



California
Association
Sheet Metal
and
Air Conditioning
Contractors
National
Association

December 12, 2012

Ms. Martha Brook
California Energy Commission
Office of High Performance Buildings and Standards Development
1516 Ninth Street
Sacramento, CA 95814

California Energy Commission
DOCKETED
12-BSTD-2
TN # 68851
DEC. 12 2012

**Re: 15-Day Comment: Docket # 12-BSTD-02:
Nonresidential Acceptance Testing Certification
Rulemaking**

Cyndi Marshall
Executive Vice President

2012-2013 Officers

David Lawson
President

Joe Isom
President-Elect

Brad Young
Treasurer

Scott Baker
Secretary

Randy Attaway
Immediate Past President

Dear Ms. Brook:

On behalf of the members of the California Association of Sheet Metal and Air Conditioning Contractors' National Association (CAL SMACNA), I write to submit comments regarding the California Energy Commission's proposed revisions to the Building Energy Efficiency Standards contained in the California Code of Regulations, Title 24, Part 6. These comments are in regards to the proposed language that would enact a certification requirement for individuals and employers to perform Nonresidential Mechanical System Acceptance Tests for the installation and maintenance of HVAC equipment.

CAL SMACNA is a non-profit trade association representing over 600 union sheet metal and air conditioning contractors who employ more than 25,000 men and women throughout the state of California. These contractors perform commercial and residential heating, ventilating, and air conditioning, manufacturing, and testing and balancing.

CAL SMACNA appreciates the time and thoughtfulness that the Energy Commission has dedicated to our concerns regarding specific features of the proposed certification requirement. We also acknowledge that the proposed regulation has shown distinct improvements as we worked together over the last six months to address those concerns.



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In our November 9 letter commenting on the previous ("45-day") iteration of this proposal, CAL SMACNA raised five specific concerns. That letter is attached for your convenience. These concerns reflect CAL SMACNA's overriding priority that the certification requirement succeeds in producing highly qualified acceptance test technicians without constraining the market for HVAC work.

Having reviewed the current ("15-day") language and conferred with you and your staff extensively regarding the proposed implementation of this certification requirement, we believe that our concerns have been addressed. We appreciate the improvements explicitly reflected in the 15-day language and we are comfortable with your assurance that our other concerns are resolved by implicit effect of the regulation.



To be specific, we appreciate the amendments, explicitly reflected in the “15-day” language, that address our concerns by:

- Reducing the burden placed on Acceptance Test Employers by giving employers the option of completing their required training online and limiting the class to four hours. We believe this change will appropriately help to avoid redundancies that would otherwise place unnecessary burdens on employers, given that contractors are already licensed and regulated by the Contractor State License Board, whose statutory mandate is to ensure licensed contractors have knowledge of the building, safety, health and lien laws of the state, as well as higher degrees of knowledge and experience within specially qualified contractor classifications.
- Clarifying that the requirement for re-training and recertification, that is triggered whenever the requirements for Title 24 acceptance tests are updated, only applies to those specific elements of each acceptance test that are affected by the update. We believe this change will appropriately avoid placing on technicians an unnecessary burden of reliving the entire certification process every time the standards applying to one test are modified.

CAL SMACNA also appreciates your willingness to investigate how to procedurally amend the Energy Commission’s Economic Impact Analysis to more accurately account for the costs imposed on contractors by this regulation, pursuant to our November 9 letter.

Finally, and with particular importance, CAL SMACNA acknowledges and appreciates your assurance that our other concerns are resolved by implicit effect of the regulation. To be clear, it is our understanding that those concerns that are resolved implicitly are:

- Providing a “test out” option. Avoid placing an unnecessary burden on technicians and employers by allowing individuals who are already qualified to perform Acceptance Tests to take the test before training and, if they pass, satisfy the requirements for certification.
- Ensuring access to training and certification. Before the certification requirement goes into effect, all individuals who seek to get certified will have reasonable access to a Certification Provider that is not restricted geographically or otherwise in a way that constrains the market.

Given the complexity that this regulation’s implementation will certainly present, we look forward to further working with you as this certification requirement is implemented.

If you should have any questions or need additional information, please do not hesitate to contact me at (916) 363-7460 or our regulatory affairs consultants Chris Walker and Josh Rosa at (916) 442-8888.

Sincerely,

A handwritten signature in cursive script that reads "Cyndi Marshall".

Cyndi Marshall
Executive Vice President

ATTACHMENT

November 9, 2012

California
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Sheet Metal
and
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Ms. Martha Brook
California Energy Commission
Office of High Performance Buildings and Standards Development
1516 Ninth Street
Sacramento, CA 95814

**Re: 45-Day Comment: Docket # 12-BSTD-02: Nonresidential
Acceptance Testing Certification Rulemaking**

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Executive Vice President

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CAL SMACNA appreciates the time and thoughtfulness that the Energy Commission has dedicated to our concerns regarding specific features of the proposed certification requirement. This letter reiterates those concerns and proposes amendments to the revisions that would address those concerns:



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We strongly support the requirement that acceptance testing and documentation under the 2013 Title 24 Energy Efficiency Standards for nonresidential structures be completed by highly trained and highly qualified individuals that have extensive knowledge and expertise in the HVAC industry. Not only is this requirement an essential component for the success of Title 24 in achieving our state's goals for energy efficiency in nonresidential buildings but it is also important to ensure the continued professionalism of the commercial HVAC industry.

In this regard, we respectfully propose the following amendments that will clarify, safeguard, and streamline the certification process for future acceptance tests (citations to the proposed language are all in reference to the proposed Section 10-103-B, Nonresidential Mechanical Acceptance Test Requirements, of the 2013 Building Energy Efficiency Standards, unless otherwise noted):

**Proposed Amendments****1. Provide a “Test Out” option for Professional Engineers and Mechanical Contractors**

The current language outlines numerous requirements for Certification Providers’ training of Mechanical Acceptance Test Technicians. This language includes detailed specifications for the curricula, a requirement that the training includes both hands-on experience and theoretical training in mechanical acceptance testing, and a requirement that the training includes “a written and practical test that demonstrates each certification applicant’s competence in all specified subjects.”

CAL SMACNA believes, in some instances, engineers and mechanical contractors may already have the skill-set and currency with acceptance testing procedures to already be capable of passing the test *before* submitting to the exhaustive training. In such instances, we believe it would be duplicative and wasteful to require engineers and mechanical contractors to “put in their time” before taking the test. CAL SMACNA therefore proposes an amendment allowing engineers and mechanical contractors to take the test before the training and, in the instance that engineer or mechanical contractor passes the test, fully satisfy the training requirement for certification. We suggest this amendment may be written as:

Sec. 10-103-B(c)(3)(B)(iv)

A written and practical test that demonstrates each certification applicant’s competence in all specified subjects. The ATTCPs shall retain all results of these tests for five years from the date of the test. *In the case of an engineer or mechanical contractor applying for certification as a Mechanical Acceptance Test Technician, the ATTCPs shall provide the option of taking the test before the training and, in the instance an engineer or mechanical contractor passes the test to the ATTCP’s satisfaction, that individual shall be deemed to have fully satisfied the requirements for training as prescribed in Sec. 10-103-B(c)(3).*

By providing a “test out” option for engineers and mechanical contractors, this amendment will help ensure that training for Mechanical Acceptance Test Technician certification is implemented with practical, efficient, and effective care, while also avoiding unnecessary redundancies in cost and training in those instances where engineers or mechanical contractors already possess the skill-set required by this regulation.

2. Clarify how the certification requirement will be phased in.

The current language sets up a phase-in process where seven of the acceptance tests can become subject to the certification requirement before the others, provided that the Energy Commission finds that there are 1,000 technicians certified by a Certification Provider to perform only those seven tests (b)(1)(B). The language also provides “interim approval” to the Associated Air Balance Council (AABC), National Environmental Balancing Bureau (NEBB), and Testing and Air Balancing Bureau (TABB) to function as Certification Providers, and to technicians certified by AABC, NEBB, or TABB, to perform acceptance tests (e).

If a technician was previously certified by AABC, NEBB, or TABB before this language is enacted, the language grants them interim approval if they complete a class or webinar on acceptance testing



procedures and compliance documentation (e)(3). A separate section of the current language limits interim approval to just those seven tests mentioned above (e)(1). Presumably, these technicians can perform those seven tests and, when the Energy Commission finds that they number at least 1,000, the certification requirement goes into effect for *all* technicians performing those seven tests.

From these interrelated provisions, CAL SMACNA infers that the language sets up a phase-in process, first for the seven abovementioned tests, and later for the remaining acceptance tests. In this interpretation, the language effectively enables AABC, NEBB, and TABB to provide the first trainings for certification during the interim, between the date the language gets enacted and the date the language goes into effect, until their certified technicians, who are certified to perform the seven tests, number 1,000, at which point the requirement goes into effect for all technicians to perform those seven tests. Later, once the Energy Commission can make a finding that there are at least 1,000 technicians certified to perform *all* the tests, the language goes into effect for *all* technicians performing *all* acceptance tests.

This interpretation relies only on a tenuous piecing together of different parts of the language and greater clarity is needed to understand how the Energy Commission envisions the implementation of this language taking place. CAL SMACNA suggests that the Energy Commission staff consider a clearer and more linear narrative to codify this complex process.

3. Revise the Employer Certification requirement to eliminate redundancies.

The current language requires “Mechanical Acceptance Test Employers” to take at least a one-day class on the scope and process of acceptance tests, provided by Certification Providers.

In essence, this proposed requirement duplicates the overall responsibility that employers of technicians already accepted as contractors licensed and regulated by the Contractor State License Board (CSLB). The CSLB’s statutory mandate is to ensure licensed contractors have knowledge of the building, safety, health and lien laws of the state, as well as higher degrees of knowledge and experience within specially qualified contractor classifications. Specifically, under California Business and Professions Code § 7068, each contractor employing technicians involved in Title 24 work is already legally responsible for full compliance with those laws.

Therefore, we propose reworking this language’s Employer Certification requirement so as to avoid redundancies that place an undue burden on employers to take time from work. In particular, we believe it is unnecessary to stipulate the class must take an entire day when a shorter webinar could feasibly suffice. CAL SMACNA therefore proposes the following amendment:

Sec. 10-103-B(c)(3)(C)

Mechanical Acceptance Test Employer Training. Training for Mechanical Acceptance Test Employers shall consist of a *minimally disruptive single* ~~minimum of a one day class or webinar~~ *not to exceed more than 4 hours* that covers the scope and process of the acceptance tests in Title 24, Part 6, Section 120.5.

By revising the Employer Certification requirement to allow greater flexibility, this amendment would relieve the burden placed on employers without compromising the language’s purpose of ensuring employers are legally responsible and up-to-date on acceptance testing rules and procedures.

**4. Revise the Economic Impact Analysis to reflect true potential costs to contractors.**

In its Initial Statement of Reasons and Economic Impact Analysis, the Energy Commission assumes a cost per certification that is commensurate with a 40-hour process of training is \$2,000 per technician. We propose that the \$2,000 estimate is significantly on the low end of probable costs per certification, given the burdened costs, opportunity costs, and possible incidental travel costs that a firm may incur as a result of its technician receiving the certification. Factoring in the typical burdened costs of a journeyman (\$79 per hour) and an estimated \$1,500 price for certification, total cost to the contractor could be as high as \$4,660. If the technician must travel out of the area, add \$50 per day the contractor must pay for subsistence, and possibly also hotel and vehicle use costs. Together, these costs may drive the total cost to as high as \$5,600. And this total does not include the opportunity cost of losing a technician for a week or paying a higher-wage worker to replace the technician.

For purposes of clarity and accuracy, we propose that Energy Commission staff revise the Economic Impact Analysis to reflect the actual costs based upon prevailing wages and market experiences of small businesses in California.

5. Clarify the Recertification Requirement.

The current language requires Certification Providers to adopt requirements and procedures for recertification of technicians each time Title 24 is updated with new and/or modified test requirements (c)(3)(B)(v). We propose this recertification requirement be clarified to ensure re-training would be required only for those elements of each test that had been modified by Title 24 updates.

Support the "Demand side" of the equation

Setting aside the issues outlined above, CAL SMACNA believes the Energy Commission's proposed certification requirement is a good first step toward ensuring that appropriate training is available for technicians performing and documenting Title 24 acceptance tests. However, we take this opportunity to again emphasize that the success of acceptance testing and high rates of Title 24 compliance in the marketplace also relies heavily upon the presence of adequately staffed and trained local building officials to enforce the law.

While it is important to ensure a supply of highly qualified acceptance test technicians, it is equally important to create real demand for those technicians' high-quality work. As long as fiscal constraints within local jurisdictions' building departments perpetuate the weaknesses in acceptance test documentation and enforcement that were observed in the California Commissioning Collaborative's 2011 report, the Energy Commission's proposed certification requirement provides no guarantee that the performance of acceptance tests and efficacy of Title 24 energy efficiency standards will improve.

We therefore emphasize the need to address inspection and enforcement by local building officials with at least the same urgency as this language addresses certification of technicians.



If you should have any questions or need additional information, please do not hesitate to contact me at (916) 363-7460 or our regulatory affairs consultants Chris Walker and Josh Rosa at (916) 442-8888.

Sincerely,

Cyndi Marshall
Executive Vice President