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Via CEC Docket 22-BSTD-03

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CalCERTS Comments on Revised Draft Staff Report - Proposed Regulations: Part Two

On July 12, 2023, CalCERTS, Inc. (CalCERTS) was able to meet with California Energy Commission Staff and other approved HERS Providers to discuss the Revised Draft Staff Report (TN#250298). In response to that meeting CalCERTS has been working to provide specific feedback to Commission Staff in response to direct questions. Part One of CalCERTS response was focused on questions related to Conflicts of Interest and the proposed regulations and “removal” of conflicted data. [TN # 251156] Part Two is focused on Quality Assurance (QA).

Over the past decade CalCERTS has built a robust Quality Assurance Program in conjunction with feedback and support from the Efficiency Division of the California Energy Commission (CEC). This program was built in collaboration with the Commission in response to findings from the 12-CAI-01 Complaint against CalCERTS. Our program should *not* be categorized as the “CalCERTS Program” but rather a program the Commission advised us to implement based on work developed through the HERS OII and through feedback on our annual report.

The HERS QA Program requires multiple components to be effective:

- Quality Training
- Blind Quality Assurance Reviews
- Desks Audits and Data Review
- Mentoring
- Transparency & Due Process

The proposed QA Program in the revised draft regulations omit some key aspects of what we know works. Each item is addressed as succinctly as possible below, except for training which will be addressed later. Please see the attachment to this letter with comments on the proposed regulations.

1. Blind Quality Assurance Reviews Work to Find Bad Actors. Shadow Audits and In-Lab Audits will not identify and address HERS Raters that are knowingly providing false compliance documents to cut costs, favor their clients, and/or have a competitive advantage over their competitors. Submitted in conjunction with CalCERTS Comments is a report requested by Commission staff in 2021, addressing specific unethical HERS Raters. These Raters would not have been identified and their bad action corroborated without the use of Blind Quality Assurance Audits. Blind QAs must be maintained, especially in the existing homes market. [This report will be docketed confidentially as “QA Data In Support of Blind QAs.”]

To prepare these comments, CalCERTS went back and looked at Raters disciplined and decertified since the 2016 code. **Of those, more than 82% were identified through blind audits of their work.** Less than 20% of the bad actors were identified through other means, such as homeowner complaints or Raters reporting on the unethical conduct of competitors. This information is corroborated in CalCERTS annual reports and complaints logs, submitted to the Commission.

2. Desk Reviews & Data Audits Work. The Providers are in an excellent position to use the Registries to review and assess the data entry of Raters. Raters with inexplicably consistent and suspicious field results should be investigated. Data audits are cost-effective and useful.
3. In-Lab Audits and Shadow Audits could be effective as training mandates to address concerns by the Commission relative to QII and other complex new construction verifications. It could be that Blind QAs must be mandated for existing homes; but a hybrid approach could be used for more complex verifications in the News Construction market. There is no evidence or proof in the Revised Draft Staff Report that In-Lab Audits or Shadow Audits would improve the FV&DT program or protect consumers relative to a Quality Assurance Program. As a result, the costs of these proposed new mandates are not supported.
4. HERS Providers must be required to document their efforts to enforce QA and must be fully transparent with the CEC, Raters, Rating Companies, and other Providers to protect the integrity of the FV&DT Program. There can no longer be a dichotomy of one Provider enforcing QA and other Providers hiding behind the complexities of the program to escape responsibility and favor prized clients. Raters must receive thorough and accurate feedback

on the quality of their work so they can understand how they are performing. This is expensive and takes time, but CalCERTS has been issuing dispositions for each QA review for years. Mandating dispositions would not increase costs substantially, because the Providers are supposed to be documenting this information for CEC review anyways.

5. The discipline process as proposed in the regulations won't work. The proposed regulations are missing key elements in the discipline section. As written no Rater would ever advance through the protocols after a violation is issued since the Commission removed the mandate for additional scrutiny. There is no requirement to further QA a Rater that has a violation, until the next annual requirement. The Commission removed the +2 and 2% requirement to further investigate Raters with violations. The proposed rules are far less protective than the existing HERS Program.

Sincerely,

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Enclosure



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Attachment 1

CalCERTS Comments on Revised Draft Staff Report - Proposed Regulations: Part Two

CalCERTS Select Comments on APPENDIX B: Proposed Regulations – Part 2 Quality Assurance

Key issues addressed below.

- **Blind QA audits are needed.**
- **The proposed Discipline Process won't work without mandates to investigate after a violation has been issued.**
- **Rater Companies should have the responsibility of remedying poor performance of their Raters not the Providers since the companies have relationships and privity of contract. Failure of a Rater Company to resolve issues would result in a violation of the company's certification obligations.**

5. **Quality Assurance.** An ECC-Provider shall maintain a quality assurance program to ensure appropriate oversight of the ECC-Raters it certifies. This program shall, at a minimum, include the following:

- A. **Quality Assurance Staff.** ECC-Providers 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 ECC-Raters. 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 ECC-Raters.
- B. **Exemplary Quality Assured ~~Verified~~ ECC-Rater.** An ECC-Rater is designated as a "Verified ECC- Rater" once the ECC-Rater has been (1) continuously certified as an ECC- Rater for a minimum of five years and (2) confirmed for designation by the applicable ECC-Provider after passing all required quality assurance audits within a 12-month period, including at least one annual quality insulation installation (QII) shadow audit, one non-QII shadow audit, one in-lab audit, and one desk audit. **[The term "Verified" may be misleading. It implies that other Raters may not be certified/verified as qualified. Exemplary would be more accurate and indicative of what is intended. Other terms could be: Quality Assured, Distinguished, Premium/Premier, Experienced**

Experience in the field may be a better litmus of expertise rather than years certified. CalCERTS designates Exemplary Raters based on a set number of passed blind QA audits and data audits, rather than years.

Rating Companies will undoubtedly pressure Providers to designate all Raters as “verified” Raters, therefore it will be important for Providers to document and provide written dispositions for each QA audit, so that passing results can be substantiated.]

- i. This designation shall be immediately revoked by the ECC-Provider for any audit failure or the failure to be recertified as an ECC-Rater in any subsequent Triennial Code Cycle.
- ii. This designation, once obtained, may be included in marketing materials. If this designation is revoked, it shall be removed from marketing materials within 10 business days.

- C. **Types of Quality Assurance Review.** Quality Assurance Review shall take the form of onsite audits, ~~shadow audits~~, ~~laboratory audits~~, and desk audits. **[Laboratory Audits should be incorporated into the training requirements as continuing education. Lab Audits are essentially continued field house exams and are described as such in these proposed rules. Consolidating Lab Audits into the training section of these proposed regulations will help simplify the necessary cost assessments associated with this rulemaking.**

Shadow audits are very useful for mentoring and training. CalCERTS uses shadow audits if a Rater has issues that can be corrected with mentoring.

Raters who knowingly violate the rules to have an unfair advantage against their competitors will never be discovered with a lab audit or a shadow audit. Raters who act unethically will only be discovered through blind audits or complaints. Complaints should be confirmed or substantiated through additional verifications or investigations performed by the Provider.

CalCERTS has data and information to substantiate its claims that Blind QA Onsite Inspections have led to the decertification of unethical Raters. Blind QAs have also provided the tools to force many Raters to correct and remediate improper conduct. The Commission should continue to use this tool to identify and address bad actors. More than 80% of the Raters that have been disciplined or decertified by CalCERTS since the 2016 code were identified through blind onsite audits

Issues of the existing QA program are not addressed by these

rules, i.e. scheduling QAs, low volume Raters, costs. Rather, the rules increase the QA costs associated with each Rater and double those mandates if a Rater uses more than one Provider without increasing the efficacy of the QA.

The most effective thing the CEC can do to improve QA is: mandate that all Raters must provide accurate contact information for their projects so that Providers can schedule QAs. If a Rater does not provide this information, they should be subject to discipline. This also helps with the homeowner bill of rights concept since the homeowner's contact information will need to be provided by the Rater or Rating Company.]

- i. **Onsite Audits.** An onsite audit is performed by the ECC-Provider following field verification and diagnostic testing by an ECC-Rater it certified. **Onsite audits may be performed at the invitation of the homeowner, through a complaint, or any other processes as deemed necessary for oversight of the integrity of the FV&DT Program.** For an onsite audit the ECC-Provider shall independently repeat the field verification and diagnostic test to determine if it was accurately performed and whether all data was accurately collected and reported by the ECC-Rater. 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 ECC-Rater and can be performed any time after the ECC-Rater has left the project site.
 - b. ECC-Raters 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 ECC-Provider shall issue a pass to the ECC-Rater and ECC-Rater 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. **[This is a mistake. A system can pass code requirements while at the same time be untruthful, inaccurate or incomplete. An installer may have**

done their job while a Rater has completely failed to do their job, i.e. a drive-by rating. This is not an appropriate standard for issuing a pass of a QA review. This standard will allow Raters to skip verifications if they believe a system passes compliance because according to this standard, a passing system is a passing QA inspection.

There are two consistent misconceptions with the FV&DT Program. 1) A properly inspected HVAC system that passes T-24 is also a properly functioning HVAC system. 2) An HVAC system that passes T-24 means the HERS Rater was a good Rater that did their inspections correctly. These misconceptions are reflected in these proposed regulations.]

- e. Onsite audits ~~shall~~ **may** be performed when an ECC-Provider is investigating a complaint from a homeowner about a field verification and diagnostic test. **[Qualifiers MUST be included in this provision. Most complaints from homeowners do NOT warrant a QA inspection. Many homeowners do not understand the difference between the CSLB and the CEC.]**

As proposed, these QA requirements will be abused by homeowners who are unhappy with their installers without any justification or merit behind their complaints. Homeowners will ask for additional HERS inspections even when unrelated to their concerns. This is a common request to our QA department. HERS Inspections are specific to T-24 and not to HVAC operations overall.

As written this provision risks bankrupting Providers. There MUST be some qualifications and discretion on when an inspection is warranted.

In most cases if a homeowner cannot substantiate their complaint, CalCERTS will still QA the Rater at a separate address to assess the quality of the inspection. This investigation is *documented* and

provided to the Commission in our annual report.

Also, not all homeowners who complain are ethical. CalCERTS has records of homeowners harassing and bullying individual Raters under conditions that are illegal and abhorrent. Discretion must be given to Providers on when and how to assess consumer complaints. This discretion must be documented and reported to the Commission.]

- f. Onsite audits shall be performed for every seventh sample-group used in a single residential development. **[QAs on sample groups are not reviewing the Rater's work since the Rater did not inspect that home. As written, QAs on sample groups would be looking to see whether there is validity to the CEC's sampling rules and inspecting the Builder's work. The data should be retained by the Commission, but it cannot be used to discipline a Rater since a Rater did not inspect the lot. This mandate will increase the QA load on Providers relative to sampled homes since one in 7 groups must be reviewed. This is an increased cost without a designated benefit.]**
- (i) The ECC-Provider shall perform the onsite audit at an untested home in the same sample-group being tested. **[Is the CEC going to collect the information to inform on the efficacy of sampling rules, because as written this information does not address Rater conduct? It seems to be a mandated cost with no purpose or outcome. What is this information going to be used for? A justification for the cost must be provided.]**
- (ii) If the ECC-Provider is refused access to the development, all sample-groups for the development will be considered conflicted data (Section 10-103.3(b)1B). **[In this case, the proposed rules on data require this "conflicted data" to be removed from the registry, undoing all of the work on the sample group. This could cost the builders, installers, and Rater Companies millions of dollars of lost work and impede**

construction timelines. The consequences of removing conflicted data from the registry seem disproportionate. Superintendents need to be incentivized to allow Providers access so QAs can be conducted, but the punishment of data removal is too severe. There needs to be a more reasonable incentive.]

- g. If the ECC-Provider is refused access to the development, the ECC-Rater may be subject to investigation and disciplinary action. Onsite audit results shall be documented by the ECC-Provider, provided to the ECC-Rater and ECC- Rater Company, provided to the homeowner, and recorded in the ECC-Provider's quality assurance database (Section 10-103.3(d)9B). If the onsite audit reveals the ECC-Rater did not accurately perform the field verification and diagnostic test or accurately collect or report data, the ECC-Provider shall initiate disciplinary action (Section 10-103.3(d)7). **[Providers must have the discretion to have narrative results if mandated to provide them to homeowners. A QA inspection is to determine whether a Rater performed their inspections according to the standards, not whether an installed system meets T-24. Providers cannot be required to perform T-24 inspections for any other purpose than to make QA determinations. Providers do not, and should not, verify compliance.]**
- h. Onsite audits shall include the use of photograph evidence to be recorded in the ECC-Provider data registry as provided in Building Energy Efficiency Standards Reference Appendix JA7.5.6.1. **[Specifications on photos should be less specific to allow for the use of contemporary technology, while maintaining the spirit of the regulations. Photos should have sufficient data and information to be authenticates as an accurate representation for the intended purpose.]**

CalCERTS recommends the below section to be reworked to better protect the integrity of the FV&DT Program and to identify bad actors. Audits should be blind onsite audits, especially for FV&DT for existing homes.

To address the CEC's concerns relative to QII, a shadow audit specific to New Construction Raters and QII could be incorporated into the QA Requirements. If given more time, CalCERTS will help revise and rewrite this section. It could be

blind QAs are required for all verifications others than QII.

With this rulemaking the CEC is working to set clear achievable QA requirements so that Providers can be held fully accountable for QA mandates. This is great. To create rules that must be complied with, some provisions that allow for discretion on low volume raters are needed. A rater with a volume less than 10 ratings may be impossible to review within a calendar year. Continuing education or some other caveat in lieu of audits could be used for low-volume Raters.

- ii. **Shadow Audits.** A shadow audit requires the ECC-Provider to audit the ECC-Rater as they perform a field verification and diagnostic test and collect and report the data. **[Shadow Audits are training. Shadow audit will not identify Raters who operate unethically.] For Shadow Audits** The ECC-Provider's auditor shall observe and may not aid the ECC-Rater during the shadow audit. Every year, at least one **shadow onsite** audit shall be performed at random by the ECC-Provider for each ECC-Rater it has certified. In addition, all ECC-Raters shall receive a shadow audit for Quality Insulation Installation field verification (Building Energy Efficiency Standards Reference Appendix RA3.5) once per **code cycle**. For Verified ECC-Raters the **onsite** audit and QII audit frequency shall be reduced from once per year to once per Triennial Code Cycle. A shadow audit shall also be performed if requested by the Commission. Shadow audits shall comply with the following: **[This section should be revised to require on onsite blind audit per year, and one QII shadow audit per code cycle.]**
 - a. The ECC-Rater shall be informed of the shadow audit on the day of the audit and the ECC-Provider's auditor will explain their presence to the homeowner. The homeowner shall grant entry to the auditor. If entry is refused, the ECC-Provider shall reschedule the shadow audit. **[With Shadow audits for QII only, this section should be revised.]**
 - 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 ECC-Rater in regard to the project. **[CalCERTS appreciates the intent to incentivize developers to assist QA. Could this concept be fleshed out to not be specific to sampling? Or is this a compromised place to start?]**
 - c. Shadow audits are limited to one field verification or

diagnostic test where the ECC-Rater shall setup measurement equipment, take measurements, and record results.

- d. The ECC-Provider'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 ECC-Provider, provided to the ECC-Rater and ECC-Rater Company, and recorded in the ECC-Provider's quality assurance database (Section 10-103.3(d)9B). If the shadow audit reveals the ECC-Rater did not accurately perform the field verification and diagnostic test or accurately collect or report data, the ECC-Provider shall initiate disciplinary action (Section 10-103.3(d)7).

The proposal for In-Lab Audits essentially requires annual continued education for each Rater. This would require lab opportunities throughout the entire state of California and travel and time off work expenses for Raters. This would be new costs to the program. Costs estimated need to include the costs of Providers to perform the audit, facility and equipment costs, and costs to the Rater for the audit and missed work. In-Lab Audits will not identify bad actors. In-Lab Audits will assist in continuing education and mentoring of existing Raters. The entire In-Lab section should be removed from the QA program and incorporated into training.

- ~~iii. **In-Lab Audits.** An in-lab audit requires an ECC Rater perform mock field verification and diagnostic testing in a laboratory setting. The ECC Provider shall develop in-lab audits to demonstrate the ECC Rater's performance competence in subjects specified in Section 10-103.3(d)1 the ECC Rater is certified to perform. All ECC Raters shall perform an in-lab audit at least once per year and as directed by the Commission. For Verified ECC Raters the in-Lab audit frequency shall be reduced from once per year to once per Triennial Code Cycle. In-lab audits shall comply with the following:~~
 - ~~a. The ECC Provider 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 ECC Provider shall make a mock data registry available to be used by the ECC Rater 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)1Av.~~

- ~~e. All in-lab audits shall be in-person using a live proctor with no more than ten test takers per proctor. ECC-Raters shall not work in teams to complete any portion of any in-lab audit.~~
- ~~f. The ECC-Provider shall not provide any equipment necessary to complete the in-lab audit.~~
- ~~g. To receive a passing score, the ECC-Rater 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 ECC-Rater will be given two chances to pass each in-lab audit.~~
- ~~h. The in-lab audit results shall be documented by the ECC-Provider, provided to the ECC-Rater and ECC-Rater Company, and recorded in the ECC-Provider's quality assurance database (Section 10-103.3(d)9B).~~
- ~~i. If the in-lab audit reveals the ECC-Rater did not accurately perform the field verification and diagnostic test or accurately collect or report data, the ECC-Provider shall initiate disciplinary action (Section 10-103.3(d)7).~~

iv. **Desk Audits.** Desk audits consist of an ECC-Provider using registered compliance documents within an ECC-Provider data registry to evaluate an ECC-Rater'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. ECC-Providers shall perform desk audits of all certified ECC-Raters at least once per year and as directed by the Commission. For Verified ECC-Raters the Desk audit frequency shall be reduced from once per year to once per Triennial Code Cycle. Desk audits shall comply with the following: **[Given the efficacy and efficiency of desk audits, it is recommended that these audits be used liberally by Providers on both Raters and Rating Companies, with reporting to the CEC on what is assessed.]**

- a. ECC-Providers shall develop and document a maximum variance for each data entry point for each field verifications and diagnostic test.
- b. ECC-Providers shall identify a project to audit where the ECC-Rater provided field verification and diagnostic test services. The ECC-Provider shall collect all compliance documents associated with the project as necessary to audit the field verifications and diagnostic tests performed by the ECC-Rater at the project site and may contact outside authorities, such as the local building authority with

jurisdiction over the project.

- c. The ECC-Provider shall confirm the measurements, calculations, and other information obtained during field verifications and diagnostic tests at the project are within expected tolerances.
- d. The ECC-Provider 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 ECC-Rater 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 ECC-Provider shall perform a further investigation to determine if results were falsified or otherwise inaccurate.
- e. The desk audit results shall be documented by the ECC-Provider, provided to the ECC-Rater and ECC-Rater Company, and recorded in the ECC-Provider's quality assurance database (Section 10-103.3(d)9B).
- f. If the desk audit shows that the ECC-Rater did not accurately perform the field verification and diagnostic test or accurately collect or report data, the ECC-Provider shall initiate disciplinary action (Section 10-103.3(d)7).

The below section as written is impermissible and likely an impossible, illegal delegation of responsibility. Providers have no privity of contract with the installer, homeowner, or project owners and cannot remedy flawed FV&DTs. Providers cannot provide inspections for compliance purposes and there is no paradigm in which an organization that trains and certifies professionals must also be liable for the work of those individuals. The responsibility of the Provider must stop at the certification or decertification of a Rater. A homeowner or project owner has a contract with the installer or rater to remediate and resolve issues. A Provider does not have the means to resolve these disputes, nor is there insurance to cover this type novel manufactured liability. Remediation of poor Rater conduct must reside with the Rater Company not the Provider.

If the proposed rules make clear it is Rater Company's responsibility to remedy flawed FV&DT tests, then the Rater Company Discipline section makes sense and has some merit.

D. 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 ECC-Provider, to be untrue or inaccurate.~~

- ~~ii. The ECC-Provider 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 ECC-Provider may seek reimbursement for the remedy from the ECC-Rater who performed the flawed field verification and diagnostic test.~~

E. **Payment of Fees; Proportionality.** ECC-Providers may charge, as a part of their contractual arrangements with ECC-Raters, a Quality Assurance fee. The entirety of any Quality Assurance fee may only be used by the ECC-Provider to fund Quality Assurance activities.

6. Queries and Complaints

- A. **Public Queries and Complaints.** ECC-Providers shall have a system for receiving queries and complaints from consumers, ECC-Raters, ECC-Rater Companies, authorities having jurisdiction, and the general public. The ECC-Provider shall respond to, investigate, and resolve queries and complaints related to field verification and diagnostic testing in a timely manner. ECC-Providers shall ensure the ECC-Raters they certify inform recipients of field verifications and diagnostic testing services about the query and complaint system. ECC-Providers 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. ECC-Providers 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 ECC-Provider 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 sufficient.
 - iv. A ~~one-paragraph~~ summary of the results of the ECC-Provider 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 ECC-Provider to investigate any queries related to the performance of the FV&DT program. An ECC-Provider shall respond within 30 days of receiving a Commission direction to investigate a query.
- C. **ECC-Rater and ECC-Rater Company-Initiated Queries and**

Complaints. ECC-Providers shall have a system for ECC-Raters and ECC-Rater Companies to report potential violations of these regulations by ECC-Raters, ECC-Rater Companies, and ECC-Providers.

7. **ECC-Rater Discipline.** If an ECC-Rater violates these regulations, including but not limited to the failure to perform accurate and complete field verification and diagnostic tests, the ECC-Provider shall take the following disciplinary steps to address and correct the noncompliance. In the event of a severe violation, however, the ECC-Provider shall proceed immediately to the suspension step for the first severe violation and to the decertification step for a second severe violation. A severe violation of these regulations includes knowingly creating false field verification or diagnostic testing documents, any violation involving criminal activity, coordinating or participating in an organized scheme to violate these regulations, or a demonstrated pattern of violating these regulations. The ECC-Provider and ECC-Rater 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 ECC-Provider to investigate an ECC-Rater or discipline an ECC-Rater 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 ECC-Rater, the ECC-Provider shall issue a notice of violation to the ECC-Rater, ~~any affected homeowners~~, and any ECC-Rater Companies for which the ECC-Rater performs FV&DT services. [**Providers involvement of homeowners on QA issues creates new liability that must be evaluated. This new rule and liability is subject to serious scrutiny in this rulemaking.**]

Delegating this responsibility to Rater Companies would be in line with industry paradigms and responsibilities. Rater Companies are in the best position to determine the impacts on the homeowner and how to remediate the issues related to Raters.]

- i. The ECC-Provider shall require the ECC-Rater take additional training or other corrective action related to the violations within a specified timeframe.
- ii. The ECC-Provider shall hold the ECC-Rater 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.~~ [**This is beyond the privity of contract principles. See above.**]
- 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 ECC-Rater shall take, any costs

the ECC-Rater shall reimburse, the timeframe for complying with all requirements of the notice of violation. [**“Approximate time of violations” is ambiguous, please clarify.**]

- iv. The ECC-Rater will have 10 days of receipt of the notice of violation to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response, and, within 5 days, request additional information needed from the ECC-Rater. The ECC-Rater shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of the notice of violation or within 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of a violation to the ECC-Rater, ~~any affected homeowners~~, and any ECC-Rater Company for which the ECC-Rater performs field verification and diagnostic testing services. The violation shall not be effective until the ECC-Rater has exhausted the right to request reconsideration by the ECC-Provider or until the time to exercise that right has lapsed (Section 10-103.3(d)7Aiv).

With the proposed regulations, the Commission has removed the +2 and 2% mandates and blind onsite QAs mandates. Unless a Provider proactively tracks a Rater that has a violation, it is very unlikely given these rules that a Rater would make it to the next level of discipline. The new rules allow a Provider to turn a blind eye to problematic Raters and still be in compliance with its obligations. The only mandate is an annual mandate, even for Rater’s with documented violations.

- B. **Step 2: Probation.** If an ECC-Rater 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 ECC-Provider shall issue a notice to the ECC-Rater and any ECC-Rater Company for which the ECC-Rater performs field verification and diagnostic testing services, placing the ECC-Rater on **probation for up to six months**. [**There is no mandate to QA the Rater within a window other than an annual basis. How would these violations be detected without something like the +2 or 2% mandate? This section needs to be reworked. This is premised only on consumer complaints and does not mandate Providers to be proactive on problematic Raters. Provider that do not want to discipline Raters would use this provision to easily allow any Rater with a notice of violation to be ignored for a year before a secondary inspection.**]
 - i. While on probation, the ECC-Rater 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 ECC-Rater must take, any costs the ECC-Rater must reimburse, and the timeframe for complying with all requirements of the notice of violation.
- iii. The ECC-Rater will have 10 days of receipt of the notice of probation to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response and, within 5 days, request additional information needed from the ECC-Rater. The ECC-Rater shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of notice of probation or within 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of probation to the ECC-Rater and any affected ECC-Rater Company. The terms of probation shall last no more than six months and shall not be effective until the ECC-Rater has exhausted the right to request for reconsideration by the ECC-Provider or until the time to exercise that right has lapsed (Section 10-103.3(d)7Biii). **[Has the Commission removed the mandate that Raters subject to discipline be designated on the Provider's website? How do consumers know about Raters that are subject to discipline or advanced scrutiny? Is it intended for the remedial training to be sufficient? Please clarify.]**

- C. **Step 3: Suspension.** If an ECC-Rater fails to fully comply with the terms of probation or receives a new notice of violation while on probation, the ECC-Provider shall issue a notice to the ECC-Rater, and any ECC-Rater Company for which the ECC-Rater 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 ECC-Rater must complete during suspension.
 - ii. The ECC-Rater shall have 10 days of receipt of the notice of suspension to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response and, within 5 days, request additional information needed from the ECC-Rater. The ECC-Rater shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of the notice of suspension or within 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of suspension to the ECC-Rater and any ECC-Rater Company for which the ECC-

Rater performs field verification and diagnostic testing services. The suspension shall not be effective until the ECC-Rater 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 ECC-Provider shall prohibit the ECC-Rater from submitting any new compliance documents (Section 10-103) or otherwise accessing the ECC-Provider data registry until the suspension has ended.
- D. **Step 4: Decertification.** If an ECC-Rater 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 ECC-Provider shall issue a notice of decertification to the ECC-Rater and any ECC-Rater Company for which the ECC-Rater performs field verification and diagnostic testing services.
- i. The notice of decertification shall be in writing and include the basis for decertification.
 - ii. The ECC-Rater will have 10 days of receipt of the notice of decertification to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response, and, within 5 days, request additional information needed from the ECC-Rater. The ECC-Rater shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of the notice of decertification or within 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination on proceeding with decertification to the ECC-Rater and any ECC-Rater Company for which the ECC-Rater performs field verification and diagnostic testing services. The decertification shall not be effective until the ECC-Rater 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.

The below section on Rater Company Discipline is very generic and as written is too abstract to have meaning. If Rater Companies become responsible for remedying Rater violations, and Rater's poor conduct, this section could make sense, but as written there is no context for a violation as applied to Rater Companies. The vagueness of this section is problematic and should be clarified.

8. **ECC-Rater Company Discipline.** If an ECC-Rater Company violates these regulations, the ECC-Provider shall take the following disciplinary steps to address and correct the noncompliance. In the event of a severe violation, however, the ECC-Provider shall proceed immediately to the suspension or decertification step. A severe violation of these regulations includes knowingly

creating false field verification or diagnostic testing documents, any violation involving criminal activity, coordinating or participating in an organized scheme to violate these regulations, or a demonstrated pattern of violating these regulations. The ECC-Provider and ECC-Rater 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 ECC-Provider to investigate an ECC-Rater Company or discipline an ECC-Rater 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 ECC-Rater Company, the ECC-Provider shall issue a notice of violation to the ECC-Rater Company ~~and any affected homeowners.~~
- i. The ECC-Provider may require the ECC-Rater Company to take additional training or other corrective action related to the violations within a specified timeframe.
 - ii. The ECC-Provider may hold the ECC-Rater 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 ECC-Rater Company must take, any costs the ECC-Rater Company must reimburse, and the timeframe for complying with all requirements of the notice of violation.
 - iv. The ECC-Rater Company will have 10 days of receipt of the notice of violation to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response and, within 5 days, request additional information needed from the ECC-Rater Company. The ECC-Rater Company shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of the notice of violation or within 20 days of receiving a response or additional information from the ECC-Rater Company, whichever is later, the ECC-Provider shall provide a final determination of a violation to the ECC-Rater Company within 30 days. The violation shall not be effective until the ECC-Rater Company has exhausted its right to request reconsideration by the ECC-Provider or until the time to exercise that right has lapsed (Section 10-103.3(d)8Aiv).
- B. **Step 2: Probation.** If an ECC-Rater 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 ECC-Provider shall issue a notice of probation to the ECC-Rater 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 ECC-Rater Company must complete during probation.
 - ii. The ECC-Rater Company will have 10 days of receipt of the notice of probation to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response, and, within 5 days, request additional information needed from the ECC-Rater Company. The ECC-Rater Company shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of notice of probation or within 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of probation to the ECC-Rater Company. The terms of probation shall last no more than six months and shall not be effective until the ECC-Rater Company has exhausted its right to request reconsideration by the ECC-Provider or until the time to exercise that right has lapsed (Section 10-103.3(d)8Bii).
- C. **Step 3: Suspension.** If an ECC-Rater Company fails to fully comply with the terms of probation or receives a new notice of violation while on probation, the ECC-Provider shall issue a notice of suspension to the ECC-Rater 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 ECC-Rater 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 ECC-Rater Company will have 10 days of receiving the notice of suspension to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response and, within 5 days, request additional information needed from the ECC-Rater Company. The ECC-Rater Company shall have 5 days to provide additional information to the ECC-Provider. Within 30 days of the date of the notice of suspension or 20 days of receiving a response or additional information from the ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of suspension. The suspension shall not be effective until the ECC-Rater 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 ECC-Rater 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 ECC-Provider

shall issue a notice of decertification to the ECC-Rater Company.

- i. The notice of decertification shall be in writing and include the basis for decertification.
- ii. The ECC-Rater Company will have 10 days of receipt of the notice of decertification to respond in writing. If the ECC-Provider receives a response, the ECC-Provider shall acknowledge the response and, within 5 days, request additional information needed from the ECC-Rater Company. The ECC-Rater Company shall have 5 days to provide additional information to the ECC-Provider. 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 ECC-Rater, whichever is later, the ECC-Provider shall provide a final determination of decertification. The decertification shall not be effective until the ECC-Rater 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.