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NEMI Comments on the 2028 Pre-Rulemaking (TN 273088)

Additional submitted attachment is included below.

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In the matter of 2028 Building Energy Efficiency Standards Pre-Rulemaking

Docket No. 25-BSTD-03

Comments on the 2028 Pre-Rulemaking Draft Regulatory Text (TN 273088)

Submitted by: Steven Winstead - Western Region Representative – CA
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Submitted to: California Energy Commission Docket Unit
1516 Ninth Street, MS-4 - Sacramento, CA 95814
Submission Date: November 5th, 2026

The National Energy Management Institute (NEMI) submits these comments on the Pre-Rulemaking Draft Regulatory Text for the 2028 Energy Code (TN 273088), docketed October 12, 2026. NEMI thanks Commission staff for carrying the Mechanical ATT and ATE Equitable Audit Process (TN 270027) and the Acceptance Test Technician Commissioning proposal into draft text. NEMI's comments are summarized below and addressed in order.

No.	Topic	Section	NEMI Position
1	Equitable Audit Process	103.2.3 Item 3.6	Support as drafted
2	Acceptance Test Summary Report	103.1.3 and 103.2.3, Item 3.8.6	Remove
3	Commission-hosted database	103.2.3 Items 3.8 and 3.8.5	Request
4	Annual report confidentiality	103.2.4 Items 1.2 and 1.3	Revise
5	ATT commissioning design team	1001.2.3.2	Support, with one clarification
6	High-rise multifamily ATT verification	NA1.9.1	Carry forward to next eligible cycle

Comment 1: Equitable Audit Process, Section 103.2.3 Item 3.6

NEMI supports Section 103.2.3 Item 3.6 [Section 10-103.2(c)3F] as drafted. The draft carries forward the core of TN 270027: a Training Facility Audit of one ATT from a minimum of five percent of all active ATEs, a Desk Audit and Site Audit floor of one project per ATE per code cycle, and ATTCP discretion to use either site or training facility audits.

NEMI also supports staff's revisions to the Training Facility Audit. They keep the minimum of five functional tests and the replication of field conditions to the extent possible, while giving ATTCPs practical flexibility in how audits are configured and scheduled.

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Comment 2: Acceptance Test Summary Report, Section 103.1.3 and Section 103.2.3, Item 3.8.6

NEMI reiterates the opposition stated in TN 271500 and requests that Item 3.8.6 be removed from Sections 103.1.3 and 103.2.3 [Sections 10-103.1(c)3H and 10-103.2(c)3H], for three reasons:

- **The authentication goal is already met.** Item 3.8.4 already requires the ATTCP to "provide a means of verifying any certificate of acceptance to the enforcement agency," which addresses provenance and fraud at the level of the certificate itself.
- **A summary displaces form-level review.** AHJ familiarity with acceptance testing remains limited. A single report listing every test and its completion status gives reviewers a reason to stop at the summary rather than examine the certificates of acceptance.
- **The effect is already visible.** In San Francisco, a per-discipline affidavit has become the document reviewers check, and attention to the underlying acceptance tests has faded. The ATSR would set that pattern statewide.

If the Commission retains the ATSR, NEMI requests that Item 3.8.6 state that the ATSR does not substitute for enforcement agency review of the individual certificates of acceptance, and that each listed test link to its recorded certificate of acceptance.

Comment 3: Commission-Hosted Acceptance Testing Database, Section 103.2.3 Items 3.8 and 3.8.5

NEMI requests that the Commission host and manage a single statewide acceptance testing database that approved ATTCPs and their certified ATTs and ATEs would access to perform and record their work.

Item 3.8 requires each ATTCP to maintain its own Commission-approved database. The draft adds a data transfer mechanism, to be approved by the Executive Director with a one-year implementation deadline and monthly reporting (Item 3.8.5), and the ATSR (Item 3.8.6). Each code cycle's new and revised certificates of acceptance also require every ATTCP to update its database. Multiple ATTCPs therefore build parallel systems to meet the same requirements, and the cost and schedule risk of every change falls on each of them separately.

The Energy Code already contemplates a Commission-held repository in Item 3.9.2, and NEMI understands from discussions with Commission staff that the Commission has been developing its own internal database capability. A Commission-hosted database would:

- give enforcement agencies one authoritative source for verifying certificates of acceptance;
- ensure every ATTCP uses the same current forms on the same schedule;
- give the Commission direct access to project data without a separate transfer mechanism; and
- let ATTCPs focus on training, certification, and quality assurance, the core functions the program assigns to them.

Until a Commission-hosted database is available, NEMI requests that Item 3.8.5 require public notice and consultation with approved ATTCPs before the data transfer mechanism is approved, and that the approved specification be published so ATTCPs have the full one-year period to implement it.

Comment 4: Annual Report Confidentiality, Section 103.2.4 Items 1.2 and 1.3

The draft expands the annual report to include, for each disciplinary action, "the general nature and source of each complaint or quality assurance finding" and "the ATT or ATE involved," and, for each ATT, the number of desk audits, on-site audits, and failed audits. ATTCP annual reports have been filed on the Commission's public docket. Publishing names alongside complaints and failed audits, including unresolved actions, would harm technicians and employers before any finding is made and could discourage good-faith complaints.

NEMI requests that Items 1.2 and 1.3 allow ATTs and ATEs to be identified by certification identification number, and that identifying details of complaints and disciplinary actions be submitted to the Commission confidentially, separate from the public report. NEMI supports full transparency to Commission staff; this request concerns only public disclosure.

Comment 5: ATT Commissioning Design Team, Section 1001.2.3.2

NEMI supports Sections 1001.2.3.2.3 and 1001.2.3.2.4 [Section 120.8(d)], which add a certified Lighting Controls ATT and a certified Mechanical ATT to the commissioning design team, and the Design Reviewer and Design Team definitions in Section 201 [Section 100.1(b)]. Placing certified ATTs on the design team brings acceptance testing expertise into design review, so compliance issues are resolved before construction rather than found at the end of it, using the existing certified workforce.

NEMI requests one clarification. The exceptions to both sections exempt "projects containing Group R occupancies." NEMI asks staff to clarify that the exceptions apply only to the Group R portions of a mixed-use project, so the ATT design team requirement continues to apply to the nonresidential portions.

Comment 6: High-Rise Multifamily ATT Verification, NA1.9.1

NEMI recognizes that AB 130 limits changes to standards affecting residential units during the 2028 cycle, and requests that staff carry forward the request in TN 271500 to the first eligible code cycle.

The Energy Code recognizes that certified ATTs "may serve the function of an ECC-Rater" (NA1), and NA1.9.2 requires ATTs to use the same NA2 procedures and compliance criteria. The draft also adds Section 103.2.3 Item 3.2.1.20, which would require ATTCPs to train ATTs on the NA1.9 field verification procedures, and ATT work is subject to ATTCP quality assurance under Section 103.2.3. Yet NA1.9.1 makes ATT-verified systems ineligible for NA1.6 sampling, so the identical test must be performed at 100 percent when an ATT performs it.

NEMI asks that the two verifier pathways be treated equitably, with equal access to sampling under the same conditions, and requests that staff confirm whether AB 130 bars this change in the current cycle.

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Conclusion

NEMI appreciates staff's work on the 2028 update and the opportunity to comment. NEMI is available to discuss any of these comments with staff.

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