

ICC-ES PMG Rules of Procedure for Product Listings/Certifications – WaterMark

1.0 PURPOSE

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

The main purpose of the ICC-ES PMG listing program, under the WaterMark scheme, is to assist those enforcing the National Construction Code Volume 3 – Plumbing Code of Australia to determine whether a given product complies with applicable requirements and are fit for purpose for which they are intended. A listing (certification) is not to be construed as representing a judgment about aesthetics or any other attributes not specifically addressed in the certification, nor as an endorsement, assurance, or guarantee, or recommendation for use of the subject of the certification. Approval of use of a product and/or system described in a certification is by the code official.

The WaterMark scheme sets forth the requirements for the certification and authorization of plumbing and drainage products listed in the ABCB's WaterMark Schedule of Products in accordance with Part G1 of the Plumbing Code of Australia (which has also been replicated in the ABCB's WaterMark Certification Scheme).

2.0 DEFINITIONS

A "listee", or "Approved User", is a person or organization having a product or products listed by ICC-ES, and who is identified in the ICC-ES PMG Application for Listing and the Approved User Agreement.

The WaterMark scheme's Marks of Conformity are the WaterMark and the Lead Free WaterMark.

3.0 BASIS OF EVALUATION

Evaluation of data is in accordance with the WaterMark Scheme rules; and based on an applicable Australian Standard, WaterMark Technical Specification (WMTS) or Recognised International Standard or other published standard identified in the Australian Building Codes Board's (ABCB's) WaterMark Schedule of Products (WMSP).

If the product is not listed on the WMSP or the WaterMark Schedule of Excluded Products (WMEP), or there is no applicable specification appropriate for evaluating the product attributes, ICC-ES shall prepare an application to the ABCB who administers the review and approval of a new product specification for inclusion into the WMSP. Once approval of the new product specification is obtained, ICC-ES can undertake an evaluation of the new product.

4.0 APPLICATIONS

Applications for new certifications or renewals, and for changes to existing certifications, 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 certification is sought and must have the legal rights to all evidence and data. Applications for new certifications 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 their designated representative.

5.0 DATA TO BE SUBMITTED IN SUPPORT OF CERTIFICATIONS

5.1 General

Applications for new certifications and for changes to existing certifications shall be accompanied by one complete set of relevant type testing 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 product specification.

Qualifying, on-site assessments are used to verify that the applicant's manufacturing quality management system, production process and batch release testing ensure the certified product will not change from the product described in the original qualifying data. ICC-ES has the option to request that quality documentation be provided.

5.2 Test Reports

Laboratory tests shall be performed at the expense of the applicant by a testing laboratory, as follows:

- a) an organisation accredited by the National Association of Testing Authorities, Australia (NATA) to undertake the relevant tests; or
- b) an organisation outside Australia accredited by an authority to undertake the relevant tests and is recognised by NATA through a mutual recognition agreement; or
- c) an organisation recognised as being an accredited testing laboratory under legislation at the time the test was undertaken.

The organisation must have a scope of accreditation covering the testing requirements of the applicable specification.

5.3 Inspections at Manufacturing Facilities

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

5.4 Additional Information

In addition to the above-noted information, applicants shall enter into an Approved User Agreement with ICC-ES, which grants permission for the use of the Mark of Conformity.

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 CERTIFICATION

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 certification, provided ICC-ES

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requirements as communicated in staff letters have been satisfied.

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

6.2 Changes to Certification Requirements:

In the event of significant changes to the applicable specification, standards, rules, or policies, affected approved users will be notified and will be given a grace period to show compliance with the changes in accordance with the applicable specification, standard, rule, or policy. In the absence of a specified grace period, it shall be no more than one year from the time the changes are adopted by ICC-ES unless this period is extended by the president or their designated representative.

7.0 FEES

7.1 General:

The ICC-ES application fee covers one category of products (covered by the same standard). A separate application is required for additional types of products covered by the same standard and for products that are covered by other standards.

Certification of a product may:

- i) include the certification of its integral components (to each of their relevant applicable specifications) and ICC-ES is fully responsible for undertaking ongoing surveillance of any integral component that does not have individual certification; or
- ii) rely on the prior certification of its individual components, providing this is current, and ICC-ES shall rely on the ongoing surveillance undertaken for any certified integral component, providing the certification retains currency.

Where a product does not require certification under the WaterMark scheme and includes integral components that would normally require certification, each individual component shall be individually certified.

The certification fee gives the approved user the right to use the ICC-ES PMG listing mark on the product after the certification is granted. All other fees are set forth in the ICC-ES PMG fee schedule. All fees shall be paid in U.S. funds drawn from a U.S. bank.

7.2 New Certification Application:

7.2.1 Each new application shall be accompanied by the application fee set forth in the most recently published ICC-ES PMG fee schedule. This fee is not refundable unless authorized by the president or their 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 certification based on an applicable specification listed in the WMSP shall be valid for five years

from the date of issue. Upon issue of a new certification, a WaterMark Licence shall be issued and shall be valid for 12 months from the date of issue.

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

7.3 Renewal:

7.3.1 An application for renewal shall be filed prior to the expiration date of the certification if continued recognition is desired. Certifications shall be renewed every five years or when there have been changes to the products covered by the certification.

7.3.2 WaterMark Licences shall be automatically renewed every 12 months following product conformity surveillance in accordance with the WaterMark Scheme rules.

7.3.3 An application for certification renewal shall be accompanied by applicable renewal fees as set forth in the ICC-ES PMG fee schedule.

7.4 Application to Revise Certifications:

An approved user may request to revise a certification at any time during the renewal period or when the certification is active. Revisions may include technical or editorial changes to a certification, and/or adding models to a certification or deleting models. Revisions shall not extend the expiration date of the existing certification. Fees for revisions are as set forth in the fee schedule.

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

8.0 MODIFICATION OF CERTIFIED PRODUCTS

Approved users must notify ICC-ES prior to modifying products covered by the certification. 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. Approved users shall also notify ICC-ES when significant changes occur regarding the approved user. Significant changes include company name change, change of address, change of ownership, or change in legal status. When deemed necessary by ICC-ES, the approved user must discontinue use of the certification and the WaterMark Licence until a certification revision addressing the changes has been issued.

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9.0 PRODUCT IDENTIFICATION

9.1 Approved user's Name, Registered Trademark, or Registered Logo:

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

9.2 PMG Listing Mark:

The approved user shall mark the listed product with the ICC-ES PMG listing mark. If the approved user reasonably believes that such marking will affect the aesthetic appearance of the listed product, ICC-ES will consider issuing a written permit allowing the approved user (1) to affix the PMG listing mark to be applied on other items acceptable to ICC-ES, such as on packaging or installation instructions, and/or (2) to affix the PMG 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 PMG listing mark.

9.3 Certification Number:

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

9.4 Mark of Conformity Details:

Markings to be placed on products or packaging shall, as a minimum, include the following: Approved User's name, brand or trademark; Mark of Conformity; Licence Number; batch identification (as required by the applicable specification); number of the applicable specification; and other markings relevant to the correct installation and safe operation of the product, e.g. witness marks, use-by dates, direction of flow, and direction of opening/closing.

In exceptional cases where the product is too small to receive a Mark of Conformity, approved users may make application for an exemption to display the Mark of Conformity. ICC-ES shall apply for exemption to the ABCB.

10.0 INSPECTIONS OF MANUFACTURERS

Qualifying inspections are required for new certification applications and for additional manufacturing facilities being added to an existing certification. The qualifying inspection will be conducted by ICC-ES or its designated representative. As an alternative, at the discretion of ICC-ES, the approved user may retain a third-party inspection body that has a contractual relationship with ICC-ES and that is accredited by a signatory to the ILAC MRA as meeting the provisions of ISO/IEC Standard 17020, *General Criteria for the Operation of Various Types of Bodies Performing Inspection*. The purpose of the

qualifying inspection is to determine whether the manufacturer's quality management system and production process have been successfully implemented and/or to verify that the manufactured product is the same as the product presented for recognition. As a condition of maintaining an ICC-ES certification and the WaterMark licence, the approved user shall grant ICC-ES or its designated representative the right to conduct surveillance and renewal inspections of manufacturing facilities, to verify compliance with the WaterMark Scheme's certification requirements.

ICC-ES, its designated representative, or the third-party inspection body shall review the following elements at the manufacturing facilities, as applicable: effectiveness of corrective actions taken in response to nonconformances found during previous inspections; changes in the quality system that may affect certified products; any changes in processes or materials; complaint records regarding listed products; markings on the product and in product literature; raw materials; and equipment calibration.

Additionally, as part of annual inspections, ICC-ES shall request and/or review results of type testing as per the product specification and when one or more of the following occurs: a change in specification, design, material, manufacturing process or location.

ICC-ES or its designated representative shall make every effort to visit manufacturing locations during normal business hours. At the manufacturing facility, the approved user shall assign an appropriate representative to accompany the ICC-ES inspector or ICC-ES's designated representative, to grant access to applicable manufacturing and storage locations, to review applicable records and documents, to select samples randomly for testing, and to accommodate the inspector with any other related inspection services as necessary. If the inspector selects samples for testing by a laboratory meeting the requirements noted in Section 5.2, the approved user 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 a laboratory meeting the requirements noted in Section 5.2, 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 compliance of the listed products; the standard governing the listed products having undergone a revision; or the these 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 following initial issuance of the certification.

The approved user shall agree that if such testing shows the product failing to meet the requirements of the applicable standard, ICC-ES may remove the product from the certification

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11.0 REVOCATION OR MODIFICATION OF CERTIFICATIONS WITH RIGHT TO A HEARING

11.1 Any certification, and the authorization to use the ICC-ES PMG listing mark, may be revoked or modified for cause. "Cause" shall include:

- a. failure of the product during testing or inspection to conform with the standard/specification upon which the certification was based.
- b. failure to comply with any characteristics of and/or conditions to the issuance of the certification;
- c. making changes to the product without first obtaining approval by ICC-ES;
- d. any misstatement, whether intentionally or unintentionally made, in the certification application or in any data submitted in support thereof;
- e. failure to comply with any provision of the application form;
- f. 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 certification, the approved user 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 Product Listings.

12.0 REVOCATION/CANCELLATION/SUSPENSION OF CERTIFICATIONS AND WATERMARK LICENCES WITHOUT RIGHT TO A HEARING

12.1 A certification or WaterMark Licence may be canceled or withdrawn upon ICC-ES receiving a written request to do so from the approved user. A file for a new certification may be closed upon receipt of a written request from the applicant.

12.2 Notwithstanding anything in these rules to the contrary, any certification or use of the Mark of Conformity may be suspended for a period not to exceed 90 days, revoked, or canceled by the ICC-ES president or their designated representative, without notice or a hearing, for any of the following reasons:

- a. Fees, costs or charges, payable under the Approved User Agreement, having not been received by ICC-ES within 30 days from the date of mailing by ICC-ES of a written demand for payment;
- b. Failure of the approved user to maintain a current quality control program;
- c. Failure to perform any test, or furnish any material or data, required by ICC-ES within the specified time limit;
- d. Failure to renew the certification within the required period after a change in the relevant applicable specification (See Section 6.2);
- e. Failure of the approved user to correct nonconformances and/or submit a plan for correction within 15 business days from the date of inspection or testing;

f. Receipt of information that the product has been modified in violation of Section 8.0 of these rules;

g. Denial of ICC-ES access to manufacturing facilities for purposes of inspecting and evaluating quality control procedures;

h. Failure to comply with any rule for maintaining WaterMark certifications as adopted or amended from time to time by ICC-ES;

i. If the approved user becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors or makes any arrangement or composition with its creditors or if a company enters into liquidation (whether compulsory or voluntary, but not including voluntary liquidation for the purpose of reconstruction) or has a receiver appointed to its business;

j. Breach of the conditions of the Approved User Agreement.

12.3 Notwithstanding anything in these rules to the contrary, any certification 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 certification was based, either condition presenting a threat to public safety or property.

13.0 PROPRIETARY DATA

Data in any certification file or application file is considered proprietary. The data may be disclosed by ICC-ES upon written consent of the approved user or, with notice to the approved user, 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 having a legitimate interest therein; or any member of the ICC-ES Board of Managers. Additionally, upon the written consent of the approved user, 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 certification application, approved users grant ICC-ES the authority to allow such access.

14.0 PERMITTED USE OF CERTIFICATIONS, THE MARK OF CONFORMITY, THE ICC-ES NAME AND PMG LISTING MARK

14.1 Upon completion of a new certification, a renewal or an interim revision to an existing certification, the approved user will be provided with an authorization letter from ICC-ES that covers the use of the ICC-ES name and the certification itself, as well as guidance on communications associated with the certification. Additionally, ICC-ES will

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issue a WaterMark Licence, which contains conditions that shall be observed by the approved user. If it is determined that identifications are being applied to materials or products that do not comply with the current certification or licence, are being applied before authorization or applied after a certification or licence has been closed, ICC-ES will immediately disseminate a notice of violation of these ICC-ES PMG Rules of Procedure and take any and all actions necessary to secure compliance with the rules.

14.2 No approved user shall use the ICC-ES PMG listing mark until authorized by ICC-ES.

14.3 The then-current certification as provided to the approved user by ICC-ES and also available on the ICC-ES website, may be reproduced in its entirety by the approved user in the approved user's literature, advertising, or promotional materials. No reference to ICC-ES, the certification, the Mark of Conformity, the WaterMark Licence Number, or the ICC-ES PMG listing mark shall be included with such reproduction in a manner which could be misleading.

14.4 In lieu of reproducing the entire certification in literature, advertising, or promotional materials, the approved user may use references and statements such as: "See ICC-ES Certification No. _____ (insert current number) at www.icc-es.org\pmg." It is the approved user's responsibility not to misrepresent the certification in any way, and to secure ICC-ES approval in advance whenever there is a question about the use of the ICC-ES name and/or ICC-ES certification. Approved users are expressly prohibited from using the ICC-ES name, PMG listing mark, Mark of Conformity or WaterMark Licence to claim or imply product recognition beyond the recognition specified in the certification. Approved users are also expressly prohibited from using, in advertising, promotional, and informational materials, any language that would likely mislead the public about their certifications. 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 PMG listing mark on products and in advertising, promotional, and informational materials:

14.5.1 Use of the ICC-ES PMG listing mark is prohibited in any manner and in any media without authorization from ICC-ES. Use of or reference to any certification after cancellation is also prohibited.

14.5.2 The Mark of Conformity, WaterMark Licence Number and the ICC-ES PMG listing mark may be used *only* on or in connection with products, components, methods, and materials that are covered in currently valid certifications. Use of the PMG listing mark is not a replacement or substitute for product identification provisions in the relevant certification. In no circumstances may the PMG listing mark, Mark of Conformity or WaterMark Licence Number be used to imply ICC-ES approval of aesthetics or any other attributes not specifically addressed in the certification.

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

14.5.4 Approved users may use their certifications 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 only one standard applicable to the product), the ICC-ES listing mark 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 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 the listed aspects of the product ("Gas Safety"; "Mechanical") may be noted in conjunction with the listing mark.] ICC-ES will inform the approved user if there are such special requirements for display of the listing mark on product packaging or in product literature.

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

14.7 In the event a approved user seeks cancellation of a certification, or informs ICC-ES that production at a recognized manufacturing facility has ceased or is being transferred to a different facility, then the approved user shall (a) promptly provide ICC-ES with written confirmation that manufacturing of products bearing the ICC-ES certification mark 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 mark has ceased.

14.8 The above does not excuse compliance with any ICC-ES requirement as a condition of securing or maintaining a certification 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 and PMG listing mark, 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 certification 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 certification should be submitted in writing to the attention of the ICC-ES Quality System

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Director. The approved user will be notified of the complaint and, if a response is needed to address the complaint, ICC-ES will so inform the approved user. After notice, the approved user will have 30 calendar days in which to respond, or the certification in question will be subject to cancellation. Upon resolution of the complaint, ICC-ES will notify the complainant within no more than 10 working days. If the complainant is not satisfied with the outcome they may then complain or appeal to the Accreditation Body (JASANZ).

16.0 APPEALS

If an applicant or Approved User is dissatisfied with a decision of ICC-ES to refuse to certify products or to refuse to allow the use of the Mark of Conformity, the applicant or Approved User may request a reconsideration of the decision in accordance with the ICC-ES Rules of Procedure for Appeals Concerning Product Listings.

If an applicant or Approved User is dissatisfied with the reconsideration decision of ICC-ES, the applicant or Approved User may, after the applicant or Approved User has exhausted all rights of review under ICC-ES' (or the applicable JASANZ's) review procedures, appeal ICC-ES' decision to the WaterMark Scheme Owner.

The WaterMark Scheme Owner will publish the procedure for such appeals from time to time on the ABCB website (www.abcb.gov.au). The procedure will allow a reasonable time for parties to provide relevant information and documents and to respond to material the WaterMark Scheme Owner may take into account, to inform itself about the issues by any means including commissioning tests or reports and for the WaterMark Scheme Owner to notify the parties of its decision in writing. The parties must comply with the WaterMark Scheme Owner's decision. ■

Effective: July 1, 2023