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**FINAL STATEMENT OF REASONS**

**AMENDMENTS TO THE  
CALIFORNIA HOME ENERGY RATING SYSTEM  
PROGRAM REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS  
TITLE 20, CHAPTER 8, SECTIONS 1670 TO 1675**

**CALIFORNIA ENERGY COMMISSION  
DOCKET NO. 08-HERS-2**

**OFFICE OF ADMINISTRATION LAW  
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## **I. INTRODUCTION**

Existing law (Public Resources Code section 25942) requires the California Energy Commission (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; and
- Labeling procedures that meet the needs of home buyers, homeowners, the real estate industry and mortgage lenders.

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. The Home Energy Rating System (HERS) Program is intended to promote home energy efficiency, reduce energy utility bills and make housing more affordable in California, provide more comfortable and safe home environments, increase property values, and preserve California environmental quality and energy security.

## **II. PROCEDURAL HISTORY OF THE RULEMAKING**

In 1999, the 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. To put in place the remaining statutory elements to achieve full compliance with Public Resources Code section 25942, the Commission initiated the Phase II rulemaking in 2008 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.

On September 30, 2008, the Commission published the Express Terms of the proposed amendments to the HERS Program regulations, as well as a Notice of

Proposed Action (NOPA), an Initial Statement of Reasons (ISOR), and a Statement of Economic and Fiscal Impacts (Form 399), as required by the Administrative Procedure Act (APA). The NOPA was published in the California Regulatory Notice Register on October 3, 2008, and copies of the NOPA, the ISOR and the 45-Day Language Express Terms were made available to all interested persons, such as HERS providers and raters, trade associations, electric and natural gas utilities, state and local governments, and efficiency advocates. All persons and entities on the Commission's Efficiency electronic List Server were expressly noticed. The notification was also sent to the Commission's selected mailing lists of approximately 5,400 building officials, businesses, and individuals that have previously indicated an interest in Commission proceedings, and published on the Commission's website.

The NOPA designated November 19, 2008 (subsequently changed to November 20, 2008), as the hearing date to consider adoption of the proposed regulations. At the November 20, 2008 hearing, the Commission decided not to adopt the proposed regulations, but instead to issue revised amendments to the HERS regulations (15-Day Language), for consideration at a hearing on December 17, 2008. The 15-Day Language was published on December 1, 2008, and notice thereof, and of the December 17, 2008 Adoption Hearing, was provided to all participants in the rulemaking proceeding, including all those who had made oral or written comments, and all persons who had requested such notice.

The 15-Day Language contained further refinements to add specified requirements for the Building Performance Contractor and the HERS provider under these regulations. The modified language clarified the type of information to be included in the rating certificate, and described non-energy benefits in recommendations, measure life for benefit-cost ratio, and cost-effectiveness determinations.

### **III. AUTHORITY AND REFERENCE**

At the December 17, 2008 hearing, the Commission adopted the amendments under the authority of Public Resources Code sections 25213 and 25942. The amendments implement, interpret, and make specific provisions of Public Resources Code section 25942.

### **IV. UPDATE TO THE INFORMATIVE DIGEST**

The Commission finds that changes in the 15-Day Language warrant an update to the Informative Digest described in the Notice of Proposed Regulatory Action for the California Home Energy Rating System Program.

#### **Summary of Effect**

Based on comments provided during the 45-Day Language public comment period, the Commission has made the following changes to the original proposed amendments that were subsequently adopted.

In the **Scope** section, the Commission modified the publication date of the *HERS Technical Manual* to reflect the updated version of the document.

In the **Definitions** section, the Commission added the proper Class B licensure requirement for the Building Performance Contractor performing services as a HERS Rater.

In the **Requirements for Rating Systems** section, the Commission specified the minimum level of data collection for a California Home Energy Audit and clarified that a HERS Report is to be used for either a California Whole-House Home Energy Rating or a California Home Energy Audit.

In the **Requirements for Providers** section, the Commission: (1) included the specified minimum level of data collection for a California Home Energy Audit; (2) changed the number of homes to be included in the field training of HERS raters and added additional HERS provider personnel for field training purposes; (3) added clarifying language for the specific requirements in order to establish agreements between the HERS providers and Building Performance Contractors; (4) added enforcement language governing the establishment and certification of a Building Performance Contractor registry by the HERS providers; (5) included the Building Performance Contractor registry for quality assurance verification and reporting; and (6) added clarifying language to exclude California Field Verification and Diagnostic Testing Raters from the conflict of interest exception.

There were no amendments to the **Certification of Providers and Rating Systems** and the **Review by the Energy Commission** sections of the regulations.

## **V. UPDATE TO THE INITIAL STATEMENT OF REASONS**

Changes made to the existing HERS Program regulations, that are in addition to those contained in the Initial Statement of Reasons proposed under this rulemaking, are identified and summarized below. Also, the adopted amendments make minor non-regulatory changes such as clarifications, corrections, capitalizations, and section reenumerations throughout the regulations.

### **Section 1670. Scope.**

This section contains a change to the revision date of the *HERS Technical Manual* that was adopted by reference. The specific purpose and rationale for this change is to correct the regulatory document publication date and is necessary for to improve compliance of the regulations.

### **Section 1671. Definitions**

In response to public comments on the 45-Day Language, the definition of Building Performance Contractor in this section was revised to clarify the licensure of a

Building Performance Contractor serving as a HERS rater. The specific purpose and rationale for these changes are that definitions are an integral part of the proposed regulations and are necessary for enforceability of the regulations.

### **Section 1672. Requirements for Rating System**

Subdivision (b)(1)(C) of this section was edited to add the specified minimum level of data collection for a California Home Energy Audit. The specific purpose and rationale for this change is to add language that was previously omitted in the 45-Day Language to provide consistency with related sections of the regulations and is necessary to improve compliance with the regulations.

Subdivision (k) of this section was changed to clarify the use of a HERS report to present information for either a California Whole-House Home Energy Rating or a California Home Energy Audit. The specific purpose and rationale for these changes are to add clarity that is necessary to improve compliance with the regulations.

### **Section 1673. Requirements for Providers**

Subdivision (a)(1)(l) of this section was amended to add the California Home Energy Audit Certificate that is produced for a California Home Energy Audit and to add clarifying language regarding the HERS reports. The specific purpose and rationale for these changes are to add language that was previously omitted in the 45-Day Language to ensure consistency with related sections of the regulations and are necessary to improve compliance with the regulations.

In response to public comments on the 45-Day Language, subdivision (a)(6) of this section was revised to reduce the required number of supervised home ratings and to allow one of the HERS provider's Quality Assurance Reviewers to perform such supervised training. The specific purpose and rationale for these changes are to lessen the training time and cost for rater applicants and the provider's training personnel and are necessary to improve compliance with these regulations.

Subdivision (a)(9) of this section contained a minor, non-substantive grammatical change and a clarifying change related to the provider reference. The specific purpose and rationale for these changes are to avoid redundancy in a defined term in the regulations and are necessary to promulgate effective regulations.

In response to public comments on the 45-Day Language, subdivision (c) of this section was added to establish separate agreement requirements between a provider and a Building Performance Contractor, including the licensure-related requirements applicable to a Building Performance Contractor. The specific purpose and rationale for these changes are to clarify and make specific these requirements, and are necessary to ensure that Building Performance Contractors properly comply with licensure responsibilities.

Subdivision (d) of this section was renumbered and revised to add a Building Performance Contractor registry and the related requirements for certification by the provider. The specific purpose and rationale for these changes are to clarify and make specific these requirements, and are necessary to ensure provider quality assurance specific to the Building Performance Contractors under the regulations.

Subdivision (i)(3)(A) of this section was edited for grammatical clarity and the correct referenced section number. The specific purpose and rationale for these changes are to add clarity that is necessary to improve compliance with the regulations.

Subdivision (i)(3)(B) of this section was edited to correctly reference the HERS report for a home energy rating. The specific purpose and rationale for the edit is to make a conforming change in accordance with section 1672, subdivision (k), and is necessary to promulgate effective regulations.

Subdivision (i)(3)(C) of this section was changed to add Building Performance Contractor registry in the language. The specific purpose and rationale for the changes are to provide consistency with related sections of the regulations and are necessary for enforceability of the regulations.

Subdivision (j)(3) was amended to further clarify that the conflict of interest exception does not apply to California Field Verification and Diagnostic Testing Raters. The specific purpose and rationale for the changes are that they clarify the 45-Day Language to respond to comments and are necessary to improve compliance with these regulations.

The following summarizes the additional modified text in the *Home Energy Rating System Technical Manual (HTM)* that is incorporated by reference. In addition, “Commission” was changed to “Energy Commission” throughout the document to provide consistency with the regulations that is necessary to effectively promulgate these regulations. A copy of the *HTM* is being filed with OAL. This document is comprised of many pages; therefore, publication in full in the California Code of Regulations would be cumbersome and impractical.

### **Section 2.1.2 Official Designation**

This section contains non-substantive changes relative to the placement of the official Commission seal on the rating certificate. The specific purpose and rationale for these changes are to increase format clarity that is necessary to improve compliance with the regulations.

### **Section 2.1.3. Energy Impact**

In response to public comments on the 45-Day Language, this section was revised to add the specified ancillary energy uses information for the rated home. The specific purpose and rationale for the changes are to add clarity that is necessary to improve compliance with the regulations.

## **Section 2.3. Recommended Improvements**

In response to public comments on the 45-Day Language, this section was revised to add optional non-energy benefits in the recommendations reports for both the Standard and Custom Approaches. The specific purpose and rationale for the changes are to improve clarity that is necessary to improve compliance with the regulations.

## **Section 4.1. Overview**

Based on public input, this section was revised to add the approval of simulation software with capability of using a reference home for national energy programs. The specific purpose and rationale for the changes are to provide options and allow the homeowner to take maximum advantages of other national energy incentive programs, and they are necessary to promulgate effective regulations.

### **Section 4.11. Ancillary Energy Uses**

In response to public comments on the 45-Day Language, this section was revised to add landscaping lighting and lighted sports courts in the estimated energy use of a home. The specific purpose and rationale for the changes are to add clarity that is necessary to improve compliance with these regulations.

## **Section 6.3 Determining Cost-Effectiveness of Energy Efficiency Measures**

### ***Subsection 6.3.1***

### ***Subsection 6.3.2***

In response to public comments on the 45-Day Language, these subsections were revised to specify the mortgage term for determining the cost effectiveness of energy efficiency measures that have a useful life of less than 30 years. The specific purpose and rationale for the changes are to clarify the language and is necessary to improve compliance with the regulations.

### **Section 6.4.1 Energy Rates – Standard Approach**

This section was revised and a footnote included to improve clarity to the language. The specific purpose and rationale for the changes are that they are necessary to improve compliance with the regulations.

### **Section 6.5.1. Modeling Assumptions – Standard Approach**

“Cooling” was changed to “air conditioning” in this section. The specific purpose and rationale for the changes are to increase clarity that is necessary to improve compliance with these regulations.

### **Section 6.6.1. Determining Costs for Measures that Affect the California HERS Index – Standard Approach**

This section was revised to provide the correct website address for the referenced database. The specific purpose and rationale for the changes are to add clarity and is necessary for enforceability of the regulations.

### **Section 8.1. Rater Certifications**

In response to public comments on the 45-Day Language, this section was edited to clarify the training and certification requirements for and services to be performed by a California Home Energy Auditor and the Building Performance Contractor under these regulations. The specific purpose and rationale for the edits are to provide consistency with related sections of the regulations and are necessary to effectively enforce these regulations.

#### **Section 8.1.4. California Home Energy Analyst**

This section was revised to delete the incorrect reference to a California Home Energy Auditor. The specific purpose and rationale for the revision is to provide consistency with related sections of the regulations and is necessary to the enforceability of these regulations.

### **Section 8.2. Provider Quality Assurance**

This section was changed to clarify the role of a Quality Assurance Reviewer and the required quality assurance and verification procedures. The specific purpose and rationale for the revisions are to add clarity and provide consistency with related sections of the regulations and are necessary to effectively enforce these regulations.

### **Section 8.3. Special Requirements for Building Performance Contractors**

#### ***Subsection 8.3.1***

#### ***Subsection 8.3.2***

#### ***Subsection 8.3.4***

#### ***Subsection 8.3.6***

In response to public comments on the 45-Day Language, Section 8.3 and the noted subsections were amended to clarify licensure-related requirements for a Building Performance Contractor serving as a HERS rater, clarify the scope and process of work to be performed under the regulations and the higher level of knowledge, training, and quality assurance requirements for such a Building Performance Contractor. The specific purpose and rationale for these changes are to add clarity and provide consistency with related sections of the regulations and are necessary to the enforceability of the regulations.

**VI. UPDATE TO DOCUMENTS RELIED UPON**

There are no new documents upon which the Commission was relying.

**VII. UPDATE TO THE LIST OF DOCUMENTS INCORPORATED BY REFERENCE**

There are no new documents that were incorporated by reference.

**VIII. DETERMINATION WHETHER REGULATIONS IMPOSED A MANDATE UPON LOCAL AGENCIES OR SCHOOL DISTRICTS**

In the December 17, 2008 Adoption Order (No. 08-1217-14), the Commission found that the adopted regulations “will impose no direct cost or direct or indirect requirements on state agencies, local agencies, or school districts, including but not limited to, costs that are required to be reimbursed under Part 7 (commencing with Section 17500) of the Government Code.”

**IX. ALTERNATIVES TO LESSEN IMPACTS ON SMALL BUSINESSES**

In the December 17, 2008 Adoption Order (No. 08-1217-14), the Commission found that the adopted regulations “will not result in a significant statewide adverse impact directly affecting business, including the ability of California business to compete with businesses in other states;” “will have no significant adverse effect on business in general or small business in particular;” and “will have no significant costs that a representative person or business would incur in compliance.”

**X. FINDINGS**

Based on the record of the rulemaking proceeding, the Commission made all findings required by the Administrative Procedure Act, such as those related to costs on businesses and local agency mandates, in the December 17, 2008 Adoption Order. The December 17, 2008 Adoption Order reflected most of the initial findings in the NOPA, which includes a more detailed discussion of the rationales for the findings. There were no comments on these findings.

**XI. SUMMARY OF COMMENTS RECEIVED AND THE ENERGY COMMISSION’S RESPONSES**

Comments supporting, opposing, or recommending changes in the regulations during the public comment period and at the Commission’s December 17, 2008 Adoption Hearing are summarized in the attached Exhibit A. Exhibit A is organized by section of the regulations and the *HTM* referenced on page 5, respectively.