DOCKETED	
Docket Number:	22-BSTD-03
Project Title:	2022 Field Verification and Diagnostic Testing OIR Proceeding
TN #:	250651
Document Title:	CalCERTS General Comments on Revised Staff Report
Description:	N/A
Filer:	Jennifer Brazell
Organization:	CalCERTS, Inc.
Submitter Role:	Other Interested Person
Submission Date:	6/16/2023 2:58:27 PM
Docketed Date:	6/16/2023

June 16, 2023

Via CEC Docket 22-BSTD-03

Mr. Drew Bohan
Executive Director
California Energy Commission
1516 Ninth Street, MS-39
Sacramento, CA 95814
Drew.bohan@energy.ca.gov

CalCERTS Preliminary Comments on Revised Draft Staff Report

CalCERTS, Inc. (CalCERTS) submits the following summary of comments in response to 22-BSTD-03, the Revised Draft Staff Report that was filed on 5/24/2023, with a comment period deadline of 6/23/2023 (TN#250298). The comments provided below are offered as preliminary feedback to help guide fruitful rulemaking. Comments have been categorized generally. More specific comments will be docketed separately directly linked to the report.

CalCERTS Supports the following proposals and premises offered in the Revised Draft Staff Report:

- All Providers should be required to enforce and support quality assurance programs.
- Rater and Providers needs to have due process protections for disciplinary actions.
- Regulations could help mitigate Rater shopping to better support Raters.
- Transparency is needed to ensure Rating Companies have sufficient trained and qualified staff to conduct FV&DT work.
- Rater training should include hands-on training sufficient to ensure Raters are qualified to do all field verification and diagnostic testing required under the Code.
- Data audits should be part of oversight and quality assurance provisions, from all levels, CEC, Provider and Rating Company.

CalCERTS is asking the Commission Staff for a ***working session*** with the HERS Providers and Provider applicants to address the 40+ pages of the newly proposed regulatory language in Appendix B. The implications of these regulatory choices could cripple the HERS Providers from being able to execute the program effectively.

Overall, it would be prudent to address *fewer* provisions and propose *fewer* program changes in this rulemaking. Once the restructuring into Title-24 is completed, the Commission can adopt further guidance in future code cycles. For example, the Commission has proposed a 72-hour window for registering documents. It would make more sense for the Commission to collect information on the registration timelines from a variety of companies and Raters over the 2022 code cycle before adopting a regulation that sets a bright-line-rule. The Commission should avoid all bright-line-rules unless supported by information and evidence of necessity.[1]

1. Quality Assurance Program Proposals: The proposals in the Revised Draft Staff Report have offered a Quality Assurance (QA) Program that will quadruple the costs of QA, and that will result in a far less effective QA Program.
    - The proposals adopt shadow audits and lab audits in lieu of blind audits. There is no information or evidence that shadow audits or in-lab audits are effective at stopping bad actors. These QA requirements do not protect consumers. Shadow audits are far more expensive than blind audits.
    - The proposal mostly eliminates blind audits, despite the fact there is ample information and evidence provided by CalCERTS that blind QA audits are effective at stopping bad actors. It is an accepted industry standard.
    - The QA mandates as proposed have a ***high probability*** of interfering and impacting construction practices and timelines. These costs when quantified will be astronomical and cannot be justified. Holding production hostage for a QA inspection is a bad idea, especially when the type of inspection has a low probability of protecting consumers.
    - The *Remedy for Flawed FV&DT* is literally impossible for the Providers to absorb financially, whether through liability insurance or implementation. There is no equivalent industry precedent to mandate such a remedy by a certifying body. This seems like a rogue suggestion by staffers that do not understand the HERS Program or the consequences of such a proposal.
    - CalCERTS supports the adoption of the Verified Rater program to reduce the QA load on Raters that have proven a record of quality work.
    - CalCERTS supports the adoption of discipline mandates being shared across Providers.
    - There Commission has ignored proposal for Raters to have more transparency on their QA results and information. CalCERTS has advocated for dispositions to be shared with Raters. CalCERTS' QA program manual will be docketed in conjunction with these comments.

[1] Much of the specificity in the proposed regulations does not seem to be supported by any information or evidence, rather it seems to be suggestions for what might be a good idea. Adoption of new regulations that will impact hundreds of businesses, require more documented support under the rulemaking regulations.

- CalCERTS encourages the Commission to mandate correct contact information from Raters, for scheduling and facilitating QAs, as the most appropriate and helpful step to improving the QA program.

2. Conflicted Data Proposal: The proposal on conflicted data are deeply problematic. Purging work-product from the data registries creates an abundance of liability and uncertainty that must be addressed in the staff report.
   - Will a closed building permit become active again?
   - Does the purge stop the sale of a home in escrow?
   - Are certificates of occupancy rendered invalid?
   - Proposed language creates additional liability for multiple parties when sampling protocols are used. As written, if a builder refuses a QA audit, the data for all sample groups in the project must be purged. It infers that all dwellings in a project must now be re-tested, regardless of when a permit is closed and dwellings that have been sold and/or occupied. It also infers that dwellings are no longer compliant to the energy code.

3. Rater of Record: The Staff proposal on Rater of Record needs to be revised. Rater of Record is not defined and needs to be expanded to a Company. The Commission needs to work with HERS Providers and Raters to clarify the parameters to ensure the intent of this provision is executed.

4. Training Program: The Staff Proposal on training programs seems to be an overreach and unjustified by necessity, especially as related to the Challenge Exam practical exams and triennial updates.

5. Conflict of Interest: The proposed and current language suggests conflict of interest can occur when the designer of energy code features and the Rater are same person. One of the most significant impediments to effective compliance with energy code is when the designer and Rater are not aligned. It results in the construction of features that cannot be inspected or corrected without significant financial burden. The overall quality of energy code enforcement begins at the design phase. The Commission needs to work with Energy Consultants and Raters to determine when an actual conflict of interest might occur and not create a blanket regulation that would impede the construction industry and increase costs.

6. Unchecked Authority: Although the Commission has adopted some due process provisions, the proposed regulatory language needs to better explain how authority is checked and who reviews final decisions. As written, Providers and Commission Staff appear to have unchecked authority to suspend a private business, essentially putting it out of business. These provisions need further clarification to make sure everyone is protected, even if the Commission simply provides clarification and context in guidance documents.

7. Data Reporting: The regulatory language for data reporting is overbroad, duplicative, and cost-prohibitive. It needs to be recognized that the data registries are built to validate and register compliance documents not to pull and query data. Compliance documents are changed by the Commission multiple times a code cycle, sometimes fully redesigning the structure and layout of the forms, which makes data mining complicated. The Commission is asking the HERS Providers to provide access to all data and also all data requests under threat of decertification. This section needs to be revised to meet the requirements of reasonableness and necessity under the rulemaking process. The costs assessment of $20/hr for programmers to build data registry reporting tools is unrealistic. Access to query all data is also unrealistic.

8. Vague and Ambiguous: Much of the proposed regulatory language in Appendix B needs to be clarified and/or examples for context of the rules are needed for the HERS Community to provide fruitful feedback.
    - Regulatory provisions clearly targeting concerns for existing homes, are blended into regulations that, as written, apply to new construction. Requirements for new construction need to be addressed separately from requirements tailored to existing homes.
    - The rules need to be clear, and they need to apply to what is being regulated – mandates for communication to homeowners are different than mandates for communication to builders and the word choice should be precise and/or defined.
    - Regulatory provisions that target consent by homeowners need clarification. As written, the limitations through the language used will impede compliance and increase costs.
    - Subject Matter Experts from the HERS industry are needed to help with word choice for the proposed regulations.

- The language choice of many of the proposals makes it very difficult and costly for Raters and Rating Companies to use multiple Providers, potentially creating new and complex conflicts of interests and undue influence.
- In many instances it is unclear what provisions from the Title-20 HERS Program are intended to be retained or omitted in the Title-24 ECC/FV&DT program. It would be helpful for Commission staff to walk through what is envisioned to be retained from Title-20, because it is not clear and is needed to do the cost assessments for these proposed changes.

Sincerely,

The CalCERTS Operations Team

 (916) 985-3400

 www.calcerts.com

 support@calcerts.com

 31 Natoma, Suite 120
Folsom, CA 95630