

DOCKETED

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Project Title:	2023 Repeal of the Field Verification and Diagnostic Testing requirements in Title 20
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CALIFORNIA ENERGY COMMISSION

715 P Street
Sacramento, California 95814

energy.ca.gov

CEC-057 (Revised 1/21)

**NOTICE OF PROPOSED ACTION**

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

Docket No. 23-HERS-01
Notice Published on February 10, 2023

INTRODUCTION

Notice is hereby given that the California Energy Commission (CEC) proposes to amend the Home Energy Rating System (HERS) regulations 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)**, after considering all comments, objections, and recommendations regarding the Proposed Action.

In a separate rulemaking, CEC proposes adding FV&DT regulations to CCR, Title 24. That rulemaking is currently in the pre-rulemaking stage. For more details on this separate rulemaking please see Docket No. 22-BSTD-03.

PUBLIC HEARING

CEC staff will hold a public hearing on the proposed regulations at the date and time listed below. Interested persons, or their authorized representative, may present statements, arguments, or contentions relevant to the proposed regulatory changes at the public hearing. *The record for this hearing will be kept open until every person who is present has had an opportunity to provide comment.*

Tuesday, March 28, 2023
10:00 a.m. (Pacific Time)

The public hearing will be held remotely to improve and enhance public access to meetings, allowing broader access through teleconferencing options. Instructions for remote participation in the public hearing are below.

REMOTE ATTENDANCE

The public hearing may be accessed by clicking the Zoom link below or visiting [Zoom](https://join.zoom.us) at <https://join.zoom.us> and entering the ID and password below. If you experience

difficulties joining, you may contact Zoom at (888) 799-9666 ext. 2, or the Office of the Public Advisor, Energy Equity and Tribal Affairs at publicadvisor@energy.ca.gov or by phone at (916) 654-4489 or toll free at (800) 822-6228.

Zoom Link:

<https://energy.zoom.us/j/87912688427?pwd=RWtOT3RpRmR2YjFxb0Y1YTRIZ1hndz09>

Webinar ID: 879 1268 8427

Password: 951808

To participate by telephone dial (213) 338-8477 or (888) 475-4499 (toll free). When prompted, enter the Webinar ID and password listed above. To comment or ask a question over the telephone, dial *9 to “raise your hand” and *6 to mute/unmute your phone line.

PUBLIC ADVISOR

The CEC’s Office of the Public Advisor, Energy Equity and Tribal Affairs provides the public assistance in participating in CEC proceedings. For information on participation or to request interpreting services or reasonable accommodations, reach out via email at publicadvisor@energy.ca.gov, by phone at (916) 654-4489, or toll free at (800) 822-6228. Requests for interpreting services and reasonable accommodations should be made at least five days in advance. The CEC will work diligently to accommodate all requests.

Zoom: If you experience difficulties with the Zoom platform, please contact the Office of the Public Advisor, Energy Equity and Tribal Affairs via email or phone.

MEDIA INQUIRIES

Direct media inquiries to the Media and Public Communications Office at (916) 654-4989 or mediaoffice@energy.ca.gov.

PUBLIC COMMENT PERIOD

The public comment period for the proposed amendment of the HERS regulations will be held from **February 10, 2023, through March 27, 2023**. Any person may submit written comments to the CEC for consideration on or prior to **March 27, 2023**. The CEC appreciates receiving written comments at the earliest possible date. Comments submitted outside this comment period are considered untimely. The CEC may, but is not required to, respond to untimely comments, including those raising significant environmental issues.

Written and oral comments, attachments, and associated contact information (including address, phone number, and email address if provided in a comment) will become part of the public record of this proceeding with access available via any internet search engine.

The CEC encourages use of its electronic commenting system. Visit the e-commenting page at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2025-building-energy-efficiency-0> which links to the comment page for this docket. Enter your contact information and a comment title describing the subject of your comment(s). Comments may be included in the “Comment Text” box or attached as a downloadable, searchable document consistent with CCR, Title 20, section 1208.1. The maximum file size allowed is 10 MB.

Written comments may also be submitted by email. Include docket number 23-HERS-01 in the subject line and email to docket@energy.ca.gov.

A paper copy may be sent to:

California Energy Commission
Docket Unit
Docket No. 23-HERS-01
715 P Street
Sacramento, CA 95814

To ensure you receive notice of any changes to the proposed regulations in this proceeding, please follow the instructions provided at the end of this notice to join the proceeding subscription list or provide a valid email or mailing address with your comments.

STATUTORY AUTHORITY AND REFERENCE

Authority cited: Sections 25213, 25942, and 25943, Public Resources Code.
Reference: Section 25942, Public Resources Code

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

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 on 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.

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.

Difference from existing comparable federal regulations or statute

These proposed regulations do not duplicate or conflict with any federal statute or regulations.

Broad objectives of the regulations and the specific benefits anticipated by the proposed amendments.

The broad objective for 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.

The specific 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.

Determination of inconsistency or incompatibility with existing state regulations

The CEC proposes to repeal requirements in Title 20 related to the FV&DT program and place those requirements into the Title 24 Energy Code effective January 1, 2026. The CEC has conducted an evaluation and determined that the proposed removal of regulations related to the FV&DT program from the Title 20 regulations would not prevent compliance with existing state regulations and are neither inconsistent nor incompatible with any other existing state regulations. Rather, the repeal of regulations related to the FV&DT program from Title 20 will avoid duplication and potential inconsistency with the addition of those provisions in Title 24 in the separate rulemaking the CEC is undertaking.

DOCUMENTS INCORPORATED BY REFERENCE

No documents are being proposed to be incorporated by reference.

MANDATED BY FEDERAL LAW OR REGULATIONS

None

OTHER STATUTORY REQUIREMENTS

None

LOCAL MANDATE DETERMINATION

The proposed regulations will not impose a mandate on local agencies or a school district that requires reimbursement pursuant to 17500 et seq.

FISCAL IMPACTS

The CEC has made the following initial determinations:

- Cost to any local agency or school district requiring reimbursement pursuant to Government Code section 17500 et seq.: None
- Cost or savings to any state agency: None
- Non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in Federal funding to the state: None

SIGNIFICANT EFFECT ON HOUSING COSTS

None

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

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 repealing the FV&DT program from the Title 20 regulations, no impacts to businesses are expected.

THE ECONOMIC IMPACT ANALYSIS

The CEC concludes that: (1) the proposal will not create jobs within California, (2) 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.

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 relevant 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.

The proposed regulatory changes will not adversely impact the health and welfare of California residents, worker safety, or the state's environment.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The CEC is not aware of any cost impacts that a representative person or business would necessarily incur in reasonable compliance with the Proposed Action.

Because there will be no changes to the industry as a result of repealing the FV&DT program from the Title 20 regulations, no impacts to businesses or representative persons are expected.

BUSINESS REPORT

The proposed regulatory changes do not impose a new reporting requirement for businesses.

EFFECT ON SMALL BUSINESS

The proposed regulatory changes will not affect small business as there will be no changes to the industry as a result of repealing the regulations.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the CEC must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the Proposed Action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSON

Questions should be addressed to:

Corrine Fishman, Regulations Manager
Efficiency Division
(916) 805-7452
or
Lorraine White, Branch Manager
Standards Compliance Branch
(916) 628-2654

COPIES OF THE INITIAL STATEMENT OF REASONS, THE EXPRESS TERMS, AND RULEMAKING FILE

The CEC will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 715 P Street, Sacramento CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the express terms, the Initial Statement of Reasons, and any documents relied upon. Copies may be obtained by contacting Corrine Fishman or accessed through the CEC website at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2025-building-energy-efficiency-0>.

AVAILABILITY OF CHANGES TO ORIGINAL PROPOSAL FOR AT LEAST 15 DAYS PRIOR TO AGENCY ADOPTION/REPEAL/AMENDMENT OF RESULTING REGULATIONS

Participants should be aware that any of the proposed regulations could be changed as a result of public comment, staff recommendation, or recommendations from Commissioners. Moreover, changes to the proposed regulations not indicated in the express terms could be considered if they improve the clarity or effectiveness of the regulations. If the CEC considers changes to the proposed regulations pursuant to Government Code section 11346.8, a full copy of the text and any additional documents relied upon will be available for review at least 15 days prior to the date on which the CEC adopts or amends the resulting regulations.

COPY OF THE FINAL STATEMENT OF REASONS

At the conclusion of the rulemaking, persons may obtain a copy of the Final Statement of Reasons once it has been prepared, by visiting the CEC website at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2025-building-energy-efficiency-0> or contacting Corrine Fishman.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The CEC maintains a website in order to facilitate public access to documents prepared and considered as part of this rulemaking proceeding. Documents prepared by the CEC for this rulemaking have been posted on our website at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2025-building-energy-efficiency-0>.

INSTRUCTIONS FOR RECEIVING NOTICES AND DOCUMENTS IN THIS PROCEEDING

To stay informed about this proceeding and receive documents and notices of upcoming workshops and hearings as they are filed, please subscribe to the proceeding email, which can be accessed at <https://www.energy.ca.gov/programs-and-topics/programs/building-energy-efficiency-standards/2025-building-energy-efficiency-0>.

The CEC's subscription lists send out email notifications and direct links when documents and notices are filed in the proceeding docket. If you are unable or do not wish to sign up for the subscription list but still would like to receive documents and notices by other means, please contact Corrine Fishman at corrine.fishman@energy.ca.gov.