

<b>DOCKETED</b>	
<b>Docket Number:</b>	24-BSTD-01
<b>Project Title:</b>	2025 Energy Code Rulemaking
<b>TN #:</b>	256354
<b>Document Title:</b>	ARCXIS Comments - on 2025 Building Energy Efficiency Standards, Express Terms, 45-Day Language
<b>Description:</b>	N/A
<b>Filer:</b>	System
<b>Organization:</b>	ARCXIS
<b>Submitter Role:</b>	Public
<b>Submission Date:</b>	5/13/2024 4:27:46 PM
<b>Docketed Date:</b>	5/13/2024

*Comment Received From: ARCXIS  
Submitted On: 5/13/2024  
Docket Number: 24-BSTD-01*

**on 2025 Building Energy Efficiency Standards, Express Terms, 45-Day Language**

*Additional submitted attachment is included below.*



May 13, 2024

David Hochschild, Chair  
California Energy Commission  
715 P Street  
Sacramento, California 95814

**RE: Comments on 2025 Building Energy Efficiency Standards, Express Terms, 45-Day Language [Docket No. 24-BSTD-01]**

Dear Chair Hochschild:

ARCXIS respectfully submits these comments on the *2025 Building Energy Efficiency Standards, Express terms, 45-Day Language* (“45-Day Language”), issued on March 28, 2024. ARCXIS has been actively engaged throughout this rulemaking process, both by submitting comments and meeting with Commission staff in the pre-rulemaking phase on the proposed changes to the Field Verification and Testing Program (HERS). The 45-Day Language includes several significant improvements to key portions of the proposed rulemaking language and we appreciate the responsiveness to our prior comments. As described further below, ARCXIS supports many of the changes in the 45-Day Language, but does believe that several areas could be clarified and that a small number are not justified.

## **A. Comments on the 45-Day Language**

### **1. Conflicts of Interest**

ARCXIS shares the Commission’s goal to make the HERS program a consumer-focused program. Robust prohibitions on conflicts of interest are an essential part of meeting this goal and we have supported common-sense restrictions and requirements throughout this proceeding. The 45-Day Language appropriately balances the need to prevent conflicts of interest while not inhibiting the ability of companies to provide valuable and innovative services to consumers. ARCXIS agrees with the conclusion in the Initial Statement of Reasons (ISOR) that the proposed Section 103.3(b)1Aii would effectively prevent builders, designers, and subcontractors from influencing the field verification and diagnostic testing. We also agree with the ISOR’s conclusion that the declaration process established by Section 103.3(f)2Diii ensures that ECC-Raters will not experience undue pressure from the builder or designer, and is sufficient to maintain

a reputable ECC Program. ARCXIS urges the Commission to adopt this language as currently proposed.

## **2. Signature Authority**

We support the changes in the proposed rules that allow certain managing/supervising raters the ability to sign compliance documents. ECC-Rater Companies may have centralized document submission processes that are streamlined to reduce costs and reduce delays. Allowing the ECC-Raters to delegate signing authority to ECC-Rater Companies supports this streamlining. We believe proposed change in the 45-Day Language strikes the right balance of ensuring consumer protection and allowing us operational flexibility to keep consumer prices low. However, ARCXIS recommends that the 45-Day Language be amended to avoid any ambiguity in order to ensure that ECC-Rater Companies have the ability to sign on behalf of individual ECC-Raters to the same extent and subject to same restrictions as other entities covered by these regulations.

### *Proposed Redline of 45-Day Language:*

#### **Section 10-103.3(b) General Provisions.**

##### **2. Prohibition on False, Inaccurate, or Incomplete Information**

A. ECC-Providers shall not knowingly accept, store, or disseminate untrue, inaccurate, or incomplete information or information received through actions not conducted in compliance with these regulations, including information related to field verification and diagnostic testing information, field verification and diagnostic test results, or results on a certificate of compliance or certificate of installation documents.

B. ECC-Providers shall not accept payment or other consideration in exchange for use of their data registry to report a field verification and diagnostic test result that was knowingly conducted and reported out compliance with these regulations.

C. Only the ECC-Rater who performs a field verification and diagnostic test shall have signatory authority for all certificates of verification related to the field verification and diagnostic test.

i. ECC-Raters shall not use technicians that are not certified ECC-Raters to perform field verification and diagnostic testing unless said technicians are directly

supervised by the ECC-Rater in person on the project site.

ii. Except as authorized in Section 10-103.3(b)2Di, no~~No~~ other person shall sign the certificates of verification other than the ECC-Rater that performed or directly supervised technicians that performed the field verification and diagnostic test.

### 3. Separation of Services

The Commission's April 16, 2024 workshop provided additional details on the proposed requirements for the separation of services. We appreciate and support the Commission's goal to allow raters and rating companies the ability to offer several services (with assurances rating work isn't being directed) that benefit consumers. As ARCXIS has previously commented, it is in the consumer's interest to integrate the design and the testing functions because it allows the designer to ensure that the system was installed and working as per their design. Any issues can be more quickly pinpointed to one of either faulty equipment or poor design, with any installation issues having been identified and rectified during construction. This creates greater accountability for the designs on the part of the designers and reduces homeowner complaints. This also speeds up complaint resolution, resulting in positive outcomes for the consumer.

### 4. Homeowner Bill of Rights

ARCXIS appreciates the 45-Day Language's inclusion of a homeowner bill of rights, which will provide consumers with much needed information about the HERS program and the complaint process. The proposal makes the process between the ECC-Rater and ECC-Provider in developing this document clear, but it should also expressly state that the homeowner must receive a copy of this document. ARCXIS also recommends that the ECC-Provider should be required to approve the template for this document.

*Proposed Redline of 45-Day Language:*

#### **Section 10-103.3(b) General Provisions.**

##### **1. Conflicts of Interest.**

###### **A. Prohibition of Conflicts of Interest.**

...

vii. ~~The~~Each ECC-Rater ~~and~~or ECC-Rater Company must ~~submit a register a~~ Consumer Information Form Template to ~~with~~ the ECC-Provider, which includes educational materials

regarding the ECC Program, the roles and responsibilities of ECC- Raters, ECC-Providers and ECC-Rater Companies, and the means by which the owner may file a complaint. The Consumer Information Form must also include the owner’s valid contact information, comprised of the owner’s name, project address, phone number, and email. [The ECC-Provider shall either approve the Consumer Information Form Template or direct the ECC-Rater or ECC-Rater Company to modify the Consumer Information Form Template. Prior to the start of any field verification or diagnostic testing at a project site, the ECC-Rater or ECC-Rater Company shall provide a copy of the approved Consumer Information Form to the owner or owner representative and shall register a completed Consumer Information Form with the ECC-Provider.](#) Failure to register a valid Consumer Information Form will make the ECC-Rater or ECC-Rater Company subject to discipline as described in Sections 10-103.3(d)7 and 10-103.3(d)8. For projects with no current owner in residence, the owner’s contact information may be that of the landlord, developer, builder, or any other such person with a real property interest.

## 5. Rating Company Qualifications

We support the clear creation of rating companies and their requirements to be certified by a provider. The rules specify that at least one “principal” of an ECC-Rater Company must be an ECC-Rater. We believe the term “principal” should be defined to avoid any misunderstanding about this requirement.

*Proposed Redline of 45-Day Language:*

### **Section 10-103.3(f) ECC-Rater Company Certification and Responsibilities.**

#### **1. Certification.**

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**B. Minimum Qualifications.** At least one principal of the ECC-Rater Company applicant shall hold an active ECC-Rater certification issued by a Commission approved ECC-Provider or be actively pursuing certification as evidenced by enrollment in training courses. [For purposes of this Section, a “principal” is defined as a senior management-level employee, and is not limited to an owner or shareholder of the ECC-Rater Company.](#)

## 6. Challenge Exam

The proposal to allow experienced professionals to take a challenge exam to meet rater requirements recognizes the work of many rating professionals over the years and allows a seamless transition into these new requirements. However, ARCXIS shares the concerns expressed by CalCERTS in comments on the 45-Day Language submitted on April 17, 2024 that requiring “in-person” exams would delay the testing process and add costs and administrative burdens, while not providing any benefit. Therefore, ARCXIS supports the CalCERTS proposal to delete the “in person” requirements for Challenge Exams.

*Proposed Redline of 45-Day Language:*

**Section 10-103.3(d) ECC-Rater Responsibilities.**

**1. ECC-Rater Training.**

**B. Challenge Test**

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- ii. The challenge test shall include a written test to be taken ~~in-person~~ using a live proctor.

## 7. Shadow Audits

Several providers have requested greater operational flexibility to schedule shadow audits. We agree that allowing a provider and rater to communicate about scheduling the audit will ease administrative burden on both sides. One key improvement to the shadow audit process would be to provide more advanced notice that a shadow audit will occur so that the ECC-Rater or ECC-Rater Company can appropriately adjust their schedule as well as notify the building owner. ARCXIS proposes the ECC-Rater be given notice five business days prior to the shadow audit.

*Proposed Redline of 45-Day Language:*

**Section 10-103.3(d) ECC-Provider Responsibilities.**

**5. Quality Assurance.**

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**C. Types of Quality Assurance Review.**

...

**ii. Shadow Audits.**

a. The ECC-Rater shall be informed of the shadow audit ~~on the day of~~ five business days prior to the audit and the ECC-Provider's auditor will explain their presence to the homeowner. The homeowner may grant entry to the auditor. If entry is refused, the ECC-Provider shall reschedule the shadow audit.

**8. Data**

We remain concerned about the cost implications to raters of several new data/registry requirements. However, we are more concerned that the registry maintains functionality. We agree with the comments submitted by CalCERTS in the pre-rulemaking docket on December 13, 2023 that recommends limiting search parameters and the rationale required for data requests. To ensure the integrity of the system, ECC-Providers should have authority over the parameters of queries and for what purposes. ARCXIS urges the Commission to adopt the change recommended by CalCERTs, which is repeated below.

*Proposed Redline of 45-Day Language:*

**Section 10-103.3(d) ECC-Provider Responsibilities.**

**12. Responses to Commission Requests for Data.**

A. At any time, the Executive Director may request access to or a digital copy of one or more registered compliance documents, associated with Compliance Registration Packages, and quality assurance records that an ECC-Provider is required to maintain pursuant to Section 10-103.3(d)9 and the Building Energy Efficiency Standards, Reference Joint Appendix JA7. Requests for data shall be limited to information needed to confirm compliance with and/or assess the Section 10-103.3 Energy Code Compliance Program.

**9. Registration of Consumer Information Form With ECC-Provider**

As stated above, ARCXIS supports the requirement for ECC-Raters to provide a Consumer Information Form to owners in advance of any field verification and diagnostic testing. However, ARCXIS remains concerned about the cost and burden associated with requiring ECC-Raters to register the Consumer Information Form with the ECC-Provider. ARCXIS recommends that the Commission consider whether this



requirement is justified by the benefits that it provides. Alternatively, the Commission could consider ways to reduce the burden of this reporting obligation, such as by requiring the ECC-Provider to augment their database systems to facilitate ECC-Raters registering these documents.

#### **10. Rater Company List of Employees.**

ARCXIS supports the ability of consumers to readily identify individual raters qualified and certified to work. However, we still fail to understand the rationale for having a list of all ECC-Rater Company certified ECC-Raters made public or who would potentially request this information. The ECC-Providers are the entities that determine ECC-Rater eligibility/certification and should be able to confirm an individual rater's certification similar to other consumer facing boards and commissions (e.g., bar association, contractors state licensing board). ARCXIS recommends that the Commission delete the proposed requirement in Section 10-103.3(f)2A for ECC-Rater Companies to maintain a publicly available list of all its ECC-Raters.

#### **11. Pricing/Cost Information.**

We remain concerned that giving ECC-Providers our cost information could impact the prices they charge us for their services. We rely upon providers for our training, data management, and certification. Given this business relationship, it provides an unfair advantage to providers to understand our pricing model. Providers could use this information to inform the prices we must pay them to participate in the HERS program. Lastly, we have no assurances this information can remain confidential. We remain unconvinced that this data helps consumers or improves the HERS program. We are all operating in a market to provide field verification and testing—let the market drive prices. ARCXIS recommends that the Commission delete the requirement in Section 10-103.3(f)2Fiv that ECC-Rater Companies provide annual total and average cost of service data to the ECC-Provider. If the Commission determines that the collection of this data is necessary, this cost information should be reported directly to the Commission and designated as confidential.

We want to thank you and staff for meeting with us and receiving our comments. Please reach out to me with any questions.

Sincerely,

/s/ Jonathan Risch  
Jonathan Risch, ARCXIS

Cc: Commission McAllister