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Via CEC Docket 22-BSTD-03

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

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 was focused on Quality Assurance (QA). [TN #251387] This submission, Part Three, is focused on the Data Collection and Reporting Sections of the proposed regulations.

Sincerely,

The CalCERTS Operations Team

Enclosure

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Attachment 1

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

APPENDIX B:

Proposed Regulations

The data request regulations drafted below give the Commission a blank check relative to the Provider's databases. These registries are not designed to have search engine type capabilities. Rather, the Registries are built to process compliance documents in conjunction with the DRRM. The Commission needs access to data and information collected on the compliance documents to support the FV&DT programing; however clear expectations in the regulations must be delineated. Duplicative data demands cannot be justified in a cost assessment. The programming and database costs are paid by the homeowners and projects owners in certificate costs.

9. Data Recording

- A. **Data Recording for Field Verification and Diagnostic Tests.** Each ECC-Provider shall record all data collected by an ECC-Rater for a field verification and diagnostic test, including the following data:
- i. The registered Certificate(s) of Compliance, Certificate(s) of Installation, Certificate(s) of Verification, and their associated Compliance Registration Packages.
 - ii. The energy efficiency improvements verified or tested, if applicable.
 - iii. Whether the builder chose to include the home in a sample for FV&DT as specified in the Residential Appendices.
 - iv. Whether initial FV&DT as specified in the Residential Appendices was conducted on the home.
 - v. Whether the home in a sample was selected and verified or tested as specified in the Residential Appendices.
 - vi. Whether the home in a sample was selected for resampling and verified or tested after a sampling failure was found in the sample as specified in the Residential Appendices.
 - vii. Whether the home in a sample was verified or tested and corrective action was taken after a resampling failure was found in the sample as specified in the Residential Appendices.
 - viii. Whether the homeowner declined to have verification or testing, and corrective action taken after occupancy as specified in the Residential Appendices.
- B. **Data Recording for Quality Assurance Actions.**
- i. An ECC-Provider shall record all Quality Assurance and disciplinary actions taken against each ECC-Rater and ECC-Rater Company.
 - ii. The ECC-Provider shall maintain a database tracking system

indicating the certificate status of all certified ECC-Raters and ECC-Rater Companies and all Quality Assurance or disciplinary actions taken against each ECC-Rater and ECC-Rater Company.

- iii. Quality Assurance Data regarding ECC-Raters and ECC-Rater Companies shall include all of the following:
 - a. Name, business address, and contact information for each certified ECC-Rater, ECC-Rater Company, or applicant.
 - b. Current status of certification, limited to one of the following: Application-in-Review, In-training, Certified, Under Notice of Violation, on Probation, on Suspension, Decertified, Certification Dormant (no data registration activity in one year).
 - c. **Quality Assurance Actions.** List and indicate pass or fail with explanation all of the following audits for each certified ECC-Rater: **[An option for "indeterminate" or "needs further audits" may be prudent. Often there is a discrepancy that should not be designated a pass but also does not rise to the level of a violation subject to discipline.]**
 - (i) Onsite Audits (Section 10-103.3(d)5Ci).
 - (ii) Shadow Audits (Section 10-103.3(d)5Cii).
 - (iii) In-Lab Audits (Section 10-103.3(d)5Ciii).
 - (iv) Desk-Audits (Section 10-103.3(d)5Civ).
 - d. **Detailed Quality Assurance Action Records.** The ECC-Provider shall keep all field notes and associated records regarding passed, warnings issued, or failed quality assurance tests for each certified ECC-Rater for no less than five (5) years.

10. Data Retention.

- A. An ECC-Provider shall maintain all information in the original format in which it collects, receives, or records the data for a minimum of ten years. **[What does original format mean?]**
- B. ECC-Providers shall maintain a system that allows the Commission to readily query, search, index, process, or otherwise interact with that data stored on the ECC-Provider's system in a way that is not substantially limited compared to the ability of the ECC-Provider to query, search, index, process, or otherwise interact with that data. **[This is overly broad and needs reasonable parameters to limit abuse. Providers can write code that allows specific queries and access to registry information that cannot and should not be extended to Commission programmers. These are not tools built for the registry but executed coding. Registries are required to register**

and validate data – extending the requirements to require the registry to be flexible searchable data storage centers needs a costs assessment. The Registries were never created or required to do data analytics. If data analytics are required with these new regulations - be specific about what is needed so it can be built into the 2025 Registries and not subject to interpretation by the Commission or the Providers. Or, make a delineated list of reports. Accommodating data requests can be less expensive than building a replete set of tools and reports and queries that may or may not be needed by CEC staff. Some specification is needed.]

- C. ECC-Providers may not restrict or degrade the Commission’s ability to query, access, sort, or filter this information in any way. **[Reasonable limits so that the Commission Staff won’t break the registries are necessary. Commission staff have not recognized the complexities of databases and database construction in the past and have also ignored the costs associated with maintaining such features. These provisions are written too broadly and have no cost assessments associated with the new mandates.]**
- D. ECC-Providers shall maintain digital copies of all files that can be indexed and searched. It is the responsibility of ECC-Providers to maintain the necessary systems to support these functions, unless the Commission or Executive Director explicitly authorizes the ECC-Provider, in writing, to operate without this functionality or process. **[If searchability is mandated then “files” need to be defined. There are significant differences in the types of files, e.g., XML versus PDF, and associated capabilities, hardware and software demands.]**
- E. Nothing in this subsection shall be construed as requiring an ECC-Provider to process, re-package, or otherwise modify any historical information collected prior to January 1, 2026.

11. Data Reporting. ECC-Providers shall comply with the following reporting requirements:

- A. ECC-Providers shall maintain a database of the information specified in Section 10-103.3(d)9A and in compliance with Building Energy Efficiency Standards, Reference Appendix JA7, for the greater of: 500 buildings field verified and diagnostically tested by ECC-Raters certified by the respective ECC-Provider each year or a 10 percent random sample of buildings field verified and diagnostically tested by ECC-Raters certified by the respective ECC-Provider each year. **[This is an expanded mandate from current rules, and it is unclear how the costs can be justified. Providers are already required under JA7 to provide compliance packages. Any further data deliveries or queries are excessive and duplicative. The Commission already has the data, what is the cost benefit of mandating duplicative submissions. These**

mandates are just asking for more duplicative data.]

- B. Beginning January 1, 2027, ECC-Providers shall provide this information annually in electronic form to the Commission for evaluating the effectiveness of field verification and diagnostic testing. **[With the 2022 Code, Providers are required to submit the compliance packages to the Commission, the Commission will already have this information and data. Any further requirements will not pass a costs analysis review since it is duplicative of existing mandates without a clear justification as to why it is necessary to be duplicated.]**
- C. This information shall be organized according to climate zones as defined in the Building Energy Efficiency Standards, Section 100.1(b).
- D. **FV&DT Data Reporting.** Within ninety days of the Executive Director approving a CEC-maintained electronic document repository, an ECC-Provider shall transmit to the Commission electronic document depository Certificate(s) of Certification, Certificate(s) of Installation, Certificate(s) of Verification documents (Section 10-103) and their associated Compliance Registration Packages that are registered and retained by a data registry in accordance with Section 10-103 and Building Energy Efficiency Standards, Appendix JA7. The ECC-Provider shall submit this data no less than once per calendar quarter and in a manner as directed by the Commission. **[The Commission is already collecting this information – please clarify that this mandate once executed will revoke all the other data demands and queries and costs on Providers. This set of regulations is a “kitchen sink” approach of give us access to everything and duplicative data sets without any recognition of the hard costs associated with the programming, data storage, data rendering, and production. Subject Matter Experts with an understanding of database management need to be involved in writing these regulations.]**
- E. **Quality Assurance Quarterly Report.** The ECC-Provider shall send a report each quarter to the Commission that includes all failed quality assurance audits (Section 10-103.3(d)5). The ECC-Provider shall comply with all of the following:
 - i. Submit a Quality Assurance Quarterly Report for each project where an audit (Section 10-103.3(d)5) was performed and failed within the calendar quarter. The Quality Assurance Quarterly Report shall be submitted no less than 60 days after the end of the calendar quarter. Each reported project shall list the contractor information, ECC-Rater information, project address, project permit code (if available), other project identification available to help identify the project, and code violations for each failed audit (as prescribed in Section 10-103.3(d)5).
 - ii. The ECC-Provider shall submit all Quality Assurance Quarterly

Reports to the Commission in a docket prepared by the Commission.

F. Quality Assurance Annual Report.

- i. An ECC-Provider shall submit a Quality Assurance Annual Report to the Commission for each calendar year no later than the end of February of the following year.
- ii. The Quality Assurance Annual Report shall include all specified records within the annual timeframe.
- iii. The Quality Assurance Annual Report shall summarize all quality assurance actions taken for each ECC-Rater certified by the ECC-Provider during the preceding year.
- iv. Detailed Quality Assurance Action Records (Section 10-103.3(d)9Biiid) are not required to be submitted annually to the Commission but shall be subject to Commission requests for information made pursuant to Section 10-103.3(d)12.

G. Annual Reporting Requirements Regarding ECC-Rater Companies.

- i. Beginning in 2027, an ECC-Provider shall submit an ECC-Rater Company Annual Report to the Commission by June first of each year
- ii. The data used as the basis for the ECC-Rater Company Annual Report shall include submitted reports from all ECC-Rater Companies (Section 10-103.3(f)2H) and all ECC-Raters filing as an independent (Section 10-103.3(e)2G).
- iii. The ECC-Provider shall ensure that the ECC-Rater Company Annual Report includes all of the following:
 - a. the compliance status of the principal licensure requirements (Section 10-103.3(f)1B) are met for each ECC-Rater Company and the certification status of ECC-Rater filing as independent (Section 10-103.3(e)1A).
 - b. the number of all types of certificate status (Section 10-103.3(e)1A) for all ECC-Raters employed by each ECC-Rater Company.
 - c. whether the total number of field verifications and diagnostic tests registered by each ECC-Rater Company and ECC-Rater filing as an independent is accurate as compared to the ECC-Provider data registry.
 - d. an aggregation of the total and average costs of services for each type of field verifications and diagnostic tests reported by all ECC-Rater Companies and ECC-Rater filing as an independent without any associated identification. The ECC-Provider shall summarize the cost of services data by local

jurisdiction and climate zone independently. All aggregations shall consist of at least three reports of either ECC-Rater Company (Section 10-103.3(f)2H) or ECC-Rater (Section 10-103.3(e)2G) filing as independent. All unaggregated results shall be included in a "other" category if consisting of at least three ECC-Rater Companies or ECC-Rater filing as independent. The ECC-Provider shall include the total number of reports for ECC-Rater Companies and ECC-Raters filing as an independent that were not possible to aggregate or are otherwise not included in the report.

- H. Immediate Reporting of Disciplinary Actions. The ECC-Provider shall provide written notification of any decertification of an ECC-Rater or ECC-Rater Company to the Commission within 24 hours of decertification. The Commission shall notify all ECC-Providers of the decertification and instruct all ECC-Providers to immediately suspend the ECC-Rater's or ECC-Rater Company's access credentials to their respective data registries.

12. Responses to Commission Requests for Data.

- A. At any time, the Executive Director may request access to or a digital copy of one or more registered compliance documents, associated Compliance Registration Packages, and quality assurance records that an ECC-Provider is required to maintain pursuant to Section 10-103.3(d)9 and the Building Energy Efficiency Standards, Reference Joint Appendix JA7.
- B. Failure to provide the requested information or access to the Executive Director within 30 days of a request issued pursuant to Section 10-103.3(d)12A is a violation of these regulations unless the Executive Director specifies additional time to comply with the request. The ECC-Provider may request an extension up to 60 days if the Executive Director's initial request does not specify a compliance deadline, or that deadline is less than 60 days.
- C. ECC-Providers have the sole responsibility to ensure that their systems are capable of complying with the data request provisions of this subsection, including providing the Commission with reasonable access to any and all compliance documents, including Compliance Registration Packages, submitted within the past 10 years.

13. Data Registry Requirements. ECC-Providers are required to comply with all data registry requirements provided by the Building Energy Efficiency Standards, Reference Joint Appendix JA7 and Section 10-109.