

DOCKETED

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CALIFORNIA ENERGY COMMISSION

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CEC-057 (Revised 1/21)

**INITIAL STATEMENT OF REASONS**

Amendment of the Home Energy Rating System (HERS) Regulations
Title 20, sections 1670-1675

Docket No. 23-HERS-01

INTRODUCTION

The California Energy Commission (CEC) proposes to amend the Home Energy Rating System (HERS) contained in the California Code of Regulations (CCR), Title 20 (“the Proposed Action”) to remove regulations related to the field verification and diagnostic testing (FV&DT) program, after considering all comments, objections, and recommendations regarding the Proposed Action.

PROBLEM STATEMENT

The Warren-Alquist Act establishes the CEC as the state’s primary energy policy and planning agency. The Warren-Alquist Act directs 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.” As part of accomplishing this mandate, the Act requires the CEC to promulgate energy standards for newly constructed buildings, additions to existing buildings, and alterations to existing buildings. The Building Energy Efficiency Standards (Energy Code) is a unique California asset that has placed the state at the forefront of energy efficiency, sustainability, energy independence, and climate change issues and has provided a template for national standards within the United States as well as for other countries around the globe. The Energy Code is in CCR, Title 24, Parts 1 and 6. CEC administers an FV&DT testing program to collect data and verify compliance with the Energy Code.

Another distinct but related way the CEC fulfills this mandate is through the development of the California Home Energy Rating System (HERS) Program regulations (CCR, Title 20, sections 1670-1675). The HERS program is a voluntary home energy usage rating program that assigns a rating on the home based on energy performance and provides efficiency upgrade recommendations to improve the whole-house rating. The HERS whole-house program utilizes HERS Providers to certify, train, and oversee HERS raters that perform the whole-house ratings.

As implemented, both the HERS whole-house and the FV&DT programs utilize raters that are governed by the regulations located at Title 20, sections 1670-1675 despite the different purposes of the two programs. The HERS whole-house rater assigns a rating to the home based on energy performance analysis and seeks to educate and advise consumers on energy efficiency measures they can voluntarily install to improve the

energy efficiency of their home. By contrast, the FV&DT rater verifies compliance with the requirements of the Energy Code in newly constructed residential buildings, and alterations and additions to existing residential buildings.

The HERS whole-house program is not intended to verify compliance with the Energy Code, but instead is to give homeowners insight into the energy performance of their home and a pathway to improve it. The FV&DT program must address an ever-changing landscape of energy efficiency requirements adopted into the Energy Code update every three years. This three-year cycle aligns with and becomes part of the California Building Standards Code developed by the California Building Standards Commission.

Because the HERS whole-house and FV&DT programs differ so greatly, a single set of requirements in Title 20 to cover both program administration makes it difficult for the CEC to implement and administer both the HERS whole-house and FV&DT programs. It also makes it more confusing to program stakeholders including HERS Providers, raters, rater companies, builders, and especially homeowners.

Therefore, to improve the administration of both programs and reduce confusion within the public and the regulated community, the CEC is proposing to separate the two programs by repealing all provisions relating to the FV&DT program from the HERS whole-house regulations in Title 20, while updating the FV&DT requirements in a separate rulemaking as a part of the 2025 triennial Building Energy Efficiency Standards rulemaking cycle under the jurisdiction of the California Building Standards Commission.

The scope of this rulemaking is limited to repealing provisions referencing the FV&DT program in Title 20. For information about the changes to the FV&DT program that the CEC is undertaking in a separate rulemaking for Title 24, please see Docket No. 22-BSTD-03, which is currently in the pre-rulemaking stage. Changes to Title 24 during the 2025 Energy Code update cycle are subject to the triennial cycle, which will entail further pre-rulemaking and formal rulemaking notice and comment periods prior to the required effective date of January 1, 2026.

The proposed amendments to Title 20 would be effective January 1, 2026, to coincide with the effective date of the Title 24 2025 Energy Code update.

PURPOSE

The purpose of the proposed regulations is to repeal regulations related to the FV&DT program from Title 20, effective January 1, 2026. In a separate rulemaking CEC proposes adding FV&DT regulations into Title 24 of the 2025 Energy Code.

BENEFITS

The benefits of the proposed regulations will be to enhance the clarity and regulatory certainty of the regulations by creating two independent programs each tailored to support a single key purpose and service. Moving regulations related to the FV&DT

program into Title 24 benefits the state by providing a regular opportunity to easily update the FV&DT program on a triennial basis to keep up with the ever-changing requirements in the Energy Code updates.

STATEMENT OF SPECIFIC PURPOSE AND NECESSITY

Summary of proposed regulatory changes.

The express terms indicate both the current language that will remain in effect until December 31, 2025, as well as the language that will replace it on January 1, 2026. Each section contains added language to demarcate which language will go into effect January 1, 2026, and which language will be replaced. The replacement language includes underline and strikeout to show the changes that will become effective as of January 1, 2026.

SECTION 1670. Scope

SPECIFIC PURPOSE

The specific purpose is to repeal all references to the FV&DT program from the scope of the HERS whole-house program in order to clearly differentiate the HERS whole-house and FV&DT programs, as discussed above, and to make non-substantive numbering changes. The proposed amendments also indicate the effective date of the amendments in this rulemaking in order to ensure they coincide with the January 1, 2026, effective date of the 2025 Energy Code.

NECESSITY

It is necessary to delete references to the FV&DT program because the CEC is proposing to add them to the Energy Code (Title 24 regulations) with amendments, in which case the language in the Title 20 regulations would be duplicative, inconsistent, and/or incompatible with the FV&DT requirements added to the Energy Code.

It is necessary to delete the words “two key services” because, with references to the FV&DT program removed from the Title 20 regulations, the HERS raters will only provide one service, the Whole-House Home Energy Ratings of newly constructed and existing homes, as provided in the language that will remain.

It is necessary to delete item (i) from the scope because the requirement to provide field verification and diagnostic testing will be provided in the Energy Code, and therefore keeping this language here would be duplicative, and potentially inconsistent and/or incompatible with the Energy Code’s FV&DT requirements.

The deletion of (ii) is necessary to correct the numbering sequence with the removal of number (i) and is a non-substantive change.

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, to avoid duplication and redundancy between Titles of the California Code of Regulations. The effective date of January 1, 2026 is determined by the triennial cycle set forth in State Building Standards Law and California Building Standards Commission's adoption schedule for the 2025 Energy Code cycle.

SECTION 1671. Definitions

SPECIFIC PURPOSE

The specific purpose is to delete the following definitions related to the FV&DT program from the definition section of the HERS program: "ACM Manual," "California Field Verification and Diagnostic Testing Rater," and "Service Water Hearing." In addition, reference to field verification and diagnostic testing is removed from the definitions of "Rater," "Rating," and "Rating System."

In addition, a reference to section 1673 was changed from subsection (j) to subsection (i) in the definition of "Independent Entity."

The proposed amendments also add the January 1, 2026, effective date of the amendments in this section to coincide with the 2025 Energy Code cycle.

NECESSITY

It is necessary to remove the definitions and portions of definitions related to FV&DT in section 1671 because the CEC is proposing to repeal the FV&DT program in Title 20 to accommodate the additions of these provisions to Title 24 and avoid duplicative and redundant provisions. Removal of these definitions will not impact any other regulated program.

The changed cross-reference to section 1673 is necessary because 1673(f) is being omitted, requiring renumbering of every subsection after 1673(e). This is a nonsubstantive change.

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, in order to avoid duplication and redundancy between Titles of the California Code of Regulations.

SECTION 1672. Requirements for Rating Systems

SPECIFIC PURPOSE

The specific purpose is to delete all references to the FV&DT program from section 1672 and make non-substantive numbering changes.

The proposed amendments also add the effective date of the amendments in this section.

NECESSITY

It is necessary to remove all references to FV&DT in section 1672 because the CEC is proposing to repeal the FV&DT program in Title 20 to accommodate the additions of these provisions to Title 24 and avoid duplicative and redundant provisions.

The replacement of (m) with (l) is necessary to correct the numbering sequence with the removal of (l) and is a non-substantive change.

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, in order to avoid duplication and redundancy between Titles of the California Code of Regulations.

SECTION 1673. Requirements for Providers

SPECIFIC PURPOSE

The specific purpose is to delete all references to the FV&DT program from section 1673 and to make non-substantive numbering and grammatical changes. The proposed amendments also add the effective date of the amendments in this section.

NECESSITY

It is necessary to remove all references to FV&DT of section 1673 because the CEC is proposing to repeal the FV&DT program in Title 20 to accommodate the additions of these provisions to Title 24 and avoid duplicative and redundant provisions.

The renumbering of subsections in section 1673 is necessary to maintain internal consistency of the numbering sequences and correct cross-references, and is a non-substantive change.

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, in order to avoid duplication and redundancy between Titles of the California Code of Regulations.

SECTION 1674. Certification of Providers and Rating Systems

SPECIFIC PURPOSE

The specific purpose is to delete all references to the FV&DT program and to add the effective date of the amendments in this section.

NECESSITY

It is necessary to remove all references to FV&DT from section 1674 because the CEC is proposing to repeal the FV&DT program in Title 20 to accommodate the additions of these provisions to Title 24 and avoid duplicative and redundant provisions

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, in order to avoid duplication and redundancy between Titles of the California Code of Regulations.

SECTION 1675. Review by the Energy Commission

SPECIFIC PURPOSE

The specific purpose is to delete all references to the FV&DT program from section 1675 and to add the effective date of the amendments in this section.

NECESSITY

It is necessary to remove all references to FV&DT from section 1675 because the CEC is proposing to repeal the FV&DT program in Title 20 to accommodate the additions of these provisions to Title 24 and avoid duplicative and redundant provisions

The addition of the effective date of the amendments, January 1, 2026, is to coincide with the proposed effective date of the addition of FV&DT provisions to the Energy Code, in order to avoid duplication and redundancy between Titles of the California Code of Regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON.

The CEC relied upon input from various stakeholders, subject matter experts, and interested parties that provided information, feedback, and subject matter expertise.

The CEC also relied upon the following document:

Final Staff Report: 2022 Update of the Home Energy Rating System Requirements. California Code of Regulations Title 20, Division 2, Chapter 4, Article 8, Sections 1670-1675. January 2023. CEC-400-2022-017-F

CONSIDERATION OF REASONABLE ALTERNATIVES INCLUDING THOSE THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The CEC has made an initial determination that the proposed regulatory changes will not have a statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Because there will be no changes to the industry as a result of removing the FV&DT program from the HERS regulations, no impacts to businesses are expected.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposed regulatory changes do not mandate proprietary technology or equipment

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

The Creation or Elimination of Jobs within the State of California

The proposed regulatory changes would repeal all provisions relating to the FV&DT program from the HERS regulations in Title 20 and add the FV&DT program requirements to Title 24 under a separate rulemaking. Separating the two programs will create two independent programs each tailored to support a single key purpose and service. Because there will be no changes to the industry as a result of removing the FV&DT program, no impacts to businesses are expected. Therefore, the CEC has determined jobs will not be created or eliminated as a result of the proposed regulations.

The Creation of New Businesses or the Elimination of Existing Businesses within the State of California.

The proposed regulatory changes would remove all provisions relating to the FV&DT program from the HERS regulations in Title 20 and add the FV&DT program requirements to Title 24 under a separate rulemaking. Separating the two programs will create two independent programs each tailored to support a single key purpose and service. Because there will be no changes to the industry as a result of removing the FV&DT program, no impacts to businesses are expected as a result of this rulemaking. Therefore, the CEC has determined no businesses will be created or eliminated as a result of the proposed regulations.

The Expansion of Businesses Currently Doing Business within the State of California

The proposed regulatory changes would remove all provisions relating to the FV&DT program from the HERS regulations in Title 20; the FV&DT program requirements will be added to Title 24 under a separate rulemaking. Separating the two programs will create two independent programs each tailored to support a single key purpose and service. Because there will be no changes to the industry as a result of removing the FV&DT program, no impacts to businesses are expected. Therefore, the CEC has determined that the proposed regulations will not result in the expansion of businesses in the state of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The benefits of the proposed regulations will be to enhance the clarity and regulatory certainty of the regulations by creating two independent programs each tailored to support a single key purpose and service. Moving regulations related to the FV&DT program into Title 24 benefits the state by providing a regular opportunity to easily update the FV&DT program on a triennial basis to keep up with the ever-changing requirements in the Energy Code updates.

Because this rulemaking effectively serves to remove requirements in Title 20 that would be duplicative, inconsistent, and/or incompatible with updated requirements that will be added to Title 24 as a result of a separate rulemaking, the proposed regulatory changes will not adversely impact the health and welfare of California residents, worker safety, or the state's environment.

Results of the Economic Impact Assessment/Analysis

Because this rulemaking effectively serves to remove requirements in Title 20 that would be duplicative, inconsistent, and/or incompatible with updated requirements that will be added to Title 24 as a result of a separate rulemaking, the CEC concludes that: (1) the proposal will not create jobs within California, (2) that the proposal will not eliminate jobs within California, (3) the proposal will not create new businesses in California, (4) the proposal will not eliminate existing businesses within California, and (5) the proposal will not result in the expansion of businesses currently doing business within the state.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT AFFECTING BUSINESS

Because this rulemaking effectively serves to remove requirements in Title 20 that would be duplicative, inconsistent, and/or incompatible with updated requirements that will be added to Title 24 as a result of a separate rulemaking, the CEC has made an initial determination that the proposed regulatory changes will not have a significant adverse economic impact directly affecting business.

Because there will be no changes to the industry as a result of removing the FV&DT program from the regulations, no impacts to businesses are expected.

DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS

The CEC has determined that there are no existing comparable Federal regulations or statutes.

FOR FURTHER INFORMATION

Inquiries concerning all aspects of the rulemaking process, including the substance of the proposed regulatory changes or any other information upon which the rulemaking is based, should be directed to Corrine Fishman at corrine.fishman@energy.ca.gov.