

Energy Analysis and Comfort Solutions Inc., (EACS Inc.), would like to thank the California Energy Commission (CEC), for this opportunity to provide our thoughts regarding the questions asked during the OII meeting on March, 10, 2015.

California Energy Commission  
**DOCKETED**  
12-HERS-01  
TN # 75612  
APR 10 2015

EACS Inc. believes that the integrity of the HERS industry is built by quality HERS Raters who are dedicated to the conservation of energy usage and ensuring compliance to protect the building owner’s interests. These dedicated HERS Raters require leadership, training, supervision, and support from HERS Providers to help the CEC meet the reduction goals for energy usage and greenhouse emissions. HERS Raters need our industry’s minimum standards to be defined, monitored, and have proper enforcement, so these HERS Raters may offer their customers a quality service from a level playing field. For the HERS industry to work properly all Contractors, HERS Raters, and even HERS Providers, must meet the minimum requirements of the Energy Standards defined by the CEC under Title 20 and Title 24, part 6.

The CEC has provided detailed guidelines to assist HERS Providers meet challenges by defining the requirements to be certified as a HERS Provider and HERS Data Registry. The purpose of this OII procedure is to determine how to strengthen the HERS industry by clarifying if some requirements may be too stringent and which requirements need additional directives from the CEC. EACS Inc. submits the following suggestions for review.

### **Provider QA Programs**

#### **How do the QA requirements impact the Providers business model?**

QA compliance can be time consuming and expensive. However, all approved HERS Provider agreed to the QA protocols as outlined in Title 20 section 1673(i)(3). QA reviews allow Providers to monitor Rater performance and ensure Raters are meeting the Energy Code requirements to protect the building owner’s interest.

QA testing of Rater verification skills is a business, just like a Rater testing of a contractor’s work. QA testing should be regarded as an opportunity to help Raters build their reputation and business.

A clearly defined and repeatable Provider QA review process ensures the integrity of the Raters work, which also reflects upon the Provider. Provider QA reviews should have oversight and random “QA testing of QA reviews” by the Regulating Authority.

#### **What changes should be made to the current QA requirements?**

Compliance with Rater QA reviews must be current, objective and precise. Infractions must be documented and reported to the Rater/ Rating Company so procedural adjustments can be made to improve Rater performance. Enforcement must be equal for all Raters. Infractions must be documented and logged. Infractions resulting in failing a QA review must be recorded and initiate the “two additional feature tests”, as defined in Title 20 section 1673(i)(4)(c) to determine any pattern.

QA verifications must be compiled on the Provider Registry. [2014 Title 20 section 1673(i)(4)(c)].

Current Rater QA logs should be available to every Rater/ Rating Company for review. Rating Companies need to know the performance of their Raters to make corrections, build Rater confidence, and improve customer service meeting compliance regulations.

Detailed QA results must be available to the Rater to help assess performance, strengths and weaknesses.

Providing the specific details of the QA test results will help Raters improve testing skills.

### **How should QA be used in the development and training of Raters?**

Defining the QA requirements allows Raters to focus on testing protocols and accuracy of project information. Providing written assessment of Rater QA field performance allows the Rater self-evaluation and to make corrections in the Rater's testing processes.

Providers should quantify the significance of all infractions so Raters know the consequences for poor performance.

Documenting the Rater's completion of any rehabilitation process will justify a Rater should be allowed back into the HERS industry.

Outline corrective procedures to help the Rater better understand and comply with regulation requirements.

### **Would requiring Continuing Education Credits keep Raters informed as to the latest techniques and requirements?**

Yes, the Energy Standards change every 3 years and Raters should be aware and proactive to help the industry continue to move forward. Requiring Education Credits would enable Raters to keep abreast of changing Standards and encourage them to participate in the rule making process.

Requiring Education Credits would give Raters the knowledge and skills to inform and train contractors about changes to the Energy Standards before implementation of a new Code cycle.

Requiring Education Credits will increase the Raters knowledge and professionalism providing advancements in career and business opportunities.

### **How can the QA program be leveraged so that a Rater's re-certification depends on meeting QA requirements?**

De-certification indicates the Rater has violated ethical or procedural requirements. To re-establish a Rater's competence for complying with HERS regulations the Rater must demonstrate that their skills, motivation and integrity will be performed precisely as required.

Re-certification should include full classroom training, and five HERS Provider supervised Field Verification and Diagnostic Testing at Rater's expense.

Re-certification should include 1 year probation with a 2% QA rate, at Rater's expense.

Demonstrate the required knowledge, attitude, and ethics to be a certified HERS Rater.

The QA program can be used to remove HERS Raters which do not comply with the regulations. Their removal will in turn increase the integrity of the HERS industry.

### **How would an independent third-party Quality Assurance company help HERS Providers meet the required QA goals and allow Providers to focus on their core business?**

An independent third-party Quality Assurance company would reduce the Provider QA workload but may increase QA costs to Raters.

Reducing QA responsibilities by utilizing an independent third-party Quality Assurance company could allow Providers to focus on training Raters, Contractors and the community.

An independent third-party Quality Assurance company would be defined as a subcontractor for hire by a single Provider, contracting to objectively perform all of the HERS Provider obligations for QA requirements.

### **Communication to the Rating community needs to improve.**

Agreed, communication needs to improve, along with full disclosure and complete transparency of all relevant issues about the HERS industry, Providers, and CEC.

### **Should home owners be notified of QA failure?**

Yes. A Building Owner signed a contract with a licensed Contractor to install a feature which must meet all Building and Energy Codes requirements. If the Contractor did not meet the minimum requirements the Owner has a right to know that some corrections are required so the system is energy efficient.

Energy efficiency compliance helps the Owner and State meet the goals of reducing energy consumption and greenhouse emissions.

Minor infractions corrected by the contractor should help build owner loyalty.

Major infractions should be handled by the Local Building Department, CSLB and CEC.

All Raters should always represent the Owner's best interest in energy compliance.

## **HERS Rater Disciplinary Process**

### **What is the Providers' current progressive disciplinary process?**

Rater Agreements require the Rater to "Provide true, accurate, and complete data collection, analysis, ratings, field verification and diagnostic testing [2014 Title 20 section 1673].

Data collection accuracy is QA verified by defining, and documenting the true Scope of Project and the status of components.

Rater test results are compared to QA reviews for compliance and accuracy.

Each data field is assigned a point value. Total correctly verified points must meet the minimum percentage to pass the QA.

Raters failing a QA review could have additional QA review charges or more training requirements. Raters that continue to fail QA reviews could be de-certified.

### **If any, what are the consequences for each violation?**

[2014 Title 20 section 1673(i)(2)] Provider approves a Rater based upon compliance and accuracy of project testing skills and documentation, through direct supervision on the Rater's first field project. [2014 Title 20 section 1673(a)(6)]. This is the Provider's opportunity to address and correct any deficiencies in the Rater's performance before approval. This should prepare the Rater to conduct HERS testing protocols and documentation to meet the minimum Standards.

Failed QA requires the tested feature have two additional reviews. [2014 Title 20 section 1673(i)(3)(c)].

Second tested feature deficiency moves Rater to 2% QA rate. [2014 Title 20 section 1673(i)(3)(c)]. Raters subject to the 2% QA rate will be responsible for the additional costs to the HERS Provider for increased QA reviews.

Continued QA failures may require disciplinary actions, including de-certification.

### **Should decertification of a Rater by one provider limit that Rater's ability to become certified with another HERS Provider?**

Yes. If a Rater willfully violates ethics or requirements, and is de-certified, then the burden of proof for rehabilitation is a Rater responsibility.

Allowing a de-certified Rater to jump Providers may perpetuate continued reduction in the integrity of the HERS Industry and may increase the accusations and hostility between Providers and Raters.

### **Should a HERS Rater decertification by one HERS Provider result in their decertification by all other HERS Providers where they may already have a certification?**

Depending upon the severity and pattern of the violations could dictate de-certification by all Providers.

Documentable evidence of a pattern of ethical violations should require de-certification by all Providers.

Procedural deficiencies by the Rater should require other Providers to enforce mandatory 2 % QA, at Rater's expense. [2014 Title 20 section 1673(i)(3)(c)].

### **Should the disciplinary decision be overseen by an independent group?**

Yes, violations/ de-certification increase emotional responses and could question the integrity of the Rater and Provider. Allowing an independent "review panel" to examine the evidence and make recommendations would uphold the integrity of the HERS industry.

Violation documentation should be verifiable by an independent review panel.

Multiple views from CEC, Providers, Rating Company, and Rater should be included in the review panel.

Careers lost, due to de-certification, should not be taken lightly. An objective review panel should base their decision upon the evidence and in the best interest of the HERS industry.

Integrity within the HERS industry is paramount in enforcing and increasing the compliance rate.

### **Should the Energy Commission seek to develop Rater disciplinary processes for Providers to adhere to?**

Yes, to help maintain Provider uniformity and disclosure to the HERS industry.

## **HERS Rater Companies**

### **Should the owner/operator of a Rater Company be required to be a certified HERS Rater in good standing?**

Yes, a Rating Company owner should be certified to demonstrate to the HERS Provider and CEC that the owner has the knowledge and field testing expertise to perform the required duties of a HERS Rater.

Rating Company owners must lead by example and know the HERS industry requirements and challenges. Raters with questions about how to handle a variety of real world situations should first turn to their Rating Company for guidance. The Rating Company should be able to supply the correct information to handle the situation and meet energy regulations. When issues are beyond the Rating Company's knowledge or require clarification of the Standards the Rating Company should request a decision from the Provider or CEC.

### **If so, should the regulations require the owner/operator to have additional certification and training?**

Rating Company Owners should have a complete understanding of the HERS industry requirements and know how these requirements are applied to the building trades to increase compliance.

Rating Company Owners have a business responsibility for the performance of their "employed Raters", to know the regulations and apply proper protocols to protect the interest of the building owner.

Rating Companies should offer additional training on regulations and proper installation or testing techniques for their Raters and contractors to increase understanding and the quality in installations.

Providers should offer specialized programs to assist Rating Companies evolve and develop organizations which promote energy efficiency with pride and integrity for the benefit of energy conservation.

### **If so, what should that training consist of?**

Providers should offer hands on training of the best practices for project installation techniques and the protocols directed by the Regulating Authority. These classes should be available to Rating Companies, Raters and Contractors.

Rating Companies should be aware of State requirements regarding Contract labor law. Providers should encourage Rating Companies to obtain CSLB certification to reduce the liability exposure for compliance work performed by their Raters.

### **Should corrective action taken against one Rater be applied to all Raters of a Rater Company?**

Not for a single Rater action. One bad Rater could be retrained and document that ethics have improved. If the Rater refuses or does not meet the Provider's requirements, then the Rater should be disciplined appropriately, including de-certification.

If QA reviews determine a pattern of infractions by several Raters within the same Rating Company, then the Rating Company and their Raters should be closely monitored, disciplined or possibly de-certified.

Pride in the integrity of the HERS industry MUST be important for all Raters for continued success and to grow our industry.

**Should individuals (not Raters) entering compliance document data into a HERS Registry need to be certified to do so?**

Data input should require basic understanding of equipment, materials, and procedures to accurately complete compliance documentation of projects installed by contractors. The quality and accuracy of compliance documentation entered by Rating Company personnel determines the correct energy requirements are defined and the verifications fulfill the requirements. Inaccurate documentation may deprive the building owner from receiving an energy efficient system by subverting tests which are required by the Energy Regulations. Enforcing data entry certification might be unrealistic due to a high rate of personnel turnover in Rating Companies and the building trades.

**Conflict of Interest**

**Should the Regulations prohibit Raters from performing HERS verification on homes for which they were the energy consultant?**

Yes. Specifying the energy measures on a building as an energy consultant, and then verifying the measures were installed to meet the Energy Standards as a HERS Rater, could present a conflict of interest. The energy consultant can recommend products to clients and contractors to meet the compliance requirements. The energy consultant determines the energy measures and tested features which are required for compliance. If the energy consultant then performs the duties of a HERS Rater it could be questioned if the Rater is truly independent and unbiased. The Rater already has a vested interest in the project and might have financial interests to get the project closed. This is a “grey area” and all boils down to Rater ethics. Defining the protocols to prevent any perception of biased HERS Ratings will increase the HERS industry integrity.

**Should Providers be prohibited from accepting compliance documentation or rating data for work performed on homes where the Provider manages the above-code rating system?**

Providers managing an above-code rating system need access to the Minimum Compliance documents. Managing above-code programs and collecting compliance data do not directly affect the installation or the testing of energy features. Compliance and above-code programs should work together to increase energy awareness.

Above-code Providers would be subjected to the Provider operational requirements for BOTH minimum compliance, and above-code programs, by the respective Regulating Authorities.

Above-code Providers should be able to reduce consumer costs for minimum and above-code operational costs by consolidating resources. Working with Owners and Contractors, for both minimum and above-code compliance, should help to increase public awareness and demand for Rater services. Expanding the HERS industry must be a priority to enable the CEC to increase minimum compliance throughout the State.

**Should Providers be prohibited from accepting compliance documentation or rating data for work in which an affiliate company has prepared or conducted the analyses for the compliance documentation?**

Yes. Providers should be separate entities, with no financial interest, with other companies performing installation services, energy consulting services or HERS testing services in the construction industry.

**Should Contractors or their affiliates be prohibited from performing ratings on projects where they have installed energy efficiency measures?**

Yes, preventing contractors from “HERS certifying” installed features would ensure the building owner that the project met the minimum Energy Standards.

Quality Contractors will never tell a customer "We did not install quality products and do not comply with Energy or Building Codes". The only way to determine an installation truly meets compliance requirements is to have an independent, unbiased HERS Rater perform verification testing to ensure the Owner that the system meets minimum Energy Standards.

Deficiencies discovered during a HERS Rating must be corrected to protect the Owner's energy compliance interests.

Corrections can be expensive. Any financial interest between Rater and Contractor, defined in 2014 Title 20 section 1671 Definitions, could motivate "less than accurate" test results. This could be in contradiction to an “independent HERS Rater” objective, which is to verify compliance standards have been met.

A Rater's responsibility is to ensure the Building Owner received energy efficient systems meeting Energy Compliance Standards, not promoting contractor interests.

**May Raters provide other services? Example Permit Pulling.**

A Rating Company is a business and should have the right to perform other diversified services, not directly related to HERS testing or the installation of energy efficient features.

Any additional services must not include work performed on any installed energy feature.

These additional services must not include recommendation of any products used in energy feature compliance.

Additional services must not include any service which affects the efficiency of installed energy features.

Permit Services may increase compliance and permits by saving contractors time and permit frustrations.

Permit Services probably increase the accuracy of project documentation by assisting contractors who do not understand the documentation process.

To prevent the appearance of any “conflict of interest”, Permit Services must not consolidate permits and HERS Ratings into a single price package, or offer discounted HERS testing prices if other services are utilized.

Contractors must have the option to use, or not use, any or all services offered by the Permit Service, including using another Rating Company for compliance testing.

**May Raters sell products separately that potentially could have been used in projects they perform FV/DT on?**

Sales of products which require HERS testing or verification of energy features could create a conflict if the sales representative knowingly performs DT/ FV on a project where their products were sold.

Enforcement of product sales and HERS verification would not be realistic unless full disclosure by the Rater is enforced on Compliance documents.

## Permissible HERS Provider Certification Categories

### Should HERS Providers be required to get certifications for all of the categories of Field Verification and Diagnostic Testing?

No. Development of a Registry which meets the stringent CEC requirements is expensive and time consuming. Providing the HERS industry with proper customer service, support, and training to help expand compliance in specialized categories should be more important than collecting data in every category. Not every Rater does all disciplines within the HERS industry. Raters focused on one segment of our industry deserve to have a Provider which understands and develops a Registry to meet the Rater's needs. From answering real world questions quickly to resolving issues, Raters deserve options to utilize the best product that simplifies compliance documentation and ensures accuracy.

Providers should be allowed to specialize in areas of interest or expertise to increase energy compliance. Regional focus on developing Rater and contractor understanding will increase compliance and reduce energy consumption.

Requiring Providers to have all categories of certifications prevents competition. This may be great for established monopolies, but not good for providing the industry with options, and the freedom of choice.

Providers need to evolve, based on the needs of clients, to offer better services and data collection Registries. Specialty Providers are poised to help increase compliance, reduce costs, and increase workforce education.

### Should Providers be approved for only one segment of the market? (Alterations, Newly-constructed Buildings, Whole-House HERS, BPC, NSHP, etc.)

Yes. Specialization allows Providers to focus on the needs of their clients and provide specific training for Raters, contractors, and building departments.

Specialty Providers are more responsive to customer demands, cycles or changes in the local market and may offer creative insights to help the industry to move forward.

Specialty Providers are driven to increase compliance in specific arenas and build quality relationships with customers to grow the Provider's business.

Specialty Providers QA programs encourage Rater development continuously, not just once every 3 years.

Specialty Providers should offer mentoring to Rating Companies and Raters to be successful and increase compliance.

### How does segmenting the HERS industry impact consumers?

Increased competition from specialized Providers will help reduce prices and increase the quality of service offered to consumers.

Specialty Providers should focus on increasing Rater competence, field experience and energy code understanding. Raters with higher levels of real world knowledge can assist Owners receive the energy efficiency required by Building and Energy Codes.

### Should it be ensured that all aspects of Title 24 compliance are being offered by one or more providers?

Yes, compliance regulations and documentation, without an approved Provider meeting the requirements or offering training, leaves Building Owners, Building Departments, Rating Companies, and Raters without guidance.

Without Providers to collect required data and train Raters and contractors, the regulations are not efficient and promote installations which ignore the Energy Regulations.

Enforcement cannot track projects or collect the proper documentation without an approved Provider responsible to cover every facet of the construction industry and Energy Compliance.

## **Energy Commission Oversight of Providers**

### **Should Energy Commission develop uniform language for Provider training material, processes, etc.?**

Detailed guidance would be helpful and assist Providers to offer more standardized programs. Typically, training materials should cover the current Energy Standards, explaining the rules, how the rules apply to real world situations, and detailed descriptions of the Contractor or Rater testing process required to fulfill the compliance requirements. These training materials should be written in common sense language so Raters and contractors can understand. The "Residential Compliance Manual" explains the requirements in common language, but is very long and fragmented. Contractors and Raters need versions which are consolidated and focus on each discipline, i.e. Alterations, New Construction, etc.

### **What types of penalties or reprimands might Providers receive for failure to comply with stated regulations?**

Issues discovered in Registry operation should receive a CEC directive to make corrections within 10 days. If a Provider cannot make the corrections within the allotted time frame, then publicize to the HERS industry that the Provider Registry has requirement issues which is impacting accuracy of data collection and documentation. The Provider should also be required to inform the public, contractors, building officials and Raters about the current infractions to the Registry or Provider operations on their home page to keep clients informed. If corrections to the Provider Registry, or operation of a Provider's processes, are not corrected within 60 days then temporary suspension of the Provider should be implemented until compliance is obtained.

### **Should Rater certification numbers/information be publicly available? i.e. a business license or similar?**

Yes, a Rating Company should provide certification, business license, CSLB number, and other "business types of information". Contractors and Owners do business with a company, and require information to make informed decisions when selecting a Rating Company to handle energy compliance. Raters work under the network of the Rating Company in the capacity of "employee". Raters should not be required to display different licenses which do not relate directly to the Rating Company they work for. Raters should be proud to display their certifications as a Rater performing verification services for the Rating Company they represent.