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DRAFT STAFF REPORT

2022 Update of the Field Verification and Diagnostic Testing Requirements

**California Code of Regulations Title 24,
Parts 1 and 6**

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ABSTRACT

The Warren-Alquist Act directs the California Energy Commission (CEC) to adopt and implement the Building Energy Efficiency Standards (Energy Code) as a primary means to reduce wasteful, uneconomical, and unnecessary uses of energy.

Poor installation of air ducts and conditioning equipment in residential buildings have been a concern since the 1980s. The CEC adopted provisions in the Energy Code to verify that these installations (and others) are consistent with Energy Code requirements. In 1999, the CEC promulgated the Home Energy Rating System regulations in California Code of Regulations, Title 20, sections 1670 through 1675. These regulations provided for and regulated raters to perform field verification and diagnostic testing services.

This report seeks to make changes to the field verification and diagnostic testing program to make the program more effective in ensuring compliance with the Energy Code. As California seeks to reduce greenhouse gas emissions and, among other efforts, decarbonize buildings by installing six million heat pumps in buildings by 2030, clear and effective program regulations are increasingly important.

The reliance of the field verification and diagnostic testing program on the Home Energy Rating System regulations located in Title 20 has made compliance difficult for stakeholders, who have requested simplification of the Energy Code. Other deficiencies addressed in this report include issues that staff identified through various efforts, investigation of complaints, submissions to Docket Number 12-HERS-01, and information collected from the order instituting an informational proceeding (Order Number 12-1114-6).

The scope of the changes proposed in this staff report focuses on conduct, responsibility, and quality assurance for the field verification and diagnostic testing program, as well as increased oversight by the CEC to improve program performance and protect consumers. The CEC intends to update the Energy Code with these proposed changes to implement improvements to this program.

Keywords: Field verification and diagnostic testing, ratings, Home Energy Rating System, raters, providers

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EXECUTIVE SUMMARY

The Warren-Alquist Act, Public Resources Code, sections 25000 *et seq.*, establishes the California Energy Commission (CEC) as the state's primary energy policy and planning agency. Section 25007 of the Act directs the CEC to "employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals." As part of accomplishing this mandate, the CEC promulgates building energy efficiency standards for newly constructed buildings and additions and alterations to existing buildings. These building energy efficiency standards are also known as the Energy Code.

The Energy Code is critical to fulfilling CEC's mission and achieving the state's greenhouse gas reduction goals. Robust and effective field verification and diagnostic testing (FV&DT) performed by independent third-party trained technicians is intended to support successful implementation of the Energy Code. FV&DT helps ensure that consumers get the energy (and monetary) savings they expect from their investment in efficiency projects and helps reduce the unnecessary consumption of energy. Further, building decarbonization is needed to achieve state climate goals. As part of California's climate action plan, Governor Gavin Newsom in a July 22, 2022, letter to the Chair of the California Air Resources Board set a goal of installing six million heat pumps in buildings by 2030 as recommended by the California Energy Commission. Clear and effective FV&DT program regulations are important in making sure these and other energy installations perform as expected as part of California's climate response.

This report presents the FV&DT program issues staff initially identified through investigating complaints (including Docket Number 12-HERS-01) and information collected from the order instituting an informational proceeding (Order Number 12-1114-6). These issues include:

- The inability of the program to ensure installation defects are addressed and consumers are protected against poor construction practices.
- Raters conducting poor quality or noncompliant field verification and diagnostic testing.
- Providers' inconsistent and inadequate discipline of raters' misconduct and underperformance.
- Failure of providers to respond to data requests by the CEC.
- Providers not performing required quality assurance.
- Conflicts of interest among providers, raters, rater companies, and contractors.
- Lack of adequate oversight and enforcement by the CEC.

The changes proposed in this staff report focus on conduct, responsibility, and quality assurance for FV&DT providers and raters, as well as increased oversight by the CEC to improve program performance and protect consumers. The CEC intends to update the Energy Code with these proposed changes to implement improvements to the FV&DT program. The specific issues, and the corresponding changes proposed by staff, are summarized in Table 1.

Table 1: Summary of Issues and Proposed Resolutions

Category	Summary	Proposal
Regulatory Alignment	<ul style="list-style-type: none"> • Regulations for FV&DT are appropriately located in the Energy Code. • The data collection and access requirements are codified in many documents, most of which are associated with the Energy Code. 	<ul style="list-style-type: none"> • Add requirements for field verification and diagnostic testing program to the Energy Code (Title 24). • Consolidate the data access and gathering requirements into the Energy Code.
Progressive Discipline	<ul style="list-style-type: none"> • Rater companies are not regulated • Lack of discipline options to address performance issues • Data falsification 	<ul style="list-style-type: none"> • Include rater companies in regulations. • Provide progressive discipline options to correct noncompliant behavior. • Provide additional data entry safeguards.
Quality Assurance Procedures	<ul style="list-style-type: none"> • Insufficient quality assurance practices • Impractical quality assurance requirements 	<ul style="list-style-type: none"> • Establish new quality assurance tracking and reporting requirements. • Provide for prescriptive alternatives to existing quality assurance procedures.
Conflict of Interest	<ul style="list-style-type: none"> • Raters pull permits for contractors potentially influencing the rater • Raters complete and sign compliance documents • Raters promote legitimate off-purpose use of registered compliance documents 	<ul style="list-style-type: none"> • Define restrictions for rater companies to avoid incentives towards fraud and collusion. • Allow rater companies to pull permits, but not raters. • Allow rater companies to complete compliance documents, but not raters. • Formally permit the legitimate off-purpose use of compliance documents.
Designation and Approval	Raters have never been approved as special inspectors by local jurisdictions although the Reference Appendices indicate that they are to be considered as such.	Amend the Energy Code to remove the indication that raters are to be considered special inspectors.
Training	Training requirements are limited causing inconsistent programs between providers	Develop clear minimum training requirements including: <ul style="list-style-type: none"> • Proctored online training and exams. • Hands-on training. • Increased initial oversight by the provider for new raters.

Category	Summary	Proposal
Make other clarifying changes	<ul style="list-style-type: none"> • Regulations do not define access to CEC data retrieval • Regulations detail on reporting requirements is limited 	<ul style="list-style-type: none"> • Provide greater clarity on CEC access to data registry records. • Provide specific reporting requirements for greater clarity.

Source: CEC staff

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CHAPTER 1:

Legislative Criteria

Section 25402 of the Public Resources Code (PRC) directs the California Energy Commission (CEC) to prescribe, by regulation, building design and construction standards that reduce the wasteful, uneconomic, inefficient, or unnecessary consumption of energy in newly constructed buildings and additions and alterations to existing buildings. These regulations are known as the Building Energy Efficiency Standards (Energy Code) and are contained in Parts 1 and 6 of Title 24 of the California Code of Regulations. The Energy Code was first adopted in 1976.

Section 25402 of the PRC also requires the CEC to periodically update the Energy Code and adopt any revision that, in its judgment, it deems necessary. The CEC adopts updates to incorporate new technologies and practices to increase the efficacy of the Energy Code following a three-year update cycle, which is referred to as the "triennial update." Section 25402.1 requires local building departments to enforce the Energy Code and directs the CEC to establish enforcement procedures.

As part of prescribing the Energy Code, the CEC includes verification and testing requirements to ensure the construction of new buildings and additions and alterations to existing buildings comply with the Energy Code. In some cases, buildings elements (such as insulation) or equipment installations (such as air-conditioning systems) are tested by trained and certified technicians to verify compliance with the Energy Code requirements. Some data from these tests must be collected and submitted to a data registry approved by the CEC. Field verification and diagnostic testing (FV&DT) is the process for verifying, testing, and recording (using the data registry) building energy efficiency measures and is an important part of the efforts to promote the proper installation of these measures. FV&DT was also intended to provide quality assurance and consumer protection, although these goals have generally not been achieved.

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CHAPTER 2:

Efficiency Policies

The Warren-Alquist Act establishes the CEC as the state’s primary energy policy and planning agency.¹ The act directs the CEC to “employ a range of measures to reduce wasteful, uneconomical, and unnecessary uses of energy, reducing the rate of growth of energy consumption, prudently conserve energy resources, and assure statewide environmental, public safety, and land use goals.”² As part of accomplishing this mandate, the act mandates the CEC to promulgate energy standards for newly constructed buildings and additions and alterations to existing buildings. The Energy Code is a unique California asset that has placed the state on the forefront of energy efficiency, sustainability, energy independence, and climate change issues; and has provided a template for national standards as well as for other countries around the globe.

Robust and effective FV&DT performed by independent third-party trained technicians is intended to support successful implementation of the Energy Code. CEC-approved Home Energy Rating System (HERS) providers are responsible for the training, certification, and direct oversight for these technicians (raters). FV&DT helps ensure that newly constructed buildings, additions, and alterations meet the intended energy performance, as well as providing quality assurance and consumer protection,³ although these goals generally have not been achieved. Also, the corresponding data output may provide feedback on program effectiveness and planning for future building energy standards. For these reasons, the CEC seeks to make changes to improve performance and effectiveness of the FV&DT program.

The following legislation and Executive Orders are relevant to program objectives.

Executive Order S-20-04 (Schwarzenegger, 2004)

Executive Order S-20-04 directed the CEC to collaborate with the California State License Board (CLSB) to ensure building and contractor compliance with the Energy Code.

Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006)

The landmark Global Warming Solutions Act of 2006 established a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020. Assembly Bill (AB) 32 made the following legislative findings:

(a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California.

1 The Warren-Alquist State Energy Resources Conservation and Development Act, Division 15 of the Public Resources Code, sections 25000 et seq., available at <https://www.energy.ca.gov/rules-and-regulations/warren-alquist-act>.

2 Public Resources Code section 25007.

3 California Energy Commission. Initial Statement of Reasons, Establishment of California Home Energy Rating System Regulations, February 2, 1999.

(b) Global warming will increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

(c) California has long been a national and international leader on energy conservation and environmental stewardship efforts, including energy efficiency requirements. The program established by this division will continue this tradition of environmental leadership by placing California at the forefront of national and international efforts to reduce emissions of greenhouse gases.

(d) National and international actions are necessary to fully address the issue of global warming. However, action taken by California to reduce emissions of greenhouse gases will have far-reaching effects by encouraging other states, the federal government, and other countries to act.

(e) By exercising a global leadership role, California will benefit from national and international efforts to reduce emissions of greenhouse gases. More importantly, investing in the development of innovative and pioneering technologies will assist California in achieving the 2020 statewide limit on emissions of greenhouse gases established by this division and will provide an opportunity for the state to take a global economic and technological leadership role in reducing emissions of greenhouse gases.

Assembly Bill 2021 (Levine, Chapter 784, Statutes of 2006)

AB 2021 directs the CEC to investigate options and develop a strategic plan to improve the energy efficiency of air-conditioning systems and decrease the peak electricity demand of these systems. In response, the CEC convened a working group of professionals in the heating, ventilation, and air-conditioning (HVAC) industry to draft a strategic plan that would reduce California's peak-load growth while improving the business climate and level of quality workmanship in the HVAC industry.⁴

In its *Strategic Plan to Reduce the Impact of Air Conditioners*, the working group concluded that increases in the energy efficiency of air conditioners will not yield any significant increases in energy or peak savings unless known quality control problems in the HVAC industry are addressed.⁵ The strategic plan also stated "failure to ensure quality installations or maintenance of cooling systems result in a 20 to 30 percent increase" in energy use.⁶ A key strategy identified by the working group was to ensure that FV&DT protocols were used by installers and third-party verifiers to demonstrate that HVAC installations, including duct sealing, complied with and achieved the energy efficiencies of the Energy Code.⁷

4 Messenger, Michael. June 2008. [*Strategic Plan to Reduce the Energy Impact of Air Conditioners*](#). California Energy Commission. Publication Number 400-2008-010, page 1.

5 Ibid., page 1.

6 Ibid., page 5

7 Ibid., pages 7-8

Senate Bill 350 (De León, Chapter 547, Statutes of 2015)

Senate Bill (SB) 350 was approved by former Governor Edmund G. Brown Jr. as a call for a new set of objectives in clean energy, clean air, and pollution reduction for 2030 and beyond. These objectives include doubling the energy efficiency savings in electricity and natural gas end uses of retail customers through energy efficiency and conservation. The Legislature expressed its intent in enacting SB 350 to codify the targets to ensure they are permanent, enforceable, and quantifiable. SB 350 also directs the CEC to “adopt, implement, and enforce a responsible contractor policy for use across all ratepayer-funded energy efficiency programs that involve installation or maintenance, or both installation and maintenance, by building contractors to ensure that retrofits meet high-quality performance standards and reduce energy savings lost or foregone due to poor-quality workmanship” (PRC 25943[a])[3]). The CEC will also establish consumer protection guidelines for energy efficiency products and services (PRC 25943[a][4]).

SB 350 calls for major changes in achieving rapid greenhouse gas reductions through building energy efficiency. SB 350 recognizes that a major handicap to achieving that reduction is the energy savings lost or foregone due to poor-quality work resulting from contractors failing to meet minimum Energy Code and performance standards governing installations of energy efficiency measures.

Senate Bill 32 (Pavley, Chapter 249, Statutes of 2016)

SB 32 updated the Global Warming Solutions Act of 2006 to reduce the state’s GHG emissions to 40 percent below 1990 levels by 2030.

Senate Bill 1414 (Wolk, Chapter 678, Statutes of 2016)

SB 1414 directed the CEC, in consultation with the Contractors State License Board (CSLB), local building officials, and other stakeholders, to approve a plan that will promote compliance with Part 6 of Title 24 of the California Code of Regulations in the installation of central air conditioning and heat pumps. The CEC initiated a public proceeding, including workshops and written comment from stakeholders, in June 2018 to develop the SB 1414 plan. The focus of the plan is improving the quality of installation of residential HVAC equipment, particularly in retrofits, and FV&DT is critical in achieving compliant installations.⁸

The CEC anticipates finalizing the SB 1414 Plan in 2022 with the following initial recommendations:⁹

- Expand the authority, responsibility, and resources of the California State Licensing Board to identify and take disciplinary action with higher consequences for (1) licensed contractors who fail to pull permits and fail to meet CEC quality installation standards for heating and air conditioning projects and (2) other persons who complete such projects without a license to do so.

8 SB 1414 (Wolk, Chapter 678, Statutes of 2016), Senate Floor Bill Analysis, August 23, 2016.

9 Kenney, Michael, Jacob Wahlgren, Kristina Duloglo, Tiffany Mateo, Danuta Drozdowicz, and Stephanie Bailey. 2022. [Final 2021 Integrated Energy Policy Report, Volume I: Building Decarbonization](#).(page 58) California Energy Commission. Publication Number: CEC-100-2021-001- V1.

- Require distributors to sell heating and air-conditioning equipment only to licensed contractors and report to the CEC the number of equipment units sold to each purchaser.
- Work with manufacturers and distributors to ensure warranty registrations include the permit number for the equipment installation and warranty claims require permits to have been pulled for the installation.
- Require all permits record the license number of the installing contractor.
- In coordination with California Air Resources Board and the U.S. Environmental Protection Agency, take action to ensure refrigerants are properly recaptured and recycled upon equipment replacement.
- Consider alternatives to demonstrate compliance with the CEC's quality installation standards, including participation in utility programs that verify quality installation, verified use of remote quality control monitoring systems, and installation of fault detection and notification equipment.
- Encourage simplification of building department permitting and inspection for heating and air-conditioning system replacement installations, including online permitting and remote inspections.
- Encourage training for contractors and technicians to properly meet quality installation standards and refrigerant recapture and recycling procedures.
- Encourage consumer protection information regarding the benefits of quality and code compliant installation be provided to persons for whom space heating and air conditioning is installed.

Assembly Bill 3232 (Friedman, Chapter 373, Statutes of 2018)

The findings of the Legislature in AB 3232 make clear the importance of effective building energy savings and include the following:

- SB 32 (Pavley, Chapter 249, Statutes 2016) directs the state to achieve a reduction in the emissions of greenhouse gases of 40 percent below 1990 levels by 2030.
- Buildings are responsible for 25 percent of all emissions of greenhouse gases.
- AB 758 (Skinner, Chapter 470, Statutes 2009) requires the CEC to establish a comprehensive program to achieve greater energy savings in the state's residential and nonresidential building stock.
- SB 350 (DeLeon, Chapter 547, Statutes of 2015) establishes a goal of achieving a cumulative doubling of statewide energy efficiency savings in electricity and natural gas end uses of retail customers by January 1, 2030. However, the state has not assessed the potential for cost-effectively reducing total greenhouse gas emissions from buildings by an amount consistent with the state's greenhouse gas reduction target of 40 percent below 1990 levels by January 1, 2030.
- Decarbonizing California's buildings is essential to achieve the state's greenhouse gas emission reduction goals at the lowest possible cost.

AB 3232 stated the intention of the Legislature to achieve significant reductions in greenhouse gas emissions by the state's residential and commercial building stock. The law directs the CEC to, in consultation with the California Public Utilities Commission (CPUC), the California Air

Resources Board (CARB), and the California Independent System Operator (CAISO), assess the state’s potential for reducing greenhouse gas emissions in its residential and commercial building stock by at least 40 percent below 1990 levels by January 1, 2030. ¹⁰

Executive Order B-55-18 (Brown, 2018)

This executive order established California’s principal climate change directive to achieve carbon neutrality in all sectors of the state as soon as possible, and no later than 2045, and to maintain and achieve negative emissions thereafter.

Executive Order N-19-19 (Newsom, 2019)

Executive Order N-19-19 called for a concerted commitment and partnership by government, the private sector, and California residents to reach some of the strongest climate goals in the world and required every aspect of state government to redouble its efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change while building a sustainable, inclusive economy.

¹⁰ Kenney, Michael, Nicholas Janusch, Ingrid Neumann, and Mike Jaske. 2021. [California Building Decarbonization Assessment](https://www.energy.ca.gov/publications/2021/california-building-decarbonization-assessment). California Energy Commission. Publication Number: CEC-400-2021-006-CMF. <https://www.energy.ca.gov/publications/2021/california-building-decarbonization-assessment>

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CHAPTER 3:

Background on the FV&DT Program

Program Development

Beginning in the latter part of the 1980s, concerns had been raised regarding construction and installation defects of energy efficient equipment. For example, field research conducted by Lawrence Berkeley National Laboratory (LBNL) in 1989 demonstrated major inadequacies in the design, installation, and sealing of heating and air-conditioning ducts that, conservatively, wasted 30 to 40 percent of the conditioned air of a home, severely impairing the energy efficiency of heating and air-conditioning equipment.¹¹ Also, numerous studies and technical papers published between 1990 and 1998, many of them focused on California, demonstrated that improvement in the installation of central air conditioners and heat pumps would have major positive impacts on energy efficiency, and would also provide non-energy benefits, such as improved comfort, reduced maintenance costs, and longer equipment life.¹² These studies concluded that installation quality improvements could achieve approximately 30 to 40 percent energy savings and 15 to 30 percent peak demand savings, reducing consumer energy bills accordingly.¹³

In the 1990s, the CEC was directed by PRC section 25942 to develop and implement a voluntary Home Energy Rating and Labeling Program (Home Energy Rating System or HERS) to assist homebuyers and others in understanding the energy performance and potential of their homes.¹⁴

Starting in 1995, the CEC began developing the HERS program seeking to establish basic administrative procedures and a “whole-house” rating system. In that same time period, construction defect litigation related to many different construction characteristics became a major problem for California builders, resulting in liability insurance becoming extremely

11 Modera, M. P., et al. 1989. “[Residential Duct System Leakage: Magnitude, Impacts, and Potential for Reduction](https://www.aivc.org/sites/default/files/airbase_3618.pdf).” Lawrence Berkeley National Laboratory, VA-89-5-5, https://www.aivc.org/sites/default/files/airbase_3618.pdf.

12 Proctor, John, Chris Neme, and Steve Nadel. 1999. National Energy Savings Potential from Addressing Residential HVAC Installation Problems, p 21. <https://www.proctoreng.com/dnld/NationalEnergySavingsPotentialfromAddressingResidentialHVACInstallationProblems.pdf> (citing, among other studies, Hammarlund, Jeff et al., “Enhancing the Performance of HVAC and Distribution Systems in Residential New Construction”, Proceedings of 1992 ACEEE Summer Study on Energy Efficiency in Buildings, Volume 2, pp. 85-87, Proctor, John, “Pacific Gas and Electric Appliance Doctor Pilot Project”, Final Report Summer 1990 Activity, January 8, 1991, and Proctor, John and Ronald Pernick, 1992a, “Getting It Right the Second Time: Measured Savings and Peak Reduction from Duct and Appliance Repairs”, Proceedings of 1992 ACEEE Summer Study on Energy Efficiency in Buildings, Volume 2, pp. 217-224.)

13 Ibid at p. 16.

14 Public Resources Code section 25942.

expensive or unavailable, and causing a major downturn in construction for multi-family housing.¹⁵ A major remedy that was proposed for reducing litigation problems was the use of third-party inspectors to ensure construction defects were avoided or corrected.¹⁶

The California Building Industry Association strongly advocated that the HERS Program be used to establish a third-party verification process to check that those energy efficiency measures that are prone to construction/installation defects do not waste energy. A third-party approach was necessary because the cost of the test equipment and the time required to use it to verify quality performance were beyond the resources of local building departments to conduct. This approach was also supported by the California Building Officials (CALBO), the statewide building official organization that promotes public health and safety in building construction through responsible building code development.

The CEC decided to develop the HERS Program using raters for two key services:¹⁷

- (i) FV&DT consistent with the California Building Energy Efficiency Standards, Title 24, Parts 1 and 6.
- (ii) Whole-House Home Energy Ratings of newly constructed and existing homes.

In 1999, CEC promulgated regulations in California Code of Regulations, Title 20, sections 1670 *et seq.*, that established the administrative procedures of the HERS program that were jointly applicable to both services. To address the construction defect problems in California, the CEC decided to develop the HERS Program in two phases, prioritizing first the development of procedures for FV&DT for certain Energy Code measures, and second the development of procedures for whole-house ratings, which were adopted in 2008.¹⁸

Program Challenges

The following background provides further information on some of the challenges of the Energy Code FV&DT program.

Rater Complaint and Investigation

On February 13, 2012, raters who had been decertified by a CEC-approved provider filed a complaint with the CEC.¹⁹ The subsequent investigation conducted by the CEC committee

15 California Building Industry Association. SB 800 The Homebuilder, "FIX IT" Construction Dispute Resolution Law. 2003 http://paladinriskmanagement.com/wp-content/paladindocs/6_may_09_g000035.pdf, Kroll, Cynthia et. al., The Impact of Construction-Defect Litigation on Condominium Development, Cal. Policy Research Center Brief Vol. 14, No. 7 October 2002, University of California, p. 2, https://www.novoco.com/sites/default/files/atoms/files/defect_litigation_effects.pdf, San Diego Association of Governments, 2001, Condominium Construction Defect Litigation and Affordable Housing p. 6, https://www.sandag.org/uploads/publicationid/publicationid_146_576.pdf.

16 California Building Industry Association. SB 800 The Homebuilder, "FIX IT" Construction Dispute Resolution Law. 2003 http://paladinriskmanagement.com/wp-content/paladindocs/6_may_09_g000035.pdf

17 California Energy Commission. Initial Statement of Reasons. California Home Energy Rating System. February 2, 1999.

18 California Energy Commission. Initial Statement of Reasons, Establishment of California Home Energy Rating System Regulations, February 2, 1999.

19 California Energy Commission Adoption Order. 2012. "[Complaint Against and Request for Investigation of CalCERTS, Inc.](https://efiling.energy.ca.gov/GetDocument.aspx?tn=65912)," <https://efiling.energy.ca.gov/GetDocument.aspx?tn=65912>.

following that complaint revealed the provider involved had an “unrefined, informal, and seemingly improvised discipline and decertification process.”²⁰ The committee further noted “the process lacks features such as published written procedures and full and complete discipline-related notices.”²¹ The committee noted that the regulations, as currently drafted, do not provide a clear process or detailed requirements for discipline.²²

Implementing the OII Proceeding

On November 14, 2012, the CEC adopted an order instituting investigation (OII), whereby all stakeholders and other interested persons were invited to participate in collecting information necessary to help improve the HERS and FV&DT programs, including those identified in the complaint investigation.²³ The OII covered the adequacy of the provider’s quality assurance program and related rater disciplinary procedures, rater decertification and disciplinary action by providers, adding the regulation of rater companies, and adequacy of conflict of interest regulations.²⁴

Workshops and Webinars Completed During the OII Proceeding

On March 6, 2013, the CEC conducted a lead commissioner workshop to solicit stakeholder input on improving the HERS and FV&DT programs, including topics identified in the OII.²⁵ Staff also added provider certification categories as part of the workshop discussion. Many issues were reviewed, and the discussion of provider quality assurance was extensive.²⁶

In subsequent public workshops and webinars, the CEC conducted topic-specific discussions to obtain comments from stakeholders on specific rules and potential changes to the regulations. The following is a list of public engagement efforts that were part of the OII proceeding:

- On July 26, 2013, the CEC conducted a discussion of rater disciplinary action to get specific input from providers on creating a uniform disciplinary process and establishing guidelines for the probation, suspension, and decertification of raters.
- On August 20, 2013, the CEC conducted a discussion on provider quality assurance to gather information on the provider quality assurance process and potential improvements to quality assurance requirements in the regulations.
- On September 10, 2013, the CEC discussed the roles and responsibilities of rating companies.

20 Ibid.

21 California Energy Commission Adoption Order. 2012. “,” pp. 14-15, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=65912>. [Complaint Against and Request for Investigation of CalCERTS, Inc.](https://efiling.energy.ca.gov/GetDocument.aspx?tn=65912),” pp. 14-15, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=65912>.

22 Ibid.

23 California Energy Commission Order Instituting Informational Proceeding. 2012. “[Regulation of Home Energy Ratings for Residential Dwellings](https://www.energy.ca.gov/sites/default/files/2020-10/2012-10-31_OII_12-HERS-01_ADA.pdf),” Docket No. 12-HERS-1, https://www.energy.ca.gov/sites/default/files/2020-10/2012-10-31_OII_12-HERS-01_ADA.pdf.

24 Ibid.

25 Transcript of Workshop on Regulations of Home Energy Rating Programs,” Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>.

26 “[Transcript of Workshop on Regulations of Home Energy Rating Programs](https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992),” Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>.

- On November 18, 2013, the CEC discussed with raters provider quality assurance issues, the rater disciplinary process, and rating companies.
- On March 10, 2015, the CEC conducted a webinar to refresh the OII proceeding efforts. Stakeholders indicated that provider quality assurance was still one of the key issues needing attention.
- On May 12, 2015, the CEC held a public workshop to continue discussing the key issues with stakeholders.
- On July 9, 2015, the CEC held a workshop to discuss provider quality assurance issues such as quality assurance quotas per measure, clarifying what qualifies as a discrepancy or a failure for each measure, exploring alternative quality assurance processes such as an online form review, exploring remote field verification using internet-connected technology, and developing uniform quality assurance processes for providers.

Since these public workshops, staff has undertaken several investigations, analyses, and efforts to uncover the contributing factors and the underlying cause of the endemic problems with the FV&DT program.

Effectiveness of FV&DT on Reducing HVAC Defects

In September 2017, a report was published on behalf of the CPUC that assessed state permitting and compliance rates for specific HVAC replacement installations in California homes.²⁷ This report assessed the effectiveness of the FV&DT process.²⁸ Survey findings indicated that one barrier associated with training for raters related to a lack of hands-on elements in the training for certain diagnostic tests.²⁹ Survey results also indicated inconsistent knowledge among raters regarding which tests they are required to perform for specific installations.³⁰ Researchers also found examples of deviations between the performance they measured in the field and the field verification documented by HERS raters that led them to conclude it is at least theoretically possible that some raters simply fill out the required compliance forms without actually performing the required tests.³¹

Complaints Against Providers and Raters

Over the years, staff has received complaints and been made aware of issues regarding the conduct of providers, raters, and rating companies consistent with many of the issues, findings, and concerns discussed above.³² The complaints and issues raised have been handled through different approaches depending on the source, topic, and program effect.

27 CALMAC Study ID CPU0172.01, 2014-16 HVAC Permit and Code Compliance Market Assessment, September 22, 2017.

28 Ibid. at pp. 79-86.

29 Ibid. at p. 83.

30 Ibid. at p.84.

31 Ibid. at p. 77.

32 For example, see page 24, Transcript of Workshop on Regulations of Home Energy Rating Programs," Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>. (Discussing flaws in the QA program stemming from concerns about litigation that lead to homeowners not being notified of failed HERS tests.)

Following are the two main categories of common complaints regarding the conduct of HERS providers and raters exemplified by the *Modesto* and *Hawthorne* case studies, cited below:

- Actions by the rater resulting in false information submitted to the certified residential data registries (for example, rater did not correctly perform FV&DT, rater did not visit the project site or bring necessary equipment, or rater did not share any information with the homeowner after performing the FV&DT).³³
- Actions by the provider resulting in false information in the certified data registry's database (for example, provider did not respond to a complaint, provider did not perform quality assurance checks, provider failed to inform the homeowner of the results of a quality assurance check, or provider failed to correct the data submitted by the rater to the data registry as a result of a failed quality assurance check).³⁴

Data Errors and Falsification

Additional concerns of program shortcomings were found when CEC staff investigated whether to establish and maintain a central data repository.³⁵ After randomly sampling certain verification forms, CEC determined that up to 70 percent of the forms contained unrealistic or invalid data input by raters. This raises concerns with potential poor testing or falsification, and supports the need for greater quality assurance, conflict of interest restrictions, and progressive discipline, further confirming various concerns raised during the 2013-2015 workshops discussed above.³⁶

Quality Assurance Program

The HERS regulations require a provider to oversee raters through quality assurance procedures. Providers are required to conduct minimum number of quality assurance checks annually for each rater and the provider's system as a whole. However, providers have not implemented their quality assurance programs consistently.³⁷ Shortcomings include failure to meet the required one percent quality assurance rate, not following procedures included in their approved application, not consistently administering disciplinary action, and not reporting failed quality assurance checks.³⁸ Quality assurance is critical to the FV&DT program achieving the purpose of correcting poor-quality contractor work, so that energy savings can be realized from the installation of energy efficiency measures and contribute to the achievement of

33 For case study examples, see California Energy Commission Staff Investigation, Report 1-01 2021-006 Modesto Complaint and California Energy Commission Staff Investigation, Report 1-02 2022-002, Hawthorne Complaint.

34 Ibid.

35 California Energy Commission Staff Investigation, Report 2-02 2021-1002, Provider QA

36 For example, see discussion by Mr. Nesbitt, HERS Rater, pages 54-57, Transcript of Workshop on Regulations of Home Energy Rating Programs," Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>. (Candid discussion about pressure to falsify data.)

37 California Energy Commission Staff Investigation, Report 2-05 2022-1001, HERS Annual Reporting. For example, see also page 66-68, Transcript of Workshop on Regulations of Home Energy Rating Programs," Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>. (HERS Rater Company owner expressing concerns about inconsistently applied QA.)

38 Ibid

California's greenhouse gas reduction goals. Effective quality assurance checks also help to build confidence that the program supports authorities having jurisdiction (AHJs) and protects consumers.

Further confirming concerns raised during the 2013-2015 workshops discussed above,³⁹ CEC staff has received complaints from consumers about contractor-installed systems failing to perform as expected, as exemplified in the *Hawthorne* case study⁴⁰ Although field research⁴¹ consistently shows a high level of installation defects, HERS raters rarely report failures of contractor installations in field verification reports as observed by staff's initial review of the provider data registry information, and quality assurance inspections rarely, if at all, lead to disciplinary actions to correct rater performance problems when issues are discovered.⁴²

In light of these challenges, to protect consumers against poor construction practices, and to help realize the intended energy efficiency measures, CEC staff intends to improve the FV&DT regulations to ensure the following outcomes in the upcoming rulemaking:

- Raters perform complete, accurate, and fully compliant FV&DT.
- Providers perform thorough rater training and quality assurance checks and consistently and appropriately discipline raters for noncompliant FV&DT.
- Providers timely and completely respond to data requests by CEC staff.
- Potential conflicts of interest between providers, raters, rater companies, and contractors are identified and prevented.
- Consumers are protected against poor construction practices and that installation defects are identified by FV&DT so that contractors may correct them.

39 For example, see page 104, Transcript of Workshop on Regulations of Home Energy Rating Programs," Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>. (Description of "drive-by" audits where rating data was entirely falsified.)

40 California Energy Commission Staff Investigation, Report 1-02 2022-002, Hawthorne Complaint.

41 This research was performed by the legislature and is part of the impetus leading the SB 350.

42 California Energy Commission Staff Investigation, Report 2-05 2022-1001, HERS Annual Reporting. See also pages 54-56, Transcript of Workshop on Regulations of Home Energy Rating Programs," Docket No. 12-HERS-1, TN# 2941-0, <https://efiling.energy.ca.gov/GetDocument.aspx?tn=2941-0&DocumentContentId=10992>. (Candid discussion of HERS Rater concerns about inadequate QA systems.)

CHAPTER 4:

Staff Proposal for Regulatory Framework

Goals for Program Rulemaking

In conducting this rulemaking the CEC has two important goals, an administrative goal and a program performance goal. The administrative goal is to consolidate all regulations related to the FV&DT program into Title 24 in order to simplify compliance with the Energy Code and associated regulations. This will also allow alignment of future FV&DT program updates with the triennial update cycle of the Energy Code. Equally important is the program performance goal. Staff proposes to achieve improved program performance by addressing all areas that have been the source of programmatic problems and complaints. Finally, the CEC intends to amend other sections as necessary for greater clarity.

To accomplish these goals, CEC staff has grouped program changes into eight areas:

1. Align the FV&DT program with Energy Code requirements.
2. Add provisions for rater companies, which are not contemplated by the current regulations.
3. Add conduct requirements and progressive discipline for providers, raters, and rater companies
 - a. Set forth progressive discipline for providers, raters, and rater companies for noncompliance.
 - b. Provide data entry triggers for progressive discipline.
4. Add new ways for providers to conduct quality assurance
 - a. Establish new quality assurance tracking and reporting requirements for AHJs, CEC, and other state agencies.
 - b. Provide for prescriptive alternative quality assurance procedures for the provider to use in rater oversight.
5. Expand conflict of interest restrictions
 - a. Define restrictions for rater companies.
 - b. Allow rater companies to pull permits, but not raters.
 - c. Allow rater companies to complete certificates of compliance and certificates of installation, but not raters.
 - d. Formally permit the legitimate off-purpose use of certificates of verification.
6. Modify requirements for rater training, testing, and oversight
 - a. Proctored online training and exams.
 - b. Hands-on training.
 - c. Increased initial oversight by the provider for new raters.
7. Remove the designation of raters as special inspectors
8. Amend other sections for greater clarity.

Staff Proposal

Align the FV&DT Program with Energy Code Requirements

Current Language and Reason for Change

As described in Chapter 3, Title 20's HERS regulations currently contain provisions on which the FV&DT program relies, such as the provisions governing certification and oversight of providers and raters and the performance of FV&DT functions. In addition, Joint Appendix 7 or JA7 of Title 24 currently contains references to the Title 20 HERS regulations. Staff believes removing these cross-references and overlapping provisions will simplify the implementation and oversight of the FV&DT program and improve the ability for stakeholders to comply with the FV&DT program's requirements.

Description of Changes

Staff proposes adding requirements that affect the FV&DT program to the Energy Code (Title 24), thereby having a self-contained FV&DT program within Title 24 and separating the FV&DT and HERS programs. This would ensure that the training, certification, and quality assurance requirements for raters could be revisited with each new triennial Energy Code cycle, allowing FV&DT requirements to be revised as needed to address changes to the Energy Code. This move will also allow for easier reference by consolidating all program requirements that are presently split between Title 20 and Title 24.

Staff proposes the following changes:

- Add all requirements that affect the FV&DT program to Title 24 by adding a new section in Title 24, Part 1.
- Revise the provisions in JA7 related to residential data registries (RDR) to remove reference to Title 20 regulations in Title 24 for FV&DT, such that RDRs, and their functions, are clearly separated from HERS functions.
- Remove all references to Title 20 HERS regulations from section 10-103 and JA7 of Title 24 and ensure that there are no remaining references to Title 20 HERS regulations found elsewhere in Title 24, Part 1 or Part 6, or other supporting appendices.
- Make other changes as necessary to achieve this objective.

Add Provisions for Rater Companies

Current Language and Reason for Changes

Rater companies were not contemplated when the FV&DT program was first established, and therefore the regulations currently do not identify or include requirements for rater companies. However, despite having no regulations governing them, rater companies have become significantly involved in FV&DT.

Most FV&DT ratings are arranged through rater companies.⁴³ Rater companies advertise for rating services, employ or contract with one or more raters, pay the provider registration fees, and handle client relations. Some owners of rater companies are certified raters; some are not. Over the years, these rater companies have expanded the services they offer directly to

43 California Energy Commission Staff Investigation, Report 2-06, 2R vs 3R Compliance Data Differences.

builders, contractors, and installers, including pulling and managing permits, conducting energy modeling, completing required compliance forms, and completing paperwork for tax credits and rebates. Rater companies can influence how ratings are conducted by their raters but remain outside CEC or provider oversight. The regulations do not address any potential conflicts of interest with rater companies and builders or contractors. The owner or manager of a rater company is not required to receive training from or be certified by a provider nor provide any reporting to the CEC. There is no regulatory guidance on how providers should deal with a rater company in the event of a quality assurance failure, or how a rater company must ensure the proper conduct and performance of its raters.

Staff has identified that the regulations should include provisions concerning rater companies in order to explicitly include them in the program and govern their conduct.

Description of Proposed Changes

Staff proposes the following provisions governing rater companies:

- A rater company would be defined as a company, partnership, or sole proprietor owned by, or that employs or contracts with, one or more raters certified by a provider to offer FV&DT services.
- A rater company would apply to a provider for certification as a rater company similar to the process for raters. Providers would then maintain a publicly available listing of all its certified rater companies, including contact information and current approval status. A rater company would maintain a publicly available list of its raters.
- A rater company would be responsible for ensuring its raters comply with FV&DT regulations, as well as all other applicable laws and regulations, when providing FV&DT services. At least one principal of the rater company would also need to hold an active rater certification issued by a provider.
- Once a rater has been assigned to a project to perform FV&DT, the rater company would not be able to reassign a new rater unless the rater company can demonstrate to the provider compelling circumstances. The assigned rater would also not be permitted to perform other services on behalf of the installing contractor or technician, designer, or architect for the same project.
- A rater company could provide services outside FV&DT but would not be able to use raters for such services.
- 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 into the provider data registry for any compliance document signed by a rater. A rater company may act as a documentation author for compliance forms.
- A rater company would use the approved data registry user interface or an approved external digital data service (EDDS) for data input into the approved data registry.
- A rater company would submit annual reports to the provider, including its contact details, principals and required licenses, list of raters, the total number of FV&DTs performed by jurisdiction, and the average cost of services charged for each type of verification performed. The provider would verify the rater company's information and annually report the information to the CEC. The provider's rater company annual report

also must include an aggregated total and average of the cost of services provided across all rater companies. The cost of services information must be summarized by local jurisdiction and climate zone. At a minimum, all aggregated data will contain data from no fewer than three rater companies.

Add Conduct and Progressive Discipline for Providers, Raters, and Rater Companies

Current Language

Existing regulations in California Code of Regulations, Title 20, sections 1670 *et seq.*, identify and establish requirements for raters⁴⁴ and providers.⁴⁵

Existing regulations state that providers and raters must not knowingly provide untrue, inaccurate, or incomplete rating information or report rating results.⁴⁶ Providers and raters must also not knowingly accept payment or other consideration in exchange for reporting a rating result not conducted and reported in compliance with these regulations.⁴⁷

Under the existing regulations, providers oversee raters by entering into agreements with rater applicants prior to the rater performing FV&DT services.⁴⁸ Providers are also required to respond to and resolve complaints related to ratings and FV&DT services and reports.⁴⁹ CEC certifies providers on a triennial basis in alignment with the code cycle and oversee them “to determine whether the providers comply with the requirements of these regulations.”⁵⁰ The CEC may revoke the certification of a provider if the CEC determines there is a violation of the regulations.⁵¹ There are no provisions to discipline a provider other than decertification.

Reason for Changes

Staff has identified a need for updates to the regulations governing providers, rater companies, and raters to add progressive discipline for the three types of entities.

Many factors could allow registry users to enter erroneous or false information. CEC staff is aware through data discovery and complaints that builders, installers, and raters can potentially be motivated to supply false data in the interests of meeting production schedules or ensuring continued working relationships, for example.⁵² Data falsification undermines the credibility of the FV&DT program and confidence in the ability of the program to ensure quality installation and compliance with the Energy Code to protect consumers.

44 Cal. Code Regs., Title 20, sections 1671, 1672, 1673.

45 Cal. Code Regs., Title 20, sections 1671, 1672, 1673, 1674, 1675.

46 Cal. Code Regs., Title 20, section 1672.

47 Ibid.

48 Cal. Code Regs., Title 20, section 1673.

49 Ibid.

50 Cal. Code Regs., Title 20, section 1675.

51 Ibid. The process for revocation follows Cal. Code Regs., Title 20, sections 1233 *et seq.*

52 California Energy Commission Staff Investigation, Report 1-01 2021-006 Modesto Complaint
California Energy Commission Staff Investigation, Report 1-02 2022-002, Hawthorne Complaint.

The lack of a clear process or detailed requirements for discipline, including the limited enforcement options, of providers and raters to address the myriad of potential infractions—big or small—limits the effective regulation of those involved in FV&DT, the ability to correct inaccurate or incomplete ratings and data records, and otherwise ensure compliance with the program. Progressive disciplinary measures were discussed to provide an opportunity to influence provider behavior and encourage compliance with the FV&DT regulations prior to initiating the decertification process.⁵³ The OII Proceedings showed the need for a prescribed rater discipline process.⁵⁴ Otherwise, raters may be unfairly punished for minor (or even nonexistent) transgressions. Establishing consistent and clear discipline procedures will give the rater and provider the ability to address errors or transgressions in a reasonable and prescribed manner approved and overseen by the CEC. The current process also does not provide any opportunity for raters to respond to or to appeal a provider’s conclusions regarding needed disciplinary actions and to provide evidence in support of the appeal.

Description of Proposed Changes

Staff proposes the following progressive discipline measures for providers, raters, and rater companies. The objective is not to eliminate providers, raters, or rater companies, but to address potential negative behaviors that may impact the effectiveness of the FV&DT program.

CEC-Provider Progressive Discipline

- The proposed additions will include progressive disciplinary actions for providers who violate the FV&DT regulations, including failure to comply with the quality assurance requirements, investigate or discipline raters, cooperate in a CEC complaint investigation, comply with data requests, or otherwise comply with any applicable law or regulation.
- CEC staff proposes a multi-step progressive disciplinary process for providers for failure to adhere to the requirements of these regulations. Typically, discipline progresses through each step described below. However, in the event of a severe violation only, staff is exploring the additional option of proceeding immediately to suspension or decertification.
 - Step 1: A formal notice of violation is issued to the provider and publicly posted describing the violation and any corrective action to be taken by the provider. This step includes the opportunity for the provider to respond prior to a final determination.
 - Step 2: Probation for a duration specified by CEC. This step includes the opportunity for the provider to respond prior to a final determination.
 - Step 3: Suspension, which may include the conditional or unconditional restriction of a provider’s access to the report generator for all projects. The provider may respond to and appeal the suspension prior to its effective date.
 - Step 4: Approval to be a provider will be rescinded. The provider may respond to and appeal the rescission of approval prior to its effective date.

53 Order Instituting an Informational Proceeding 12-1114-6.

54 Ibid.

- These proposed disciplinary actions for providers also apply to the failure to respond to data requests, or to provide the CEC access to the provider’s databases and registries, including full access to view data and documents retained in the providers data registry or database and run queries and download data and information.

Provider-Rater Progressive Discipline

The proposed additions will include progressive disciplinary intervention to correct rater performance issues. The provider would be required to inform other providers and the CEC of any progressive discipline it takes against a rater and list all field audit failures and disciplinary actions of a rater on the provider’s website for six months.

A field audit failure or other violation for a rater at one provider will count as a failure or violation for that rater at all providers. A rater with disciplinary actions at one provider would be required to continue at the same disciplinary step at all providers. This would mean, for example, a rater that is on probation or suspension at one provider would be on probation or suspension at all providers.

Violations subject to progressive discipline include exceeding the limit on the number of registered compliance documents that can be submitted by a single rater to a single data registry over a specified period (such as 15 in one day, 75 in one week, or a monthly limit). This limit will be developed with input from providers, raters, and industry experts as part of this rulemaking and would be applied across provider data registries. Each provider would submit an annual report to the CEC identifying the number of FV&DT tests registered by each rater, the number that exceeded the limitation for a given time period and the total registered for the entire year. The annual report should include the identification of each rater (name, business address, email, phone number, and certificate number) and an indication as to known certification with other providers.⁵⁵ Identified failure to comply by any rater will result in the CEC performing an immediate quality assurance on the rater and/or proceed to a violation (as a failed quality assurance) in the progressive discipline process for raters described below. The CEC will verify compliance of all raters with the FV&DT registration limitation across all providers annually.

CEC staff proposes a multi-step progressive disciplinary process for raters by providers. Typically, discipline progresses through each step described below. However, in the event of a severe violation only, staff is exploring the additional option of proceeding immediately to suspension or decertification.

1. Step 1: A formal notice of violation is issued to the rater, rater company, and any affected property owner describing the violation and any corrective action to be taken by the rater. This step includes the opportunity for the rater to respond prior to a final determination.
2. Step 2: Probation for up to six months. This step includes the opportunity for the rater to respond prior to a final determination.

⁵⁵ While providers may work together to resolve issues regarding an individual rater, the CEC cannot effectively rely on this cooperation as a means to oversee the activities of raters. Therefore, it is necessary for the CEC to ensure that regulations treat each provider individually as well as equally.

3. Step 3: Suspension, during which the rater will not be able to submit any new compliance documents or otherwise access the provider's data registry. The rater may respond to and appeal the suspension prior to its effective date.
4. Step 4: Decertification as a rater. The rater may respond to and appeal the decertification prior to its effective date.

Provider-Rater Company Progressive Discipline

Rater company progressive discipline has two major components. First, the rater company must ensure its raters comply with all disciplinary requirements imposed by the provider. Second, rater companies are subject to progressive discipline by the provider.

CEC staff proposes a multi-step progressive disciplinary process of rater companies by providers. Typically, discipline progresses through each step described below. However, in the event of a severe violation only, staff is exploring the additional option of proceeding immediately to suspension or decertification.

1. Step 1: A formal notice of violation issued directly to the rater company and any affected property owner describing the violation and any corrective action to be taken by the rater company. This step includes the opportunity for the rater company to respond prior to a final determination.
2. Step 2: Probation for up to six months. This step includes the opportunity for the rater company to respond prior to a final determination.
3. Step 3: Suspension, during which the provider will disable access to its registry for all raters of the rater company. The rater company may respond to and appeal the suspension prior to its effective date.
4. Step 4: Decertification as a rater company. The rater company may respond to and appeal the decertification prior to its effective date.

Add New Ways for Providers to Conduct Quality Assurance

Current Language

Existing FV&DT regulations state that providers must have a quality assurance program that includes the following:

- Quality Assurance Manager and Quality Assurance Reviewers
- Initial review for accuracy and completeness of at least the first five homes a rater performs after completing training
- Ongoing reviews of work being performed by the raters in the provider's registry⁵⁶

The one percent ongoing quality assurance reviews require providers evaluate "the greater of one rating, randomly selected or one percent of [each] rater's past 12 months total number of ratings for each measure tested by the rater."⁵⁷ The providers must also conduct the same check on one percent of all ratings conducted through the provider, selected randomly from the provider's entire pool of ratings on an ongoing basis.⁵⁸ These field checks are performed by the providers independently repeating the rating to check whether the rating was accurately completed by the rater, and determining whether information was completely collected and reported.⁵⁹ Field checks occur after the submission of the certificate of verification and are documented in the provider's database.⁶⁰

Reason for Changes

At the end of each year, providers report all quality assurance actions to the CEC. Each year, these reports show that the providers do not meet their minimum quality assurance requirements. While there are many issues identified by the providers, the primary obstruction that can be out of the Provider's control is that contacted homeowners refuse to allow quality assurance inspectors from the provider to enter the home and rerun the FV&DT.

Thorough and complete quality assurance is a vital component of the FV&DT program. As an example, quality assurance is particularly important when sampling is used for FV&DT ratings for larger housing developments. Under sampling, one home out of a group of projects (typically seven) is chosen for FV&DT. If the tested home passes, then the other homes in the sample group are deemed to pass. It is critical for the tested home to be reported by the rater if it does not pass FV&DT. The failed report determines that the other projects in the sample group may not pass as well, and that further FV&DT is needed to determine whether the other homes comply with the Energy Code. If a rater were to accidentally or intentionally falsely report that a noncompliant tested home passes FV&DT, this will likely mean other homes in the sample groups fail to comply without anyone's knowledge or any opportunity for corrective

56 Cal. Code Regs., Title 20, section 1673, subdivision (i)

57 Cal. Code Regs., Title 20, section 1673, subdivision (i)(3)(A). The regulations further provide that for raters that have had at least one quality assurance evaluation for any measure in the past 12 months, this evaluation shall be required to be done only for those measures that have been tested by the rater at least 10 times in the past 18 months. The amount of field measures increases when deficiencies are found. Cal. Code Regs., Title 20, section 1673, subdivision (i)(3)(C).

58 Cal. Code Regs., Title 20, section 1673, subdivision (i)(3)(A).

59 Ibid.

60 Cal. Code Regs., Title 20, section 1673 subdivision (i)(3)(C).

action. Quality assurance evaluations for the homes that were not tested is the only means available to the FV&DT program to identify when raters cause projects in a sampling group to be falsely deemed compliant.

The regulations do not require that quality assurance reports be submitted to the homeowners (consumers), building departments, the CSLB, or builders, nor do providers voluntarily provide these reports to them. This lack of disclosure and transparency undermines the program. Failing to ensure that homeowners/consumers are properly informed of how these quality assurance evaluations are done and what the results are seriously disadvantages them and limits their ability to get resolution of poor installations and inaccurate ratings.

The CEC has received complaints about 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.⁶¹ It is critical for the CEC and providers to stop these problems from occurring. Building departments need to know when incorrect ratings have resulted in building departments incorrectly determining that projects comply with the requirements of the Energy Code. Furthermore, the CSLB needs to know when incorrect ratings may have been caused by contractor fraud or misrepresentation in violation of contractor license laws. Builders need to be informed about the actions of the rater and the consequences to their construction project.

Description of Proposed Changes

Staff proposes that providers have a range of quality assurance methods available to them to achieve the required audits. As a starting point, staff proposes the following alternative quality assurance procedures. Staff will seek more input from stakeholders through the rulemaking process so providers can perform the minimum required quality assurance in a cost-effective manner and meet the quality assurance and disclosure requirements. Staff proposes the following quality assurance measures:

- Onsite audits are performed by the provider following a field verification and diagnostic testing by a rater. Onsite audits are performed at the invitation of the homeowner, through the complaint or other processes. For an onsite audit the provider independently repeats the field verification and diagnostic test to determine if it accurately performed and whether all data was accurately collected and reported by the rater and are included in an annual report to the CEC. The quality assurance reviewer will perform all FV&DT performed by the rater at the project site.
- "Shadow audits," where field audits are performed on the rater as they perform the FV&DT. The rater will be informed of the shadow audit requirement on the day of the audit, and the reviewer will explain their presence to the homeowner. Developers or contractors may not refuse a shadow auditor if sampling is being used. The shadow audit reviewer will provide a report of results to the rater and, if applicable the rater company, and issue a pass or fail based on the rater performance.
- "In-lab audits," where a rater performs FV&DT in a laboratory setting: Each year, all raters will be required to perform each FV&DT that they have been certified to perform

61 California Energy Commission Staff Investigation, Report 1-01 2021-006, Modesto Complaint
California Energy Commission Staff Investigation, Report 1-02 2022-002, Hawthorne Complaint.

in a laboratory setting. The in-lab audit will be conducted by the provider and include failure conditions found in the field by onsite and shadow audit reviewers. The rater must come to the appropriate results for each FV&DT, including "failed," and demonstrate the proper reporting using a mock interface for the data registry. The rater will be given two chances to pass the in-lab audit for each FV&DT.

- "Desk audits" based on the compliance documents within the provider's data registry. Providers will develop and document a maximum variance for each data entry point for each FV&DT based on its data registry and the professional judgement of its reviewers. The desk auditor will identify a project to audit where the rater in question provided FV&DT services. The desk auditor will pull all compliance documents associated with the project as necessary to audit the FV&DT performed by the rater at the project site and may contact outside authorities, such as the AHJ, at their discretion. The desk audit reviewer will confirm that the measurements, calculations, and other information obtained during FV&DT at the project are within expected tolerances. The reviewer will then compare the FV&DT results from the project site to no fewer than 20 other FV&DT results performed by the rater on other project sites prior to the audited project. The reviewer will determine if the FV&DT results are copied from other project sites. If such trends are identified, additional project audits will be performed to determine the potential for fraud. The reviewer will provide a report of results to the rater and, if applicable, the rater company, and a pass or fail of the desk audit.
- Quality assurance tracking and reporting: The provider will send a report each quarter to the CEC summarizing all failed field audits. The summarized reports will be public information that the CEC may forward to building officials with enforcement jurisdiction in the rater's service area and the CSLB. The report will list the rater information, contractor information, address of the project, and code violations for each failed measure.
- Quality assurance triggers for exceeding the FV&DT registration limitation: Providers will increase the rate of their quality assurance audits when a rater has violated the FV&DT registration limitation and notifies the CEC of the incident.
- Sampling will have the following additional restrictions: For newly constructed residential developments, tested homes will be subject to the registration limit and at least one in seven of the rater-tested homes will be field quality assurance tested by the provider. This means every seventh sampling group registered by the rater will be subject to an onsite quality assurance inspection by the provider. The provider will perform the onsite audit at an untested home in the same sample-group being tested. If the provider is refused access to the development, all sample-groups for the development will be considered to fail the audit and will be rejected from the data registry with a notification to the CEC. If the provider is refused access to the development, the rater may also be subject to investigation and disciplinary action.
 - The CEC is considering restricting sampling to developments that are larger than seven dwelling units. Further, the CEC is considering restricting existing homes (additions and alterations) from the sampling provisions altogether.

Expand Conflict of Interest Prohibitions

Current Language

The current regulations establish conflict of interest requirements for providers' and raters' conduct and responsibilities in the interest of consumer protection. The conflict of interest requirements are as follows:

1. Providers shall be independent entities from raters.
2. Providers and raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.
3. Providers and raters shall be independent entities from any firm or person that performs work on the home for a California Home Energy Audit or a California Whole-House Home Energy Rating,⁶² California Code of Regulations, Title 20, section 1673(j).

The regulations define an "independent entity" as "having no financial interest in, and not advocating or recommending the use of any product or service as a means of gaining increased business with, firms or persons specified in section 1673(j)."⁶³ The regulations define a "financial interest" as "an ownership interest, debt agreement, or employer/employee relationship. Financial interest does not include ownership of less than 5 percent of the outstanding equity securities of a publicly traded corporation."⁶⁴

Reason for Changes

Staff seeks to expand and clarify the conflict of interest prohibitions. The current conflict of interest language fails to clarify financial interests that may occur when the provider, rater, builder, or installing contractor is not an individual, but rather a business with principals who are responsible. They also fail to prohibit close familial relationships, which is commonly prohibited in conflict-of-interest protections in other fields. The current conflict of interest language fails to address conflicts involving rating companies (rater-employers).⁶⁵ Further, staff seeks to expand and clarify the definition of a financial interest, including removing the phrase "advocating or recommending the use of any product or service as a means of gaining increased business with [specified] firms or persons."

As an example, during the fall of 2014, staff was made aware that raters were pulling permits on behalf of a contractor, which may constitute a conflict of interest. Staff determined that the conflict of interest provisions concerning raters pulling permits for contractors are

62 There is an exception that does not apply to raters performing FV&DT of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6. The exception is for California Whole-House Home Energy Raters, who are working as or for a building performance contractor certified under a CEC-approved Building Performance Contractor program as part of a provider's rating system as specified in section 1674(e) of the regulations and in the HERS Technical Manual, are not required to be an independent entity from the person(s) or firm(s) performing the work on a home.

63 Cal. Code Regs., Title 20, section 1671. California Home Energy System Program, Definitions.

64 Ibid.

65 California Energy Commission Staff Investigation, Report 2-02 2021-1002, Provider QA.

ambiguous.⁶⁶ Staff concluded that raters pulling permits do not necessarily constitute a conflict of interest under the current regulations. A letter from the CEC dated January 14, 2015, indicated that based on the information presented, there was no evidence to suggest that such an arrangement was sufficient to constitute a violation of the conflict of interest provisions of the regulations.⁶⁷ The CEC letter sought additional information for further consideration and for the CEC OII to improve the HERS program.⁶⁸

The issue of raters pulling permits on behalf of a contractor primarily affects alterations (mostly HVAC changeouts). The relationship in question is between the rater and the HVAC contractor. New home developers are typically not using permit pulling services for newly constructed buildings.

Stakeholders have argued that the practice of raters pulling permits violates the existing regulations.⁶⁹ For example, some raters, rater-employers, and energy consultants offer discounted or “bundled” pricing for rating and permit pulling services. As a result, these entities tend to receive increased business from contractors.⁷⁰ Stakeholders argue that this practice violates the conflict of interest regulations because the raters offering bundled pricing for HERS rating and permit pulling services are advocating or recommending the use of a service as a means of gaining increased business with building contractors. As a result, the raters are no longer “independent entities” as defined in section 1671. In addition, provider training materials, which are approved by the CEC, prohibit raters from providing additional services to contractors and subcontractors.

Staff proposes to allow rater companies to perform these additional tasks without using an FV&DT rater to do so. By regulating the rater company under the FV&DT program (through an application process with the provider), the CEC can allow the rater company to perform services in addition to the FV&DT services performed by raters. It would be more appropriate to allow the rater company to continue to provide these services to builders without using the rater to do so.

The conflict of interest requirements should be amended to make them clear and easy to understand. They should focus on tangible financial interests that should be avoided, add a prohibition on close familial and similar conflicts, and reduce the percent of the outstanding equity securities excluded. Finally, provisions concerning rating companies should be added.

Description of Proposed Changes

Staff proposes the following changes to clarify conflict of interest restrictions:

66 [Information Proceeding to Improve the Home Energy Rating System Program](https://www.energy.ca.gov/sites/default/files/2020-10/2012-10-31_OII_12-HERS-01_ADA.pdf), Docket 12-HERS-01, https://www.energy.ca.gov/sites/default/files/2020-10/2012-10-31_OII_12-HERS-01_ADA.pdf.

67 Ibid

68 Letters to and from Attorney Brett Dickerson, [HERS Docket 12-HERS-1](https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=12-HERS-01f), <https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=12-HERS-01f>

69 Mahoney, Gregory (CALBO CEC Advisory Committee, Chair) letter filed to the HERS Docket 12-HERS-1, TN#76178, September 25, 2015.

70 Ibid.

- Expand the list of parties that providers and raters are to be independent from to be more inclusive of any person designing and installing measures, not just a builder and the installing subcontractor.
- Expand prohibited financial relationships between providers, raters, or rater companies and the builders, designer, or installers that receive FV&DT services. These financial relationships may include the following:
 - Financial relationships created by ownership agreements, debt agreements, and employee-employer relationships.
 - Stock or equity ownership for any direct or indirect investment worth \$2,000 or more, except for ownership of less than five percent in publicly traded companies.
 - Sources of income totaling \$500 or more within the 12 months from builders, designer, or installers that receive FV&DT services, except for payments by building owners or project owners for FV&DT services or other services related to FV&DT.
- Prohibit FV&DT services for builders, designers, or subcontractors owned or operated by close familial relatives.
- Establish a list of prohibited activities that create an actual conflict or the appearance of a conflict of interest between the rater and contractor or technician performing work on a project site.
 - Raters may not apply to any AHJ capable of issuing a construction permit for a residential property.
 - Raters and rater companies may not perform any construction on a project site for which a construction permit has been issued by an AHJ.
 - Raters and rater companies may be hired by or accept payment from only the building owner for FV&DT services performed on an existing residential building that has been issued a certificate of occupancy by an AHJ.
 - Raters and rater companies may be hired by and accept payment from only the project owner for FV&DT services performed on a newly constructed residential building that has not been issued a certificate of occupancy by an AHJ.
- Remove from the definition of a prohibited financial interest the provision “advocating or recommending the use of any product or service as a means of gaining increased business with [specified] firms or persons.”

Modify Requirements for Rater Training, Testing, and Oversight

Current Language

The current regulations require providers to conduct rater training, including classroom and field training, in analysis, theory, and practical application in several specified areas, including FV&DT requirements of the Energy Code.⁷¹ Providers must require each rater applicant to take

⁷¹ Cal. Code Regs., tit. 20, section 1671(a)

a CEC-approved written and practical test that demonstrates the applicant's competence in all subjects specified in section 1673(a)(1).⁷²

Reason for Changes

Training

Training requirements have not been updated as the FV&DT program has developed to support Title 24 compliance. As a result, training offered by the two current providers differs significantly and may not meet the needed rigor to ensure competency to performed required FV&DT of the increasingly complex measures being defined in the Energy Code.

The current training modules focus more on the theory of building science than on practical skills. Although the time required to complete provider offered training differs, it generally can be completed in less than 50 hours (online). Staff has reviewed the providers' training materials, submitted with their certification applications, and observed that the regulations should include more specific guidance for providers to provide more robust training on the skillsets needed to conduct FV&DT proficiently and to complete the compliance documentation accurately.

The current training modules are all online, self-guided, and self-paced.⁷³ There is no monitoring of new raters going through the online training process. It is not possible for CEC to determine that raters going through the training process adequately learn how to proficiently conduct FV&DT, how to read the compliance documents, or how to complete the compliance documentation just by sitting through several modules of self-guided videos. The training videos lack the detailed step-by-step procedures for conducting each FV&DT. The training platforms do not ensure the user is actively viewing content. Once the user clicks on the video, the countdown timer begins. Regardless of the playback experience (pause or allow to play), once the timer reaches zero, the rater applicant can click "Continue" to proceed to the next video or quiz. Most quiz and exam solutions can be found within the student manual by using a keyword search or within the video presentation. The quizzes may be attempted without limitation and allow the student to learn which answers are incorrect. The number of quiz questions allows for some variation as to which questions are presented with every attempt in addition to re-ordering the questions.⁷⁴ More questions would prevent the pass-by-elimination process. Some of the quiz questions are vague and confusing in that additional context could change the correct response from the intended. At the end of the module, there is a final exam that user must pass to receive a completion certificate. The final exam is not proctored. The closest attempt at a controlled completion is that one provider limits the final online exam to three attempts, with a delay of two days before the student can make a fourth attempt.

Practical training differs between providers. Providers are required to qualify rater applicants to satisfactorily perform FV&DT ratings for at least one home in the presence and under direct supervision of the provider's trainer or quality assurance reviewer.⁷⁵ CEC staff is aware that

72 Ibid.

73 Ibid.

74 Ibid.

75 Cal. Code Regs., Title 20, section 1673(a)(1) and (7).

one provider does not have a hands-on lab to demonstrate practical training and to perform the practical test. However, the provider's application stated that they are using an active project location for hands-on instruction, but these locations are not disclosed to the CEC at any time.

Provider Applications

The regulations do not provide any guidance on the types of applications for which providers can be certified. The regulations also do not state that a provider must be certified for all certification categories. This impacts the training offering available for raters and can have a deleterious impact on the program in general if builders cannot find certified raters for the services that they need. Over the history of the program, providers have been approved for conducting only parts of FV&DT services required by the Energy Code, including:

- Prescriptive HVAC alterations for residential buildings.
- Newly constructed residential buildings.
- Newly constructed residential buildings and prescriptive HVAC alterations for residential buildings.
- Newly constructed residential and nonresidential buildings and prescriptive HVAC alterations for residential and nonresidential buildings.

A consumer who is looking to hire a HERS rater might be confused when a HERS provider is not certified for all FV&DT services. This confusion could also result in having a gap in coverage of provider oversight over one or more FV&DT rating services, leaving a part of the Energy Code FV&DT services unsupported.

On the other hand, significant investment is required to develop a provider data registry and conduct the other provider functions. Under the current regulations, new providers could become established with partial approval and an expectation to expand. By staging the application, prospective providers could better align their expected income with their initial investment costs regarding the developing a data registry, other software and databases specified in Title 20, a rating system, and training for all procedures and compliance forms under the applicable Energy Code. However, these application options are far from clear in the existing regulations, and at the very least the regulations need to specifically acknowledge that there are options available.

Description of Proposed Changes

Staff proposes the following changes to improve the training requirements:

- Staff recommends increasing the scope of training regarding "building science" and focusing on additional practical skills for determining the measures are properly installed and comply with the Energy Code. For example, training should be expanded in areas of design and installation of HVAC systems; building envelope vapor and energy transmission principles; and design strategies that will better assist raters to identify the cause of failed FV&DT.
- To complete certification, all raters must be trained on all FV&DT procedures.
- All training (online or in-person) is to be proctored and include a quiz at the end of the session.

- Training is to include videos that show step-by-step procedures for conducting all FV&DT services as detailed in Title 24, Part 6, Reference Appendix, Residential Appendix RA3 (RA3).
- Provider applications will include draft scripts and recorded voiceover files in addition to the presentation slides.
- Presentation materials will be indexed for content and associated code or regulation. Documents will be keyword searchable.
- Training videos will be reviewed by CEC staff and are subject to correction post approval.
- Hands-on training will be required for all FV&DT procedures and must be performed in a fixed or mobile laboratory under the control (either direct or by contract) of the provider. Video or online training may not be used in place of hands-on training.
- Raters that pass the training and certification testing will be granted a limited status as a rater until both of the following are satisfied within 90 days:
 - Satisfactorily perform one FV&DT in one home in the presence and under direct supervision of the provider's trainer or quality assurance reviewer.
 - The provider has reviewed the rating documentation of the first five FV&DTs or home ratings conducted by new raters for accuracy and completeness.
- All raters must satisfactorily perform one FV&DT in one home or in the lab in the presence and under direct supervision of the provider's trainer or quality assurance reviewer annually.
- Trainings for active raters will conclude with an exam and a self-certification that the rater understands the updates.
- Providers will update training materials no less than every three years, matching the Energy Code's triennial cycle, to ensure that the training materials remain consistent with the updated Energy Code.
 - Raters will continue to be required to become trained on the new materials and certified by the provider to offer FV&DT services under the new code cycle.
- Retroactive training will be offered to guide new raters on differences in the prior code to perform ratings on projects permitted under the prior version.

Staff also proposes to add or expand on the following training requirements:

- The Title 24 requirements found in section 10-103, "Permit, Certificate, Informational, and Enforcement Requirements for Designers, Installers, Builders, Manufacturers, and Suppliers."
- The intended workflow for raters in the permitting and construction process.
- The provider's quality assurance program and provisions for rater discipline. The program plan will include procedures, sample dialogue for different types of rater deficiencies, and a remediation flow diagram.
- Terms of the provider-rater agreement.
- Residential alterations and new construction requirements (per Title 24, Part 6).
- Sampling procedures (per Residential Appendix RA2).

- Hands-on training on protocols for all FV&DT measures (per Residential Appendix RA3).
- The provider’s registry interface and procedures.
- The provider’s testing protocols for written and hands-on exams.

Remove the Designation of Raters as Special Inspectors

Current Language and Reason for Change

The Energy Code, in Reference Appendix 2.1, currently states that raters should be considered as “special inspectors” by enforcement agencies. Title 24, Part 2 defines a special inspector as “a qualified person employed or retained by an approved agency and approved by the building official as having the competence necessary to inspect a particular type of construction requiring special inspection.”⁷⁶ RA 2.1 also states that raters shall demonstrate competence, to the satisfaction of the building official, for the visual inspections and diagnostic testing that they perform. However, no AHJ (local building department) has approved or attempted to approve any rater as a special inspector or required a rater to demonstrate competence to their satisfaction to operate within its jurisdiction. Raters are trained and certified by providers as set forth in the program regulations without any other action taken by a building official.

Description of Changes

Staff proposes amending Residential Appendices RA21 and JA7 to remove the statement that HERS raters should be considered as “special inspectors,” and delete the authority of local building departments to determine whether raters are allowed to perform FV&DT in their jurisdiction, consistent with the current implementation of the FV&DT program.

Amend Other Sections for Greater Clarity

Staff proposes to amend the following sections for greater clarity:

Data Collection

Current Language and Reason for Change

Under the current regulations, providers are required to record and maintain for 10 years all required and optional data collected for a rating, as well as certain other information related to homes that received FV&DT.⁷⁷ Upon the CEC request, not more frequently than annually, the provider must submit to CEC these data and provide the CEC with ongoing access to the provider’s database.⁷⁸

The regulations do not define “access” or otherwise specify how CEC staff can retrieve the collected data and compliance documents. However, Joint Appendix 7 of the Energy Code is clear on how CEC should be granted access to the information in the registry. JA7.4.1 states providers “shall grant authorization to [CEC] staff to view the data and documents retained in the Data Registry, and shall provide functionality that allows [CEC] staff to query and download retained data and documents.” CEC staff does not have the ability to run queries or download data from the data registries, and the current level of access allows only for narrow

76 Cal. Code Regs., Title 24, section 202.

77 Cal. Code Regs., Title 20, section 1673(e).

78 Ibid.

search and review of projects one at a time. Searches that result in fewer than 100 documents or 500 projects (depending on the HERS provider) must be assessed individually.

Description of Changes

To clarify the requirements in JA7.4.1, staff proposes the following changes:

- The CEC must have direct and consistent access to all provider data registries and quality assurance records for queries resulting in no more than 1,000 records.
- The CEC may request query results that are expected to exceed 1,000 records or are more complex from the provider at any time.
- The provider will address any requested query from the CEC with either a direct submission of the requested data, a time frame by which the data can be compiled, or an explanation as to why the requested data cannot be provided for the CEC to consider.

Submission of Reports

Current Language and Reason for Change

Providers are required to maintain databases and submit annual reports to the CEC on FV&DT evaluation, quality assurance for unrated or untested buildings or installations, and its complaint response system.⁷⁹ These reports enable CEC staff to evaluate provider compliance and the effectiveness of the program.

However, regulations for these annual reporting requirements do not provide much detail, which results in inconsistent reports in scope and level of detail produced by the providers due to varying interpretation of what information should be contained in the annual reports. For example, there are no minimum requirements on specific information that needs to be collected and stored in the provider's database for quality assurance verifications.

Description of Changes

Since CEC relies on reporting to determine program compliance and evaluate its effectiveness, staff proposes the following changes to clarify FV&DT and quality assurance reporting requirements and the corresponding information in the provider's databases that is the source for these reports:

- FV&DT reporting will include submitting registered documents to the CEC repository on a quarterly basis once the repository is approved by the CEC executive officer for implementation. Before that approval, the provider will submit a random sample of registered documents (10 percent or 500 homes, whichever is less) organized by climate zone as defined in Section 100.1(b) of the Energy Code.
- Providers will be required to maintain a database system to show the quality assurance and progressive discipline actions taken regarding each rater certified by the provider, including:
 - A summary of all quality assurance actions taken by the provider and the results of those actions.

⁷⁹ Cal. Code Regs., Title 20, section 1673, subdivisions (f) and (i).

- Rater identification information, the rater company of each rater, and current certification status, including the status of any progressive discipline actions that the provider has taken.
- A requirement of the provider to maintain detailed quality assurance records that are referenced in the database for better tracking but are not otherwise reported.
- A provider's annual quality assurance reporting from the providers must include the summarized data tracked by the providers for all certified raters. Also, the CEC may request a copy of the detailed quality assurance records for individual raters.

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CHAPTER 5:

Alternatives Considered

Listed below are five options to address the issues in the HERS program:

1. Do nothing.
2. Investigate elimination of the FV&DT program.
3. Add provisions related to FV&DT program to Title 24, including regulations to improve program clarity and compliance.
4. Reimagine the entire FV&DT program.

Option 1: Do Nothing

This approach is the least desirable option because it leaves the current regulations in place without addressing the issues identified throughout this staff report. This approach will result in continued problems with rater training, quality assurance and discipline by the providers, and continued limited ability for CEC staff to oversee the providers and enforce compliance with the FV&DT regulations. Staff does not recommend this option.

Option 2: Investigate Elimination of FV&DT Program

The problems with the FV&DT program are significant and long running. It is not unreasonable to question whether the FV&DT program is achieving the desired outcomes cost-effectively. Staff's current investigations of complaints and performance of the FV&DT program, as it is currently implemented, have raised serious questions about the ability of the program to consistently provide value and benefit to consumers that outweigh the costs. Some investigations have suggested that if verifications find that installations meet the requirements when they actually do not, the inaccurate verification report may be assumed to be valid, and actually may be detrimental to consumers, shielding contractors who perform poor installations and construction from scrutiny. Under this option, a targeted investigation could be conducted to determine the cost-effectiveness of FV&DT ratings and the value of these ratings to the consumer and AHJs. The outcome of the investigation may be a recommendation that the FV&DT program can be rehabilitated through a rulemaking (see Option 3) or provide evidence to support a rulemaking to eliminate it entirely. The investigation could also examine the Energy Code to determine the effect of eliminating the FV&DT portion. One potential issue to be examined is the practice of using HERS ratings to verify building features claimed for compliance credit in software modeling.

A potential benefit of eliminating the FV&DT program, if determined appropriate, would be to lower the costs to consumers associated with new and existing residential projects. Contractors would become responsible for conducting all of the necessary FV&DT required by the Energy Code. Eliminating the FV&DT ratings would reduce construction costs by removing the third-party rater layer of regulation.

One drawback to this option is that it will require more time and resources than Option 4 to complete. Conducting an adequate investigation into whether the FV&DT program currently is achieving the desired outcomes in a cost-effective manner would be time and resource

intensive. It is unclear whether the investigation would support eliminating the program or updating it as in Option 4. Staff does not recommend this approach until Option 4 is pursued.

Another major drawback is the job losses caused by the elimination of rater jobs (currently estimated to be 900–1,000 raters statewide) and other jobs hosted by providers and rater companies. A final potential drawback are the unknown impacts associated with unwinding the FV&DT program regulations. Staff does not recommend this option.

Option 3: Add Regulations Related to the FV&DT Program to Title 24

This option involves adding all regulations affecting the FV&DT program to Title 24 and the complete separation of the FV&DT Energy Code verification program and the HERS whole-house home energy rating program.

Current FV&DT and HERS regulations allow the use of HERS raters to provide two key services: whole-house home energy ratings and FV&DT. Adding all of the regulations that affect the FV&DT program to Title 24 creates a logical separation between FV&DT and whole-house home energy ratings. This would also simplify the regulatory language for both services and allow regularly updating the requirements for FV&DT program as part of the Energy Code's triennial code update cycle.

Adding the regulations affecting the FV&DT program to Title 24 also offers an opportunity to improve the Energy Code field verification program with more robust requirements. This rulemaking should also include language changes to augment the minimum requirements for the quality assurance program and include additional oversight and enforcement tools for CEC staff as outlined in this staff report.

The main advantage of this approach is clarifying the fact that FV&DT and HERS are two separate programs that are each tailored to support a single key purpose and service, which will simplify each program and make them more manageable for stakeholders. The regular triannual update cycle of Title 24 also allows the FV&DT program requirements to evolve with the Energy Code without the need for an additional rulemaking. Staff recommends this approach, and this is the proposal discussed in this report.

Option 4: Reimagine the FV&DT Program

The last option would investigate the feasibility of altering the existing structure of the FV&DT program by re-assigning quality assurance functions from providers to independent entities or requiring that other services, such as compliance document processing through a registry, be done without charge as part of the rater agreements. Quality assurance functions would be delegated to independent third-party quality assurance providers that would need to be approved by the CEC and paid for by the providers. This change would be similar to how the Residential Energy Services Network (RESNET) quality assurance program design is conducted.

RESNET is a recognized oversight body for building energy efficiency rating and certification. RESNET is recognized by several federal government agencies (including the Internal Revenue Service, the U.S. Environmental Protection Agency, and U.S. Department of Energy), builders, contractors, and industry organizations. Unlike the FV&DT program, which uses a single entity (the HERS provider) to train and oversee raters, RESNET has established two kinds of

providers: quality assurance providers and rating providers. Quality assurance providers perform the quality assurance checks on the raters. The rating providers certify new raters and perform quality assurance oversight of the raters they certify.

This option could help all program elements to better meet the expected performance standards. The current FV&DT program structure combining ratings, FV&DT, and data registries is problematic because providers rely on the raters and raters rely on contractors for economic reasons. A provider benefits financially from having a large number of certified raters performing work and charging customers for completed forms. As a result, there is no financial incentive for a provider to discipline a rater. An independent entity performing quality assurance evaluations may be less likely to allow improper FV&DT testing.

A significant disadvantage of this approach is unknown increases in complexity in the codes, the number of entities to be regulated, and the associated costs of implementing these parallel tracks to consumers and industry. While this option may represent a different (even better) approach to quality assurance, it also represents a significant impact on the current implementation of the FV&DT program. Staff does not recommend this approach.

Staff Recommendations

The problems with the FV&DT regulations identified in Chapter 3 of this staff report make it difficult for the CEC to ensure that the providers create and implement a robust program that complies with applicable regulations. There is enough information on hand to justify an immediate rulemaking to remedy the problems identified in Chapter 3 of this staff report. For this reason, in the absence of any constraints on CEC staff time and resources, staff recommends that Option 3 should be pursued and is the subject of this staff report.

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CHAPTER 6:

Technical Feasibility

These proposals are the culmination of an extensive period of stakeholder workshops, reports, complaints, and CEC investigations. While staff has carefully considered these modifications, they have not been released to the public for comment. The proposed changes include primarily procedural changes with some changes to the provider data registries and conduct of progressive discipline and quality assurance. Staff concludes that the proposed changes are technically feasible.

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CHAPTER 7:

Savings and Cost Analysis

CEC staff proposes eight general categories of changes to the FV&DT program regarding the FV&DT regulations. This chapter will address cost and savings analysis related to these proposed changes and will include statewide impacts (in terms of costs and benefits, as well as cost-effectiveness) in connection with the CEC policies and affected parties. Economic and fiscal impacts will be discussed in another chapter. The impacts included are the best estimates that staff can make at the moment with currently available information. Staff seeks and anticipates further input from stakeholders during the rulemaking that will refine these estimates.

CEC Policies Considered

These CEC policies are discussed in greater detail in Chapter 2 of this staff report. Staff lists them again here as a reminder to the reader of the policies being considered for this analysis.

Executive Order S-20-04 (Schwarzenegger, 2004)

Executive Order S-20-04 directed the CEC to collaborate with the CLSB to ensure building and contractor compliance with the Energy Code. Improvements in the FV&DT program will help the CEC achieve better collaboration with the CSLB.

Assembly Bill 32 (Nuñez, Chapter 488, Statutes of 2006)

The landmark Global Warming Solutions Act of 2006 established a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions levels in 1990 to be achieved by 2020. Any improvement in the FV&DT program will help achieve the California greenhouse gas emission goal.

Assembly Bill 2021 (Levine, Chapter 784, Statutes of 2006)

This strategic plan concluded that increases in the energy efficiency of air conditioners will not yield any significant increases in energy or peak savings unless known quality control problems in the HVAC industry are addressed. Persistent defects common in the installation of HVAC equipment and other energy efficiency measures must be corrected to achieve the energy savings necessary to accomplish the state's greenhouse gas reduction goals. Generally, any improvement in the FV&DT program will contribute to reducing the installation defects of HVAC systems in housing construction.

Senate Bill 350 (De León, Chapter 547, Statutes of 2015)

These objectives include doubling the energy efficiency savings in electricity and natural gas end uses of retail customers through energy efficiency and conservation. SB 350 called for major changes in achieving rapid greenhouse gas reductions through building energy efficiency. SB 350 recognized that a major handicap to achieving that reduction is the energy savings lost or foregone due to poor-quality work resulting from contractors failing to meet minimum Energy Code and performance standards governing installations of energy efficiency measures. Again, any improvement in the FV&DT program will contribute to reducing the installation defects of HVAC systems in housing construction.

Senate Bill 32 (Pavley, Chapter 249, Statutes of 2016)

SB 32 updated the Global Warming Solutions Act of 2006 to reduce the state's GHG emissions to 40 percent below 1990 levels by 2030. Any improvement in the FV&DT program will help achieve the California greenhouse gas emission goal.

Senate Bill 1414 (Wolk, Chapter 678, Statutes of 2016)

SB 1414 directed the CEC, in consultation with the CSLB and other stakeholders, to approve a plan that will promote compliance with the Energy Code in the installation of HVACs and heat pumps. The HERS FV&DT verifications are critical to achieving compliant installations of residential HVAC equipment and were a central discussion in the work related to SB 1414. So, any improvement in the FV&DT program will help address the concerns raised in SB 1414.

Assembly Bill 3232 (Friedman, Chapter 373, Statutes of 2018)

AB 3232 directs the state to achieve a reduction in the emissions of greenhouse gases of 40 percent below 1990 levels by 2030, and requires the CEC to establish a comprehensive program to achieve greater energy savings in the state's residential and nonresidential building stock. Improvements in the FV&DT program will contribute to achieving the goals of AB 3232.

Executive Order B-55-18 (Brown, 2018)

This executive order established California's principal climate change directive to achieve carbon neutrality in all sectors of the state as soon as possible, and no later than 2045, and to maintain and achieve negative emissions thereafter. Any improvement in the FV&DT program will help achieve the California greenhouse gas emission goal.

Executive Order N-19-19 (Newsom, 2019)

Executive Order N-19-19 called for a concerted commitment and partnership by government, the private sector, and California residents to reach some of the strongest climate goals in the world and required every aspect of state government to redouble its efforts to reduce greenhouse gas emissions and mitigate the impacts of climate change while building a sustainable, inclusive economy. Any improvement in the FV&DT program will help achieve the California greenhouse gas emission goal.

Affected Parties

These parties are at least potentially affected by the staff proposed changes to the FV&DT regulations. All the parties considered are directly related to the compliance and enforcement of the Energy Code, with the exception of the consumers who are the primary benefactor of the Energy Code.

Consumers

Homeowners, both first-time buyers and existing owners, will be affected by increased costs of the FV&DT program that are passed down to them by the raters or contractors. Similarly, renters or lease holders are affected by these same costs that are likely to be passed down to them by the landlord. However, the benefits of overseeing and effectively enforcing the FV&DT program benefits the state and public in many ways, most importantly by achieving the energy savings envisioned by the Energy Code. These energy savings are important to all Californians to address global climate change, achieve the state's greenhouse gas emission reduction targets, and protect consumers against poor HVAC installations. Essentially, all

consumers will benefit from improved compliance with the Energy Code and the part this plays in achieving the greenhouse gas emission reductions for California. Improvement of the FV&DT program that leads to increased compliance will have a positive long term impact on consumers.

Authorities Having Jurisdiction

The CEC does not directly enforce the Energy Code. Only local building departments have the authority to enforce the California Building Code (Title 24, which includes the Energy Code). AHJs⁸⁰ are responsible for ensuring that the FV&DT verification tests are performed when required by the Energy Code. One of the objectives of the FV&DT program is to ease the burden on AHJs by providing a third-party, independent tester (rater), to verify the more complex requirements of the Energy Code. 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. A more reliable and defensible FV&DT program may encourage AHJs to enforce the FV&DT requirements, as well as the rest of the Energy Code requirements. All the staff-proposed changes may result in a change in costs from the perspective of the AHJ, but those changes will be minor and closely link to the AHJs policies while the benefit will be a more code-compliant construction.

Contractors, Builders, and Responsible Persons

Residential contractors affected by these changes will predominately be newly constructed home builders and existing building HVAC contractors. Contractors, builders, and those signing compliance documents as the "responsible person" (Title 24, Part 6, Section 10-103) that generally comply with the Energy Code regulations (and use the FV&DT program to complete the required verifications) will have little effect to the overall costs or procedures. Those builders who routinely circumvent the FV&DT verification requirements should experience a change in procedures as well as costs in order to comply with the Energy Code. If such speculative costs do increase, it is likely that the contractor will pass those costs onto the consumer.

Raters

The proposed revisions to the FV&DT regulations discussed in this staff report do not change the actual processes for performing FV&DT. However, the new proposed regulations will affect raters in terms of the progressive discipline, appeal process, new requirements for rater companies, quality assurance procedures, training requirements, conflict of interest prohibitions, and compliance document registration limits. While these changes represent an update to the procedures and oversight a rater will be subject to, the change in cost should be minimal.

Rater Companies

Rater companies will be affected by a new cost of compliance with the proposed regulations. Rater companies were not previously regulated. Rater companies would be subject to

80 The Energy Code uses the term enforcement agencies to include all entities with enforcement authority. A new term, authorities having jurisdiction, has in recent years been used by some to convey the broader set of entities who have enforcement jurisdiction; that term is used in this report.

certification, training requirements, conflict of interest prohibitions, progressive discipline, and the appeal process. However, the cost of these requirements should be minimal because the requirements, although new, are not onerous. Essentially, the rater company will be required to register and report on an annual basis. Additionally, there are potential impacts from the progressive discipline of the raters employed by rater companies. Rater companies are required to support the progressive discipline programs for raters but are not required to significantly implement that program. The main requirement is for the rater company to ensure that the rater complies with the progressive discipline requirements.

Providers

The providers include two existing providers and any other entities considering submitting a new application to become a provider. The proposed changes are primarily procedural, requiring the performance and tracking of progressive discipline, certification of rater companies, changes to training, more tracking of rater activities, enforcement of conflict of interest, and quality assurance tracking and reporting requirements. However, while it is likely that many of these activities individually would not constitute a significant initial investment on the part of the provider, taken together they may.

Analysis

Staff proposes eight general categories of changes to the FV&DT program regarding the HERS regulations. Within these eight categories, staff has identified those elements that may incur a cost or savings for either the considered CEC policies or affected parties. These costs or savings are estimates based on known information, staff experience, or a reasonable expectation.

Expected Sources of Costs or Benefits

1. Align the FV&DT program with Energy Code requirements
2. Add provisions for rater companies
3. Add conduct and progressive discipline for providers, raters, and rater companies
 - a. Set forth progressive discipline for providers, raters, and rater companies for noncompliance.
 - b. Provide data entry triggers for progressive discipline.
4. Add new ways for providers to conduct quality assurance
 - a. Establish new quality assurance tracking and reporting requirements for AHJs, CEC, and other state agencies.
 - b. Provide for prescriptive alternative quality assurance procedures for the provider to use in rater oversight.
5. Expand conflict of interest restrictions
 - a. Define restrictions for rater companies.
 - b. Allow rater companies to pull permits, but not raters.
 - c. Allow rater companies to complete certificates of compliance and certificates of installation, but not raters.
6. Formally permit the legitimate off-purpose use of certificates of verification.

7. Modify requirements for rater training, testing, and oversight
 - a. Proctored online training and exams.
 - b. Hands-on training.
 - c. Increased initial oversight by the provider for new raters.
8. Remove the designation of raters as special inspectors
9. Amend other sections for greater clarity.

Estimated Costs and Savings

Regulatory Alignment

The regulatory alignment will add requirements related to FV&DT, including data access and gathering requirements, to the Energy Code (Title 24). Therefore, the move itself will benefit all parties.

Certified Rater Company

Rater companies will be required to be certified by (at least one) provider. This certification process can be simple, requiring only that the rater company demonstrate that they meet the minimum requirements. There is no expectation of significant training or testing requirements for the rater company certification. Therefore, the cost of this certification should be minimal. Equally, ongoing enforcement of these requirements should also be minimal, assumed to be no more frequent than on an annual basis. Savings attributable to these requirements are speculative but are associated with an improved FV&DT program that will result in improved true, accurate, and complete verifications.

Progressive Discipline

There are three levels of progressive discipline: (1) CEC-provider, (2) provider-rater, and (3) provider-rater company. The intent of progressive discipline is to correct bad behavior and only eliminate the party as a last resort. The progressive discipline requirements are procedural only and do not have an associated cost to implement. However, there will be a cost when it is used to correct behavior. Since this is completely under the control of the disciplined party, the cost is speculative at best and can be avoided. Savings attributable to these requirements are expected to be associated with an improved FV&DT program.

Data entry restrictions and triggers for progressive discipline include limiting the number of registered documents a rater may submit per day (or possibly week). This restriction would mean adding this limit as a feature to the provider data registry program, as well as the ongoing track to alert the provider when a rater has exceeded that limit. This represents an initial cost (for the program feature). The ongoing procedural change would have a minimal cost, relying on the registry to alert the provider when action needs to be taken and the progressive discipline procedures implemented. The daily limit would affect raters as well, but the result would be only that the rater would need to make sure that they registered their compliance documents on the same day (or week) that the FV&DT verifications occurred. Therefore, for raters this constraint is a procedural effect and not a cost. Again, the savings are speculative and are associated with an improved FV&DT program. Tables 2-6 using the following terms to describe the results of the estimated costs:

- No cost – Improved FV&DT. This indicates that staff has determined that the feature considered will improve the FV&DT program at no or very little cost to the stakeholder.
- No cost – Energy Savings. This indicates that staff has determined that the feature considered will improve the energy savings potential for the stakeholder at no or very little cost.
- No cost – Compliance. This indicates that staff has determined that the feature considered has the potential to improve Energy Code compliance for the stakeholder at no or very little cost.
- Minor initial cost. This indicates that staff has determined that the feature considered has the potential to cause a minor initial cost to the stakeholder, but is unlikely to result in an ongoing cost.
- Initial cost. This indicates that staff has determined that the feature considered will likely cause an initial cost greater than what staff would consider minor for the stakeholder, but an ongoing cost is unlikely.
- Initial and ongoing cost for compliance. This indicates that staff has determined that the feature will likely cause an initial cost (more than minor) for compliance and an ongoing cost for compliance for the stakeholder.
- Possible cost for compliance. This indicates that staff has determined that the feature has the possibility (nonzero) of resulting in a cost for compliance for the stakeholder.
- No impact. This indicates that staff has determined that the feature has no or very little potential to impact the stakeholder.
- Possible savings. This indicates that staff has determined that the feature has a potential to reduce costs for the stakeholder.
- Potential income stream. This indicates that staff has determined that the feature has the potential to become an income stream for the stakeholder.
- Potential loss of income stream. This indicates that staff has determined that the feature has the potential to eliminate an income stream for the stakeholder.

Table 2: Progressive Discipline Cost Analysis Summary

Feature	CEC Policies	Consumer	Contractor	Raters	Rater Company	Provider
Rater Companies	No cost improved FV&DT	No cost energy savings	No cost compliance	Minor initial cost	Minor initial cost	Minor initial cost
Progressive Discipline	No cost improved FV&DT	No cost energy savings	No cost compliance	No cost compliance	No cost compliance	No cost compliance
Restrict Registry	No cost improved FV&DT	No cost energy savings	No cost compliance	No cost compliance	No cost compliance	Initial cost

Source: CEC Staff

Quality Assurance

The proposed new quality assurance tracking and reporting requirements are primarily procedural. However, there will be initial costs to the provider and potentially some adjustments for the AHJs (although costs should be minimal or zero). These proposed changes will enable the AHJs (and other agencies) to better enforce the Energy Code without affecting costs or staff time. The costs to the provider will be procedural with only minimal initial costs.

The alternative quality assurance procedures for the provider to implement regarding rater activities will have an initial and ongoing cost to both the provider and the rater (and potentially the rater company). However, the costs to the provider and rater are associated with the consequences for noncompliance. For the provider, noncompliance with the minimum quality assurance requirements will result in progressive discipline actions. For the rater, noncompliance not only is expected to result in progressive discipline actions, but also in repercussions at the local jurisdiction level as well as CSLB for the rater company.

Table 3: Quality Assurance Cost Analysis Summary

Feature	CEC Policies	Consumer	Contract-or	Raters	Rater Co.	Provider
Quality Assurance Tracking - Reporting	No cost improved FV&DT	No cost energy savings	No cost compliance	Minor initial cost	Minor initial cost	Minor initial cost
Alternative Quality Assurance Procedures	No cost improved FV&DT	No cost energy savings	No cost compliance	Initial and ongoing cost for compliance	Possible cost for compliance	Initial and ongoing cost for compliance

Source: CEC Staff

Conflict of Interest — Enforcement

The changes to the conflict of interest restrictions include minor restrictions for rater companies, restricting raters from completing Certificates of Compliance, Certificates of Installation, and pulling permits for contractors. The changes allow rater companies to perform these services and formally allow the legitimate use of certificates of verification for other purposes (such as federal tax credits). While there may be initial costs associated with these requirements for rater companies, those costs would be minimal (if not zero), and the improvement to the reputation of the FV&DT program could be substantial. Also, allowing the use of certificates of verification for other purposes has already been shown to be a realizable and immediate source of additional income for rater companies.

Table 4: Conflict of Interest Cost Analysis Summary

Feature	CEC Policies	Consumer	Contract -or	Raters	Rater Company	Provider
Minor Restrictions — Rater Companies	No cost improved FV&DT	No impact	No impact	No cost compliance	No cost compliance	Minor initial cost

Feature	CEC Policies	Consumer	Contract -or	Raters	Rater Company	Provider
Contractor Services from Rater Companies	No cost improved FV&DT	No impact	Possible savings – rater company services	Potential loss of income stream	Potential income stream	Minor initial cost
Off-Purpose Use of Certificates of Verification	No cost improved FV&DT	No impact	No cost – tax implication	No cost additional income stream	Potential income stream	Minor initial cost

Source: CEC staff

Training

The proposed changes to the training requirements are intended to add specific elements that are shown to be cost-effective, including proctored online training and exams, hands-on training, and increased initial oversight by the provider for new raters. These changes may have minor initial costs implications for the provider and rater. However, there should be no ongoing costs, and the improvements to the training will positively affect the FV&DT program.

Table 5: Training Cost Analysis Summary

Feature	CEC Policies	Consumer	Contract-or	Raters	Rater Company	Provider
Minor Restrictions — Rater Companies	No cost improved FV&DT	No impact	No impact	Possible minor initial cost	Possible cost for compliance	Possible minor initial cost

Source: CEC staff

Designation and Approval (Special Inspectors)

The proposal is to amend the Energy Code to remove the designation of raters as “special inspectors.” Since the current implementation of the FV&DT program does not rely on the special inspector designation, there should be little to no cost or savings from this change.

Amending Other Sections for Greater Clarity

By clarifying the data recording and reporting requirements, the CEC proposal benefits the providers and rater companies without affecting any other parties. While the proposed requirements may require minor initial investments, the requirements are technically feasible and give the provider and rater companies the certainty of knowing exactly what is expected. Clarifying requirements benefits businesses and the marketplace. Establishing clear requirements for all providers and rater companies allows them to avoid the cost of unnecessary development and implementation and encourages entry into the marketplace for greater competition by creating a consistent and fair playing field for all providers to compete.

Table 6: Amending Other Sections Cost Analysis Summary

Feature	CEC Policies	Consumer	Contractor	Raters	Rater Company	Provider
Clarifying Data and Reporting	No cost improved FV&DT	No impact	No impact	No Impact	Possible minor initial cost	Possible minor initial cost

Source: CEC staff

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CHAPTER 8:

Environmental Impact Analysis

The proposed changes to the FV&DT program do not affect the efficiency measures required by the Energy Code. Rather, the proposed changes to the FV&DT program would help ensure that the Energy Code's provisions are properly implemented. As such, the proposed changes would help increase efficiency by reducing the frequency of inferior installations of HVAC and other energy-using residential equipment, reducing the need for fossil-fuel generation, and minimizing the impact of the electricity system, which in turn would minimize the impact of new construction on the environment and the climate crisis. Specifically, reduced energy consumption would translate to fewer power plants built and less pressure on the limited energy resources, land, and water use associated with energy production. In addition, lower electricity consumption results in reduced greenhouse gas and criteria pollutant emissions, primarily from reduced generation in natural gas power plants.

California faces numerous climate change-induced challenges from wildfires to heat waves to droughts, which all impact the safety and health of the state's residents, economy, and energy systems.⁸¹ By reducing the need for fossil fuel and electricity consumption, the actions proposed in this report would have a beneficial impact on natural resources, including California's water supply and forests, as well as the health and safety of California's population. In this way, these actions are taken to assure the maintenance, restoration, or enhancement of one or more natural resources and to assure the maintenance, restoration, enhancement, or protection of the environment.

Furthermore, because the proposed actions will only increase proper implementation of the efficiency measures of the Energy Code, staff has concluded that they do not have the potential for causing a significant effect on the environment. No unusual circumstances have been identified that could lead to the reasonable possibility that the activity will have a significant effect on the environment.

By ensuring proper implementation of the Energy Code's efficiency measures, the proposed changes to the FV&DT program will also benefit consumers. The changes will enable customers to fully realize the efficiency savings of equipment installation (such as HVAC equipment) and efficiency measures (such as insulation) and will reduce overall energy consumption statewide, providing important air quality and climate benefits and reducing energy costs.

The proposed changes do not require the use of any specific materials to improve the efficiency and do not require any further implementation of energy efficiency requirements, as the savings come from improving installation of already-required energy efficiency measures for consumers.

Finally, the proposed changes will also support information gathering activities that cannot reasonably lead to any major disturbance to an environmental resource. In addition to helping

81 Final 2021 Integrated Energy Policy Report; Volume I: Building Decarbonization, at p. 1, Docket No. 21-IEPR-01, *available at* <https://efiling.energy.ca.gov/GetDocument.aspx?tn=241599>.

to improve statewide compliance with the Energy Code, the proposed changes will provide the state with more accurate information about the energy and water usage of buildings across the state. The proposed changes therefore support information gathering activities, including parts of one or more studies leading to action which the CEC, and/or other public agencies, have not yet approved, adopted, or funded.

CHAPTER 9:

Economic and Fiscal Impacts

This chapter evaluates the statewide economic and fiscal impacts as a result of the proposed changes to the FV&DT program. The analysis considers impacts to jobs, the creation or elimination of businesses, advantages or disadvantages to businesses, incentives for investment in California, incentives for innovative products, and benefits to health, safety, and welfare of California residents, as well as agencies and businesses. The costs and savings to individuals directly impacted by the proposed changes is covered in an earlier chapter, "Savings and Costs Analysis." Based on the evaluation in this chapter, neither the costs nor benefits associated with the proposed changes to the FV&DT program will exceed \$50 million. For this analysis, staff makes the following assumptions:

- The proposed changes to the FV&DT program will increase compliance with the Energy Code requirements by contractors and other licensed professionals.
- The proposed changes to the FV&DT program will increase enforcement of the Energy Code by AHJs.
- There are too few certified raters to provide all the required FV&DT verification services in the current market.
- Currently, at least 90 percent of alteration projects are completed without the benefit of permitting.⁸²
- A large portion of HVAC installations do not comply with the California Building Code (Title 24) and, in particular, do not comply with the Energy Code.
- There are some contractors who comply with the Energy Code except for FV&DT because it is not enforced by the AHJ.
- Many contractors at least offer to do work without benefit of permitting, and this practice will continue into the future regardless of the proposed changes to the FV&DT program.

Potential Creation of Jobs

The job markets considered are construction workers, construction contractors (including all trades), and the HERS raters. No other job markets are affected by the proposed changes to the FV&DT program. In California, there are currently about 900,000 construction-related

82 California Public Utilities Commission, [Final Report: 2014-16 HVAC Permit and Code Compliance Market Assessment \(Work Order 6\) Volume I – Report](https://www.calmac.org/%5Cpublications/HVAC_WO6_FINAL_REPORT_VolumeI_22Sept2017.pdf), September 22, 2017. CALMAC Study ID: CPUC0182.01, Contract# 12PS5119 (HVAC WO6).
https://www.calmac.org/%5Cpublications/HVAC_WO6_FINAL_REPORT_VolumeI_22Sept2017.pdf

jobs,⁸³ 300,000 licensed contractors⁸⁴ and, as stated prior in this report, about 900 to 1,000 HERS raters.

Code compliance is the responsibility of the licensed contractor, as well as the other licensed professionals involved with the project such as the architect and engineer. Since the proposed changes to the FV&DT program are not new energy efficiency requirements and only encourage compliance with existing requirements, the effect to the creation or elimination of jobs in the contractor market should be minimal to the existing 300,000 licensed contractors in California.

Licensed contractors may use unlicensed workers to perform tasks on a job site. The creation and elimination of unlicensed worker-jobs are extremely cyclical in California. This cyclical pattern makes any possible effect from the proposed changes to the FV&DT program diminutive in comparison to the existing market forces to the point of being purely speculative.

To determine the approximate effect on rater job creations (job elimination is not expected), staff first will show the current market residential projects trend using 2020 data (most recent available) and the relative effect that raters have in that market.

Figure 1 (below) is based on data collected by the Construction Industry Research Board (CIRB). CIRB obtains building permit records directly from California AHJs each month to calculate new housing units and valuations (construction cost). CIRB has provided construction market statistical information regarding residential and commercial building permit data since 1954. Figure 1 shows the trend in residential construction for newly constructed buildings (single-family and multifamily), with the 2021 values forecasted. For 2020, Figure 1 shows that there were 57,784 single-family permits and 47,901 multifamily permits, for a total of 105,685 housing permits for newly constructed buildings. For 2020, the valuation of the single-family newly constructed buildings was approximately \$16.273 billion,⁸⁵ and multifamily was \$8.584 billion⁸⁶ for a total of \$24.857 billion. In terms of comparison, the alterations market for residential buildings was valued at \$5.374 billion⁸⁷ based on the permits pulled (452,952 alteration permits in CIRB data in 2020).

83 Simonson, Ken, chief economist, AGC of America. November 11, 2019. "[California Construction Outlook: Moving Ahead Despite Gradual Downshift.](https://www.mossadams.com/articles/2019/november/california-construction-outlook-for-companies)" Moss Adams, <https://www.mossadams.com/articles/2019/november/california-construction-outlook-for-companies>.

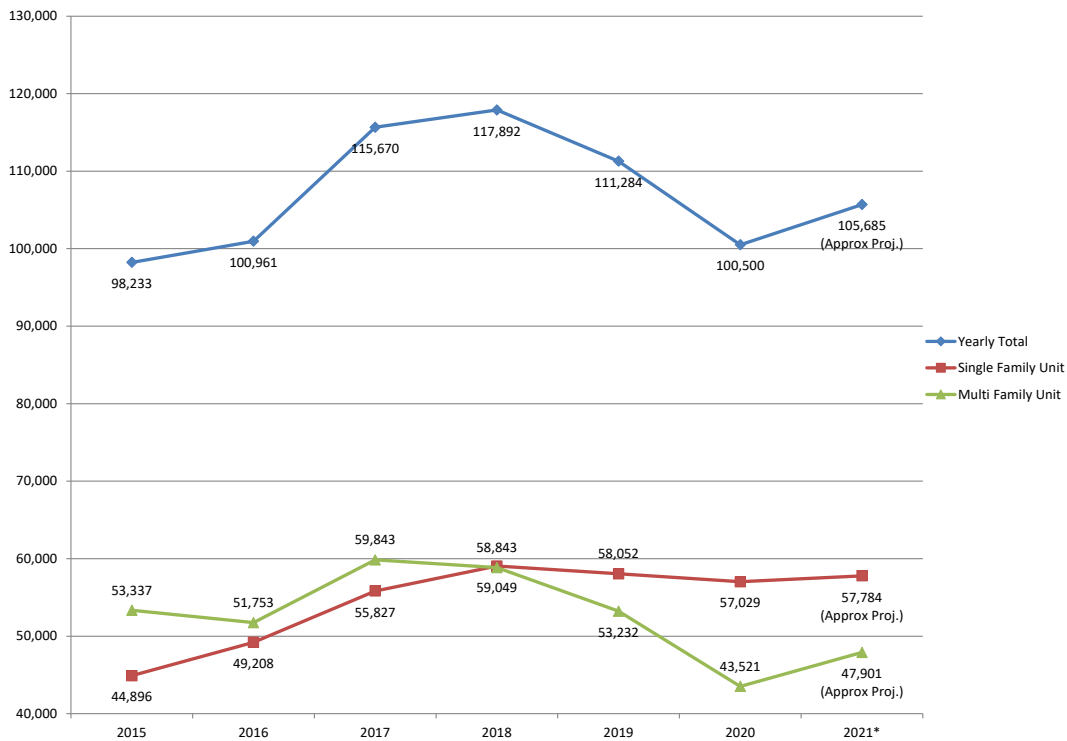
84 California Contractors State Licensing Board. June 1, 2022. "[History and Background,](https://www.cslb.ca.gov/About_Us/History_and_BackGround.aspx)" https://www.cslb.ca.gov/About_Us/History_and_BackGround.aspx.

85 Construction Industry Research Board. "CIRB Annual Building Permit Summary California Cities & Counties Data for Calendar Year 2020." [CIRB Home Page](https://www.cirbreport.org/), <https://www.cirbreport.org/>

86 Ibid.

87 Ibid.

Figure 1: California Newly Constructed Residential Production



Source: Construction Industry Research Board, CIRB Annual Building Permit Summary California Cities & Counties Data for Calendar Year 2020

From both existing providers, the total number of projects registering at least one FV&DT verification for newly constructed buildings in 2020 was 32,547,⁸⁸ or less than a third of the permits pulled. For alterations, the total number of projects registering at least one FV&DT verification in 2020 was 123,039,⁸⁹ which is also less than a third of the permits pulled. Also, through various market analyses performed (most recently for SB 1414), the rate at which alteration projects are permitted is still very low in California. Roughly only 10 percent of the alteration projects are completed with the benefit of permitting. This suggests that there is an unserved market for FV&DT services that exists now. Assuming the proposed changes will improve compliance and enforcement of the Energy Code requirements, staff would expect to eventually see a moderate increase in the number of persons seeking rater certification in the first year of implementation and continuing to increase in the years following.

Potential Creation of Businesses

Staff does not foresee the elimination of businesses because of the proposed changes to the FV&DT program, but there may be an increase in the number of rater companies. The proposed changes include a requirement that all HERS raters be employed by a rater company with an option for a rater to be self-employed. Staff has an incomplete picture of the employment status of all raters but estimates that half of them are employed by rater companies that employ more than one rater. Staff assumes that most raters will want to

88 Summary provided by CEC staff using the CCDR data as submitted by HERS providers for Calendar Year 2020 under the 2019 Energy Code.

89 Ibid.

continue in their current occupational status, but these new requirements may encourage some raters to start their own rater companies and employ those raters that would prefer to join a rater company.

Estimated Costs and Benefits

Costs of Implementation

The proposed changes to the FV&DT program include changes to oversight, data reporting, quality assurance, training, and conflicts of interest. The proposed changes to move the FV&DT regulations to the Energy Code and to eliminate the special inspector provision do not result in any substantive changes that would affect the cost of implementation for any parties. Most of the proposed changes are to procedures (such as progressive discipline) and result in minor speculative costs to implement. The primary cost of implementation will be from necessary modifications to the provider data registry to support the proposed changes. Staff believes these costs are well below \$1 million.

Benefits to Implementation

The intent of the proposed changes to the FV&DT program is to improve the implementation of the FV&DT program. The primary benefit of an improved FV&DT program is to the consumer in terms of health, safety, and welfare. Proper housing construction including envelope, HVAC, lighting, and domestic hot water creates a home that is energy-efficient and capable of providing safe living environment with improved indoor air quality and protection from extreme heat. The FV&DT program is intended to verify that these systems work and comply with the Energy Code. Therefore, while benefits to the consumer are expected, they are already accounted for with the implementation of the Energy Code itself.

CHAPTER 10:

Consumer Equity

Energy equity encompasses the equitable access to the benefits of energy infrastructure and equitable access to resources for energy improvement. This chapter discusses the economic and environmental benefits to low-income households and disadvantaged communities as a result of the proposed changes to the FV&DT program.

The FV&DT program is a statewide program intended to protect consumers (homeowner and ratepayers) from poor construction and installations practices common in the housing construction and equipment replacement market. For low-income and disadvantaged consumers, getting the most out of their investments into residential energy efficiency measures is extremely important. A 2016 study prepared with National Resources Defense Council (NRDC) support shows that low-income households in some of the largest California metropolitan areas spend, on average, 7.2 percent of their income for energy. That amount is more than double the national median of 3.5 percent.⁹⁰ The report also shows that on average these low-income households paid a three times greater percentage of their income on energy bills, than higher income households.

The proposed changes to the FV&DT program intend to improve the FV&DT program, ensuring that the verifications provided by raters are true, accurate, and complete and that consumers received the energy savings they expected from their investments in energy efficiency measures.

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ACRONYMS AND DEFINITIONS

Acronym/Term	Description/Definition
AB	<p>Assembly Bill.</p> <p>A proposed law, introduced during a session of the California State Assembly for consideration by the Legislature, and identified numerically in order of presentation.</p>
AHJ	<p>Authority having jurisdiction</p> <p>AHJs have the authority to issue building permits, perform building inspections, issue building citations, and issue certificates of occupancy. They are generally county, city, town building departments but may include state agencies as well.</p>
CAISO	<p>California Independent System Operator.</p> <p>The CAISO maintains reliability on the California power grid, and operates a transparent, accessible wholesale energy market.</p>
CARB	<p>California Air Resources Board.</p> <p>CARB is charged with protecting the public from the harmful effects of air pollution and developing programs and actions to fight climate change.</p>
CEC	<p>California Energy Commission</p> <p>The California Energy Commission is leading the state to a 100 percent clean energy future for all. As the state's primary energy policy and planning agency, the CEC is committed to reducing energy costs and environmental impacts of energy use while ensuring a safe, resilient, and reliable supply of energy.</p>
CIRB	<p>Construction Industry Research Board.</p> <p>CIRB research and compiles permitting data from building departments across California and has provided construction market statistical information regarding residential and commercial building permit data since 1954.</p>

Acronym/Term	Description/Definition
CPUC	California Public Utilities Commission is a state agency that regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies, in addition to authorizing video franchises.
CSLB	California State Licensing Board. CSLB protects California consumers by licensing and regulating the state's construction industry. CSLB was established in 1929 and today licenses about 290,000 contractors in 44 different classifications.
EDDS	External Digital Data Service A data transfer service approved by the CEC to operate in conjunction with an approved data registry that allows authorized users to transfer data from a digital data source external to the data registry as an alternative to the key-in data entry for registering compliance documents.
Energy Code	Also known as the California Building Energy Efficiency Standards, including California Code of Regulations, Title 24, Part 6, and its implementing administrative provisions found in Title 24, Part 1, Chapter 10.
FV&DT	Field verification and diagnostic testing Tests performed and registered by raters in the provider data registry following the prescribed procedures in Title 24, Part 6 Residential Appendices (RA1-4).
HERS	Home Energy Rating System HERS is the California Home Energy Rating System as described in Title 20, Chapter 4, Article 8, section 1670. The HERS program consists of providers that train and certify raters to perform whole house rating as well as field verification and diagnostic testing as a third-party to the contractor on a construction project. The providers and raters are responsible for registering the testing results in the provider's data registry.
HVAC	Heating, ventilation, and air conditioning is the use of various technologies to control the temperature, humidity, and purity of the air in an enclosed space. The goal is to provide thermal comfort and acceptable indoor air quality.

Acronym/Term	Description/Definition
JA	<p>Title 24, Part 6, Reference Appendix Joint Appendix (JA).</p> <p>Reference Appendices are adopted along with the Energy Code and contain data and other information that helps builders comply with the Energy Code requirements. There are three Reference Appendices: Residential Appendix, Nonresidential Appendix, and the Joint Appendix. While the first two appendices apply to residential and nonresidential construction respectively, JA applies to both.</p>
LBNL	<p>Lawrence Berkeley National Laboratory develops science and technology solutions for the world by bringing together multidisciplinary teams of researchers and creating tools for scientific discovery.</p>
NRDC	<p>Natural Resources Defense Council.</p> <p>NRDC is a 501(c)(3) non-profit international environmental advocacy group. The purpose of its work is to "safeguard the earth, its people, its plants and animals, and the natural systems on which all life depends," and to "ensure the rights of all people to the air, the water and the wild, and to prevent special interests from undermining public interests." Their stated areas of work include: "climate change, communities, energy, food, health, oceans, water, and the wild"</p>
OII	<p>Order instituting informational proceeding</p> <p>Initiates a public process, including hearings, workshops, and opportunities for participation by public notice.</p>
Raters	<p>Home Energy Rating System Raters.</p> <p>A rater is a technician certified by a HERS Provider to perform FV&DT services for newly constructed building and construction on existing buildings as an independent third-party.</p>
RDR	<p>Residential Data Registry.</p> <p>Data registry (including an RDR) is a web service with a user interface and database maintained by a HERS Provider that complies with the applicable requirements in Appendix JA7, providing for registration of residential compliance documentation used for demonstrating compliance with Title 24, Part 6.</p>

Acronym/Term	Description/Definition
RESNET	<p>Residential Energy Services Network.</p> <p>RESNET is a recognized national standards-making body for building energy efficiency rating and certification systems. RESNET standards are recognized by several federal government agencies (including the Internal Revenue Service, the U.S. Environmental Protection Agency, and U.S. Department of Energy), builders, contractors, and industry organizations.</p>
PRC	<p>Public Resources Code.</p> <p>Codified in 1939 under the direction of the of the California Code Commission, the Public Resources Code consolidated and revised the law relating to natural resources, the conservation, utilization, and supervision thereof, along with mines and mining, oil and gas, and forestry.</p>
SB	<p>Senate Bill</p> <p>A proposed law, introduced during a session of the California State Senate for consideration by the Legislature, and identified numerically in order of presentation.</p>

Source: CEC staff

APPENDIX A:

California Energy Commission Investigative Reports

Summary

Staff provides the following table (Table A-1) as a summary listing of the investigation reports created by CEC staff as a result of complaints or comments received. Table A-1 lists the investigation report and correlates it to the footnote within the staff report. This appendix includes the investigation reports in order list in Table A-1.

Table A-1: Investigation Reports Correlated to Footnotes

Title	Investigation Report Number	Parent Investigation Paper Number	Footnotes
Modesto Complaint	1-01	2021-006	34, 35, 53, 62
Hawthorne Complaint	1-02	2022-002	34, 35, 41, 53, 62
Provider QA	2-02	2021-1002	36, 66
HERS Annual Reporting	2-05	2022-1001	38, 43
2R vs 3R Compliance Data Differences	2-06		44

Source: CEC Staff

Links to Investigation Reports

The following links are to the Investigation Reports listed in Table A-1:

[Modesto Complaint](#)

(<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fefiling.energy.ca.gov%2FGetDocument.aspx%3Ftn%3D246532%26DocumentContentId%3D80733&data=05%7C01%7C%7C6715c4b907e645d37dc108daad76a507%7Cac3a124413f44ef68d1bbaa27148194e%7C0%7C0%7C638013022341707886%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=4HsDZKJU37uKvLg9V8UZI300IQXGzgfsw7qIubta2E%3D&reserved=0>)

[Hawthorne Compliant](#)

(<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fefiling.energy.ca.gov%2FGetDocument.aspx%3Ftn%3D246539%26DocumentContentId%3D80752&data=05%7C01%7C%7C3a02aa3818f74bf0303e08daae04538a%7Cac3a124413f44ef68d1bbaa27148194e%7C0%7C0%7C638013630867627551%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Iik1haWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sdata=2R5GDqQsM5S88w0vTkG6tjNR2p9L%2BHf8WwF3azpcKuA%3D&reserved=0>)

[Provider Quality Assurance](#)

(https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffiling.energy.ca.gov%2FGetDocument.aspx%3Ftn%3D246533%26DocumentContentId%3D80734&data=05%7C01%7C%7C61781bd0cb294ecf227d08daad76ac6a%7Cac3a124413f44ef68d1bbaa27148194e%7C0%7C0%7C638013022478216893%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6I6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=uQMwippeIoUwVmkxPbs3yLADqJ0W2TvGdvXa0BD2HPE%3D&reserved=0)

[HERS Annual Reporting](#)

(https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffiling.energy.ca.gov%2FGetDocument.aspx%3Ftn%3D246534%26DocumentContentId%3D80735&data=05%7C01%7C%7Cee2a680d709e4ac8f4df08daad76b287%7Cac3a124413f44ef68d1bbaa27148194e%7C0%7C0%7C638013022591700926%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6I6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=EBiJS P8rVJhY1s7D50XvDE7rfkV1Iq7jHuKf7AVhydQ%3D&reserved=0)

[2R vs 3R Compliance Data Differences](#)

(https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ffiling.energy.ca.gov%2FGetDocument.aspx%3Ftn%3D246535%26DocumentContentId%3D80736&data=05%7C01%7C%7Cceec14a68d41d4e897a2f08daad76b8be%7Cac3a124413f44ef68d1bbaa27148194e%7C0%7C0%7C638013022661994561%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6I6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=dm9H zHG%2Fhmhgu%2BSVYsQW90tngK7DFysyK1nFrbIzUiw%3D&reserved=0)

APPENDIX B:

Proposed Regulations

Edits to Energy Code Appendices RA1, RA2, RA3, RA4, NA1, and NA2

Note to Reviewers: The following edits to Section RA1.2 are provided as an example of the sections that will be added to all of the FV&DT procedures in RA1-4 and NA1-2 (as necessary).

RA1.2 Winter Setup for the Standard Charge Verification Procedure

ADD Sections RA1.2.4 and RA1.2.5 to RA1.2:

RA1.2.4 Onsite Audit Quality Assurance Check Winter Setup Charge Verification

The following procedures are to be performed by the FV&DT Administrator quality assurance auditor during an onsite audit (Title 24, Part 1, Section 10-103.3(c)2Ei) of a FV&DT Technician that has performed the winter setup charge verification (RA1.2).

Step 1: The Winter Charge Setup may only be used for equipment for which the air conditioning manufacturer approves the use of the Winter Charge Setup. Refer to the Commissions website for the list of split system air conditioner units approved by the manufacturers to use the Winter Charge Setup and verify that the installed system is listed by the Commission. If the system is not listed, the FV&DT Technician fails the audit.

Step 2a: Verify that the ambient conditions are appropriate for the Winter Charge Setup. If so, perform the Winter Charge Setup for the Standard Charge Verification Procedure as indicated by RA1.2.

Step 2b: If ambient conditions are not appropriate for the Winter Charge Setup, perform the Charge Verification Procedure as indicated by RA3.2.2.6.2.

Step 3: Document results of Charge Verification Procedure and compare to FV&DT Technician documented results.

RA1.2.4.1 Passing Criteria for Onsite Audit Quality Assurance Check Winter Setup Charge Verification

The FV&DT Technician passes the onsite audit if the quality assurance check using the Winter Setup option (RA1.2) or the Charge Verification Procedure (RA3.2.2.6.2) also passes the HVAC system as provided in Table RA3.2-1 for FV&DT Technician testing.

RA1.2.5 Shadow Audit Quality Assurance Check Winter Setup Charge Verification

The following checklist is to be use by the FV&DT Administrator quality assurance auditor during a shadow audit (Title 24, Part 1, Section 10-103.3(c)2Eii) of a FV&DT Technician performing the winter setup charge verification (RA1.2).

Verify that the FV&DT Technician performs the following tasks regarding the Winter Setup Charge Verification (RA2.1):

- Refers to the Commissions website for the list of split system air conditioner units approved by the manufacturers to use the Winter Charge Setup.
- Verifies the refrigerant type being used (either R-410A or R-22).
- Installs the condenser outlet air restrictor on the outlet from the condenser fan such that it does not interfere with the inlet airflow to the condenser.
- Verifies that the difference between the high side pressure and the low side pressure is between 160 psi and 220 psi for R-410A refrigerant and 100 to 145 psi for R-22 refrigerant.

Verify that the FV&DT Technician performs the following tasks regarding Variable Metering Device Calculations – Subcooling Charging Method (RA3.2.2.6.2):

- Calculates and records the actual subcooling as the condenser saturation temperature minus the liquid line temperature properly.
- Determines and records the target subcooling specified by the manufacturer.
- Calculates and records the deviation of the actual subcooling value from the target subcooling value.
- Determines if the system passes using the appropriate criteria in Table RA3.2-1.
- Calculates and records the actual superheat as the suction line temperature minus the evaporator saturation temperature.
- Determines the superheat range specified by the manufacturer (if possible).
- Determines if the system passes using the appropriate criteria in Table RA3.2-1
- Optional - Records results in FV&DT Administrator data registry.
- Informs HVAC installer and homeowner of results and indicates if the system does not comply and needs remedial actions to ensure the TXV or EXV is operating properly.

Note to Reviewers: The following changes to Section RA2.1 and NA1.1 are to remove the special inspector designation for the HERS Rater (aka "Technician").

RA2.1 California Field Verification and Diagnostic Tests Home Energy Rating Systems

Amend Second paragraph as follows:

When the Certificate of Compliance documentation for a dwelling unit indicates that field verification and diagnostic testing of specific energy efficiency measures are required as a condition for complying with Title 24, Part 6, an approved HERS FV&DT Administrator and certified HERS FV&DT Technician shall be used to conduct the field verification and diagnostic testing according to the applicable procedures in Appendix RA2. ~~HERS Raters shall be considered special inspectors by enforcement agencies and shall demonstrate competence, to the satisfaction of the building official, for the visual inspections and diagnostic testing that they perform.~~

NA1.1 California Field Verification and Diagnostic Tests Home Energy Rating Systems

Amend Second paragraph as follows:

When the Certificate of Compliance indicates that field verification and diagnostic testing of specific energy efficiency measures are required as a condition for compliance with Title 24, Part 6, an approved HERS FV&DT Administrator and certified HERS FV&DT Technician shall be used to conduct the field verification and diagnostic testing according to the applicable procedures in Reference Nonresidential Appendix NA2. ~~HERS Providers and HERS Raters shall be considered special inspectors by enforcement agencies, and shall demonstrate competence to the satisfaction of the enforcement agency, for field verifications and diagnostic testing.~~

Addition of Definitions to Section 10-102 of Part 1 of the Building Standards

FV&DT PROGRAM is the field verification and diagnostic testing program as set forth in Section 10-103.3 to verify the construction of new buildings and additions and alterations to existing buildings comply with the requirements of the Energy Code.

FV&DT ADMINISTRATOR is an organization approved by the Commission to administer field verification and diagnostic testing pursuant to the requirements of Section 10-103.3.

FV&DT TECHNICIAN is a person trained, tested, and certified by an FV&DT Administrator to perform field verification and diagnostic testing pursuant to the requirements of Section 10-103.3.

FV&DT TECHNICIAN COMPANY is an organization certified by a FV&DT Administrator to offer FV&DT services to by the FV&DT Technician Company's FV&DT Technicians pursuant to the requirements of Section 10-103.3.

TRIENNIAL CODE CYCLE is the three-year period for which a particular cycle of California's building codes is effective, as used and defined by State Building Standards Law and the California Building Standards Commission pursuant to Health and Safety Code 18901 et seq.

Edit to Section 10-110 of Part 1 of the Building Standards

10-110 Procedures for consideration of applications under Sections 10-103.3, 10-104, 10-106, 10-108 and 10-109.

Addition of Section 10-103.3 to Part 1 of the Building Standards

10-103.3 Administrative Procedures for the Field Verification and Diagnostic Testing Program

- (a) **Scope.** The requirements in this section apply to FV&DT Administrators, FV&DT Technicians, and FV&DT Technician Companies performing work relating to field

verification and diagnostic testing (FV&DT) of the construction of new buildings and additions and alterations to existing buildings to verify compliance with the requirements of the Building Energy Efficiency Standards.

(b) General Provisions.

1. Conflicts of Interest.

A. Prohibition on Conflicts of Interest.

- i. FV&DT Administrators shall be independent from, and have no financial interest in, FV&DT Technician Companies or FV&DT Technicians.
- ii. FV&DT Administrators, FV&DT Technicians, and FV&DT Technician Companies shall be independent from, and have no financial interest in, the builder, designer, or subcontractor installer of energy efficiency installations field verified or diagnostically tested.
- iii. For the purposes of this subdivision, a "financial interest" includes:
 - a. a business entity in which the entity or individual has a direct or indirect investment worth \$2,000 or more, or in which the entity or individual is a director, officer, partner, trustee, or employee. However, this prohibition on investments does not include ownership of less than five percent of a publicly traded company.
 - b. a source of income totaling \$500 or more in value provided or promised to, or received by, the entity or individual within the 12 months. This prohibition on sources of income does not apply to payments by building owners or project owners for (1) field verification or diagnostic testing services by FV&DT Technicians and FV&DT Technician Companies or (2) payments for other services related to field verification or diagnostic testing.
 - c. an ownership interest, debt agreement, or employer/employee relationship.
- iv. FV&DT Administrators, FV&DT Technicians, and FV&DT Technician Companies, or principals of a FV&DT Administrator or FV&DT Technician Company shall not:
 - a. perform field verification or diagnostic tests services for builders, designers, or subcontractors owned or operated by close familial relatives. For purposes of this subdivision, "close familial relative" means a spouse, domestic partner, or cohabitation partner or a parent, grandparent (including greats), sibling, child, grandchild (including greats) of the individual or spouse, domestic partner, or cohabitation partner, and any person living in the same household.

- b. perform or participate in field verification or diagnostic testing services for any individual or entity that is not the building owner for existing residential buildings or project owner for newly constructed residential buildings.
 - v. FV&DT Technicians shall not sign as the "Documentation Author," "Technician," or "Responsible Person" (as defined in Section 10-103) for registered Certificates of Compliance or Certificates of Installation (Section 10-103) for projects in which they will or are reasonably expected to perform field verification or diagnostic testing services.
 - vi. FV&DT Technicians shall not apply to any authority having jurisdiction to issue a construction permit for a residential property in which they will or are reasonable expect to perform field verification or diagnostic testing services.
 - vii. FV&DT Technicians and FV&DT Technician Companies shall not perform any construction activity on a project site for which a construction permit is issued and for which they will or are reasonable expected to perform field verification or diagnostic testing services.
 - viii. FV&DT Technicians and FV&DT Technician Companies shall only be hired by or accept payment from the building owner for field verification or diagnostic testing services performed on an existing residential building that has been issued a certificate of occupancy.
 - ix. FV&DT Technicians and FV&DT Technician Companies shall only be hired by and accept payment from the project owner for field verification or diagnostic testing services performed on a newly constructed residential building that has been issued a permit to construct and has not been issued a certificate of occupancy.
- B. **Conflicted Data.** The prohibitions on conflicts of interest specified in Section 10-103.3(b)1A apply to any data collected by a FV&DT Technician. Any data collected by a FV&DT Technician when they have a conflict of interest, regardless of its accuracy, shall be considered conflicted data. In addition, any data collected by an FV&DT Technician in violation of the daily registration limit in Section 10-103.3(e)3 shall be considered conflicted data. Any data collected through sampling procedures (Building Energy Efficiency Standards, Reference Appendix RA2.6) where the FV&DT Administrator is refused access to perform an onsite quality assurance audit (Section 10-103.3(d)5Bif) shall be considered conflicted data.
- i. FV&DT Administrators shall not accept or store, conflicted data on their systems. FV&DT Administrators may demonstrate that they have fulfilled this requirement by, for example:

- a. Requiring FV&DT Technicians to affirmatively indicate, upon submitting any data to the FV&DT Administrator, that the data is not conflicted data, or that the FV&DT Technician had a conflict of interest at the time the data was collected, but had express written approval from the Executive Director waiving the conflict.
 - b. Any other process approved by the CEC.
- ii. FV&DT Administrators shall take all reasonable steps to detect, deter, isolate, and remove conflicted data from their systems, including in compliance documents and Compliance Registration Packages. FV&DT Administrators may demonstrate that they have taken all reasonable steps, for example:
 - a. Requiring FV&DT Technicians to complete training, prior to certification, regarding the requirements of Section 10-103.3(b)1A, including that it applies to data, or by some other reasonable method to deter conflicted data.
 - b. Instituting a desk audit program that assesses data submitted to the FV&DT Administrator pursuant to Section 10-103.3(d)5Biv to confirm whether or not the submitting FV&DT Technician had a disqualifying conflict of interest pursuant to Section 10-103.3(b)1A at the time of the data's submission, or by some other reasonable method to detect conflicted data.
 - c. Investigating and, as necessary, removing conflicted data from the FV&DT Provider's system, or otherwise identifying and quarantining that data as conflicted, including pursuant to Section 10-103.3(b)1Bvi.
 - d. Any other process approved by the CEC.
- iii. FV&DT Administrators may not use, rely on, sell, or offer for sale, any conflicted data for any purpose other than to detect, deter, isolate, and remove conflicted data from their systems, or to otherwise prevent the generation or transmission of conflicted data.
- iv. FV&DT Technicians and FV&DT Technician Companies may not submit any conflicted data without the express written approval of the Executive Director. FV&DT Technicians and Technician Companies may fulfill this requirement by for example,
 - a. Affirmatively indicating, upon submitting any data to the FV&DT Administrator, that the data is not conflicted data, or that the FV&DT Technician or Technician Company had a conflict of interest at the time the data was collected, but had express written approval from the Executive Director excusing the conflict.
 - b. Any other process approved by the CEC.

- v. Any FV&DT Technician or Technician Company may apply to the Executive Director for express written approval excusing a conflict of interest under this section.
 - a. Such an application must include the following information: an explanation of the conflict of interest, the beginning and ending date of the conflict of interest (if any), and written justification providing compelling and persuasive evidence that (1) the conflict of interest will not result in inaccurate data, and (2) unnecessary hardship will result from the application of the prohibition on conflicted data in this instance.
 - b. The Executive Director may grant such written approval only if the Executive Director finds there is compelling and persuasive evidence of the factors identified in Section 10-103.3(b)1Bva.
 - c. Unsupported or general assertions of trustworthiness or accuracy are neither compelling nor persuasive evidence of the factors identified in Section 10-103.3(b)1Bva.
 - d. If the Executive Director may, at their discretion, request additional information, provide express written approval, provide conditional express written approval, or reject the request. If an applicant does not receive a reply within 120 calendar days, their request is denied.
- vi. Upon identifying data that may be conflicted, the FV&DT Administrator shall perform a desk audit to assess whether the data is in fact conflicted data, such as by contacting the submitting FV&DT Technician or Technician Company and asking them to confirm, in writing, whether the data was conflicted or not. Upon discovery of a violation of the conflict of interest restrictions in Section 10-103.3(b)1A, the FV&DT Administrator shall use this gathered information to initiate discipline action pursuant to against either of (or both of) the FV&DT Technician (Section 10-103.3(d)7) and FV&DT Technician Company (Section 10-103.3(d)8) responsible for the registered data in question.
- vii. FV&DT Administrators shall remove verified conflicted data (Section 10-103.3(b)1Bvi) from the data registry and inform all of the following of the removal of the data and what field verification and diagnostic tests reliant on the data are invalidated: the homeowner, FV&DT Technician, FV&DT Technician Company, authority having jurisdiction over the issued construction permit, and the Commission.

2. Prohibition on False, Inaccurate, or Incomplete Information

- A. FV&DT Administrators shall not 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. FV&DT Administrators 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 not conducted and reported in compliance with these regulations.
- C. Only the FV&DT Technician who performs a field verification and diagnostic test shall have signature authority for compliance documents related to the field verification and diagnostic test documents.

(c) **FV&DT Administrator Approval**

1. **Approval Process.** Approval as an FV&DT Administrator is limited to a single triennial code cycle. To become an FV&DT Administrator, an applicant shall submit a Full Application. To continue as an FV&DT Administrator for a subsequent triennial code cycle, a current FV&DT Administrator shall submit a Triennial Reapproval Application. Applications will be considered pursuant to the procedures in Section 10-110. A Full Application or a Triennial Reapproval Application may be updated as set forth in Section 10-103.3(c)6. An approved FV&DT Administrator may make modifications to its application as set forth in Section 10-103.3(c)7.
2. **Confidential Information.** An applicant may identify any information in its application the applicant considers confidential and request from the Commission a confidential designation as specified in Title 20, California Code of Regulations, Section 2505. If an applicant requests a designation of confidential information, the applicant shall also submit a non-confidential summary of its application.
3. **Full Application.** The Commission may approve a full application to become a FV&DT Administrator if the application includes each of the following:
 - A. **Evidence of Ability to Satisfy FV&DT Administrator Requirements.** Information sufficient to demonstrate, by a preponderance of the evidence, that the applicant can and will satisfy each regulatory requirement specified as the FV&DT Administrator Approval Process in Section 10-103.3(c)1 for the duration of their tenure as an FV&DT Administrator.
 - i. **Methods of Producing Evidence.** An applicant may evidence its ability to satisfy the FV&DT Administrator Requirements by providing a written strategy for how it intends to satisfy each requirement, citing examples of how it has been able to satisfy each regulatory requirement, or by any other means of introducing evidence into the record acceptable to the Executive Director or Commission.
 - ii. **Disputed Evidence.** Any interested party may introduce evidence demonstrating that an applicant either cannot satisfy, or in the past

has failed to satisfy, one or more regulatory requirements specified in Section 10-103.3(c)1.

- B. The full legal name of the applicant registered with the California Secretary of State.
 - C. The full legal name, date of birth, current residential address, and social security number of every individual with an ownership interest in and principal of the applicant.
 - D. A complete list of any entities that have business relationships with the applicant such as parent companies, subsidiaries, affiliates, and/or any past names under which the entity has conducted business as a FV&DT Administrator, if applicable.
 - E. The triennial code cycle for which the applicant intends to operate as a FV&DT Administrator.
 - F. The contact information for one or more Designated Contacts who the Commission can contact as needed.
 - G. Any other information relating to the applicant's ability to satisfy each regulatory requirement specified in Section 10-103.3(c)1 or specifically requested by the Executive Director or Commission.
4. **Triennial Reapproval Application.** The Commission may approve an existing FV&DT Administrator's application to continue as a FV&DT Administrator for a subsequent triennial code cycle if the application includes each of the following:
- A. The original Full Application for the previous cycle, any Updated Applications, including Conditions of Approval, and any Post-Approval Amendments that were submitted and/or approved.
 - B. All previously submitted and approved Triennial Reapproval, if any.
 - C. Information demonstrating that the applicant can and will satisfy each regulatory requirement not otherwise addressed in any previously approved Application, subject to the same evidentiary constraints and requirements as a Full Application.
 - D. Alternatively, an existing FV&DT Administrator may submit a full Application for the triennial code cycle.
5. **Application for Remediation.**
- A. An FV&DT Administrator that has been decertified may submit one Application for Remediation pursuant to Section 10-110 during the triennial code cycle in which it was decertified.
 - B. An Application for Remediation shall include:
 - i. The original Full Application, all previously submitted and approved Triennial Reapprovals, any Updated Applications, including Conditions of Certification, and any Post-Approval Amendments that were submitted and/or approved.

- ii. All correspondence concerning progressive discipline between the FV&DT Administrator and the Commission commencing with the notice of potential violation for each violation that led to rescinding approval.
 - iii. A Remediation Report and Plan explaining why each violation leading to a rescinded approval occurred and the steps that the FV&DT Administrator has taken to remedy past violations and prevent future violations similar to those that led to its rescinded approval.
 - iv. A draft Full Application that incorporates all necessary modifications to address the issues described in the Remediation Report and Plan.
- C. **Basis for Approval.** The Commission may approve an Application for Remediation if the Commission finds:
- i. The decertified FV&DT Administrator has demonstrated a good faith willingness to take feasible steps towards remediation.
 - ii. The decertified FV&DT Administrator has presented a remediation plan that can remedy past violations and prevent future violations similar to those that led to its rescinded approval.
 - iii. The decertified FV&DT Administrator has demonstrated the ability to adequately implement the remediation plan.
- D. **Upon Approval.** If the decertified FV&DT Administrator's Application for Remediation is approved by the Commission, the decertified FV&DT Administrator is eligible to submit a Full Application.
- E. **Upon Rejection.** If a decertified FV&DT Administrator's Application for Remediation is rejected by the Commission, the FV&DT Administrator may re-submit an Application for Remediation only with the written approval of the Executive Director or Commission.

6. Updated Application.

- A. **Update with Executive Director's Approval.** With the written permission of the Executive Director, at any point during the Section 10-110 process, an applicant may submit an updated application, which shall be identified as an Updated Application and made available to interested parties for review and comment for at least 30 days prior to consideration by the Commission at a business meeting.
- B. **Update at Commission Direction; Conditions of Approval.** The Executive Director or Commission may direct an applicant to update their application in order to address any issues or concerns raised by any interested party with respect to the applicant's ability to completely fulfil the role of FV&DT Administrator, including by imposing Conditions of Approval.

- C. **Applicant Withdrawal and Re-submission.** Applicants who have submitted an application may, at any time prior to approval and for any reason, withdraw their application and may submit a new application pursuant to this section and Section 10-110.
7. **Post-Approval Amendments.** An approved FV&DT Administrator shall submit a Post-Approval Amendment to the Executive Director when the FV&DT Administrator wishes to make a modification to their approved application, or, as a result of any circumstances other than the transition to a new triennial code cycle or progressive discipline pursuant to Section 10-103.3(c)3, the application to no longer accurately reflects the FV&DT Administrator's operations.
- A. **Process.** The FV&DT Administrator may submit a Post-Approval Amendment as either substantive or non-substantive. The Executive Director may determine whether a post-approval amendment is substantive or non-substantive.
- B. **Substantive.** If the Executive Director determines that a post-approval amendment is substantive, the amendment shall follow the process specified by section 10-110 and be approved by the Commission. Substantive changes include any changes to training, certification, or oversight (including quality assurance) that would result in any impact to consumers, FV&DT Raters, FV&DT Rater Companies, or the ability of the FV&DT Administrator to comply with any requirement of Section 10-103.3(c)1.
- C. **Nonsubstantive.** If the Executive Director determines that a post-approval amendment is nonsubstantive, they may approve the amendment by informing the FV&DT Administrator's Designated Contact and posting the proposed post-approval amendment application. Non-substantive updates are any change that is not considered a substantive update, including correcting typographical errors modifying contact information, renaming positions or programs, and making changes that do not impact consumers, FV&DT Technicians, FV&DT Technician Companies, or alter the ability of the FV&DT Administrator to comply with any requirement of Section 10-103.3(c)1.
8. **Conditions of Approval.** As a prerequisite of approval of any FV&DT Administrator application, the Commission may impose Conditions of Approval as the Commission deems necessary to ensure that the applicant will be able to meet the requirements of Section 10-103.3(c)1 if it is approved. If the Commission imposes Conditions of Approval, the Commission may require the applicant to demonstrate that the applicant will satisfy each Condition of Approval prior to approval. Violation of a Condition of Approval imposed by the Commission shall constitute violation of these regulations and may result in disciplinary action, up to and including rescinding of approval.
9. **Executive Director Rejection of Decertified FV&DT Administrator's Application.**

- A. The Executive Director may reject any application if the Executive Director determines the applicant is an FV&DT Administrator that has previously been decertified, or is a successor, subsidiary, or otherwise affiliated or substantially similar organization to an FV&DT Administrator that has previously been decertified, and that has not completed the Application for Remediation process pursuant to Section 10-103.3(c)5.
- B. An applicant may appeal the Executive Director's decision to reject its application to the full Commission pursuant to Section 10-103.3(h). The applicant shall establish that it is not a decertified FV&DT Administrator, successor, subsidiary, or otherwise affiliated or substantially similar organization to a decertified FV&DT Administrator.
- C. **Minimum Evidentiary Requirements.** At a minimum, an appeal from rejection shall demonstrate that the applicant and decertified FV&DT Administrator have dissimilar and unrelated owners, shareholders (if applicable), executive management, employees, physical assets, intangible assets, intellectual property, business practices, registered organization names, branding, marketing materials, and trademarks.
- D. **Final Agency Action.** If the Commission determines that the applicant has failed to demonstrate it is not a decertified FV&DT Administrator, or any successor, subsidiary, or otherwise affiliated or substantially similar organization to a decertified FV&DT Administrator, the Commission may deem the applicant a decertified FV&DT Administrator ineligible to apply until the applicant has completed remediation or specify when the applicant may re-submit an application. The period of time before re-submittal may not exceed three years from when the appeal was submitted.

(d) **FV&DT Administrator Responsibilities**

- 1. **FV&DT Technician Training.** For each Triennial Code Cycle, FV&DT Administrators shall provide training to FV&DT Technicians. To fulfill the training requirements (Section 10-103.3(d)), an FV&DT Administrator shall confirm that an FV&DT Technician applicant has completed a training curriculum that covers all information necessary to perform all FV&DTs in accordance with the applicable Building Energy Efficiency Standards and passed all associated tests. Alternatively, if offered by the FV&DT Administrator, an existing FV&DT Technician may apply for approval without completing an FV&DT Administrator's training curriculum by passing a challenge test, which is a comprehensive test of advanced FV&DT technical knowledge that verifies the FV&DT Technician applicant has sufficient knowledge necessary to perform FV&DT in accordance with the applicable Building Energy Efficiency Standards. All training materials under the full training curriculum and challenge test shall be approved by the Commission as part of the FV&DT Administrator's application (Section 10-103.3(b)).
 - A. **Training and testing curriculum.** A FV&DT Administrator's training curriculum for FV&DT Technician applicants must include the following:

- i. **Building Energy Efficiency Standards mandatory subject areas.** The training curriculum shall instruct FV&DT Technicians how to perform FV&DT as set forth in the following Building Energy Efficiency Standards, Reference Appendices:
 - a. RA1: Alternative Residential HERS Field Verification and Diagnostic Test Protocols
 - b. RA2: Residential HERS Verification, Testing, and Documentation Procedures
 - c. RA3: Residential HERS Field Verification and Diagnostic Test Protocols
 - d. RA4: Eligibility Criteria for Energy Efficiency Measures
 - e. NA1: Nonresidential HERS Verification, Testing, and Documentation Procedures
 - f. NA2: Nonresidential HERS Field Verification and Diagnostic Test Procedures
- ii. **Other mandatory subject areas.** The training curriculum shall inform FV&DT Technician applicants about:
 - a. The roles and responsibilities of all entities regulated by Section 10-103.3 and in the Building Energy Efficiency Standards, Reference Appendices RA1, RA2, RA3, RA4, NA1, NA2, and JA7.
 - b. Basic building science, testing and verification techniques likely to be used in the field, including the principles of heat transfer, building energy feature design and construction practice, including construction quality assurance, onsite renewable generation, and "house as a system" concepts, safety practices relevant to home energy testing and verification procedures and equipment, energy efficiency effects of building site characteristics, types and characteristics of space heating, space cooling, service hot water, and hard wired lighting systems, function and proper use of diagnostic devices including but not limited to: duct leakage testing equipment, blower doors, and air flow and pressure measurement devices, and construction types, equipment types, and their associated energy efficiency ramifications.
 - c. Progressive discipline of FV&DT Technicians (Section 10-103.3(d)7) and the appeal process (Section 10-103.3(h)).
 - d. Quality assurance process (Section 10-103.3(d)5).
 - e. Conflict of interest requirements (Section 10-103.3(b)1).
 - f. Prohibition on False, Inaccurate, or Incomplete Information (Section 10-103.3(b)2)

- iii. **Classroom Training.** Classroom training shall include an electronic or hardcopy manual for each student and may include the following features:
 - a. Classroom training may be provided online or in person and may be taught by an instructor or proctoring software.
 - b. Classroom training may include pre-recorded video instructions but must not solely rely on pre-recorded videos.
 - c. Classroom training may use mock tests or exams, but mock tests or exams may not be used to comply with the Tests and Exams requirements in Section 10-103.3(d)1Av.
- iv. **Laboratory Training.** Laboratory training shall cover all FV&DT procedures listed in Building Energy Efficiency Standards Reference Appendices RA1, RA2, RA3, RA4, NA1, and NA2 and comply with the following requirements:
 - a. All laboratory training facilities shall be designed to provide consistent and repeatable practical training exercises and be approved in advance by the Commission.
 - b. Laboratory training shall be conducted in a controlled space with appropriate safety measures such as proper ventilation, safe egress, appropriate lighting, and fire response systems. Laboratory training must not be conducted in an occupied residence.
 - c. All laboratory training shall be in person and be supervised by an instructor with no more than ten students to one instructor. Laboratory instruction shall include an electronic or hardcopy manual for each student.
 - d. Any equipment necessary to complete the laboratory training shall be available to students at a ratio of no greater than one test equipment per five students. Each student shall perform the laboratory training independently with full access to the necessary equipment.
- v. **Written test.** An FV&DT Technician applicant shall take a written test, offered by an FV&DT Administrator, to confirm the applicant's understanding of all mandatory training information specified in Section 10-103.3(d)1Ai and Section 10-103.3(d)1Aii. Tests shall only be used to verify the knowledge of FV&DT Technician applicants and may not be used for training purposes. FV&DT Administrators shall retain all results for five years from the date of the test. The written test shall comply to all of the following:
 - a. Be online using proctoring software (Section 10-103.3(d)1Avii) or in person using a live proctor.
 - b. Consist of between 10 and 100 questions per subject area specified in Sections 10-103.3(d)1Ai and 10-103.3(d)1Aii.

- c. Require a passing score of no less than 70 percent.
 - d. Be approved by the Commission at the time of FV&DT Administrator application (Section 10-103.3(c)1).
 - vi. **Practical test.** FV&DT Technician applicants shall take a practical test, offered by an FV&DT Administrator, to demonstrate competence in all subjects specified in Section 10-103.3(d)1Aiv as they apply to the performance of FV&DT procedures. The FV&DT Administrator shall retain all results for five years from the date of the test. The practical test shall comply with the following:
 - a. All practical tests shall be performed in the same facilities as required by the Laboratory Training Requirements in Section 10-103.3(d)1Aiv.
 - b. All practical tests shall be in-person only using a live proctor with no more than five test takers to one proctor.
 - c. Any equipment required to complete the practical test shall be made available to each test taker. Test takers shall not work in teams to complete any portion of the practical test.
 - d. All practical tests shall be approved by the Commission by demonstration during the application process (Section 10-103.3(c)1).
 - vii. **Proctoring Software.** Any proctoring software used for training and exams shall be approved in advance by the Commission and comply with the following:
 - a. Proctoring software for training or exams must be time limited.
 - b. Proctoring software shall monitor the computer desktop, webcam video, and audio of the individual completing the training or exam. The proctoring software, including any interactions with a proctoring service, shall take reasonable steps to detect the use of prohibited outside resources on the exam, and return a failing grade if the use of prohibited outside resources are in fact detected.
- B. **Challenge Test.** An FV&DT Administrator may also offer challenge testing that evaluates competence in all subjects specified in Section 10-103.3(d)1Ai and Section 10-103.3(d)1Aii. If a challenge test is used it must comply with the following requirements:
 - i. The challenge test shall include both a written and practical test and both must be taken in person using a live proctor.
 - ii. The written portion of the challenge test shall include no less than 100 and no more than 1,000 questions prepared by the FV&DT Administrator.

- iii. The written portion of the challenge test shall comply with all requirements in Section 10-103.3(d)1Av.
- iv. The practical portion of the challenge test shall comply with all requirements in Section 10-103.3(d)1Avi.

C. **Training and Testing for Subsequent Triennial Code Cycle**

Updates. An FV&DT Administrator shall provide training to previously certified FV&DT Technicians on changes made during any triennial code cycle update. The Triennial Code Cycle Update training and testing shall comply with all requirements in Section 10-103.3(d)1A. FV&DT Administrators may offer a challenge test in compliance with Section 10-103.3(d)1B.

2. **FV&DT Technician Certification.**

- A. **Certification Requirements.** Certification as an FV&DT Technician is limited to a single triennial code cycle. The FV&DT Administrator shall record each triennial code cycle for which an individual FV&DT Technician has been certified to provide field verification and diagnostic test services. For each Triennial Code Cycle, an FV&DT Administrator shall certify an eligible FV&DT Technician applicant who meets the minimum requirements for an FV&DT Technician, as verified by the FV&DT Administrator, and completes and passes all training requirements. Prior to certification, an FV&DT Administrator shall advise the FV&DT Technician applicant on the required conduct for FV&DT Technicians in Section 10-103.3(e), the progressive discipline requirements Section 10-103.3(d)7, and the appeal process in Section 10-103.3(h).
- B. **Certification Agreement.** Prior to certification, the FV&DT Administrator shall ensure that the applicant signs the FV&DT Technician Agreement with the FV&DT Administrator, in which the FV&DT Technician shall agree, at minimum, to comply with all applicable laws and regulations, including the requirements provided in Section 10-103.3, and shall maintain a copy of the signed agreement.
- C. **Eligibility.** A FV&DT Technician is eligible if they meet the minimum qualifications enumerated in Section 10-103.3(e)1B and have not been prohibited from practicing by the Executive Director or Commission pursuant to Section 10-103.3(g)1.

3. **FV&DT Technician Company Training.** For each Triennial Code Cycle, the FV&DT Administrator shall develop and maintain a course of training to summarize the responsibilities of the FV&DT Technician Company in the performance of field verifications and diagnostic testing as prescribed in Section 10-103.3(d)3. The FV&DT Technician Company training may not exceed eight (8) hours in duration. All training materials shall be approved by the Commission as part of the FV&DT Administrator's application (Section 10-103.3(c)1). An FV&DT Administrator's training curriculum for FV&DT Technician Company applicants must, at minimum, include all of the following:

- A. A summary of the Training curriculum for FV&DT Technician applicants provided in Section 10-103.3(d)1.
- B. Information regarding the following:
 - i. The roles and responsibilities of all entities regulated by Section 10-103.3 and in the Building Energy Efficiency Standards, Reference Appendices RA1, RA2, RA3, RA4, NA1, NA2, and JA7.
 - ii. Discipline procedure for FV&DT Technicians (Section 10-103.3(d)7) and FV&DT Technician Companies (Section 10-103.3(d)8), and the appeal process (Section 10-103.3(h)).
 - iii. Quality assurance process (Section 10-103.3(d)5).
 - iv. Conflict of interest requirements (Section 10-103.3(c)1).
 - v. Prohibition on False, Inaccurate, or Incomplete Information (Section 10-103.3(c)2)

4. **FV&DT Technician Company Certification**

- A. **Certification Requirements.** An FV&DT Administrator shall certify an eligible FV&DT Technician Company applicant that meets the minimum requirements for an FV&DT Technician Company, as verified by the FV&DT Administrator, and completes and passes all training requirements. Prior to certification, an FV&DT Administrator shall advise the FV&DT Technician Company applicant on the required conduct for FV&DT Technicians in Section 10-103.3(f)2, the discipline requirements Section 10-103.3(d)8 and the appeal process in Section 10-103.3(h).
 - B. **Certification Agreement.** The FV&DT Technician Company applicant shall sign the FV&DT Technician Company agreement with the FV&DT Administrator, in which the FV&DT Technician Company shall agree, at minimum, to comply with all applicable laws and regulations, including the requirements provided in this Section 10-103.3.
 - C. **Public List.** FV&DT Administrators shall maintain a publicly available list of certified FV&DT Technician Companies.
 - D. **Eligibility.** A FV&DT Technician Company is eligible if it meets the minimum qualifications enumerated in Section 10-103.3(f)1B and has not been prohibited from practicing by the Executive Director or Commission pursuant to Section 10-103.3(g)2.
 - E. After its initial certification, an FV&DT Technician Company does not need to complete the training curriculum again or be recertified for each Triennial Code Cycle, so long as it maintains its eligibility under Section 10-103.3(d)4.
5. **Quality Assurance.** An FV&DT Administrator shall maintain a quality assurance program to ensure appropriate oversight of the FV&DT Technicians it certifies. This program shall, at a minimum, include the following:
- A. **Quality Assurance Staff.** FV&DT Administrators shall maintain the necessary qualified staff to ensure a functioning quality assurance

program that includes, at a minimum, performing the types of quality assurance reviews listed in Section 10-103.3(d)5 on FV&DT Technicians. Any form of audit is subject to the same standards of required conduct as any other field verifications and diagnostic tests and is also subject to Quality Assurance review. Quality Assurance staff may not include active FV&DT Technicians.

B. **Types of Quality Assurance Review.** Quality Assurance Review shall take the form of onsite audits, shadow audits, laboratory audits, and desk audits.

- i. **Onsite Audits.** An onsite audit is performed by the FV&DT Administrator following field verification and diagnostic testing by an FV&DT Technician it certified. Onsite audits are performed at the invitation of the homeowner, through the complaint or other processes. For an onsite audit the FV&DT Administrator shall independently repeat the field verification and diagnostic test to determine if it accurately performed and whether all data was accurately collected and reported by the FV&DT Technician. This information shall be included in the annual reporting to the Commission (Section 10-103.3(d)11E) or provided in response to a request by the Commission. Onsite audits shall comply with the following:
 - a. Onsite audits must not be performed in the presence of the FV&DT Technician and can be performed any time after the FV&DT Technician has left the project site.
 - b. FV&DT Technicians must not be informed that their field verification and diagnostic test is receiving an onsite audit until the onsite audit is complete and the results are documented.
 - c. Onsite audits shall follow the audit requirements in the Building Energy Efficiency Standards Reference Appendices RA1, RA2, RA3, RA4, NA1, and NA2.
 - d. The FV&DT Administrator shall issue a pass to the FV&DT Technician and FV&DT Technician Company if the onsite audit results show compliance with the passing requirements for onsite audits as indicated in the Building Energy Efficiency Standards Reference Appendices RA1, RA2, RA3, RA4, NA1, and NA2.
 - e. Onsite audits shall be performed when an FV&DT Administrator is investigating a complaint from a homeowner about a field verification and diagnostic test.
 - f. Onsite audits shall be performed for every seventh sample-group used in a single residential development.

- (i) The FV&DT Administrator shall perform the onsite audit at an untested home in the same sample-group being tested.
 - (ii) If the FV&DT Administrator is refused access to the development, all sample-groups for the development will be considered conflicted data (Section 10-103.3(b)1B).
 - (iii) If the FV&DT Administrator is refused access to the development, the FV&DT Technician may be subject to investigation and disciplinary action.
- g. Onsite audit results shall be documented by the FV&DT Administrator, provided to the FV&DT Technician and FV&DT Technician Company, provided to the homeowner, and recorded in the FV&DT Administrator's quality assurance database (Section 10-103.3(d)9B).
- h. If the onsite audit reveals the FV&DT Technician did not accurately perform the field verification and diagnostic test or accurately collect or report data, the FV&DT Administrator shall initiate disciplinary action (Section 10-103.3(d)7).
- ii. **Shadow Audits.** A shadow audit requires the FV&DT Administrator to audit the FV&DT Technician as they perform a field verification and diagnostic test and collect and report the data. The FV&DT Administrator's auditor shall observe and may not aid the FV&DT Technician during the shadow audit. Every year, at least one shadow audit shall be performed at random by the FV&DT Administrator for each FV&DT Technician it has certified. In addition, all FV&DT Technicians shall receive a shadow audit for Quality Insulation Installation field verification (Building Energy Efficiency Standards Reference Appendix RA3.5) once per year. A shadow audit shall also be performed if requested by the Commission. Shadow audits shall comply with the following:
 - a. The FV&DT Technician shall be informed of the shadow audit on the day of the audit and the FV&DT Administrator's auditor will explain their presence to the homeowner. The homeowner shall grant entry to the auditor. If entry is refused, the FV&DT Administrator shall reschedule the shadow audit.
 - b. For newly constructed buildings, the developer or contractor shall not refuse a shadow auditor if sampling is being used on the development. If the auditor is refused entry, the data registry will not accept sample-based compliance documents from the developer, contractor, or FV&DT Technician in regard to the project.

- c. Shadow audits are limited to one field verification or diagnostic test where the FV&DT Technician shall setup measurement equipment, take measurements, and record results.
 - d. The FV&DT Administrator's auditor shall use the shadow audit check list provided in the Building Energy Efficiency Standards Reference Appendix RA1, RA2, RA3, RA4, NA1, and NA2.
 - e. The shadow audit results shall be documented by the FV&DT Administrator, provided to the FV&DT Technician and FV&DT Technician Company, and recorded in the FV&DT Administrator's quality assurance database (Section 10-103.3(d)9B).
 - f. If the shadow audit reveals the FV&DT Technician did not accurately perform the field verification and diagnostic test or accurately collect or report data, the FV&DT Administrator shall initiate disciplinary action (Section 10-103.3(d)7).
- iii. **In-Lab Audits.** An in-lab audit requires an FV&DT Technician perform mock field verification and diagnostic testing in a laboratory setting. The FV&DT Administrator shall develop in-lab audits to demonstrate the FV&DT Technician's performance competence in subjects specified in Section 10-103.3(d)1 the FV&DT Technician is certified to perform. All FV&DT Technicians shall perform an in-lab audit at least once per year and as directed by the Commission. In-lab audits shall comply with the following:
- a. The FV&DT Administrator shall include failure conditions randomly in all in-lab audits that are consistent with failure conditions found in the field by onsite and shadow audits.
 - b. The FV&DT Administrator shall make a mock data registry available to be used by the FV&DT Technician as part of the in-lab audits.
 - c. All in-lab audits shall be approved by the Commission by demonstration during the application process (Section 10-103.3(c)1).
 - d. All in-lab audits shall be performed in the same facilities as required by the Laboratory Training Requirements in Section 10-103.3(d)1Aiv.
 - e. All in-lab audits shall be in-person using a live proctor with no more than ten test takers per proctor. FV&DT Technicians shall not work in teams to complete any portion of any in-lab audit.
 - f. The FV&DT Administrator shall not provide any equipment necessary to complete the in-lab audit.

- g. To receive a passing score, the FV&DT Technician shall determine the appropriate results for each in-lab audit including “failed” tests and demonstrate the proper reporting using a mock-interface for the data registry. The FV&DT Technician will be given two chances to pass each in-lab audit.
 - h. The in-lab audit results shall be documented by the FV&DT Administrator, provided to the FV&DT Technician and FV&DT Technician Company, and recorded in the FV&DT Administrator’s quality assurance database (Section 10-103.3(d)9B).
 - i. If the in-lab audit reveals the FV&DT Technician did not accurately perform the field verification and diagnostic test or accurately collect or report data, the FV&DT Administrator shall initiate disciplinary action (Section 10-103.3(d)7).
- iv. **Desk Audits.** Desk audits consist of an FV&DT Administrator using registered compliance documents within an FV&DT Administrator data registry to evaluate an FV&DT Technician’s Certificates of Compliance (Section 10-103(a)), Certificates of Installation (Section 10-103(b)), and Certificates of Verification (Section 10-103(d)) for consistency and accuracy. FV&DT Administrators shall perform desk audits of all certified FV&DT Technicians at least once per year and as directed by the Commission. Desk audits shall comply with the following:
- a. FV&DT Administrators shall develop and document a maximum variance for each data entry point for each field verifications and diagnostic test.
 - b. FV&DT Administrators shall identify a project to audit where the FV&DT Technician provided field verification and diagnostic test services. The FV&DT Administrator shall collect all compliance documents associated with the project as necessary to audit the field verifications and diagnostic tests performed by the FV&DT Technician at the project site and may contact outside authorities, such as the local building authority with jurisdiction over the project.
 - c. The FV&DT Administrator shall confirm the measurements, calculations, and other information obtained during field verifications and diagnostic tests at the project are within expected tolerances.
 - d. The FV&DT Administrator shall compare the field verification and diagnostic test results from the project site to no less than twenty other field verification and diagnostic test results performed by the same FV&DT Technician on other project sites prior to the audited project. If the comparison

suggests the subject project results could have been copied from prior project sites, the FV&DT Administrator shall perform a further investigation to determine if results were falsified or otherwise inaccurate.

- e. The desk audit results shall be documented by the FV&DT Administrator, provided to the FV&DT Technician and FV&DT Technician Company, and recorded in the FV&DT Administrator's quality assurance database (Section 10-103.3(d)9B).
- f. If the desk audit shows that the FV&DT Technician did not accurately perform the field verification and diagnostic test or accurately collect or report data, the FV&DT Administrator shall initiate disciplinary action (Section 10-103.3(d)7).

C. Remedy for Flawed Field Verification and Diagnostic Tests

- i. A flawed field verification and diagnostic test is any field verification and diagnostic test that is inconsistent with an audit, or that is otherwise determined by the Executive Director, the Commission, or the FV&DT Administrator, to be untrue or inaccurate.
- ii. The FV&DT Administrator is responsible for remedying any flawed field verification and diagnostic tests identified by audit or by any other means.
- iii. A flawed field verification and diagnostic test is remedied by providing an additional field verification and diagnostic test to the hiring party that corrects the untrue or inaccurate reporting.
- iv. The FV&DT Administrator may seek reimbursement for the remedy from the FV&DT Technician who performed the flawed field verification and diagnostic test.

- D. Payment of Fees; Proportionality.** FV&DT Administrators may charge, as a part of their contractual arrangements with FV&DT Technicians, a Quality Assurance fee. The entirety of any Quality Assurance fee may only be used by the FV&DT Administrator to fund Quality Assurance activities.

6. Queries and Complaints

- A. Public Queries and Complaints.** FV&DT Administrators shall have a system for receiving queries and complaints from consumers, FV&DT Technicians, FV&DT Technician Companies, authorities having jurisdiction, and the general public. The FV&DT Administrator shall respond to, investigate, and resolve queries and complaints related to field verification and diagnostic testing in a timely manner. FV&DT Administrators shall ensure the FV&DT Technicians they certify inform recipients of field verifications and diagnostic testing services about the query and complaint system. FV&DT Administrators shall retain all records of queries and complaints, the corresponding investigation, and the response for a minimum of five years from receipt of the query or complaint. FV&DT

Administrators shall annually report to the Commission a summary of all queries and complaints and actions taken over the last 12 months. The Queries and Complaints Annual Summary shall include all of the following for each query or complaint received:

- i. A tracking number identifying each query or complaint in the FV&DT Administrator queries and complaints tracking system.
- ii. The name and contact phone or email of the person(s) submitting the query or complaint.
- iii. A one-paragraph summary of the query or complaint.
- iv. A one-paragraph summary of the results of the FV&DT Administrator investigation and related actions.
- v. A one-paragraph summary of the resolution of the query or complaint.

B. Commission-Initiated Queries and Complaints. The Commission may direct an FV&DT Administrator to investigate any queries related to the performance of the FV&DT program. A FV&DT Administrator shall respond within 30 days of receiving a Commission direction to investigate a query.

C. FV&DT Technician and FV&DT Technician Company-Initiated Queries and Complaints. FV&DT Administrators shall have a system for FV&DT Technicians and FV&DT Technician Companies to report potential violations of these regulations by FV&DT Technicians, FV&DT Technician Companies, and FV&DT Administrators.

7. FV&DT Technician Discipline. If an FV&DT Technician violates these regulations, including but not limited to the failure to perform accurate and complete field verification and diagnostic tests, the FV&DT Administrator shall take the following disciplinary steps to address and correct the noncompliance. In the event of a severe violation, however, the FV&DT Administrator shall proceed immediately to the suspension step for the first severe violation and to the decertification step for a second severe violation. The definition of a severe violation will be determined at a later time. The FV&DT Administrator and FV&DT Technician may extend, by written agreement, the time for response, reply, and final determination for each step below. At any time, the Executive Director may direct an FV&DT Administrator to investigate an FV&DT Technician or discipline an FV&DT Technician pursuant to Section 10-103.3(d)7A through Section 10-103.3(d)7D.

A. Step 1: Notice of Violation. Upon identification of one or more violations of these regulations by an FV&DT Technician, the FV&DT Administrator shall issue a notice of violation to the FV&DT Technician, any affected homeowners, and any FV&DT Technician Companies for which the FV&DT Technician performs FV&DT services.

- i. The FV&DT Administrator shall require the FV&DT Technician take additional training or other corrective action related to the violations within a specified timeframe.
 - ii. The FV&DT Administrator shall hold the FV&DT Technician responsible for the costs of quality assurance testing and additional training for the violations, and the costs to the property owner for the original field verification and diagnostic test and any necessary retesting because of the violations.
 - iii. The notice of violation shall be in writing and include a description of the regulatory requirements and violations, the date and approximate time of the violations, the parties affected by the violations, any corrective action the FV&DT Technician shall take, any costs the FV&DT Technician shall reimburse, the timeframe for complying with all requirements of the notice of violation.
 - iv. The FV&DT Technician will have 10 days of receipt of the notice of violation to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response, and, within 5 days, request additional information needed from the FV&DT Technician. The FV&DT Technician shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of the notice of violation or within 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of a violation to the FV&DT Technician, any affected homeowners, and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services. The violation shall not be effective until the FV&DT Technician has exhausted the right to request reconsideration by the FV&DT Administrator or until the time to exercise that right has lapsed (Section 10-103.3(d)7Aiv).
- B. **Step 2: Probation.** If an FV&DT Technician fails to comply with a notice of violation within the specified timeframe or receives a second notice of violation within a three-month period, the FV&DT Administrator shall issue a notice to the FV&DT Technician and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services, placing the FV&DT Technician on probation for up to six months.
- i. While on probation, the FV&DT Technician shall be required to retake the training for both written and laboratory (Section 10-103.3(d)1Ai and Section 10-103.3(d)1Aii) and pass the required testing (Section 10-103.3(d)1Av and Section 10-103.3(d)1Avi) related to the violated regulations.
 - ii. The notice shall be in writing and include a description of the regulatory requirements and violations, the date and approximate

time of the violations, the parties affected by the violations, any corrective action the FV&DT Technician must take, any costs the FV&DT Technician must reimburse, and the timeframe for complying with all requirements of the notice of violation.

- iii. The FV&DT Technician will have 10 days of receipt of the notice of probation to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Technician. The FV&DT Technician shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of notice of probation or within 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of probation to the FV&DT Technician and any affected FV&DT Technician Company. The terms of probation shall last no more than six months and shall not be effective until the FV&DT Technician has exhausted the right to request for reconsideration by the FV&DT Administrator or until the time to exercise that right has lapsed (Section 10-103.3(d)7Biii).

- C. **Step 3: Suspension.** If an FV&DT Technician fails to fully comply with the terms of probation or receives a new notice of violation while on probation, the FV&DT Administrator shall issue a notice to the FV&DT Technician, and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services.
 - i. The notice of suspension shall be in writing and include the basis for suspension, duration of suspension, all corrective action the FV&DT Technician must complete during suspension.
 - ii. The FV&DT Technician shall have 10 days of receipt of the notice of suspension to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Technician. The FV&DT Technician shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of the notice of suspension or within 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of suspension to the FV&DT Technician and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services. The suspension shall not be effective until the FV&DT Technician has exhausted their right to appeal pursuant to Section 10-103.3(h) or until the time to exercise their right to appeal has lapsed.

- iii. Once the suspension becomes effective, the FV&DT Administrator shall prohibit the FV&DT Technician from submitting any new compliance documents (Section 10-103) or otherwise accessing the FV&DT Administrator data registry until the suspension has ended.
- D. **Step 4: Decertification.** If an FV&DT Technician fails to comply with the terms of suspension or receives a new notice of violation while suspended or while a notice of suspension is pending, the FV&DT Administrator shall issue a notice of decertification to the FV&DT Technician and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services.
- i. The notice of decertification shall be in writing and include the basis for decertification.
 - ii. The FV&DT Technician will have 10 days of receipt of the notice of decertification to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response, and, within 5 days, request additional information needed from the FV&DT Technician. The FV&DT Technician shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of the notice of decertification or within 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination on proceeding with decertification to the FV&DT Technician and any FV&DT Technician Company for which the FV&DT Technician performs field verification and diagnostic testing services. The decertification shall not be effective until the FV&DT Technician has exhausted their right to appeal pursuant to Section 10-103.3(h) or until the time to exercise their right to appeal has lapsed.
8. **FV&DT Technician Company Discipline.** If an FV&DT Technician Company violates these regulations, the FV&DT Administrator shall take the following disciplinary steps to address and correct the noncompliance. In the event of a severe violation, however, the FV&DT Administrator shall proceed immediately to the suspension or decertification step. A severe violation will be defined at a later time. The FV&DT Administrator and FV&DT Technician Company may extend, by written agreement, the time for response, reply, and final determination for each step below. At any time, the Executive Director may direct an FV&DT Administrator to investigate an FV&DT Technician Company or discipline an FV&DT Technician Company pursuant to Section 10-103.3(d)8.
- A. **Step 1: Notice of Violation.** Upon identification of one or more violations of these regulations by an FV&DT Technician Company, the FV&DT Administrator shall issue a notice of violation to the FV&DT Technician Company and any affected homeowners.

- i. The FV&DT Administrator may require the FV&DT Technician Company to take additional training or other corrective action related to the violations within a specified timeframe.
 - ii. The FV&DT Administrator may hold the FV&DT Technician Company responsible for the costs of quality assurance testing and additional training for the violations, and the costs to the property owner for the original field verification and diagnostic test and any necessary retesting because of the violations.
 - iii. The notice of violation shall be in writing and include a description of the regulatory requirements and violations, the date and approximate time of the violations, the parties affected by the violations, any corrective action the FV&DT Technician Company must take, any costs the FV&DT Technician Company must reimburse, and the timeframe for complying with all requirements of the notice of violation.
 - iv. The FV&DT Technician Company will have 10 days of receipt of the notice of violation to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Technician Company. The FV&DT Technician Company shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of the notice of violation or within 20 days of receiving a response or additional information from the FV&DT Technician Company, whichever is later, the FV&DT Administrator shall provide a final determination of a violation to the FV&DT Technician Company within 30 days. The violation shall not be effective until the FV&DT Technician Company has exhausted its right to request reconsideration by the FV&DT Administrator or until the time to exercise that right has lapsed (Section 10-103.3(d)8Aiv).
- B. **Step 2: Probation.** If an FV&DT Technician Company fails to complete all corrective actions and reimburse all costs specified for a violation within the required timeframe or receives two violations within a three-month period, the FV&DT Administrator shall issue a notice of probation to the FV&DT Technician Company.
- i. The notice of probation shall be in writing and include the basis for probation, the duration of probation, and all corrective action the FV&DT Technician Company must complete during probation.
 - ii. The FV&DT Technician Company will have 10 days of receipt of the notice of probation to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response, and, within 5 days, request additional information needed from the FV&DT Technician Company. The FV&DT Technician Company shall have 5 days to provide additional

information to the FV&DT Administrator. Within 30 days of the date of notice of probation or within 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of probation to the FV&DT Technician Company. The terms of probation shall last no more than six months and shall not be effective until the FV&DT Technician Company has exhausted its right to request reconsideration by the FV&DT Administrator or until the time to exercise that right has lapsed (Section 10-103.3(d)8Bii).

- C. **Step 3: Suspension.** If an FV&DT Technician Company fails to fully comply with the terms of probation or receives a new notice of violation while on probation, the FV&DT Administrator shall issue a notice of suspension to the FV&DT Technician Company.
- i. The notice of suspension shall be in writing and include the basis for suspension, the duration of suspension, and all corrective action the FV&DT Technician Company must complete during suspension.
 - ii. During suspension, the provider will disable access to its registry for all raters of the rater company.
 - iii. The FV&DT Technician Company will have 10 days of receiving the notice of suspension to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Technician Company. The FV&DT Technician Company shall have 5 days to provide additional information to the FV&DT Administrator. Within 30 days of the date of the notice of suspension or 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of suspension. The suspension shall not be effective until the FV&DT Technician Company has exhausted its right to appeal pursuant to Section 10-103(h) or until the time to exercise its right to appeal has lapsed.
- D. **Step 4: Decertification.** If an FV&DT Technician Company fails to comply with the terms of suspension or receives a new notice of violation while suspended or while a notice of suspension is pending, the FV&DT Administrator shall issue a notice of decertification to the FV&DT Technician Company.
- i. The notice of decertification shall be in writing and include the basis for decertification.
 - ii. The FV&DT Technician Company will have 10 days of receipt of the notice of decertification to respond in writing. If the FV&DT Administrator receives a response, the FV&DT Administrator shall acknowledge the response and, within 5 days, request additional

information needed from the FV&DT Technician Company. The FV&DT Technician Company shall have 5 days to provide additional information to the FV&DT Administrator. No earlier than 30 days of the date of the notice of suspension or 20 days of receiving a response or additional information from the FV&DT Technician, whichever is later, the FV&DT Administrator shall provide a final determination of decertification. The decertification shall not be effective until the FV&DT Technician Company has exhausted its right to appeal pursuant to (Section 10-103.3(h)) or until the time to exercise its right to appeal has lapsed.

9. Data Recording

- A. Data Recording for Field Verification and Diagnostic Tests.** Each FV&DT Administrator shall record all data collected by an FV&DT Technician for a field verification and diagnostic test, including the following data:
- i. The registered Certificate(s) of Compliance, Certificate(s) of Installation, Certificate(s) of Verification, and their associated Compliance Registration Packages.
 - ii. The energy efficiency improvements verified or tested, if applicable.
 - iii. Whether the builder chose to include the home in a sample for FV&DT as specified in the Residential Appendices.
 - iv. Whether initial FV&DT as specified in the Residential Appendices was conducted on the home.
 - v. Whether the home in a sample was selected and verified or tested as specified in the Residential Appendices.
 - vi. Whether the home in a sample was selected for resampling and verified or tested after a sampling failure was found in the sample as specified in the Residential Appendices.
 - vii. Whether the home in a sample was verified or tested and corrective action was taken after a resampling failure was found in the sample as specified in the Residential Appendices.
 - viii. Whether the homeowner declined to have verification or testing, and corrective action taken after occupancy as specified in the Residential Appendices.
- B. Data Recording for Quality Assurance Actions.**
- i. An FV&DT Administrator shall record all Quality Assurance and disciplinary actions taken against each FV&DT Technician and FV&DT Technician Company.
 - ii. The FV&DT Administrator shall maintain a database tracking system indicating the certificate status of all certified FV&DT Technicians and FV&DT Technician Companies and all Quality

Assurance or disciplinary actions against taken against each FV&DT Technician and FV&DT Technician Company.

- iii. Quality Assurance Data regarding FV&DT Technicians and FV&DT Technician Companies shall include all of the following:
 - a. Name, business address, and contact information for each certified FV&DT Technician, FV&DT Technician Company, or applicant.
 - b. Current status of certification, limited to one of the following: Application-in-Review, In-training, Certified, Under Notice of Violation, on Probation, on Suspension, Decertified, Certification Dormant (no data registration activity in one year).
 - c. **Quality Assurance Actions.** List and indicate pass or fail with explanation all of the following audits for each certified FV&DT Technician:
 - (i) Onsite Audits (Section 10-103.3(d)5Bi).
 - (ii) Shadow Audits (Section 10-103.3(d)5Bii).
 - (iii) In-Lab Audits (Section 10-103.3(d)5Biii).
 - (iv) Desk-Audits (Section 10-103.3(d)5Biv).
 - d. **Detailed Quality Assurance Action Records.** The FV&DT Administrator shall keep all field notes and associated records regarding passed, warnings issued, or failed quality assurance tests for each certified FV&DT Technician for no less than five (5) years.

10. Data Retention.

- A. An FV&DT Administrator shall maintain all information in the original format in which it collects, receives, or records the data for a minimum of ten years.
- B. FV&DT Administrators shall maintain a system that allows the Commission to readily query, search, index, process, or otherwise interact with that data stored on the FV&DT Administrator's system in a way that is not substantially limited compared to the ability of the FV&DT Administrator to query, search, index, process, or otherwise interact with that data.
- C. FV&DT Administrators may not restrict or degrade the Commission's ability to query, access, sort, or filter this information in any way.
- D. FV&DT Administrators shall maintain digital copies of all files that can be indexed and searched. It is the responsibility of FV&DT Administrators to maintain the necessary systems to support these functions, unless the Commission or Executive Director explicitly authorizes the FV&DT Administrator, in writing, to operate without this functionality or process.

- E. Nothing in this subsection shall be construed as requiring an FV&DT Administrator to process, re-package, or otherwise modify any historical information collected prior to January 1, 2026.

11. Data Reporting. FV&DT Administrators shall comply with the following annual reporting requirements:

- A. FV&DT Administrators shall maintain a database of the information specified in Section 10-103.3(d)9A and in compliance with Building Energy Efficiency Standards, Reference Appendix JA7, for the greater of: 500 buildings field verified and diagnostically tested by FV&DT Technicians certified by the respective FV&DT Administrator each year or a 10 percent random sample of buildings field verified and diagnostically tested by FV&DT Technicians certified by the respective FV&DT Administrator each year.
- B. Beginning January 1, 2027 , FV&DT Administrators shall provide this information annually in electronic form to the Commission for evaluating the effectiveness of field verification and diagnostic testing.
- C. This information shall be organized according to climate zones as defined in the Building Energy Efficiency Standards, Section 100.1(b).
- D. **FV&DT Data Reporting.** Within ninety days of the Executive Director approving a CEC-maintained electronic document repository, an FV&DT Administrator shall transmit to the Commission electronic document depository Certificate(s) of Certification, Certificate(s) of Installation, Certificate(s) of Verification documents (Section 10-103) and their associated Compliance Registration Packages that are registered and retained by a data registry in accordance with Section 10-103 and Building Energy Efficiency Standards, Appendix JA7. The FV&DT Administrator shall submit this data no less than once per calendar quarter and in a manner as directed by the Commission.
- E. **Quality Assurance Quarterly Report.** The FV&DT Administrator shall send a report each quarter to the Commission that includes all failed quality assurance audits (Section 10-103.3(d)5). The FV&DT Administrator shall comply with all of the following:
 - i. Submit a Quality Assurance Quarterly Report for each project where an audit (Section 10-103.3(d)5) was performed and failed within the calendar quarter. The Quality Assurance Quarterly Report shall be submitted no less than 60 days after the end of the calendar quarter. Each reported project shall list the contractor information, FV&DT Technician information, project address, project permit code (if available), other project identification available to help identify the project, and code violations for each failed audit (as prescribed in Section 10-103.3(d)5).

- ii. The FV&DT Administrator shall submit all Quality Assurance Quarterly Reports to the Commission in a docket prepared by the Commission.

F. Quality Assurance Annual Report.

- i. An FV&DT Administrator shall submit a Quality Assurance Annual Report to the Commission for each calendar year no later than the end of February of the following year.
- ii. The Quality Assurance Annual Report shall include all specified records within the annual timeframe.
- iii. The Quality Assurance Annual Report shall summarize all quality assurance actions taken for each FV&DT Technician certified by the FV&DT Administrator during the preceding year.
- iv. Detailed Quality Assurance Action Records (Section 10-103.3(d)9Biiid) are not required to be submitted annually to the Commission but shall be subject to Commission requests for information made pursuant to Section 10-103.3(d)12.

G. Annual Reporting Requirements Regarding FV&DT Technician Companies.

- i. Beginning in 2027, an FV&DT Administrator shall submit a FV&DT Technician Company Annual Report to the Commission by June first of each year
- ii. The data used as the basis for the FV&DT Technician Company Annual Report shall include submitted reports from all FV&DT Technician Companies (Section 10-103.3(f)2H) and all FV&DT Technicians filing as an independent (Section 10-103.3(e)2G).
- iii. The FV&DT Administrator shall ensure that the FV&DT Technician Company Annual Report includes all of the following:
 - a. the compliance status of the principal licensure requirements (Section 10-103.3(f)1B) are met for each FV&DT Technician Company and the certification status of FV&DT Technician filing as independent (Section 10-103.3(e)1A).
 - b. the number of all types of certificate status (Section 10-103.3(e)1A) for all FV&DT Technicians employed by each FV&DT Technician Company.
 - c. whether the total number of field verifications and diagnostic tests registered by each FV&DT Technician Company and FV&DT Technician filing as an independent is accurate as compared to the FV&DT Administrator data registry.
 - d. an aggregation of the total and average costs of services for each type of field verifications and diagnostic tests reported by all FV&DT Technician Companies and FV&DT Technician filing as an independent without any associated

identification. The FV&DT Administrator shall summarize the cost of services data by local jurisdiction and climate zone independently. All aggregations shall consist of at least three reports of either FV&DT Technician Company (Section 10-103.3(f)2H) or FV&DT Technician (Section 10-103.3(e)2G) filing as independent. All unaggregated results shall be included in a "other" category if consisting of at least three FV&DT Technician Companies or FV&DT Technician filing as independent. The FV&DT Administrator shall include the total number of reports for FV&DT Technician Companies and FV&DT Technicians filing as an independent that were not possible to aggregate or are otherwise not included in the report.

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 Compliance Registration Packages, and quality assurance records that an FV&DT Administrator is required to maintain pursuant to Section 10-103.3(d)9 and the Building Energy Efficiency Standards, Reference Joint Appendix JA7.
- B. Failure to provide the requested information or access to the Executive Director within 30 days of a request issued pursuant to Section 10-103.3(d)12A is a violation of these regulations unless the Executive Director specifies additional time to comply with the request. The FV&DT Administrator may request an extension up to 60 days if the Executive Director's initial request does not specify a compliance deadline, or that deadline is less than 60 days.
- C. FV&DT Administrators have the sole responsibility to ensure that their systems are capable of complying with the data request provisions of this subsection, including providing the Commission with reasonable access to any and all compliance documents, including Compliance Registration Packages, submitted within the past 10 years.

13. Data Registry Requirements. FV&DT Administrators are required to comply with all data registry requirements provided by the Building Energy Efficiency Standards, Reference Joint Appendix JA7 and Section 10-109.

14. No Approved FV&DT Administrators. If there are no certified FV&DT Administrators, the CEC may perform the FV&DT Administrator Responsibilities provided in Section 10-103.3(d) or suspend all or a portion of the FV&DT program, including (but not limited to) relevant provisions of the Building Energy Efficiency Standards found in the Residential Appendices RA1, RA2, RA3 and RA4, Nonresidential Appendix NA1 and NA2, Reference Joint Appendix JA7 and Section 10-109.

15. FV&DT Administrator Discipline. If the Executive Director becomes aware of an FV&DT Administrator's violation of these regulations, including any Conditions

of Approval, the Executive Director shall take the disciplinary steps necessary to address and correct the violation. Violations that trigger the disciplinary process include failure to comply with quality assurance requirements (Section 10-103.3(d)5), failure to investigate or discipline FV&DT Technicians and FV&DT Technician Companies (Section 10-103.3(d)7 and Section 10-103.3(d)8), failure to allow the Commission full access to the FV&DT Administrator data registry (Section 10-103.3(d)12), refusal to comply with Commission data requests (Section 10-103.3(d)12), failure to cooperate in an Commission complaint investigation (Section 10-103.3(d)12), and failure to otherwise comply with any applicable law or regulation. In the event of a severe violation, the Executive Director may proceed immediately to issue a notice of suspension for the first severe violation and to issue a notice of decertification for a second severe violation. A severe violation will be defined at a later time.

- A. **Step 1: Notice of Violation** Upon identification of one or more violations of these regulations by an FV&DT Administrator, the Executive Director shall issue a notice of violation to the FV&DT Administrator's designated contact and publicly post the notice. The Executive Director shall require the FV&DT Administrator take corrective action related to the violations within a specified timeframe. The notice of violation shall be in writing and include a description of the legal requirements and violations, any corrective action the FV&DT Administrator must take, and the timeframe for complying with all requirements of the notice of violation. The FV&DT Administrator will have 10 days of receipt of the notice of violation to respond in writing. If the Executive Director receives a response, the Executive Director shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Administrator. The FV&DT Administrator will have 5 days to provide additional information to the Executive Director. Within 30 days of the date of the notice of violation or within 20 days of receiving additional information from the FV&DT Administrator, whichever is later, the Executive Director shall provide a final determination of a violation to the FV&DT Administrator.
- B. **Step 2: Probation.** If an FV&DT Administrator fails to complete all corrective action prescribed by the Executive Director within the specified timeframe or receives a second notice of violation within a three-month period, the Executive Director shall issue a notice of probation to the FV&DT Administrator's designated contact. The Executive Director shall also publicly post the notice of probation. The notice shall be in writing, include a description of the regulatory requirements and violations, and specify the duration of probation. The FV&DT Administrator will have 10 days of receipt of the notice of probation to respond in writing. If the Executive Director receives a response, the Executive Director shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Administrator. The FV&DT Administrator will have 5 days to provide additional information to the

Executive Director. Within 30 days of the date of the notice of probation or within 20 days of receiving additional information from the FV&DT Administrator, whichever is later, the Executive Director shall provide a final determination of a probation to the FV&DT Administrator.

- C. **Step 3: Suspension.** If an FV&DT Administrator fails to complete all corrective action or receives a new notice of violation while on probation, the Executive Director shall issue a notice of suspension to the FV&DT Administrator's designated contact. The Executive Director shall also public post the notice of suspension. The notice shall be in writing, include a description of the regulatory requirements, violations, and proposed terms of suspension. The terms of suspension shall not be effective until the FV&DT Administrator has exhausted its right to appeal pursuant to Section 10-103.3(h) or until the time to exercise its right to appeal has lapsed, at which time the terms of suspension shall be deemed to have been imposed by the Commission.
- i. The FV&DT Administrator shall have 10 days of receipt of the notice of suspension to respond in writing. If the Executive Director receives a response, the Executive Director shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Administrator. The FV&DT Administrator will have 5 days to provide additional information to the Executive Director. Within 30 days of the date of the notice of suspension or within 20 days of receiving additional information from the FV&DT Administrator, whichever is later, the Executive Director shall provide a final determination of a suspension to the FV&DT Administrator
 - ii. **Terms of Suspension.** Suspension may include conditionally or unconditionally restricting access to the Report Generator by the FV&DT Administrator. The duration of suspension shall be included in the terms of suspension.
 - iii. **Amendment to Terms of Suspension.** The Executive Director may amend any term of the suspension by issuing a notice of amendment to terms of suspension to the FV&DT Administrator's Designated Contact that includes the new terms of suspension and proposed effective date. Within 30 days of the date of the notice, the FV&DT Administrator may appeal the new terms pursuant to Section 10-103.3(h) or accept the new terms. If the FV&DT Administrator does not respond to the notice, the new terms shall go into effect on the 31st day after the date of the notice.
 - iv. **180-day Report.** After 180 days of suspension, the Executive Director has 30 days to send to the FV&DT Administrator's Designated Contact and publicly post a 180-day report that includes each outstanding violation, a timeline of when notices of potential violation and notices of violation were given for each

outstanding violation, the date the probation began, the date suspension began and all terms of suspension, any amendments during the suspension, all steps the Executive Director is aware that the FV&DT Administrator has taken to remedy each violation, and any other information the Executive Director deems relevant, including the Executive Director's intentions moving forward with respect to the FV&DT Administrator.

- D. **Step 4: Rescinding Approval.** If an FV&DT Administrator fails to comply with the terms of suspension or receives a new notice of violation while suspended or while a notice of suspension is pending, the Executive Director shall issue a notice of rescinding approval to the FV&DT Administrator's designated contact. The rescinded approval shall not be effective until the FV&DT Administrator has exhausted its right to appeal pursuant to Section 10-103.3(h) or until the time to exercise its right to appeal has lapsed, at which time the rescinded approval shall be deemed to have been imposed by the Commission.
- i. The FV&DT Administrator shall have 10 days of receipt of the notice of rescinded approval to respond in writing. If the Executive Director receives a response, the Executive Director shall acknowledge the response and, within 5 days, request additional information needed from the FV&DT Administrator. The FV&DT Administrator will have 5 days to provide additional information to the Executive Director. Within 30 days of the date of the notice of rescinded approval or within 20 days of receiving additional information from the FV&DT Administrator, whichever is later, the Executive Director shall provide a final determination of a rescinded approval to the FV&DT Administrator.
- E. **Remediation** required to restore eligibility to apply to be an FV&DT Administrator. Once an FV&DT Administrator has been decertified, neither that entity nor any successor, subsidiary, or otherwise affiliated or substantially similar organization, is eligible to apply to operate as or apply to become a certified FV&DT Administrator until it has completed the following Remediation process:
- i. A decertified FV&DT Administrator may regain their eligibility to apply to become a FV&DT Administrator by submitting an Application for Remediation pursuant to Section 10-103.3(c)9 and receiving the Commission's approval.
 - ii. Once a decertified FV&DT Administrator has completed the Remediation process by receiving the Commission's approval, the decertified FV&DT Administrator becomes a remediated FV&DT Administrator eligible to submit an FV&DT Administrator Application pursuant to Section 10-103.3(c)3 according to the process set out in Section 10-110. A remediated FV&DT Administrator is only eligible for a full application pursuant to Section 10-103.3(c)3.

(e) **FV&DT Technician Certification and Responsibilities**

1. **Certification.**

- A. **Certification Process.** FV&DT Technician applicants shall apply to a Commission approved FV&DT Administrator for certification pursuant to the application process established by the FV&DT Administrator.
- B. **Minimum Qualifications.** FV&DT Technician applicants shall be at least 18 years of age or be an emancipated minor and hold a high school diploma or equivalent and have completed all training set forth in Section 10-103.3(d)1.
- C. **FV&DT Technician Agreement.** Prior to being certified, a FV&DT Technician applicant shall sign the FV&DT Technician agreement with the FV&DT Administrator, in which the FV&DT Technician shall agree, at minimum, to comply with all applicable laws and regulations, including the requirements provided in this Section 10-103.3.

2. **Required Conduct.**

- A. FV&DT Technicians shall provide field verification services in compliance with these regulations, including any regulations contained in the California Building Energy Efficiency Standards and related Reference Appendices RA1, RA2, RA3, RA4, JA7, NA1, and NA2
- B. FV&DT Technicians shall not create, record, submit, or certify untrue, inaccurate, or incomplete field verification and diagnostic test information or report field verification and diagnostic test results that were not conducted in compliance with these regulations.
- C. FV&DT Technicians shall not accept payment or other consideration in exchange for reporting a field verification and diagnostic test result not conducted and reported in compliance with these regulations.
- D. FV&DT Technicians shall comply with the conflict-of-interest prohibitions set forth in Section 10-103.3(b)1.
- E. FV&DT Technicians shall be present and personally participate in any field verification and diagnostic test or field verification activity. If a FV&DT Technician relies on employees, designees, trainees, or any other individual to assist them in performing field verification and diagnostic test activity, the FV&DT Technician shall be able to directly monitor and verify that any tests or measurements were performed properly in accordance with regulations.
- F. FV&DT Technicians shall not provide information based on assumptions, averages, or otherwise generated in any way other than by field verification and diagnostic testing performed in accordance with these regulations. Any such information is presumed to be untrue, inaccurate, and/or incomplete unless the FV&DT Technician has the written permission of the Executive Director that explains how that information is collected and why such data is not untrue, inaccurate, and/or incomplete.

G. FV&DT Technicians not employed by a FV&DT Technician Company are considered independent. Independent FV&DT Technicians shall submit annual reports no later than the end of March of each year starting in 2027 to the FV&DT Administrator that includes the information listed in Section 10-103.3(f)2Hiii and Section 10-103.3(f)2Hiv.

3. FV&DT Technician Compliance Document Registration Limits.

- A. Each FV&DT Technician may not register more than fifteen (15) compliance documents in one day (from midnight to midnight).
- B. All field verifications and diagnostic tests performed at a tested-home of a sample-group is subject to the FV&DT Technician registration limit (Section 10-103.3(e)3A) as one registered compliance document.

4. Failure to Adhere to Required Conduct. FV&DT Technicians are subject to the disciplinary action set forth in Section 10-103.3(d)7 for the failure to adhere to the required conduct and these regulations.

5. Appeal and Reconsideration of Discipline.

- A. FV&DT Technicians may seek reconsideration and review of a disciplinary action as set forth in Section 10-103.3(d)7.
- B. FV&DT Technicians may appeal a disciplinary action imposed on them as set for in Section 10-103(h).

(f) FV&DT Technician Company Certification and Responsibilities

1. Certification.

- A. **Certification Process.** FV&DT Technician Company applicants shall apply to a Commission approved FV&DT Administrator pursuant to the application process established by the FV&DT Administrator.
- B. **Minimum Qualifications.** At least one principal of the FV&DT Technician Company applicant shall hold an active FV&DT Technician certification issued by a Commission approved FV&DT Administrator or be actively pursuing certification as evidenced by enrollment in training courses.
- C. **Training.** Prior to being certified, the FV&DT Technician Company applicant shall complete all required training provided by the FV&DT Administrator.
- D. **FV&DT Technician Company Agreement.** Prior to being certified, the FV&DT Technician Company applicant shall sign an agreement with the FV&DT Administrator, in which the FV&DT Technician Company shall agree, at minimum, to comply with all applicable laws and regulations, including but not limited to the requirements provided in Section 10-103.3.

2. Required Conduct.

- A. FV&DT Technician Companies shall maintain a publicly available list of all of its FV&DT Technicians.

- B. FV&DT Technician Companies shall assign at least one FV&DT Technician to perform field verification and diagnostic services at a project that has been issued a permit to construct. Once a FV&DT Technician has been assigned to a project the FV&DT Technician Company shall not reassign or replace the original FV&DT Technician with a new FV&DT Technician unless the FV&DT Technician Company can demonstrate to the FV&DT Administrator compelling circumstances such as injury, sickness, or other inability of the original FV&DT Technician to complete the field verification and diagnostic tests.
- C. FV&DT Technician Companies may provide services outside FV&DT but shall not use FV&DT Technicians for such services.
- D. FV&DT Technician Companies shall have view-only access to the compliance documents registered by its FV&DT Technician.
- E. FV&DT Technician Companies shall not change data entered into the FV&DT Administrator data registry for any Certificates of Verification.
- F. FV&DT Technician Companies may be the "document author" for Certificates of Compliance and Certificates of Installation registered in the FV&DT Administrator data registry but may not sign as the "Responsible Person" or "Installing Technician."
- G. FV&DT Technician Companies shall use the approved data registry user interface of a data registry or an approved external digital data service for data input into the FV&DT Administrator data registry.
- H. No later than March 31 of each year, each FV&DT Technician Company shall submit to the FV&DT Administrator an annual report that includes:
 - i. FV&DT Technician Company Contact details, principals and required certificates.
 - ii. A list of all FV&DT Technicians working for the FV&DT Technician Company.
 - iii. The total number of field verifications and diagnostic tests performed by Technicians working for the FV&DT Technician Company during the prior calendar year, organized by building code jurisdiction.
 - iv. The total and average cost of services charged for each type of field verification and diagnostic test performed by Technicians working for the FV&DT Technician Company during the prior calendar year.
- I. The FV&DT Technician Company is responsible for all of its FV&DT Technicians complying with these regulations and all other applicable laws and regulations when providing field verification and diagnostic services.
- J. The FV&DT Technician Company shall support the FV&DT Technician progressive discipline requirements (Section 10-103.3(d)7) as follows:

- i. **Notice of Violation.** The FV&DT Technician Company shall ensure the FV&DT Technician complies with any corrective action and reimbursement of costs prescribed in the notice of violation within the timeframe provided in the notice of violation. The FV&DT Technician Employer shall facilitate any refund to a homeowner.
 - ii. **Probation.** The FV&DT Technician Company shall ensure the FV&DT Technician complies with any training and tests and reimbursement of costs prescribed in the notice of probation within the time provided in the notice of probation. The FV&DT Technician Company shall not assign any new work to the FV&DT Technician until probation is lifted.
 - iii. **Suspension.** The FV&DT Technician Company shall ensure the FV&DT Technician complies with the terms of suspension prescribed in the notice of suspension.
 - iv. **Decertification.** The FV&DT Technician Company shall ensure the decertified FV&DT Technician does not perform any FV&DT services.
 - K. FV&DT Technician Companies shall not provide untrue, inaccurate, or incomplete field verification and diagnostic test information or report field verification and diagnostic test results that were not conducted in compliance with these regulations.
 - L. FV&DT Technician Companies shall not accept payment or other consideration in exchange for reporting a field verification and diagnostic test result not conducted and reported in compliance with these regulations.
 - M. **Prohibition on Conflicts of Interest.** FV&DT Technician Companies shall comply with the conflict-of-interest prohibitions set forth in Section 10-103.3(b)1.
 - 3. **Failure to Adhere to Required Conduct.** FV&DT Technician Companies are subject to the disciplinary action set forth in Section 10-103.3(d)8 for the failure to adhere to the required conduct and these regulations.
 - 4. **Reconsideration of Discipline.** FV&DT Technician Companies may request reconsideration and review of a disciplinary action as set forth in Section 10-103.3(d)8.
- (g) **Prohibition from Practice and Re-Entry.** Any FV&DT Technician, FV&DT Technician Company, or FV&DT Administrator that is currently suspended, or that has been decertified by the Executive Director or Commission pursuant to these regulations, is prohibited from operating pursuant to its certification under these regulations.
- 1. **FV&DT Technicians.**
 - A. While prohibited from practice, an FV&DT Technician shall not submit field verification and diagnostic test information, including any compliance documents or Compliance Registration Packages, to an FV&DT Administrator, Data Registry, or the Commission.

- B. Any such information submitted by an FV&DT Technician who is prohibited from practicing is invalid and may not be relied on for purposes of permit compliance under the Energy Code.
 - 2. **FV&DT Technician Companies.** FV&DT Technician Companies shall not act in any manner that leads to, encourages, or aids a violation of the prohibition to practice.
 - 3. **FV&DT Administrators.**
 - A. No FV&DT Administrator shall accept or maintain field verification and diagnostic test information, including any compliance documents or Compliance Registration Packages, from an entity that is prohibited from practice at the time that information was either gathered or submitted.
 - B. Nothing in this subsection shall be interpreted as prohibiting a FV&DT Administrator from storing or relying on information submitted by a FV&DT Technician while they were in good standing.
 - 4. **Re-Entry.** The Executive Director or Commission may, for good cause, reinstate an entity's ability to practice pursuant to Section 10-103.3(c).
- (h) **Appeal to Commission.** Within 30 days of any decision or determination made by the Executive Director (Section 10-103.3(d)15) or an FV&DT Administrator (Section 10-103.3(d)7 and Section 10-103.3(d)8), an FV&DT Administrator, FV&DT Technician, or FV&DT Technician Company subject to the decision or determination ("appellant") may appeal the decision or determination to the Commission. The following procedures apply to the appeal:
- 1. The appeal shall be in writing and signed by the appellant and served on the party whose decision is the subject of appeal ("respondent") and the Commission. The appeal shall consist of a written argument, stating the grounds for modifying or reversing the decision, identifying the statutes and regulations relevant to the appeal, and stating whether an oral hearing is requested, and a copy of all relevant notices, responses, correspondence, documents, and decisions.
 - 2. Within 30 days after the date the appeal was filed, the respondent shall serve on the appellant and the Commission a written argument, stating the grounds for affirming, modifying, or reversing the decision, identifying the statutes and regulations relevant to the appeal, and stating whether an oral hearing is requested. The respondent's written argument shall also be accompanied by any relevant notices, responses, correspondences, documents, and decisions not previously provided by the appellant.
 - 3. **Commission Consideration of Appeal**
 - A. The proceedings on appeal shall be conducted in a manner consistent with Chapter 4.5 of the Government Code (Section 11400 et seq.) and Title 20 CCR sections 1200-1216.
 - B. The Commission shall review the decision or determination made pursuant to this section for substantial evidence.