

DOCKETED	
Docket Number:	24-BSTD-01
Project Title:	2025 Energy Code Rulemaking
TN #:	256343
Document Title:	Energy Code Rulemaking Express Terms Comments
Description:	N/A
Filer:	Alisha Pember
Organization:	JCEEP; WSC SMART; CAL SMACNA; NEMIC
Submitter Role:	Public
Submission Date:	5/13/2024 3:42:05 PM
Docketed Date:	5/13/2024

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May 13, 2024

Via Docket No. 24-BSTD-01

California Energy Commission
Docket Unit, MS-4
715 P Street
Sacramento, California 95814

Re: **Comments on 2025 California Energy Code Express Terms**

Dear Commissioners and Staff:

We write on behalf of the Joint Committee on Energy and Environmental Policy (“JCEEP”), Western States Council of Sheet Metal, Air, Rail and Transportation Workers (“WSC SMART”), California Association of Sheet Metal and Air Conditioning Contractors, National Association (“CAL SMACNA”), and National Energy Management Institute Committee (“NEMIC”) (collectively, “the Coalition”) to comment on the 2025 update to the Building Energy Efficiency Standards contained in the California Code of Regulations, Title 24, Part 6 (also known as the California Energy Code). The Coalition greatly appreciates the Commission’s engagement with stakeholders throughout the pre-rulemaking process. Overall, the Coalition supports the comprehensive updates being made to the California Energy Code. However, discrete modifications to certain administrative provisions are needed to improve implementation and eliminate unnecessary costs.

I. INTRODUCTION

On March 29, 2024, the Commission released proposed changes to the B contained in the California Code of Regulations (CCR), Title 24, Part 6 (also known as the California Energy Code) and associated administrative regulations in Title 24, Part 1, Chapter 10 (“45-Day Language”). These include several significant changes to field verification and diagnostic testing (“FV&DT”) program and acceptance test technician certification provider (“ATTCP”) program.

May 13, 2024

Page 2

Overall, the Coalition strongly supports the proposed changes to the nonresidential FV&DT program. Specifically, the Coalition endorses eliminating redundant testing requirements for duct leakage testing for certain heating, ventilation, and air conditioning (“HVAC”) systems in nonresidential buildings. The Coalition also agrees with the proposed revisions to the acceptance test technician alternative procedure, which would allow field verification and diagnostic testing to be performed by certified acceptance test technicians (“ATTs”) without local agency pre-approval.

In addition, the Coalition supports revisions to ATTCP quality assurance and accountability requirements, including the removal of the building department surveys and the newly added alternative shadow audit procedure at ATTCP training facilities. However, the Coalition is concerned that the proposed language is inequitable and creates additional unnecessary costs and administrative burdens. As a result, the Coalition proposes several discrete modifications to these requirements.

Lastly, the Coalition opposes changing the FV&DT program nomenclature to the Energy Code Compliance (“ECC”) program as it would cause considerable confusion and overstate the role of Home Energy Rating System (“HERS”) Raters.

II. STATEMENT OF INTEREST

JCEEP is an advocacy organization that represents the California sheet metal workers’ local unions and over 25,000 technicians working for over 600 contractors throughout California. JCEEP’s mission is to promote responsible environmental, indoor air quality, and energy policy in California as it pertains to and impacts the HVAC industry.

WSC SMART represents sheet metal workers local unions located in California, Arizona, Nevada, and Hawaii. WSC SMART’s sheet metal worker members install HVAC systems and are committed to ensuring not just indoor heating and cooling comfort, but also protecting air quality that occupants breathe and ensuring that HVAC systems are energy efficient. WSC SMART’s California members have over 15 training facilities throughout the state where thousands of workers are trained daily in HVAC specialties, including heat pump installations.

CAL SMACNA is a non-profit statewide trade association representing over 300 sheet metal and air conditioning contractors who employ more than 25,000

union employees and administrative personnel throughout California. CAL SMACNA aims to unify the voice of the industry for the benefit of member companies, employees, our communities, and industry through advocacy and program services. CAL SMACNA member contractors perform commercial and residential HVAC services, architectural and industrial sheet metal work, and manufacturing, testing and balancing, siding, and deck work.

NEMIC is a non-profit organization that works with public, private, and government entities to promote certification, education, and emerging market opportunities in HVAC fire life safety, testing, adjusting and balancing, indoor air quality, and energy efficiency. NEMIC ensures trained and certified professionals are placed in positions to properly install, inspect, and maintain buildings' air handling systems. NEMIC is a Commission-approved ATTCP that trains, certifies, and oversees nonresidential and multifamily HVAC technicians and their employers.

III. THE PROPOSED CHANGES TO NONRESIDENTIAL FIELD VERIFICATION AND DIAGNOSTIC TESTING REQUIREMENTS ARE NECESSARY AND APPROPRIATE

The 45-Day Language makes 4 important changes to the nonresidential FV&DT program that the coalition strongly supports. First, it requires duct leakage testing to be performed by only a certified ATT, instead of both a HERS Rater and a certified ATT. Second, it allows any nonresidential FV&DT to be performed by a certified ATT without local enforcement agency pre-approval. Third, it requires dwelling unit ventilation tests to be performed by either a HERS Rater or certified ATT, instead of both. Finally, it requires high rise multifamily dwelling unit enclosure leakage tests to be performed by either a HERS Rater or certified ATT, instead of both.

The Commission properly recognizes that nonresidential duct leakage testing performed by HERS Raters is duplicative of acceptance testing performed by certified ATTs. Only recently, and under limited circumstances, were HERS raters required to perform field verification in nonresidential buildings and common areas in multifamily buildings. However, the concerns which initially prompted the Commission to require nonresidential duct leakage testing by HERS Raters are no longer present given the advent of certified ATTs. Eliminating this requirement would not result in any energy efficiency changes given the similarities between HERS Raters and certified ATTs (i.e., training, oversight, documentation). It

would, however, streamline the compliances process by eliminating redundant testing, which in turn can reasonably be expected to lower costs.

The Commission also rightly modifies the acceptance test technician alternative procedure to eliminate the requirement that certified ATTs obtain approval from local enforcement agency before they can perform nonresidential FV&DT to satisfy the condition of compliance. While there are some distinctions between certified ATTs and HERS Raters, those dissimilarities did not necessitate an additional administrative hurdle and stricter standard for certified ATTs. In fact, certified ATTs have greater and more comprehensive level of training and experience than HERS Raters. The proposed language appropriately removes this unnecessary and unjustified administrative hurdle, which added costs and time without any countervailing benefits, and allows the market to dictate which qualified technician should be used for verification.

Lastly, the Commission correctly identifies that FV&DT in high rise multifamily dwelling units is duplicative of acceptance testing. The 45-Day Language removes this redundancy by eliminating ventilation and enclosure leakage acceptance testing requirements. However, the language also clarifies that certified ATTs are allowed to perform FV&DT to satisfy the condition of compliance pursuant to the acceptance test technician alternative procedure. Given the modifications to the alternative procedure, the Coalition supports these proposed changes.

In sum, the Coalition strongly supports the amendments to nonresidential FV&DT as they will improve compliance, reduce costs, and improve energy efficiency outcomes.

IV. THE PROPOSED CHANGES TO ATTCP QUALITY ASSURANCE AND ACCOUNTABILITY REQUIREMENTS ARE GENERALLY APPROPRIATE, BUT REQUIRE SOME MODIFICATIONS

The 45-Day Language makes 2 substantive changes to the ATTCP quality assurance and accountability requirements in Section 10-103.2(c)3F. First, it appropriately eliminates building department surveys to determine acceptance testing effectiveness. This requirement imposed unnecessary costs and burdens without any countervailing benefits or improved energy efficiency outcomes. The Coalition supports removal of this provision.

Second, the 45-Day Language allows an ATTCP to meet the shadow audit mandate by either (1) observing the performance of an assigned ATT on the job site, for no less than 1 percent of each ATE's overseen projects or (2) observing the performance of each ATT on at least five functional tests at an ATTCP training facility at least once per code cycle. The training facility must replicate field conditions for installed equipment and controls in buildings and be set up to allow auditing of all functional tests. Shadow audits must be in addition to any recertification testing.

While the Coalition supports shadow audits at an ATTCP training facility, the proposed language is inequitable and creates unnecessary costs and administrative burdens. To make the two shadow audit procedures truly equivalent and eliminate any potential ambiguity, the Commission should use the same language for both procedures. ATTCPs should be permitted to perform the shadow audit either on the job site or at an ATTCP training facility. In addition, ATTCPs should audit at least 1 percent of each ATE's overseen projects regardless of location.

The proposed alternative procedure would impose significant, unnecessary costs because, as written, it would require that all ATTCP training facilities be set up to audit all functional tests. The Commission should narrow this requirement to ensure that only the ATTCP training facility where the audit occurs can conduct all the functional tests for which the ATT is certified to perform. This change is consistent with the fact that Commission regulations allow ATTs to be certified on just a subset of the most commonly performed acceptance tests. Allowing ATTCPs to designate certain training facilities for audits of just those partially-certified ATTs will make audits more cost-efficient. If a facility is not auditing any fully-certified ATTs, it makes no financial or policy sense to require that facility to have the ability to audit for functional tests that it will never actually audit.

Finally, the Coalition proposes two additional modifications to the audit requirements to eliminate ambiguity. First, the Commission should clarify how ATTCPs determine 1 percent for audits. The current requirement is vague and ambiguous, which has made compliance difficult and inconsistent. For paper audits, the Coalition recommends clarifying that the number of compliance forms audited by an ATTCP shall be equal to 1 percent of the forms completed by an ATT in the prior code cycle. For example, if an ATT completed 500 forms during the 2019 code cycle, then an ATTCP would need to audit 5 of those completed forms.

To reduce administrative burdens and costs, the paper audit should not apply to recently certified ATTs since the paper audit is meant to ensure that the ATT maintains competency over time. Therefore, the Coalition recommends that the paper audit apply to ATTs who have completed at least 20 compliance forms. In our experience, this roughly equates to approximately 3 jobs since an ATT completes an average of 7 forms per job.

For shadow audits, the Coalition recommends clarifying that the number of shadow audits shall be equivalent to no fewer than 1 percent of each ATE's overseen projects in the prior code cycle. For example, if an ATE oversaw 400 projects in the prior code cycle, then the ATTCP would need to audit 4 randomly selected ATTs employed by the ATE.

Second, the Commission should clarify the timeline for completing audits. The Coalition recommends that the paper audits for each ATT's prior code cycle be completed by the end of the next code cycle. Similarly, the Coalition recommends that the number of shadow audits completed in a code cycle be determined by the number of projects completed in the prior code cycle. This frequency is consistent with the 45-Day Language requiring that ATTCP shadow audit at an ATTCP training facility occur at least once per code cycle.

Consistent with the proposed modifications discussed above, the Coalition respectfully requests the Commission modify Section 10-103.2(c)3F as identified in the 45-Day Language as follows, with blue underline representing added language, and ~~red strikethrough~~ representing deleted language:

- F. **Quality Assurance and Accountability.** The ATTCP shall describe in its applications to the Energy Commission procedures for conducting quality assurance and accountability activities, including but not limited to the following:
- i. The ATTCPs shall include quality assurance and accountability measures, including but not limited to independent oversight of the certification materials, processes and procedures, visits to building sites where certified technicians are completing acceptance tests, certification process evaluations, ~~building department surveys to determine acceptance testing effectiveness~~, and expert review of the training curricula developed for Building Energy Efficiency Standards, Section 120.5 and 160.3(d).

- Independent oversight may be demonstrated by accreditation under the ISO/IEC 17024 standard.
- ii. By the end of each code cycle, tThe ATTCP shall review a random sample of no ~~less~~ fewer than 1 percent of each ATT's completed compliance forms in the prior code cycle. This requirement shall not apply to ATTs that have completed fewer than 20 compliance forms in the prior code cycle., and
 - ~~iii. The ATTCP shall perform audits by meeting either of the following:~~
 - iii. By the end of each code cycle, tThe ATTCP shall ~~randomly select and~~ shadow audit each ATE. The number of shadow audits for each ATE shall be equivalent to no less fewer than 1 percent of each ATE's overseen projects in the prior code cycle, following the assigned ATT and observing their performance on the job site. ~~Independent oversight may be demonstrated by accreditation under the ISO/IEC 17024 standard.~~
 - iv. The ATTCP shall perform the shadow audit by randomly selecting an each ATT employed by the ATE and at an ATTCP training facility at least once per code cycle where the ATTCP shall observe the performance of the ATT on at least five functional tests either:
 - a. On the job site; or
 - b. At an ATTCP training facility. The shadow audit at an ATTCP training facility must replicate field conditions for installed equipment and controls in a building. The ATTCP training facility where the shadow audit is performed shall be setup to allow auditing of all functional tests for which the ATT is certified.
 - v. The shadow audits must be in addition to any testing used for ATT recertification.

V. THE PROPOSED NOMENCLATURE FOR THE FIELD VERIFICATION AND DIAGNOSTIC TESTING PROGRAM SHOULD BE RECONSIDERED

The 45-Day Language proposes to rename the FV&DT Program to the ECC Program to separate field verification from Home Energy Rating and Labeling program set forth in California Code of Regulations, Title 20. With this name

change, HERS Rater, Provider, and Rater Companies would be identified as ECC-Rater, ECC-Provider, and ECC-Rater Companies, respectively. The Coalition strongly opposes this name change.

Energy Code compliance is not exclusively performed by HERS Raters through the FV&DT program. For example, acceptance testing for HVAC controls, lighting controls, and other covered processes in nonresidential and certain multifamily projects must be performed by certified ATTs.¹ Acceptance test requirements specify targeted inspections and functional performance tests that demonstrate that the building components, equipment, systems and interface conform to the Energy Code.² This helps ensure that the building achieves the energy savings potential specified in its design and protects installing technicians by providing demonstrable proof that the system functioned as required by the code when it was installed.³

Like HERS Raters, ATTs must complete specific compliance documentation. Certificates of acceptance are completed by the certified ATT and must be submitted to the enforcement agency during the final inspection phase and prior to the enforcement agency issuing the certificate of occupancy.⁴ Certificates of verification are completed by HERS Raters, but may be waived if the related certificate of acceptance is completed by a certified ATT.⁵

Identifying the FV&DT program as the ECC program would cause considerable confusion and overstate the role of HERS Raters with respect to Energy Code compliance. In addition, the proposed name change would not simplify the identification of program stakeholders. Moreover, HERS programs have operated under that name for almost 30 years. Changing the name of the program now would simply cause confusion in the marketplace with no discernable benefit. The fact that Commission staff have indicated that HERS companies could continue to call themselves HERS Raters even with the name change underscores just how confusing and unnecessary this name change would be. The Commission should return to its original program name and continue to identify program stakeholders in a manner that accurately reflects the work they perform.

¹ California Energy Commission, 2022 Nonresidential and Multifamily Compliance Manual (May 11, 2022) p. 2-2, available at <https://efiling.energy.ca.gov/GetDocument.aspx?tn=250098>.

² *Id.* at p. 14-1.

³ *Id.* at p. 14-2.

⁴ *Id.* at p. 2-3.

⁵ *Ibid.*

May 13, 2024
Page 9

VI. CONCLUSION

The Coalition greatly appreciates the Commission's continued efforts to improve the Energy Code and thanks the Commission for consideration of these comments.

Sincerely,



Andrew J. Graf

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