

**DOCKETED**

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# CaICERTS QA Department

Comments on 2022 FV&DT OIR Proceeding



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## A MESSAGE FROM THE QUALITY ASSURANCE TEAM AT CALCERTS

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The staff at CalCERTS looks forward to working through this rulemaking with the California Energy Commission and are hopeful we can work together to improve the program. We are grateful that this conversation has begun as we have been proponents of it for many years.

Unfortunately, we have not had enough time to digest the multitude of docketed information given our current workload with the Commission on the 2022 Code Cycle launch. The items referenced in the docketed information require thoughtful and thorough review as they will impact an entire industry.

We have made an effort in commenting on Quality Assurance related items, however much of it is summarized given the short time line for comments. We hope the Commission will take into account the experience and expertise CalCERTS has in the oversight of the HERS program.

# 1 INTRODUCTION

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CalCERTS primary mission from inception has been to help the state of California reach its energy efficiency goals and protect the consumer. As part of that endeavor, the team at CalCERTS has made the development of well trained and well intentioned HERS Raters the focal point of our efforts. With these clear and specific goals, CalCERTS in collaboration with California Energy Commission, has developed and refined our Quality Assurance program for over a decade.

Because of our jointly developed Quality Assurance program, CalCERTS and Raters that work with us are widely regarded as the most technically proficient Raters in the industry. That expertise has led to integrity and completeness in the enforcement of Title 24, Part 6, of the California Energy Code.

CalCERTS has developed the most complete and substantive training and mentoring program in the industry. This training program includes robust technical training, with a live hand-on-lab component requirement where a trainee has an opportunity to learn from extremely qualified CalCERTS staff on testing procedures. In addition, CalCERTS requires trainees to pass a proctored field exam in our Northern or Southern California testing facilities.

CalCERTS views the training of HERS Raters as a holistic endeavor. The goal is constant improvement in helping Raters understand energy code and diagnostic testing procedures. This should not only occur at the onset of a Rater's career, but throughout their career. We strongly believe that the process of learning to be a technically proficient Rater is extensive and involves regular mentoring and conversations. Our entire program has been built with that in mind, which is why we have a system where Raters must progress in a series of trainings and exams before they can inspect more complex conditions.

In addition, CalCERTS maintains a unique, active Compliance Team made up of code and procedural experts. This team regularly fields phone calls and emails from HERS Raters, Building Officials, Builders, and Installers on code requirements. The purpose of maintaining this Compliance Team is to create clarity in a very complex energy code environment for all stakeholders that want it to succeed. It also creates a level of transparency that increases the quality of HERS Ratings and overall energy code enforcement. CalCERTS regularly trains AHJs (Building Departments) on energy code enforcement.

The goal at CalCERTS has never been to produce as many Raters as possible or the fastest HERS registry possible simply for the sake of speed or profits. The goal has always been producing quality Raters and a HERS registry that protects all involved stakeholders with the checks and balances needed to protect the industry.

CalCERTS welcomes this conversation on how to improve the HERS program and are grateful the CEC has opened these proceedings. We have been requesting such a proceeding for many years with the express goal of creating clarity and a level playing field in an industry where not all actors have the same forthright intentions as us.

## 2 MISCHARACTERIZATIONS OF CALCERTS' REPORTING

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CalCERTS recognizes that collaboration with the CEC spans over a decade, and includes a multitude of personnel and groups within the CEC. That collaboration likely encompasses thousands of emails, conversations and meetings. Many of these CEC staff members involved are no longer in their roles with the HERS program. Changes in staffing and management inevitably causes a loss of context and information. The CEC is made up of hardworking individuals that make great effort for the program to succeed and can't always make decisions knowing all possible history and outcomes. The following comments are made for the sake of providing context and clarity to stakeholders, and are made in the heart of partnership.

### 2.1 INVESTIGATION REPORT NUMBER 2-02 (TN# 246533)

#### Investigation Report Summary

A portion of the *Investigation Report Number 2-02, TN# 246533* states the following:

***FV&DT Provider Discipline***

- *Staff has observed HERS providers resisting to provide requested information.*

***Annual Quality Assurance Reviews.***

- *Staff has observed a lack of consistency in providers' quality assurance practices. The California Energy Commission (CEC) found "... an unrefined, informal, and seemingly improvised discipline and decertification process. It seems the process lacks features such as published written procedures and full and complete discipline-related notices. These deficiencies – as well [as] more general matters involving [HERS] Provider-Rater relations – warrant broader Commission inquiry." (see Documents Reviewed, bullet 4)*

***Provider QA Program Deficiencies***

- *The HERS regulations require a HERS provider to create and implement a quality assurance (QA) program. The regulations state "For each Rater, the Provider shall annually evaluate the greater of one rating, randomly selected or one percent of the Rater's past 12 month's total number of ratings (rounded up to the nearest whole number for each measure tested by the Rater." Providers describe their QA programs in the Provider Applications.*
  - *CalCERTS performed 1598 QA of the 6728 required evaluations in 2019.*
  - *CHEERS performed 676 of the required 4466 measures in 2019.*

#### CalCERTS Response #1

In order to provide stakeholders with context, CalCERTS would like to clarify what has been submitted to the CEC.

CalCERTS has always maintained transparency in our disciplinary procedures. For example, on 11/10/2020, CalCERTS submitted our internal Quality Assurance program manual to the Standards

Compliance Office of the CEC. The manual included 85 pages of detailed information on our Quality Assurance process that includes but is not limited to:

- Rater Certification and Signed Agreements
- CalCERTS Interdepartmental Procedures for the purpose of QA oversight.
- QA Reviewer Qualifications
- Quality Assurance Review Process
  - Scheduling
  - Blind Review Process
  - Field Review Procedures
- Internal Tracking of Rater Performance
- Auditing Tools
- QA Review Tracking
- Disposition Notice Process
- Disciplinary Process
- Complaint Response Process
- Investigation Process
- Resolution Process

The CalCERTS Quality Assurance program was developed in response to CEC inquiries and recommendations over the span of a decade as well as the original OIR proceeding. Its goal has been to provide due process while maintaining oversight of HERS Raters using the written guidelines of our manual.

In another example, in response to a request by the California Energy Commission, on 3/2/2021, CalCERTS submitted a 28-page report on our Quality Assurance history on a specific HERS Company at the request of the Energy Commission. Some of what we specify in the report is as follows:

- QA Field review history of Raters under disciplinary status employed by this Rating Company.
- History of relevant disciplinary proceedings.
- Mentoring and Training attempts by CalCERTS.
- Historical perspective of collaborative communication between the California Energy Commission and CalCERTS regarding this Rating Company.
- CalCERTS opinion of duration of a truthful and accurate HERS Rating.
- Procedural example of discipline and decertification of a Rater employed by the Rating Company. The example includes analysis of multiple QA Field reviews, Rater vs QA test results and related discrepancies, homeowner interviews, correspondence between CalCERTS and Rater, and photographs pertaining to QA Field reviews.

CalCERTS has always strived to provide the California Energy Commission with any information on Quality Assurance or Rater disciplinary matters.

In the name of transparency, CalCERTS then produced two (2) [Quality Assurance videos](#) for distribution to all stakeholders. The videos detail the Quality Assurance process so homeowners can rest assured that HERS inspections have oversight and value. The videos also provide a detailed explanation to Raters and installers of what to expect during a QA review.

## CalCERTS Response #2

Regarding the *Provider QA Program Deficiencies*, CalCERTS greatly appreciates the CEC's position in the FV&DT Pre-rulemaking Workshop that was hosted on 11/15/22. In the presentation, the CEC states that the goals as described in Title 20, Section 1673, were unachievable by HERS Providers.

As they are written, through reviewing our own Quality Assurance history, we have found that meeting the letter of the regulation would require QA Field reviews of approximately 1 in 29 rated systems. This rate is greater than the 1 in 30 required for the Third-Party Quality Control Program (TPQCP).

CalCERTS agrees that meeting the letter of the regulation is not possible in the current marketplace, or with the limited enforcement power and financial resources of a HERS Provider. However, CalCERTS is the only Provider that has repeatedly conducted QA Reviews on greater than 1% of total tested lots registered. In the last six years, the CalCERTS QA Team has conducted over 4000 *blind* QA field reviews, covering over 13,000 tested measures. These Quality Assurance reviews represent every type of HERS project conceivable and have been conducted throughout California. In addition, CalCERTS introduced a new hybrid QA approach for greater oversight of the HERS program. In the last two years, CalCERTS QA Team has conducted approximately 3000 hybrid QA reviews, covering over 10,000 tested measures.

The following is an overview of the last six year of our Quality Assurance efforts:

- CalCERTS 2016 QA Report: 1.00% of Total Lots QA'd
- CalCERTS 2017 QA Report: 1.02% of Total Lots QA'd
  - Recognize that CHEERS has no QA Program.
- CalCERTS 2018 QA Report: 1.03% of Total Lots QA'd
  - Continued requests to CEC for clarification and guidance. None provided.
- CalCERTS 2019 QA Report: 0.59% of Total Lots QA'd
  - While asking for guidance and clarification from the Commission, CalCERTS began to adjust to a market supported by the Commission where an approved HERS Provider functioned without a QA program and offered \$0 certificate fees. A significant portion of certificate fees subsidizes Quality Assurance. CalCERTS was forced to reduce QA volume but continued significant efforts in QA oversight.
  - At this point, the majority of remaining CalCERTS Raters had exemplary Field QA histories and the majority of problematic Raters had moved to other HERS Providers. Documentation was provided to the Commission that support these statements.
- CalCERTS 2020 QA Report: 2.54% of Total Lots QA'd
  - Global pandemic. CalCERTS begins hybrid QA approach for greater oversight.
- CalCERTS 2021 QA Report: 2.78% of Total Lots QA'd

At all times, CalCERTS has provided detailed annual QA reports to the California Energy Commission regarding these efforts. Without any regulations or specifications, CalCERTS submitted robust and thorough annual Quality Assurance reports to the Commission.



## 2.2 INVESTIGATION REPORT NUMBER 2-05 (TN# 246534)

### Investigation Report Summary

A portion of the *Investigation Report Number 2-05, TN# 246534* states the following:

#### **Findings of Fact:**

- *HERS Annual Reports submitted to the CEC from providers CalCERTS and CHEERS are discussed below.*
- *CalCERTS*
  - *The CalCERTS 2019 and 2020 annual reports each consisted of a single PDF file.*
  - *Neither the 2019 nor the 2020 reports contained the required information on a random sample of tested homes.*
  - *The reports presented information on the quality assurance (QA) processes and the number of QA conducted.*
  - *The CalCERTS 2021 annual report submission had a PDF file containing a rater registry and a “CalCERTS, Inc. 2021 Title 20, Section 1673(f) Report.”*
  - *The CalCERTS 2019, 2020, and 2021 QA data on unrated or untested installations or buildings were mixed in the same table as the QA evaluations on raters.*
  - *The CalCERTS 2019, 2020, and 2021 annual reports contained a “complaint table” with information on the complaints and actions taken. These complaints included information such as location, and time to resolve the complaint.*
  - *CalCERTS did not indicate any disciplinary actions against any rater as a result of complaints or standard QA investigations.*

### CalCERTS Response

In order to provide stakeholders with context, CalCERTS would like to clarify what has been submitted to the CEC. CalCERTS provides the California Energy Commission with annual Quality Assurance reports that include:

- Raters QA'd vs Raters Active.
- Number of QA Reviews completed.
- Number of dispositions sent to Rater along with how many HERS measures were reviewed, separated by measure.
- Summary of all complaints received, that include involved parties, summary of complaint, action taken that includes disciplinary action.
- Disciplinary actions on Raters as a result of complaints or standard QA Field Reviews that include:
  - Number of Raters on +2 and 2% Disciplinary watch.
  - Suspensions and Decertifications
- Quality Assurance Log that contains:
  - Scheduling attempts that include project identifying information

- HERS measures information
- Raters of record
- Installers/Builder of record
- Rating Company of record
- QA Reviewer of record
- Discrepancies found if any, and discipline.

These “single PDF file” QA reports consisted of 52 pages in 2019, 39 pages in 2020, 89 pages in 2021.

CalCERTS makes a great effort at mentoring and helping Raters meet the challenges of Energy Code enforcement, along with constant and progressive training. Disciplinary proceedings are initiated when mentoring and training have failed. CalCERTS affirms that the primary goal of our Quality Assurance program is to train and mentor well intentioned Raters, and to locate and discipline Raters not acting in the best interest of homeowners and the HERS Rating community as a whole. The CalCERTS registry clearly displays what Raters are on disciplinary status, as required in Title 20.

CalCERTS also notifies the California Energy Commission and other HERS Providers, of Raters that have been placed on 2%, are suspended or decertified. As an example, in our 2020 QA Annual Report, we note three decertifications were issued based on repeated deficiencies found in QA field reviews, and because mentoring did not produce corrective behavior. As a result, the Commission’s reliance on Staff Report Number 2-05 (TN#246534) for this rulemaking is not supported. The Staff report does not reflect the information available from CalCERTS, a HERS Provider. Rather, the Staff Report should be revised to discuss *discrepancies with reporting* rather than inaccurate generalization about available information from HERS Providers.

### **2.3 INVESTIGATION REPORT NUMBER 1-01 (TN# 246532)**

CalCERTS would like to comment that this investigation was on a HERS Rater that registered the project with another HERS Provider. CalCERTS had no knowledge or involvement.

### **2.4 INVESTIGATION REPORT NUMBER 1-02 (TN# 246539)**

CalCERTS would like to comment that the Rating Company in question was under disciplinary review by CalCERTS prior to ceasing all communication and registration at CalCERTS. This HERS Rating company had ceased its relationship with CalCERTS years before the investigation. The Rating Company in question, operated under a different HERS Provider during the investigation.

### **2.5 INVESTIGATION REPORT NUMBER 2-06 (TN# 246535)**

CalCERTS would like to comment that this investigation was on registrations under a different HERS Provider.

### 3 EFFECTIVENESS OF COMPLAINT RESPONSE REQUIREMENT SUCCESS OF HERS PROGRAM UNDER CALCERTS

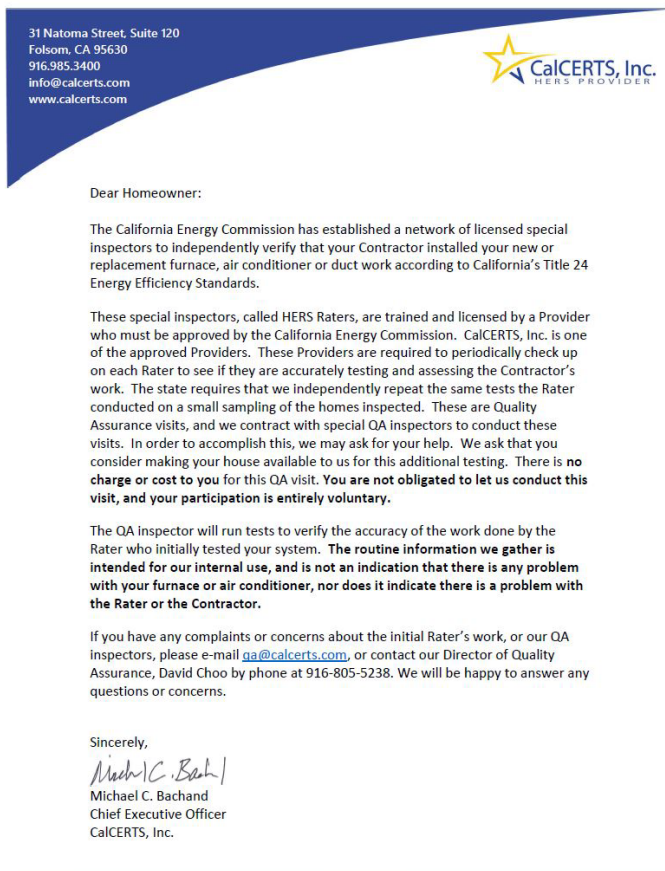
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CalCERTS has a well-developed Complaint Response program. We provide multiple avenues for stakeholders, which includes homeowners, to file a complaint on a HERS Rater or Rating Company registering certificates with CalCERTS.

As part of CalCERTS HERS Raters candidate training, and in the *Quality Assurance Policy Agreement*, it states that as part of Complaint Response:

“Raters must provide the Homeowner on Alterations, and the Superintendent, Builder (or builder’s representative) or Homeowner on New Construction, with a standardized written notice, notifying them they can file a complaint with CalCERTS related to the Rater’s ratings and/or field verification and diagnostic testing services.”

An example of the standardized letter CalCERTS Raters provide homeowner is as follows:



Since its inception, CalCERTS has made considerable effort in the development of our complaint response system that includes investigations and pre-emptive Quality Assurance field reviews. As previously mentioned, in the last six years, CalCERTS has conducted over 4000 *blind* QA field reviews,

covering over 13,000 tested measures, along with approximately 3000 hybrid QA reviews, covering over 10,000 tested measures.

In that time, we have logged a total of 144 complaints. The complaint summaries and action taken by CalCERTS have been provided to the California Energy Commission on an annual basis. Of these, 58 were not legitimate or related to HERS, 33 were Rater complaints on other Raters, and 13 could not be tracked as they were related to HERS Ratings at another Provider.

Of the 144 complaints during the span of six years, 20 were legitimate homeowner complaints on HERS Raters. These legitimate complaints regularly resulted in investigations to determine the responsibility of the HERS Rater. When CalCERTS QA team found significant discrepancies in Rater to QA results, or any type of fraudulent behavior, the resulting discipline ranged from additional QA scrutiny, to suspension, remedial training at the Rater's expense, or decertification as a HERS Rater.

These 20 complaints, when compared to the overall volume of HERS Ratings they are represented in, amount to ratio of one complaint in greater than 23,000 HERS Ratings. As a percentage, they represent **0.004%** of HERS Ratings.

Some complaints from homeowners are of multiple CalCERTS HERS Raters refusing to provide certifications that resulted in a delay of closing their permits.

CalCERTS has found great success in administering the HERS Program, training HERS Raters, and maintaining Quality Assurance oversight of CalCERTS HERS Raters. We maintain that our Quality Assurance program is proven to be successful, and the limitation in industry wide HERS oversight is the result of unscrupulous Raters working with other HERS Providers that lack the robust quality control program we have.

## **4 CALCERTS QUALITY ASSURANCE COMMENTS ON CEC DRAFT STAFF REPORT**

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### **CalCERTS Quality Assurance Comments on 2022 Field Verification and Diagnostic Testing OIR Proceeding, TN # 246542**

#### **4.1 ALIGN THE FV&DT PROGRAM WITH ENERGY CODE REQUIREMENTS**

##### **CalCERTS Quality Assurance Team Comments:**

We do not agree with the CEC proposal to change HERS Rater designation to FV&DT (Field Verification & Diagnostic Testing).

Changing nomenclature that has been in use nearly two decades will confuse stakeholders. HERS Rater is a commonly known and used term by AHJs, builders, installers, and homeowners.

Whole House Raters, also known as HERS II Raters, only operate in a very limited capacity. In most cases, stakeholders are not aware that such a role exists. The few stakeholders that are aware of the HERS II designation, readily understand the difference.

In California, a HERS Rater is synonymous to a Title 24 Compliance Rater. Changing the nomenclature does not serve anyone.

Further, the language in Title 20 is specifically used by Providers and the CEC. Other stakeholders have little interest in reading the original Title 20, Section 1673 regulations, and are far removed from the need to understand the difference between a HERS I Title 24 Compliance Rater, and a HERS II Whole House Rater.

## 4.2 ADD PROVISIONS FOR RATER COMPANIES

### 4.2.1 Comment #1

#### Draft Staff Report Summary

*Explains that 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.*

#### CalCERTS Quality Assurance Team Comments:

We agree that a Rater Company should be responsible for ensuring its Raters comply with appropriate regulations. By regulating Rating Companies and holding them to similar standards as Raters:

- Internal QA/QC would be established, to protect the interests of the Rater Company.
- Rater companies will be detracted from the practice of using Raters as scapegoats.
- Will improve the recording of accurate data under the certifying Rater.

### 4.2.2 Comment #2

#### Draft Staff Report Summary

*Explains that 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.*

#### CalCERTS Quality Assurance Team Comments:

We have received numerous complaints by Raters/Rating companies of being replaced by another Rater/Rating company by the installer/builder with the alleged goal of a more favorable rating or possibly less scrutiny. CalCERTS Quality Assurance team does not believe the replacement of a HERS Rater on a project to another within a Rater company will have an impact on stakeholders.

We also note that many New Construction projects have multiple HERS Raters on record, certifying different aspects of Title 24 HERS regulations (Ex. Rater A certifies HVAC, Rater B certifies IAQ, Rater C certifies QII). Many HERS inspections on different HERS measures occur at different stages of construction.

The primary issue in project transfers between Raters of other Rating Companies. When a Rater in a Rating company issues corrections on a project (HERS measure fails inspection), allowing the transfer of the project to another Rating company or Provider significantly reduces energy code oversight.

Currently, this is significantly challenging for the following reasons:

- Alterations Projects: A new Rating company can simply register a new project. There currently is no limitation or mechanism to stop this. Without limitations, the rating company that issued a correction will not be able to return to a project for confirmation of correction.
- New Construction Projects: A new Rating company can simply register a new project. If the local AHJ understands CEC registration numbers and requires that registration number stay identical to those on the approved plans, it will help curtail the registration of a replacement project.
- Provider to Provider: If a Provider could limit Rating Company to Rating Company transfers, there would be no limitation to registering the project with another HERS Provider.

#### 4.2.3 Comment #3

##### **Draft Staff Report Summary**

*Explains a Rater Company could provide services outside FV&DT but would not be able to use Raters for such services.*

##### **CalCERTS Quality Assurance Team Comments:**

We recommend language be specific with what limitations the CEC is proposing. HERS Raters currently provide services outside of Title 24 HERS Ratings or permit services. HERS Rater can also currently provide services such as ENERGY STAR certificates, HERS H2O, Moisture Testing, California Whole House scores, etc. CalCERTS Quality Assurance team does not believe any of these additional services result in conflicts of interest that can be harmful to stakeholders. HERS Providers must be able to charge certificate fees for program outside of field verification and diagnostic testing.

#### 4.2.4 Comment #4

##### **Draft Staff Report Summary**

*Explains 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.*

**CalCERTS Quality Assurance Team Comments:**

We believe that if Rating Companies are held to similar disciplinary standards as Raters, this requirement would not be necessary. By allowing the Rating Company to change data in compliance documentation, it could significantly expedite document processing and reduce overall costs.

**4.3 CEC-PROVIDER PROGRESSIVE DISCIPLINE**

**Draft Staff Report Summary**

*Proposes 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.*

**CalCERTS Quality Assurance Team Comments:**

Our position is that data requests should be reasonable and for the purpose of Quality Assurance for the overall success of the HERS program. The primary purpose of a HERS Provider is for Quality Assurance, Training, and to serve as a repository for certificates. As private organizations with limited resources, devoting our IT or Quality Assurance staff for any type of data analytics or fulfilling data requests outside of the aforementioned scope can significantly impact the day-to-day operations and operation costs of a HERS Provider.

**4.4 PROVIDER-RATER PROGRESSIVE DISCIPLINE**

**4.4.1 Comment #1**

**Draft Staff Report Summary**

*Proposes that the HERS 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.*

**CalCERTS Quality Assurance Team Comments:**

In addition to the CEC proposal, we recommend the list of Raters with failures or violations be hosted by the CEC. That its location would be common knowledge for AHJs and readily accessible by the public.

**4.4.2 Comment #2**

**Draft Staff Report proposes the following:**

*“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. 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.”*

**CalCERTS Quality Assurance Team Comments:**

We recommend that the current “registered compliance documents that can be submitted by a single rater to a single data registry over a specified period” limitations proposed in this draft language be carefully considered.

Some HERS measures, and the corresponding compliance documents require more effort and time than others. A blanket limitation will reduce the ability of legitimate Raters to service the industry and will increase costs to the public considerably.

**4.4.3 Comment #3**

**Draft Staff Report Summary**

*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.*

**CalCERTS Quality Assurance Team Comments:**

We agree that immediate action in the event of severe violation should be explored. We recommend the CEC provide clear guidelines on why and how long a suspension occurs in a manner that provides due process for the HERS Rater.

**4.5 ADD NEW WAYS FOR PROVIDERS TO CONDUCT QUALITY ASSURANCE**

**4.5.1 Comment #1**

CalCERTS has a long history of conducting 1%, random, blind QA field reviews on all ratings registered with us. We have conducted QA field reviews on every type of conceivable HERS project. Over the years, we’ve continually tailored our approach to create the most effective means of creating a QA program that can accurately represent whether there are any actual discrepancies in a HERS Rater’s recorded results. This program continues to evolve.



The success of CalCERTS QA program is based on the experience garnered from thousands of QA field reviews over multiple code cycles. In addition, we have conducted thousands of homeowner and superintendent interviews, and have a multitude of mentoring relationships with HERS Raters.

We've employed QA Reviewers with significant experience in relevant fields from Mechanical Engineering, Architectural Drafting, General Contracting, C-20 HVAC Contracting, Air Balancing to name a few. In addition, the current manager of the QA Team has personally conducted thousands of HERS verifications as a HERS Rater and thousands as a QA Reviewer. This combined experience places CalCERTS in a unique position to understand what QA processes work. It has also given us a clear understanding of what parts of the program can be gamed.

It is our position that the blind Field QA is the gold standard of verifying if a Rater is conducting testing truthfully and accurately. With this in mind, the following are our comments on the description of proposed changes to the QA regulations.

#### 4.5.2 Comment #2

##### **Draft Staff Report Summary**

*Proposal for Field QA to only be performed at the invitation of the homeowner, through the complaint or other processes.*

##### **CalCERTS Quality Assurance Team Comments:**

We greatly appreciate Joe Loyer's comments that Title 20, Section 1673 QA requirements, as they are written, are unachievable by HERS Providers. Our experience shows that in order to achieve the currently as written requirements, approximately 1 in 29 HVAC systems would need to be QA'd.

We are concerned with the proposal to only conduct Field QA when invited by the homeowner, or through a complaint/other process.

Our experience in dealing with bad actors shows that the best method of understanding whether a HERS Rater is conducting truthful and accurate ratings is through the **blind Field QA**. Because the selection is at random, and the HERS Rater can't anticipate what project will be reviewed, it creates a significant barrier to gaming the system.

However, over the years we've found many Raters that have exemplary QA histories. Some have been Field QA'd dozens of times because they also have significant HERS volume. Conducting Field QA on these Raters is relatively easy but very expensive. Simply conducting additional QAs on these exemplary Raters for the sake of meeting an arbitrary percentage may not be as beneficial to the industry. Instead, CalCERTS recommends that once a Rater has met a specific threshold where they have proven continually that they are conducting truthful and accurate HERS Ratings, that their QA oversight requirement be reduced. This would allow HERS Providers to focus their resources on Raters that have had questionable reviews.

Staffing limitations, along with scheduling difficulties, and the sheer geographic reach a HERS Provider must have in CA is significant. By focusing our efforts on conducting Field QA reviews on "bad actors", and having a CEC established method of due process, it would greatly reduce the number of "bad actors" in the industry.

#### 4.5.3 Comment #3

##### Draft Staff Report Summary

*“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.*

##### CalCERTS Quality Assurance Team Comments:

CalCERTS believes “Shadow audits” have their place and can serve as an excellent mentoring tool. CalCERTS has generally used this process after HERS Raters have shown discrepancies in Field QA results and has served as a tool for teaching but also helps to understand if a Rater has any bad intent.

Requiring “Shadow audits” for every Rater on an annual basis can be as challenging as conducting the original QA requirements in Title 20, Section 1673. A HERS Provider would require significant staff and geographic reach to coordinate such efforts. The cost of a shadow audit to both Rater, Provider and ultimately stakeholders will be higher than a standard Field QA Review. What of Raters that only conduct a few ratings a year? Will the Provider or Rater be disciplined when schedules don’t align?

Shadow Audits help educate Raters but they will likely do little to remove or identify bad actors. In our experience, bad actors are often capable of conducting truthful and accurate HERS Ratings, but choose not to. Shadow audits should be considered under training, and not mandated as Quality Assurance.

#### 4.5.4 Comment #4

We are also concerned with this language from the Draft Staff Report:

*“Developers or contractors may not refuse a shadow auditor if sampling is being used.”*

The repercussions of holding up a construction project are varied and significant. The coordination that must occur between builders, superintendents, other trades, HERS Raters, QA Reviewers are significant. This specific requirement may increase the likelihood of inaccurate or untruthful ratings.

#### 4.5.5 Comment #5

##### Draft Staff Report Summary

*“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 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.*

##### CalCERTS Quality Assurance Team Comments:

We await comments from the Rating community on their thoughts of the efficacy of this proposed alternative.

We also request clarification if a Rater must perform this exam annually with each Provider they operate under.

#### 4.5.6 Comment #6

##### **Draft Staff Report Summary**

*“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.*

##### **CalCERTS Quality Assurance Team Comments:**

Desk Audits can be very useful in determining if truthful and accurate ratings are being conducted. CalCERTS already conducts these types of audits during investigations. Making desk audits a requirement will improve the quality of recorded data, but if not followed up by Field QA oversight, may simply represent fabricated results.

#### 4.5.7 Comment #7

##### **Draft Staff Report**

*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.*

##### **CalCERTS Quality Assurance Team Comments:**

We repeat that the repercussions of holding up a construction project are varied and significant. The coordination that must occur between builders, superintendents, other trades, the HERS Rater, QA

Reviewer are significant. This specific requirement may increase the likelihood of inaccurate or untruthful ratings.

A Rater can make every effort to require the builder to allow a QA inspection access, but without AHJ support, may be ineffective.

## 5 EXPAND CONFLICT OF INTEREST PROHIBITIONS

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### **CalCERTS Quality Assurance Team Comments:**

We await comments from the Rating community.

## 6 MODIFY REQUIREMENTS FOR RATER TRAINING, TESTING, AND OVERSIGHT

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### **CalCERTS Quality Assurance Team Comments:**

We recommend that minimum training requirements be clearly outlined by the CEC, and look forward to further discussions. Our history has shown that a considerable number of Raters with other Providers, fail examinations administered through CalCERTS. These are the same examinations that Raters trained through CalCERTS must pass in order to be certified as a Rater.

In addition, the QA team, upon conducting Field QA Reviews of these Raters finds a significant lack of understanding of basic HERS procedures. Our goal is to teach and mentor in these circumstances. The end result is most often that the Rater ceases their relationship with CalCERTS in favor of a different Provider with less oversight.

## 7 REMOVE THE DESIGNATION OF RATERS AS SPECIAL INSPECTORS

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### **CalCERTS Quality Assurance Team Comments:**

The designation of “special inspector” was created for HERS Raters to support building inspectors and AHJs. The designation was created to provide HERS Raters authority that the name implies.

Much of the building community and AHJs operate with the understanding that these special inspectors have the authority to conduct HERS ratings. We are concerned that these “special inspectors”, instead of being viewed as authorities in enforcing energy code, will be relegated as another construction trade and lose the ability to effectively enforce energy code.

## 8 CHAPTER 5: ALTERNATIVES CONSIDERED

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### **CalCERTS Quality Assurance Team Comments:**

Our position is that many of the problems in the HERS industry are the result of HERS Providers being held to different Quality Assurance standards. It is well known in the industry that there is a significant difference in HERS Provider Quality Assurance programs. Many of these differences are touted in other HERS Provider marketing attempts to gather market share. This has encouraged many Raters and Rating Companies to choose their Provider based on how much oversight of their work would be conducted. CalCERTS has always maintained a line of integrity for the sake of the HERS program and stakeholders.

We strongly recommend that all HERS Providers be held to the same standards in all accounts for the future success of the HERS industry and the protection of stakeholders.