

DOCKETED

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CalCERTS Preliminary Comments on 22-HERS-02

CalCERTS, Inc. (CalCERTS) submits the following preliminary comments in response to 22-HERS-02. The Draft Staff Report supporting 22-HERS-02 was filed on 10/26/2022, with a comment period deadline of 12/16/2022. (Notice TN#246827) Given the pending 2022 Code Cycle Adoption and Approval, and related issues, CalCERTS has not been able to review the 22-HERS-02 docket and supporting documents in full. (Draft Staff Report TN#246542). The comments provided below are offered as preliminary feedback to help guide a fruitful rulemaking. Comments have been numbered for ease of reference for future submissions and follow comments submitted on December 2, 2022, under 22-BSTD-03 (TN# 247893)

1. The Commission has proposed a major rulemaking to change the operating rules for CalCERTS, Inc. and all other potential and approved HERS Providers. In the rulemaking the Commission has proposed rules that will impact all businesses working in HERS, to include HERS Raters, HERS Rating Companies, municipalities, building departments, utilities, and California's ratepayers relying on grid stability. CalCERTS looks forward to working with the Commission to help complete the necessary assessments, reports, and economic impact studies required to support the proposed regulations. In total the Commission has proposed more than forty pages of brand-new regulations and fifteen pages of redline edits to the HERS Regulations. There is a lot of work to do in the timeframe provided by Commission staff.
2. CalCERTS currently has approximately 1,900 active Rating Companies registering compliance documents, with an additional six hundred fifty-seven inactive companies registered. The Commission will need to assess the impacts on these small businesses and their associated vendors, such as energy analysts, equipment suppliers, employees and clients. (Gov. Code §11346.2.) It is anticipated that the proposed rules as drafted will

eliminate many small sized Rating Companies. The consolidation of Rating Companies to exclusively large firms may not have the consumer protection impacts intended by this rulemaking. The Commission will also need to assess the impact on authorities having jurisdiction (AHJ) and municipalities.

- How do the proposed changes impact small business?
 - How do the proposed changes favor larger HERS Rating Companies to the detriment of smaller companies?
 - How will a reduction of permits and FV&DT inspections impact AHJs?
 - How will traditionally underserved communities and hard to reach geographic locations be impacted given the proposed regulations?
3. The Commission’s Staff Reports in support of the 22-HERS-02 the 22-BSTD-03 rulemakings cite to the origins and amendments to 20 CCR 1670 et seq, otherwise referred to as the HERS Regulations. On November 15, 2022, CalCERTS requested access to the HERS Regulations rulemaking file referenced by the Commission. To date, the Commission has been unable to locate the file. On December 5, 2022, Tanner Kelsey from the Commission indicated the file can’t be found and will not be produced. We look forward to working with the Public Advisor’s Office to get access to the HERS Regulations rulemaking files so we can better assist with this rulemaking process.
 4. CalCERTS looks forward to better understanding some of the fundamental shifts in the proposed rulemaking to 20 CCR 1670 et seq. The Commission appears to be rebranding the HERS Program as a consumer protection program. The proposed changes transition the focus from enforcement of the energy code and energy savings, to a focus on homeowner protection. With these changes the Commission will need to investigate the fiscal and economic impacts, in addition to impacts on energy. The origins of the HERS Program were to help assess residential energy use and energy savings.

It is likely by shifting the responsibility of HERS inspections to homeowners, participation in field verification and diagnostic testing for alteration change-outs will significantly decline which in turn will impact California’s energy grid. CalCERTS will work with the Commission to bring to the rulemaking stakeholders that can document and demonstrate the important work of HERS Raters to protect the energy savings within the building code. This analysis appears to be missing from the reports in support of the rulemaking.

HERS Raters are the **only** inspectors ensuring that homeowners and tenants are not air-conditioning their attics or heating uninsulated spaces. These inspections are especially important during a time when California is faced with rolling black-outs during peak energy demands and when energy costs have skyrocketed. There are also significant health and safety components to these inspections in addition to energy savings.

HERS Provider, Raters, and Rating Companies, must do a better job of promoting their work as essential to effective execution of the Building Energy Efficiency Standards. The Staff Reports in support of the rulemakings do not appear to adequately address the benefits of the HERS Program to energy savings.

In the proposed rulemaking the following questions should be explored:

- What impact will the proposed rules have on FV&DT inspections for HVAC change-outs? If there is a decline in homeowners seeking inspections, what impact will this have on California’s projected energy savings from the Building Energy Efficiency Standards?
 - What is the estimated reduction of HERS inspections if homeowners are responsible for purchasing the inspections directly from HERS Raters? How is this shift supposed to protect homeowners? How do the proposals in application reduce the conflicts of interest identified? Does the Commission intend to prohibit HVAC installers from recommending HERS Raters? Homeowners will likely seek referrals from their HVAC installers if they choose to complete a HERS inspection. HVAC installers will refer preferred HERS Raters. How does the proposed rule in application provide protection?
 - What type of outreach and education will be conducted to help homeowners feel empowered and inclined to purchase HERS inspections? How does the Commission plan to support enforcement of the energy code if homeowners do not participate in HERS inspections?
 - Is the Commission working with the State’s Contractor State Licensing Board to help ensure HVAC installers comply with T-24? What is the CSLB’s discipline protocols for HVAC installers?
5. CalCERTS is in support of a HERS Program that is focused on California’s energy goals that is also protective of consumers. The Commission’s 40+ pages of new regulations take an “everything including the kitchen-sink” approach. CalCERTS would like to help the Commission adopt only the regulations that are certain to improve the program. More requirements do not necessarily make the program better and can have the opposite result. Only proven methods of education, training and quality assurance should be adopted.

CalCERTS would like to propose that a stringent enforceable Quality Assurance (QA) program offers all the consumer protection objectives identified without substantially adding new costs to the HERS program or unfairly prejudicing small businesses. If HERS Providers are held accountable for their Raters, the HERS program works. Blind field inspections of registered FV&DT have proven effective at identifying and decertifying bad actors. This is an industry standard and has led to the decertification of bad actors.

There is no evidence that shadow audits will identify and eliminate bad actors from the marketplace. It is highly unlikely that a Rater that chooses to not perform time consuming or cumbersome verifications, would omit those verifications during a shadow audit. Rather, bad actors could use shadow audits to bolster their QA record. Shadow audits will simply add substantial costs to the HERS Program without a QA benefit. If there is research or evidence that shadow audits are effective for QA, the Commission should share it as part of this rulemaking. Shadow audits are excellent for mentoring and training and could be considered as a training or mentoring requirement.

Data audits are effective and cost-effective at monitoring established Raters with proven histories of accurate, truthful and complete ratings. CalCERTS has provided the Commission with information and resources to show the efficacy of data audits. CalCERTS looks forward to data audits being formally recognized as QA.

With an effective and enforceable QA program, the Commission does not need to adopt the new conflict of interest prohibitions that only superficially address perceived conflicts and that hurt small Rating Companies. An effective QA program where HERS Providers are held accountable, can identify and eliminate bad actors that harm the program.

Note: With this rulemaking the Commission will need to carefully define newly proposed terms under conflicts of interest. For example, the term “other services related” triggers fiscal and economic analysis. Would HERS Raters be able to provide verifications for EPA programs or other above code programs and rebates not regulated by the Commission?

6. The Commission should be cautious of equating passing or failing a QA audit with a system passing FV&DT. QA inspections are not, and should not, be conducted to verify whether or not a system is compliant with the energy code. QA audits are conducted to determine whether a HERS Rater performed their field verification and diagnostic testing to the code of conduct established in the regulations and by agreement. Any regulations changing a HERS Provider’s liability by forcing them to conduct inspections for the purpose of compliance is a

major change, subject to economic analysis. Questions that should be investigated with this rulemaking:

- Are the homeowner complaints identified by the Commission in the Staff Reports enough to support a major rulemaking triggering the necessary requirements under the law? Would these complaints better warrant amendments to the existing regulations placing less of a burden on the Commission under the rulemaking requirements?
 - What is the percentage of homeowner complaints relative to HERS inspections?
 - What is the percentage of homeowner complaints relative to HVAC installations?
 - How often are homeowners seeking quality assurance documentation from HERS Raters and HERS Providers to commence legal action against installers? What new liability is being created by the Commission’s proposed rules to “remedy” failed QA inspections?
 - What percentage of failed QAs are unrelated to compliance with the code? What percentage of failed QAs are associated with system that pass compliance measures but are the result of untruthful ratings? For example, Raters that did not conduct time consuming inspections, Rater enters false data for system that meets T-24 requirements, FV&DT conducted by unauthorized representatives, etc.
 - What does a remedy for a failed QA entail? How does implied liability impact the costs of program administration?
7. With this rulemaking, CalCERTS will work with the Commission to help identify reasonable training program requirements and restrictions. It would be helpful for the Commission to identify and define how the new requirements were decided. Whereas CalCERTS is in support of clear and meaningful rules; we need to understand the basis of the new regulations. What industry standards are being referenced? How are the new costs and mandates being supported? The Commission has gone beyond providing clarification to the training requirements and has introduced substantial new requirements. The Commission has not yet identified the basis for the new costs and requirements, other than wanting to provide clarity to the training requirements.
- Are the new requirements mirroring other industry standards, approved ANSI standards, accepted adult learning principles? Is the Commission mirroring other trade organization’s training programs? If so, which ones?
 - What are the estimated costs associated with the new training mandates? Is the Commission mirroring requirements for building officials, HVAC contractors, special inspectors, technical trades? Can the Commission extrapolate from similar industries the reasonableness of the new costs?

CalCERTS is very proud of its training program. It is one of the ways we have differentiated ourselves in the marketplace. We have created our own requirements that have been vetted against industry standards, such as ANSI, IREC and California's standards under the Bureau for Private Postsecondary Education. Being able to create and amend our program is important. With this rulemaking the Commission is imposing new mandates that should be carefully considered. For example, the proposed the Recertification and Challenge Exam provisions are especially onerous and costly, and possibly impossible. If these rules were in place for the 2022 Code Cycle, CalCERTS would need training facilities to conduct hands-on exams for all existing certified HERS Raters between December 15, 2022 and January 1, 2023. Certified HERS Raters would need to travel and miss work to take practical exams for work they are already certified and trained to conduct. These exams would be required at each code cycle, regardless of whether new verifications or tests are added to the code. CalCERTS is unaware of any industry standard that imposes similar practical examination requirement on a trained and certified workforce. A solution would be for the Commission to retain authority over training, and require HERS Providers to propose reasonable update and challenge exam protocols.

8. CalCERTS welcomes expansion of the HERS Program to include a broader scope of inspections and verifications needed to help achieve California's energy goals. Growth in the marketplace for HERS Raters and HERS Rating Companies would help all stakeholders work towards improved and effective building science. Through this rulemaking it will be helpful to hear from CALBO and others to document the expertise, training and qualifications needed to inspect T-24 compliance. With the proposed regulations the Commission has included a wide range of concepts outside of the FV&DT to the training requirements, such as onsite renewable generation, hard-wired systems, construction quality assurance, house and system concept, and energy efficiency effects on buildings. It would be helpful for the Commission to clarify the intention of these requirements and if they intend these requirements to indicate expansion of the HERS Program. For example, these requirements make sense if the Commission anticipates HERS Raters helping Building Officials inspect solar installations.

9. CalCERTS would like to offer its expertise to assist the Commission in evaluating its proposal to limit an individual HERS Rater's ability to work. The Commission must carefully assess limits being proposed in regulations that would infringe on a Rater's rights to work and to sustain an existing viable business. CalCERTS can help the Commission better understand the time and resources needed for the various field verifications and diagnostic

testing. For example, the time to complete a visual inspection is significantly different than the time needed to pressurize a home for a verification. Currently the Commission has proposed a limit of 15 compliance documents in one day per HERS Rater. This limit is arbitrary. A HERS Rater could feasibly complete 15 IAQ inspections within a couple of hours if within the same subdivision. Quantitative limits must be supported by qualitative analysis. CalCERTS' subject matter experts are available to help with this analysis.

Sincerely,

The CalCERTS Operations Team



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