

DOCKETED

Docket Number:	22-BSTD-01
Project Title:	2025 Energy Code Pre-Rulemaking
TN #:	248342
Document Title:	Email from Darrel Kelly
Description:	N/A
Filer:	Joe Loyer
Organization:	California Energy Commission
Submitter Role:	Commission Staff
Submission Date:	1/9/2023 11:49:57 AM
Docketed Date:	1/9/2023

From: Darrel <Darrel@builders-energy.net>

Sent: Sunday, January 8, 2023 7:56 AM

To: Loyer, Joe@Energy <Joe.Loyer@energy.ca.gov>

Subject: Update of the Field Verification & Diagnostic Testing Requirements (Docket #22-BSTD-3)

Thank you Joe for such a quick reply. Yes, you may include my email in the official record. I look forward to talking with you on Monday.

Meanwhile, back on the ranch, the list:

1. I like that allowing someone other than the contractor to pull permits has increased the number of permits and thus, better compliance with the energy code. I doubt we will change from our current structure as we like the wall to be airtight with no infiltration of an air of conflict. (Metaphor intended).
2. Ahh the conundrum,
 - a. How does a one-person shop not complete the CF2Rs?
 - i. In our case we have three people, each of whom specialize in Title 24 reports, green building checklists, or the field work. We could, if need be, push the CF2R work onto one of the other two people but would like to see a softening of the rule for companies with three or fewer people.
 - b. I don't think another certification is the answer. I will have to give this some deeper thought. Maybe in internal process that gives the data a last review by the originator would suffice. I will run it by the rest of the staff.
3. I would define a custom home as a "one-off" design. While subdivisions allow for flexibility (developers like to call it custom, they really aren't) none of the homes are truly custom. As for a "custom builder" that term could apply to companies who both design and build unique homes. I will say that many of our architect's design custom homes, but the homeowner decides who will build them. We do have vertically integrated firms that buy the lot, design the home, and sell it. Every one of those homes are unique.
4. While I must agree that most homeowners have never heard of HERS requirements, I don't think that should trigger any changes in nomenclature. Heck, if you change the labels the homeowners will still remain ignorant of the terms and requirements and the rest of us will be stuck with switching to term that have been unlinked from the product, much like renaming peanut butter to *Arachis hypogea* paste. I look to the source (CF-1R) and see HERS requirements listed and believe the current naming schema is more than sufficient.
5. THIS IS A NEW TOPIC – *Provisions for Rater Companies*.
 - a. There are many one-man shops that have incorporated (are companies) and these added requirements would be a burden for them. Heck, the added paperwork would be a burden even for us.
 - b. The fourth proposed provision governing Rater Companies (Page 21) is a bit concerning for me. While I am a certified Rater, most of my work is in compliance documentation (CF-1Rs). However, there are times when scheduling mandates that I perfume QII verifications while later our other Rater does the rest of the HERS required verifications. Sometimes I was the person creating the Title 24 reports, but I don't always know who the author was until I am on the job site reviewing the plans and see the included Title 24 report. There are times that we need a Rater to verify existing conditions before we complete a Title 24 report. If I am that Rater, would I then be disqualified from completing the Title 24 documentation that I was working on when I saw a need for that credit? It would appear so from the wording.

- c. To disallow me to perform other non-HERS related work for the homeowner, contractor, or architect is overly restrictive. This rule would disqualify me from performing a solar analysis, a shadow study or HVAC design work all because I was needed to timely perform a QII or an existing conditions verification.
- d. The last proposed provision is crazy. As a business owner I really don't want to reveal the specifics of my fees to any organization or government agency. What I charge for my work is no one else's business. To have my fees available to my competitors through the Freedom of Information Act is simply unacceptable to me personally. ***sarcastic tone*** *Data breaches? That would never happen – just ask LastPass, Google, Twitter, and thousands of other organizations. I'm sure the details of my business will be safe. LOL.* That aside, we work in multiple climate zones and would spend endless hours disaggregating our work, identifying specific building departments, and costs by Climate Zone. I don't want CHEERS, CalCERTS or any other provider's staff knowing my fee structure details and then leaving to start their own business in competition with me or any of my colleagues. Neither do I want to spend unpaid hours providing closely held information.

Off topic:

1. I could not find Docket Number 12-HERS-01 using Google search
2. This link on page 14 is broken: http://paladinriskmanagement.com/wp-content/paladindocs/6_may_09_g000035.pdf,
3. Any program that shows a 70% failure rate in reporting (unrealistic or invalid data input) is pretty much useless. One would think that the database software would be checking those inputs for valid/realistic entries and force revisions rather than simply allow bad entries to be recorded. At the very least those data could be analyzed for patterns revealing specific Raters who consistently get it wrong, either intentionally or by poor training.



Darrel E. Kelly
Energy Analyst Emeritus
Builders' Energy Services, Inc.
Phone: (408) 718-1908
Email: darrel@builders-energy.net
Builders' Energy Services, Inc.
460 W. Edmondson Avenue
Morgan Hill, CA 95037

www.Title24.com

From: Loyer, Joe@Energy <Joe.Loyer@energy.ca.gov>

Sent: Friday, January 6, 2023 1:36 PM

To: Darrel <Darrel@builders-energy.net>

Subject: RE: Update of the Field Verification & Diagnostic Testing Requirements (Docket #22-BSTD-3)

Hi Darrel,

I appreciate the email!

Before I answer these questions, I want to ask if it is alright with you that I submit your email to the rulemaking docket. This is very important so that we can get everyone's comments and concerns on the record. Otherwise, I'm not allowed to consider them.

That said, I will follow up this email with a phone call next week – I'm a little tight for time this week.

I have to say, I like the way you run your business and there is nothing that you are doing that is against the rules as they stand now (may be a small infraction of the intent). I like lists, so I'm putting this into a list Q and A:

1. Pulling Permits – Currently the Rater can pull a permit for the contractor (or builder, homeowner, etc.). However, this came as a cost to the HERS program reputation with the authorities having jurisdiction (AHJs). However, the results were positive to a certain extent (i.e., more permits were pulled). So, under the new proposed regulations we included the Rater Company in part to give them the ability to pull a permit but keep the Rater from performing that task. Sort of splitting the baby.
2. CF2R - (plus the CF1Rs as well) Currently, the Rater can complete the CF1/2Rs ... AS A DOCUMENT AUTHOR (that's the important part). The Rater cannot sign as the Responsible Person or as the Installing Technician. In fact, it is dubious if the Rater's HERS-Test can be used by the Installing Technician for the CF2R; The jury is still out on that one. So, under the new proposed regulations, we allow the HERS Company to continue completing these forms, but not using the Rater to do it.
 - a. We are getting a lot of comments on this requirement, so we might soften it a bit and make special allowances for small HERS Companies.
 - b. Also, I agree that the Rater is the most trained person to complete these forms, is there another solution to the conflict of interest problem. Maybe another certification from the Provider?
3. Including "custom homes" – It's a good idea (needs to be docketed), but I'd also like to have your suggestion for a definition of what qualifies as a custom home or custom home builder.
4. Name Change – No one likes this idea. I will say that it appears that no homeowners have ever heard of the HERS program. That said, I understand the issue, especially for small Rater Companies. Is there a middle ground that would allow us to create a separation of the Whole House and FV&DT programs but not lose the HERS history?

Hope you feel better, I will send you a Team Meeting for next week.

-Joe

Joe Loyer
Senior Mechanical Engineer
California Energy Commission
916-237-2546



From: Darrel <Darrel@builders-energy.net>

Sent: Friday, January 6, 2023 11:11 AM

To: Loyer, Joe@Energy <Joe.Loyer@energy.ca.gov>

Subject: Update of the Field Verification & Diagnostic Testing Requirements (Docket #22-BSTD-3)

Good morning, Joe,

I am hoping you can clarify a couple of things for me. First, I want to be sure I understand how my company fits into the scheme of the definitions and, if we are not doing something properly, identify any changes we need to make. Builders' Energy Services, Inc. is a multidisciplinary company. We offer Title 24 compliance and Green Building compliance (CALGreen and Build-It-Green) documentation, HERS and Green Building field verification and HVAC design based on ACCA Manuals D, J, and S. We have two HERS Raters, one of which does a lot of hand holding. By that I mean there are so many contractors and subs that do not have a clue how to navigate the CalCERTS or CHEERS registries and we must walk them through the process. All this works out fine for a while. But then a few weeks or months later the same company has a new person in charge of the paperwork and the training begins all over. It gets tiring and demands a lot of our unpaid time.

With that background can you help me understand the Conflict of Interest changes? We have always assumed that it is a serious conflict of interest to pull permits for a client. It is something we have not and will never do, even if it is allowed. My first concern is the part that says, "Allow Technician Companies to complete compliance documents, but not Technicians". We are a small company, and that requirement seems to indicate that our field personal would not be allowed to update the registries with the C2R form data in the field but would need to transmit the information to one of the office people for them to upload. We can certainly do that, but it does introduce the possibility of error. I feel that the best person to do that with absolutely certainty is the Rater in the field who has personally seen the work completed by the subcontractor and verified its compliance. The person in the office may not recognize a bad entry (assuming the field person mis-typed something) and that extra step simply adds time to the process. That begs the question of how many of the one-man companies could not comply with the changes proposed.

My second concern is how the hiring of HERS Raters (Technicians) is structured. "Restrict the hiring of Technicians to the homeowner (existing homes) or developer (newly constructed homes)". Most of our new home projects are custom homes not undertaken by a developer but rather by the homeowner. Might I suggest that "existing homes" be modified to say, "existing and custom home"?

Finally, I do not see any need to change the terminology. It will only add a layer of confusion to the entire process. On the residential side everyone is familiar with the HERS requirements (the term with

which they are identified on the CF-1R forms) and to simply change the way HERS Raters are named is pointless. To call a HERS Rater a “Technician” strips away the identifier as a HERS Rater. There are many types of “technicians” as you can see with a simple Google search. More importantly, technicians are people working in a field of technology. In simple terms a technician is a person whose job relates to the practical use of machines or science in industry, medicine, etc. It is a stretch to call a HERS Rater a technician. Other descriptions of a technician include references to a skilled person who repairs, installs, replaces and/or services various types of equipment or systems.

OK enough. I have had a nasty cold for nearly a week and the brain fog is setting in again...LOL

A simple phone call would be much faster than an email so feel free to call me. I emailed this because it was much too early to call when I started to review the docket items.



Darrel E. Kelly
Energy Analyst Emeritus
Builders' Energy Services, Inc.
Phone: (408) 718-1908
Email: darrel@builders-energy.net
Builders' Energy Services, Inc.
460 W. Edmundson Avenue
Morgan Hill, CA 95037

www.Title24.com