



Why Accept the Use of TERs?

TERs Are Comparable to, Compatible with, and Equivalent to the Purpose of an ICC-ES ESR

Technical Evaluation Reports (TERs) are code compliant research reports (e.g. [IBC/IRC Section 104.11.1](#)), drafted, maintained and sealed as necessary by DrJ Engineering, LLC (DrJ, a professional engineering firm and ISO/IEC [17065 applicant through ANSI/ACCLASS](#)) fitting the building code and legal definition of an “approved source.” DrJ’s professional engineering work, within its area of engineering expertise, is to independently evaluate and provide an engineering assessment of how specific products comply with the provisions of the building code and all state professional engineering rules and regulations.

TERs are comparable to, compatible with, and equivalent to the purpose of an ICC Evaluation Service (ICC-ES) Evaluation Service Reports (ESRs)¹. ICC Evaluation Service does not provide an engineer’s seal on any of its ESRs. Furthermore, the ICC-ES Evaluation Report Purpose² is defined as follows:



ICC EVALUATION SERVICE, LLC, RULES OF PROCEDURE FOR EVALUATION REPORTS

1.0 PURPOSE

These rules set forth procedures governing ICC Evaluation Service, LLC (ICC-ES), issuance and maintenance of evaluation reports on building materials and products, methods of construction, prefabricated building components, and prefabricated buildings.

ICC-ES evaluation reports assist those enforcing model codes in determining whether a given subject complies with those codes. An evaluation report is not to be construed as representing a judgment about aesthetics or any other attributes not specifically addressed in the report, nor as an endorsement or recommendation for use of the subject of the report. Approval for use is the prerogative and responsibility of the Code Official; ICC-ES does not intend to assume, nor can ICC-ES assume, that prerogative and responsibility.

¹ ICC Evaluation Service, LLC and the ICC-ES Evaluation Reports logo are registered trademarks of ICC-ES.

² Please see the “ICC-ES Rules of Procedure” at www.icc-es.org/pdf/rules_evalrpts.pdf.

This is the Page 1 footer of each ICC-ES report³:

ICC-ES Evaluation Reports are not to be construed as representing aesthetics or any other attributes not specifically addressed, nor are they to be construed as an endorsement of the subject of the report or a recommendation for its use. There is no warranty by ICC Evaluation Service, LLC, express or implied, as to any finding or other matter in this report, or as to any product covered by the report.



Likewise, the DrJ responsibility statement is identical to that provided in ICC-ES ESRs.

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DrJ Sealed Engineering

DrJ engineers undertake rigorous engineering and analysis work to determine a product's compliance with the codes and standards referenced in its TER.

DrJ work:

- Complies with accepted engineering procedures, experience and good technical judgment.
- Is the work of an independent person, firm or corporation who is competent and experienced in the application of engineering principles to materials, methods or systems analyses.

A Technical Evaluation Report generated by DrJ is in all "code-compliance-evaluation-processing" respects equivalent to an ICC-ES ESR, as ICC-ES defines its approach, with one material difference. DrJ will seal all TERs, as needed, so that responsibility for the work is well-defined.

Legal Aspects of Product Approval

In general, the model and local codes provide for the use of alternative materials, designs and methods of construction by having a legal provision that states something similar to:

The provisions of this code/law are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by this code/law, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the compliance official finds that the proposed design is satisfactory and complies with the intent of the provisions of this code/law, and that the material, design, method or work offered is, for the purpose intended, at least the equivalent of that prescribed in this code/law.

³ Page 1 footer of each ICC-ES report that can be found at www.icc-es.org/reports/index.cfm.

In concert with preserving “free and unfettered competition as the rule of trade,” should this alternative material, design or method of construction not be approved, the building official shall respond in writing, stating the specific reasons for non-code-compliance and/or for non-professional engineering regulation compliance.

Congress passed the first antitrust law, the Sherman Act, in 1890 as a “comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade.” In 1914, Congress passed two additional antitrust laws: the Federal Trade Commission Act, which created the FTC, and the Clayton Act. With some revisions, these are the three core federal antitrust laws still in effect today.

...Yet for over 100 years, the antitrust laws have had the same basic objective: to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up....

The Sherman Act outlaws “every contract, combination, or conspiracy in restraint of trade,” and any “monopolization, attempted monopolization, or conspiracy or combination to monopolize.” For instance, in some sense, an agreement between two individuals to form a partnership restrains trade, but may not do so unreasonably, and thus may be lawful under the antitrust laws. On the other hand, certain acts are considered so harmful to competition that they are almost always illegal.

The penalties for violating the Sherman Act can be severe. Although most enforcement actions are civil, the Sherman Act is also a criminal law, and individuals and businesses that violate it may be prosecuted by the Department of Justice.⁴

Legal Validity of TERs

A TER is a code-defined (e.g., 2009 IBC and IRC [Section 104.11.1](#) and 2009 IBC [Section 1703.4.2](#)) “research report” that provides supporting data to assist in the approval of materials, designs or assemblies not specifically provided for in this code. Therefore, a TER is a valid research report from a professional engineering company that complies with the code definition of “approved source.” If required by the authority having jurisdiction, this TER can also be sealed to comply with professional engineering laws and regulations.

⁴ http://www.ftc.gov/bc/antitrust/antitrust_laws.shtml.