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**State of California
California Energy Commission
Memorandum**

To: Docket 23-HERS-01

Date: August 9, 2023

From: Michael J. Sokol, Deputy Director
Energy Efficiency Division
California Energy Commission

Subject: Basis for Finding the Amendments to the Home Energy Rating System (HERS) Regulations Rulemaking is Exempt under the California Environmental Quality Act

I. CEQA

The California Environmental Quality Act (CEQA) (Pub. Resources Code, §21000 et seq.; see also CEQA Guidelines, Cal. Code Regs., tit. 14, §15000 et seq.) requires that state agencies consider the environmental impact of their discretionary decisions. CEQA allows for certain projects to be exempted from its requirements. Of relevance here, and discussed further below, are the Class 7 and 8 exemptions (Cal. Code Regs., tit. 14, §§15307 and 15308) and the common sense exemption (Cal. Code Regs., tit. 14, §15061(b)(3)).

II. The CEC's Home Energy Rating System (HERS) Program

The Warren-Alquist Act establishes the California Energy Commission (CEC) as California's primary energy policy and planning agency. Most, if not all, actions taken by the CEC are taken to protect the environment and natural resources, either in the near term with, for example, specific regulatory actions or in the long term with, for example, long-term planning and investments in research. One of these measures was the development of a program to provide estimates of potential utility bill savings and reliable recommendations on cost effective ways to improve home energy efficiency, known as the Whole House Rating program. In Public Resources Code section 25942, the Legislature directed the CEC to "establish criteria for adopting a statewide home energy rating program for residential dwellings." Pursuant to this statute, the CEC promulgated California Code of Regulations, title 20, section 1670-1675, establishing the Home Energy Rating Services (HERS), or Whole House Rating program. The HERS program is one way the CEC has furthered Public Resources Code section 25007's directive to 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."

The HERS program is a voluntary program and provides efficiency upgrade recommendations to improve a home's energy efficiency rating. The HERS program utilizes providers and raters. A separate program, the Field Verification and Diagnostic Testing (FV&DT) program, is a mandatory administrative program to verify compliance with the Title 24 Energy Code and collect compliance data. The HERS and FV&DT programs are designed to benefit the environment and

natural resources by promoting energy efficiency in California's buildings, thereby reducing the need to procure and generate electricity.

The FV&DT program has also used HERS providers and raters and, for this reason, some administrative provisions related to the FV&DT program were originally located in the Title 20 HERS regulations. This has made compliance with the Energy Code difficult and confusing for stakeholders, and management of the Whole-House Home Energy Rating program and Field Verification and Diagnostic Testing program challenging for the CEC.

III. The Proposed Action

The goal of this rulemaking action is to remove certain administrative FV&DT provisions from California Code of Regulations, title 20 sections 1670 through 1675 because they already exist in the Title 24 Energy Code or because they are being added to the Energy Code in a concurrent rulemaking. The adoption of the corresponding provisions in Title 24 will become effective at the same time as their removal from Title 20, so as to avoid any gap in regulation for the HERS program or the FV&DT program. This action will have no regulatory or practical impact on the HERS program or the FV&DT program, and therefore is essentially clerical in nature.

IV. The amendments to the HERS regulations is not a project.

CEQA only applies to an action "that has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (Cal. Code Regs., tit. 14, §15061(a).)

As discussed above, the proposed amendments to the HERS regulations are essentially clerical in nature, in that it will have no regulatory or practical impact on the HERS or FV&DT programs or the entities regulated by those programs. In other words, the proposed amendments do not impose any new requirements or obligations, and therefore the rulemaking has no potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Accordingly, the proposed amendments to the HERS regulations does not meet the definition of a project under CEQA.

V. Even if the amendments to the HERS regulations were considered a project, they would be exempt from CEQA under the Common-Sense Exemption.

The development and adoption of the amendments to the HERS regulations are exempt from CEQA under the common sense exemption. CEQA only applies to projects that have the potential for causing a significant effect on the environment. (Cal. Code Regs., tit. 14, §15061(b)(3).) A significant effect on the environment is defined as a substantial, or a potentially substantial, adverse change in the environment, and does not include an economic change by itself. (Pub. Resources Code, §21068; Cal. Code Regs., tit. 14, §15382.) The goal of the proposed amendments is to move administrative provisions related to the FV&DT program from one title of the California Code of Regulations to another title. As discussed above, this rulemaking action will have no regulatory or practical impact on regulated entities or the environment. No significant adverse impacts to the environment have been identified as resulting from this action. For these reasons, adoption of the amendments to the CEC's regulations would not be subject to CEQA under the common sense exemption of section 15061(b)(3) even if it was considered a project.

VI. Conclusion

As shown above, it can be seen with certainty that the rulemaking to amend the HERS regulations is not a project because it does not impose any new requirements and therefore has no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. If this rulemaking was considered a project, there is no possibility that it would have a significant effect on the environment and, therefore, this project is exempt pursuant to the common sense exemption under section 15061(b)(3) of the CEQA Guidelines.