

CALIFORNIA ENERGY COMMISSION1516 Ninth Street
Sacramento, California 95814Main website: www.energy.ca.gov**NOTICE OF PROPOSED ADOPTION**

**PROPOSED AMENDMENTS TO
CALIFORNIA HOME ENERGY RATING SYSTEM PROGRAM REGULATIONS
California Code of Regulations, Title 20, Chapter 4, Article 8
Sections 1670 to 1675**

**CALIFORNIA ENERGY COMMISSION
DOCKET NUMBER 08-HERS-2
OCTOBER 3, 2008**

DOCKET**08-HERS-2**DATE SEP 29 2008RECD. SEP 29 2008**INTRODUCTION**

Public Resources Code (PRC) Section 25942 directs the California Energy Commission to adopt a statewide Home Energy Rating System (HERS) program for residential dwellings. The overall goal of this program is to provide reliable information to differentiate the energy efficiency among California homes, and guide investment in cost effective home energy efficiency measures. Information may also be provided to field verify the physical characteristics and measures installed in new homes to help demonstrate compliance with the California Residential Building Energy Efficiency Standards.

In 1999, the Energy Commission adopted the Phase I HERS Program regulations, establishing the program for the purposes of certifying home energy raters to provide field verification and diagnostic testing for demonstrating compliance with the Building Energy Efficiency Standards.

The Energy Commission announces the Phase II rulemaking of the HERS program to put in place the remaining statutory elements of PRC section 25942 necessary to extend the program to whole-house energy ratings for existing and newly constructed homes. Specifically, Phase II extends Phase I of the program to include methodologies for calculating a California HERS Index and analyzing utility bills and cost-effectiveness of energy efficiency measures. Phase II further addresses whole-house energy ratings and certification of individuals who would be involved in the California HERS Program, including raters, energy auditors, energy inspectors, energy analysts, and building performance contractors.

The Energy Commission has prepared this Notice of Proposed Adoption (NOPA) and an Initial Statement of Reasons regarding the need for the proposed amendments. This NOPA also announces the availability of the Express Terms (45-Day Language) of the proposed amendments to the existing HERS Program regulations, including the HERS Technical Manual that is incorporated by reference. These documents can be obtained

from the contact persons designated below or from the Energy Commission website at [\[http://www.energy.ca.gov/HERS/index.html\]](http://www.energy.ca.gov/HERS/index.html).

PUBLIC HEARING

The Energy Commission's Efficiency Committee (Committee) will hold a public hearing on the following date to receive public comments on the Express Terms:

WEDNESDAY, OCTOBER 15, 2008
10 a.m.
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
First Floor, Hearing Room A
Sacramento, California
(Wheelchair Accessible)

Audio for the October 15, 2008 Committee meeting will be broadcast over the Internet. For details, please go to:

[\[www.energy.ca.gov/webcast\]](http://www.energy.ca.gov/webcast)

If you do not have computer access and wish to participate in the meeting by phone, please call 1- 888-282-0366 by 10:00 a.m. Pacific Time.
Passcode: HERS Call Leader: Helen Lam

At this hearing, any person may present comments relevant to the proposed action. Interested persons may also submit written comments by **October 14, 2008**, to be considered at the Committee hearing. However, the Energy Commission appreciates and encourages the submittal of written comments at the earliest possible date.

PROPOSED ADOPTION DATE

The Energy Commission will hold a public hearing for consideration and possible adoption of the 45-Day Language Express Terms on the following date unless the Commission decides to modify the Express Terms through the issuance of 15-Day Language.

WEDNESDAY, NOVEMBER 19, 2008
10 a.m.
CALIFORNIA ENERGY COMMISSION
1516 Ninth Street
First Floor, Hearing Room A
Sacramento, California
(Wheelchair accessible)

Audio for the November 19, 2008 Adoption Hearing will be broadcast over the Internet at [\[www.energy.ca.gov/webcast\]](http://www.energy.ca.gov/webcast).

At the adoption hearing, any person may present written or oral comments on the proposed amendments. Interested parties may also submit written comments by **November 17, 2008**, for consideration at the adoption hearing. Again, the Energy Commission appreciates and encourages the submittal of written comments at the earliest possible date.

If you have a disability and require assistance to participate in these hearings, please contact Lou Quiroz at (916) 654-5146 at least five days in advance.

PUBLIC COMMENT PERIOD/WRITTEN COMMENTS

The public comment period for this NOPA will be from **October 3, 2008** through **November 19, 2008**. Please submit written comments on the proposed amendments in accordance with the dates specified above. Written comments are preferred to be emailed to [\[docket@energy.state.ca.us\]](mailto:docket@energy.state.ca.us) and [\[hlam@energy.state.ca.us\]](mailto:hlam@energy.state.ca.us). However, public comments may also be mailed or delivered to the following address:

California Energy Commission
Docket No. 08-HERS-2
Docket Unit
1516 Ninth Street, MS-4
Sacramento, California 95814-5504

All written comments must specify **Docket No. 08-HERS-2** on the document. When comments are e-mailed on behalf of an organization, the comments should be a scanned copy of the original on the organization's letterhead and include a signature of an authorized representative.

Written comments will also be accepted at both the Committee and the Adoption hearings provided that the comments are received by 10:00 a.m. on **November 19, 2008**.

AUTHORITY AND REFERENCE

The Energy Commission proposes to adopt the amendments under the authority of PRC sections 25213 and 25942. The proposed amendments implement, interpret, and make specific provisions of PRC section 25942.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

PRC section 25942 requires the Energy Commission to adopt a statewide home energy rating program for residential buildings. The program is required to establish the following:

- Consistent, accurate and uniform ratings based on a single statewide scale;
- Reasonable estimates of potential utility bill savings and reliable recommendations on cost-effective measures to improve energy efficiency;
- Training and certification procedures for home raters and quality assurance procedures to promote accurate ratings and protect consumers;
- In coordination with home energy rating system organizations, procedures to establish a centralized database including a uniform reporting system for information on residential dwellings;
- Labeling procedures that meet the needs of home buyers, homeowners, the real estate industry and mortgage lenders.

In 1999, the Energy Commission adopted the Phase I California HERS Program regulations under this statutory authority to utilize HERS raters to provide field verification and diagnostic testing services for showing compliance with the California Building Energy Efficiency Standards. Under the Phase I regulations, the basic infrastructure for training and certification of raters, quality assurance and uniform reporting and database management was established. The Commission is now conducting the Phase II rulemaking to extend the existing scope of the Phase I HERS Program to include whole-house energy ratings for existing and newly constructed homes and make some limited refinements of the Phase I rules for field verification ratings. This regulatory action is necessary to put in place the remaining statutory elements to achieve full compliance with PRC section 25942.

Under the Phase I HERS Program regulations, the Energy Commission has approved three HERS providers to train and certify over 1,000 HERS raters statewide, conduct quality assurance programs to monitor those HERS raters, and maintain databases of rating results. The Phase I HERS raters are paid by builders and contractors to conduct independent third-party field verification and diagnostic testing to ensure compliance with the Building Energy Efficiency Standards for newly constructed buildings and additions and alterations of existing buildings. They perform similar duties for demonstrating that homes and installations qualify for incentives for energy efficiency beyond that required by the Standards, which are offered by utility Public Goods Charge funded new construction programs, the Energy Star Homes Program, the New Solar Homes Partnership, and federal energy efficiency tax credits. Builders, contractors, and the administrators of these public incentives programs rely on the HERS Program to ensure that energy efficiency measures are reliably installed.

The proposed amendments extend the HERS Program to deliver whole-house energy ratings that provide California homeowners and home buyers with information about the relative energy efficiency of the homes they live in or homes that they are considering for purchase, and evaluation of the cost effectiveness of options to achieve greater energy efficiency in those homes. The HERS Phase II regulations set up a structure to

ensure that these ratings and cost effectiveness analyses are technically accurate and done with quality and to avoid conflicts of interest to protect consumers. These regulations govern what is to be addressed by whole-house home energy raters, how they are to be established and the procedures for persons providing the services of a HERS provider or HERS rater. The regulations do not require that anyone provide these services; if a person chooses to pursue the business opportunity to provide HERS provider or HERS rater services, they must comply with the regulations. Existing HERS providers and HERS raters who provide field verification rating services must adjust their work to comply with limited modifications to existing rules.

Taking advantage of the whole-house energy ratings conducted under these regulations is voluntary on the part of homeowners, home purchasers, or home sellers. These regulations do not mandate the use of home energy ratings or the improvement of the energy efficiency of homes. The Phase II HERS Program regulations are expected to add considerable value to the real estate market for residential homes, providing valuable information for buyers, sellers, realtors, lenders, and appraisers. Also, these regulations are expected to add considerable value for homeowners to understand the advisability of investments in energy efficiency improvements for the homes they live in. The Energy Commission does expect that administrators of incentives programs, such as utility public goods charge programs and local governments, will provide incentives for performance of home energy ratings that meet the requirements of these regulations and for installing of energy efficiency improvements that are recommended as a result of these regulations. The Commission expects that this reliance on the whole-house home energy ratings meeting the requirements of these regulations will provide substantial business opportunities for persons who become certified to perform HERS provider and HERS rater services and for suppliers of energy efficiency improvements.

The *Home Energy Rating System Technical Manual (HTM)*, California Energy Commission Publication No. CEC 400-2008-012, September 2008, is a new document that provides details for implementing the proposed regulations. It will be incorporated by reference into the HERS Program regulations. The *HTM* is designed for the specific target audience of HERS providers and raters who are familiar with the technical terminology used in the manual.

There is no existing federal law governing a national HERS program. The proposed amendments do not conflict with nor are mandated by federal law.

DOCUMENT INCORPORATED BY REFERENCE

California Energy Commission
Home Energy Rating System Technical Manual
CEC 400-2008-012, September 2008

OTHER STATUTORY REQUIREMENTS

Public Resources Code section 25213 provides the Commission with the authority to adopt rules and regulations necessary to carry out its assigned duties and responsibilities. There are no other statutory requirements that apply to the Phase II proposed amendments.

ECONOMIC AND FISCAL IMPACTS

The Energy Commission has made the following initial determinations.

LOCAL MANDATE

The proposed amendments will not impose a mandate on state or local agencies or districts.

FISCAL IMPACT

Costs Requiring Reimbursement. The proposed amendments will not impose on local agencies or school districts any costs for which Government Code sections 17500 to 17630 require reimbursement.

Other Non-Discretionary Costs or Savings for Local Agencies. The proposed amendments will not result in costs or savings for local agencies.

Costs or Savings for State Agencies. The proposed amendments will not result in any costs or savings for state agencies.

Cost or Savings in Federal Funding to the State. The proposed amendments will not result in any costs or savings in federal funding to the state.

EFFECT ON HOUSING COSTS

The proposed amendments for Phase II will have no direct impact on housing costs because homeowners and home purchasers are not required to obtain whole-house home energy ratings, but volunteer to do so. A homeowner who wishes to have his/her home rated or audited and to invest in energy efficiency improvements will have to pay for the costs of the work and services. The costs for obtaining a rating will be limited, typically in the range of \$100 to \$300. Homeowners also will have the option to increase the energy efficiency of their existing homes or homes that they are considering for purchase by implementing the cost effective improvements recommended by the whole-house home energy rating. However, the homeowner will be able to see a return on their investment through reduced energy bills and will obtain other benefits, such as improved comfort and air quality in the home. Similarly, a prospective home buyer who purchases a rated home that has had energy efficiency improvements made to it would gain the same utility cost savings and other benefits.

By being able to obtain this information at the time-of-sale, the cost of investment in energy efficiency improvements can be included in new mortgage financing, creating an instant positive cash flow where a small incremental increase in the mortgage payment to cover the cost of the improvements will be more than offset by a reduction in monthly energy bills.

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

The proposed amendments for Phase II will impose additional requirements on the three currently certified HERS Providers, should the providers choose to expand their responsibilities and implement the requirements to oversee whole-house home energy ratings. The HERS Providers will need to invest in the development of new course materials and rating software, the recruitment and training of staff, and other resources necessary to comply with the new provisions of the regulations. However, these costs will be offset by the training fees that the HERS Providers charge to participating HERS Rater applicants. Jobs for home energy raters and other service providers are expected to be created as a result of the proposed regulations. Also, additional business opportunities are expected to become available for providers, raters, and energy efficiency service providers who currently do not perform these services. New businesses providing such services may be created or existing businesses expanded. Therefore, the Energy Commission has made an initial determination that there will be no significant statewide adverse economic impact directly affecting businesses, including small businesses, as a result of the proposed amendments, including the ability of California businesses to compete with businesses in other states.

IMPACTS ON THE CREATION OR ELIMINATION OF JOBS WITHIN THE STATE, THE CREATION OF NEW BUSINESSES OR THE ELIMINATION OF EXISTING BUSINESSES, OR THE EXPANSION OF BUSINESSES IN CALIFORNIA

The proposed amendments for Phase II will have no adverse impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses in California. Any effect on jobs will be positive, as the regulations will enable greater employment opportunities for providers, raters, auditors, and other energy efficiency service providers due to the increased demand for services by homeowners and home buyers.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The Energy Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

BUSINESS REPORTS

The proposed amendments will impose minor modifications to reporting requirements for existing HERS Providers and Raters engaged in field verification and diagnostic testing. Only HERS Providers, Raters, businesses, and individuals who choose to be certified to provide services within the proposed whole-house energy rating system will need to comply with new reporting requirements in accordance with the proposed amendments. The Energy Commission finds that the reporting requirements are necessary for the health, safety, or welfare of the people of the state.

SMALL BUSINESS

The proposed regulations may impact small business. Small businesses that wish to be certified in the existing home rating system subject to the proposed regulations must pay for training, reporting, and/or oversight costs. However, the acquired skills and certification will result in income-generating opportunities for the small businesses.

ALTERNATIVES

Before it adopts the proposed amendments, the Energy Commission must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the amendments are proposed or would be as effective as and less burdensome to affected private persons than the proposed amendments. To date, the Energy Commission has found no alternatives to the proposed action that would be more effective, or as effective and less burdensome.

DESIGNATED CONTACT PERSONS

Please contact the following person, preferably by e-mail, for general information about the proceeding or to obtain any document relevant to the proceeding, including the Express Terms, the Initial Statement of Reasons, the Form 399, and any other document in the rulemaking file:

Helen Lam
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 651-3007
E-mail: [hlam@energy.state.ca.us]

Please contact the following person, preferably by e-mail, for substantive questions:

Rashid Mir
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 654-4109
E-mail: [rmir@energy.state.ca.us]

The backup contact person for substantive questions is:

Bruce Maeda
California Energy Commission
1516 Ninth Street, MS-25
Sacramento, California 95814-5512
Telephone: (916) 654-4077
E-mail: [bmaeda@energy.state.ca.us]

PUBLIC ADVISER

The Energy Commission's Public Adviser provides public assistance in participating in Energy Commission activities. If you wish to obtain information on how to participate in this proceeding, please contact the Public Adviser's Office by phone at (916) 654-4489 or toll free at (800) 822-6228, by FAX at (916) 654-4493, or by email at [pao@energy.state.ca.us].

NEWS MEDIA INQUIRIES

News media inquiries should be directed to the Media and Communications Office at (916) 654-4989, or by e-mail at [mediaoffice@energy.state.ca.us].

AVAILABILITY OF THE TEXT OF THE PROPOSED AMENDMENTS (EXPRESS TERMS), THE INITIAL STATEMENT OF REASONS, AND THE INFORMATION UPON WHICH THE PROPOSAL IS BASED (RULEMAKING FILE)

Documents in this rulemaking proceeding may be obtained at the Energy Commission's HERS website at [<http://www.energy.ca.gov/HERS/index.html>]. The website will have all of the documents prepared by the Energy Commission, including the Express Terms of the proposed amendments (written in plain English and set forth in a format that indicates both the existing text and the proposed text), including the HERS Technical Manual that is incorporated into the regulations by reference, the Initial Statement of Reasons, all documents relied upon by the Commission, and most of the other documents in the rulemaking file. The Express Terms and the Initial Statement of Reasons are also available at no cost from Helen Lam or the Docket Office referenced above.

AVAILABILITY OF MODIFIED AMENDMENTS (15-DAY LANGUAGE)

At the **November 19, 2008** Adoption Hearing, the Energy Commission may adopt the proposed amendments substantially as described in this NOPA. If the Energy Efficiency Committee decides to make modifications in response to public comments, this hearing will be continued to a subsequently noticed date and the full modified text with changes clearly indicated will be made available to the public at least 15 days before the subsequently noticed date when the Commission will consider adoption of the amendments. A notice of the availability of any such text will be placed on the Commission's website and will be mailed to all persons to whom this notice is being mailed, who submitted written or oral comments at any hearing, who submitted written comments during the public comment period, or who requested to receive such modifications. In addition, copies may be requested from the contact person named above and from the Docket Office. The Commission will accept written comments on any such modified text for at least 15 days after the text is made available to the public. Adoption of the 15-Day Language will be considered at a public hearing scheduled in the notice of availability.

FINAL STATEMENT OF REASONS

The Energy Commission will prepare a Final Statement of Reasons on the amendments to respond to all relevant comments made during the proceeding. The Final Statement of Reasons will be available from Helen Lam or the Docket Office noted above.

Mail Lists: 50, 51, 53 and 480

Note: The California Energy Commission's formal name is the State Energy Resources Conservation and Development Commission