

DOCKETED

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**ARCXIS Comments - 2022 Field Verification and Diagnostic Testing
OIR Proceeding**

Additional submitted attachment is included below.

Staff CEC 2025 Code Document

New Construction – Production Builders Only

ARCXIS, formerly known as Energy Inspectors, submits preliminary comments in response to 22- BSTD-03. The Draft Staff Report supporting 22-BSTD-03 was filed on 10/14/2022, with a comment period deadline of 12/16/2022. These are responses to some of the specific recommendation and a response to some of the logic in which the new regulations have been based...the backstory.

Overall, the important points are:

1. California, as the world 4th largest Economy, should not be congealed into one docket. Not separating New Construction Production Builders from Custom homes, or existing homes from new homes, raters from rater companies and providers causes the overall subject to be condensed and inequitable as each faction is very different which would result in different rules and regulations all around.

As such we wish to make it known that THIS REPORT only addresses New Home Production Builder concerns.

2. Staff in the docket is assuming costs to individual raters, rater companies and providers do not affect contractors or builders Any additional cost to raters or rater companies would get passed onto builders.
3. Under-estimating the lack of involvement by Building Departments and CSLB and its subsequent impacts on raters and rater companies. If Building Departments grant certificates of occupancy without 3Rs then it says the 3Rs are unimportant. If Building Departments inflict increased requirements such as LEED or Green Point Rated (for profit companies) onto new home builders under the name of energy efficiency, then it gives the whole subject an expensive cast.
4. Mixing Construction Quality and Energy Efficiency. The Rater has no contractual obligation or way to oversee trades as it relates to construction quality. The best it can do is inform the builder of deficiencies – not stop construction or trades – as it is not supported by AHJs. The CEC is stating that raters and rater companies oversee or verify trade Installation (CF-2R) but what of Building Depts and CSLB. The number of inspections and number of people capable of stopping construction at a work site are great – there is the CEC, Providers, Rating Companies, Building Departments and CSLB. This represents a great cost to contractors/builders and a multitude of inspection entities. Also it essentially makes all CF-2Rs (Construction Quality) into a code mandate.
5. In alignment with (4) above - We would like to propose the elimination of CF-2Rs and leave Field Raters to do Diagnostic testing and verification in 100% of the homes. The testing/verification would include:

All mandatory tests

Air Infiltration – Blower Door

RCT

WHF

CF-1R feature verification

Confirmation of all Energy Components/features listed on the CF-1R
Field Inspections would apply to all Homes SF, Detached/Attached, All MF (Low Rise and High rise) providing they are all wood framed.

7. The whole training approach seeks to take the place of colleges, community colleges, trade schools by repeating all the training in another venue to the cost of taxpayers in California. This mandate assumes the problem here are raters and rater training and nothing presented supports this. In fact, what is presented is that AJHs do not require Energy Inspections and that Quality construction inspections have been made Code by requiring CF-2Rs be verified in all cases.

Individual notes:

Draft Staff Report 2022 Update of Field Verification and Diagnostic Testing Requirements:

1. Executive Summary (Page 1): Solar is not mentioned. It is the component of the building structure designed to offset electrical usage – this combined with making it mandatory in the state of California makes solar the highest concern to the end user in terms of cost and effectiveness in reducing home energy costs.

Chapter 1: Legislative Criteria (Page 5):

Below are some general comments on this section of the report.

- No consumer protection on Solar is brought up or discussed, yet HVAC is highly addressed and regulated.
- There is no feedback loop or direction from AHJ however it is general knowledge that local building departments rarely demand compliance to energy codes, no enforcement. Some acknowledgement and action is needed on this point.

Chapter 2: Efficiency Policies (Page 7):

- Overall: This chapter takes on an air of agitation with raters claiming ‘false report’ in compliance documents so more regulations are called out rather than finding the reasons behind failures. See Page 17 Data, Errors, and Falsification, also see Page 27 which states *Raters who walk through FV&DT visits without conducting required testing or who do not even go to project sites to conduct the required tests yet still submit compliance documents to registries. It is critical for the CEC and providers to stop these problems from occurring....*

Chapter 3: Background on the FV&DT Program. (Page 13):

- There is a lack of improvement or achievement review, which could lead to reinforcing what is done right. What is the number 1 reason for success? Is it energy modeling requirement as part of initial planning submission or testing? Or both?
- There is no mention of builder or consumer training, yet these would both help out building departments and raters

Chapter 4: Staff Proposal for Regulatory Framework.

- Page 21: (4th dot): This proposed change seeks to control rater work assignment, so that rating companies use the same rater on all projects. It does not appear any research was done to determine how or why rater companies assign raters right now. This change would be very disruptive and yet no reason for the change is stated. What substantiates this change? What is the impact of this on Production Builders, what is a compelling circumstance?
- Page 21, 5th dot, appears to state that A rater company could provide additional services but can't use raters for such services.... therefore, raters could not provide E*, Water Sense, Indoor Air inspections, frame walks HVAC Commission reviews, California Green Inspections?
- Page 21, 6th dot: states "A rater company would have view-only access to the compliance documents of raters that are in any state of completion within the data registry and would not be permitted to change data entered the provider data registry for any compliance document signed by rater... changes signature authority process. Anything that disrupts what is currently being done needs a good reason and this is not clear here,
- Page 24, Provider-Rater Progressive Discipline. Requires a rater in one provider ship to be reported and similarly addressed in the other provider. Endless, possibilities for corruption, administrative mistakes, Provider-favorites and so forth.
- Page 25: How does a provider choose to reduce its own income through suspension of a rater company. Conflict of Interest seems to be pre-ordained. Some conflicts are addressed, and others are not.
- Page 31: States Raters and Rating Companies may be hired by and accept payment from only the building owner for FV&DT services performed on a newly constructed residential building that has not been issued a certificate of occupancy by AJH." What is definition of building owner? What about a General Contractor? What happens if AHJ issues certificate without testing, does rating company then only sign a contract with the new homeowner?
- Training Page 34. There is a good deal of language about regulating how raters operate, how they are to be disciplined, how they are to be paid, what their agreements should state, seems like overreach. There is no justification given for all these changes other than to make raters into "government employees". It appears a good deal of the suggestions are out of a desire or feel the need to control – hire or fire – or regulate people not under government.

Chapter 5: Alternatives Considered:

- Pages 39 – 41.

Option 3 “Add provisions related to FV&DT program to Title 24, including regulations to improve program clarity and compliance”

... has been deemed as the only option by staff

Whereas for New Home Production Builders Option 4 would seem the most applicable Option 4...” Reimagine the entire FV & DT Program”

This would include:

Delete CF-2Rs and turn over management of trades to Building Depts and CSLB.

Cancel Sampling

Implement Blower Door 100% to replace QII

Re-iterate and do not allow any COO without rater inspection

Review and reconcile all testing procedures so that it is doable by trades and able to be inspected such as inaccurate forms creating additional costs such as

- Blower Door SF & MF
- Mech 27
- WHF
- Ducts in Conditioned Space

Find out what raters, rater companies are doing correctly to improve energy efficiency and reinforce

Implement HERS Diagnostic test for Solar

Chapter 6: Technical Feasibility:

No Comment

Chapter 7: Savings and Cost Analysis

All newly added costs (procedures, training, process flow interruption) assigned to rater, rater companies and providers are assumed as no cost to contractors. Yet with every single change to New Home Construction rater company comes a cost that will be passed onto the builder. This includes:

CEC policies on Quality Assurance to add cost to builder and thus to consumer

CEC policies on rater or rater company training to add cost to builder and thus to consumer

CEC policies on rater or rater company for new regulations and new processes to add cost to builder and thus to consumer

Selecting Option 4 and eliminating CF-2Rs and QII and just going to Blower Door 100% would standardize costs to Builders and thus consumers.

Page 47. States ... *However, many AHJs do not enforce the Energy Code or verify that the FV&DT verifications have been performed prior to issuing a certificate of occupancy...*

It then goes on to assume the reason of this is:

A more reliable and defensible FV&DT program may encourage AHJs to ensure the FV&DT requirements, as well as the rest of the Energy Code requirements as well....”

The logic here is flawed and thus will result in an over regulated system, adding time and cost to a building industry already in need of assistance.

Chapter 8: Environmental Impact Analysis:

No additional comments

Chapter 9: Economic and Fiscal Impacts

There is nothing in these proposed rules or regulations to improve to support the first two bullet points in NEW HOME CONSTRUCTION Production Builders which state:

- The proposed changes to the FV&DT Program will increase compliance with the Energy Code requirements by contractors and other licensed professional.
- The proposed changes to the FV&DT Program will increase enforcement of the Energy Code by AHJs.

Specific Staff Recommendation comments

1. **Change the naming convention in the industry.** Change “HERS Rater” to “Technician”, “HERS Rater Company” to “Technician Company”, among other naming changes.

Proposal: The terms suggested are too general. It would create confusion. No real reason as to why this is being done.

2. **Progressive Discipline**

Summary: Rater Companies currently are not regulated in the HERS regulations. There is a lack of discipline options and procedures to address performance issues including data falsification.

Proposal: Include Field Energy Rater Companies in FV&DT regulations. Provide progressive discipline options to correct noncompliant behavior (for Providers, Raters, and Rater Companies). Provide additional data entry safeguards.

3. **Conflict of Interest**

Summary: Some Raters pull permits for contractors, potentially influencing the rater. Some Raters complete and sign compliance documents other than the Certificates of Verification. Some Raters promote legitimate off-purpose use of registered compliance documents which is not expressly permitted.

Proposal: Define restrictions for Field Energy Rater Companies to avoid potential for fraud or

collusion such as EPA programs. Allow Field Energy Rater Companies to complete compliance documents, as well as raters.

4. **Training**

Summary: Training requirements are limited causing inconsistent programs between Providers.

Proposal: Develop clear minimum training requirements including proctored online training and exams, hands-on training, and increased initial oversight by the Provider for Raters.

Specific Recommendations:

Summary:

Provide the best service to New Home Builders and Consumers with least amount of cost.

Proposal:

Implement the following

Delete CF-2Rs and turn over management of trades to Builders, Building Depts and CSLB.
Cancel Sampling and have Field Raters do Diagnostic testing and verification in 100% of the homes. The testing/verification would include:

All mandatory tests

Air Infiltration – Blower Door, eliminate QII

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CF-1R feature verification

Diagnostic test for Solar

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