

14.4 In lieu of reproducing the entire listing report in specifications, literature, advertising, or promotional materials, the listee may use references and statements such as: "See ICC-ES Listing Report No. _____ (insert current number) at (www.icc-es.org)."; and/or the ICC-ES machine-readable code. It is the listee's responsibility not to misrepresent the listing report in any way, and to secure ICC-ES approval in advance whenever there is a question about the use of the ICC-ES name, listing report, listing mark, or machine-readable code. Listees are expressly prohibited from using the ICC-ES name, listing mark, machine-readable code, or listing report number to claim or imply product recognition beyond what is specified in the listing report. Listees are also expressly prohibited from using, in advertising, promotional, and informational materials, any language that would likely mislead the public about their listings. ICC-ES reserves to itself the right to interpret what would constitute misleading language.

14.5 The following provisions govern the use of the ICC-ES listing mark and ICC-ES machine-readable code on products and in advertising, promotional, and informational materials:

14.5.1 Use of the ICC-ES listing mark and ICC-ES machine-readable code is prohibited in any manner and in any media without authorization from ICC-ES. Use of, or reference to, any listing report after cancellation is also prohibited.

14.5.2 The ICC-ES listing mark and ICC-ES machine-readable code may be used only on or in connection with products, components, methods, and materials that are covered in currently valid listing reports. Use of the ICC-ES listing mark and/or ICC-ES machine-readable code is not a replacement or substitute for product identification provisions in the relevant listing. In no circumstances may the ICC-ES listing mark and/or ICC-ES machine-readable code be used to imply ICC-ES approval of aesthetics or any other attributes not specifically addressed in the listing.

14.5.3 The ICC-ES listing mark and ICC-ES machine-readable code may not be altered in any way, although they may be enlarged or reduced. Black is the basic color of the ICC-ES listing mark and ICC-ES machine-readable code. Other colors may be used only when authorized in writing by ICC-ES.

14.5.4 Listees may use their listing reports only to indicate that the products in question conform with the standards specified. When no clarification is needed regarding the standard under which the product has been listed (as when the product has been listed as complying with all applicable standards, or there is only one standard applicable to the product), the ICC-ES listing mark alone, or the ICC-ES machine-readable code alone, without additional clarification, may be sufficient for the product. However, to avoid misunderstandings, ICC-ES may require additional markings, to supplement the listing mark or ICC-ES machine-readable code, and clarify its meaning, wherever the possibility of confusion exists. [For example, ICC-ES may require the relevant standard number(s) to accompany the listing mark or ICC-ES machine-readable code.] ICC-ES will inform the listee if there are such special requirements for display of the listing mark or ICC-ES machine-readable code on product packaging or in product literature.

14.6 It is the responsibility of the listee not to misrepresent in any way the status, conditions, or terms of the relevant ICC-ES listing report, and not to use the listing report in such a manner as to bring ICC-ES into disrepute. It is also the listee's responsibility to secure ICC-ES approval in advance whenever there is a question about how the ICC-ES listing mark, machine-readable code, listing report number and/or name is to be used.

14.7 In the event a listee seeks cancellation of a listing report, or informs ICC-ES that production at a recognized manufacturing facility has ceased or is being transferred to a different facility, then the listee shall (a) promptly provide ICC-ES with written confirmation that manufacturing of products bearing the ICC-ES listing mark and/or electronic labeling has ceased at the previously recognized facility; and (b) permit ICC-ES, upon request, to send a representative to inspect the facility in order to verify that the manufacturing of products bearing the listing mark and/or electronic labeling has ceased.

14.8 The above does not excuse compliance with any ICC-ES requirement as a condition of securing or maintaining a listing concerning identification, reference to standards or inspection, or other information to be affixed to or labeled upon products.

14.9 Violation of these rules, regarding use of the ICC-ES name, ICC-ES listing mark, and ICC-ES machine-readable

code as determined by ICC-ES, must cease immediately upon notification of the violator by ICC-ES. Failure to respond to the notification may lead to suspension or revocation of the listing report under these rules. ICC-ES also reserves the right to note violations in the public notices and publications of ICC-ES and its parent company, ICC, and on the ICC-ES website.

15.0 COMPLAINT PROCEDURE

All complaints related to a listing report should be submitted in writing to the attention of the ICC-ES Quality System Director, accompanied by a filing fee of \$5,000. The listee will be notified of the complaint and, if a response is needed to address the complaint, ICC-ES will so inform the listee. After notice, the listee will have 30 calendar days in which to respond, or the listing report in question will be subject to cancellation.

16.0 APPEALS

For details on appeals, see the ICC-ES Rules of Procedure for Appeals Concerning Evaluation Reports and Listings.■