



April 10, 2015
Energy Commission
Dockets Office, MS-4
RE: Docket No. 12-HERS-1
1516 Ninth Street
Sacramento, CA 95814-5512

**To: California Energy Resources Conservation and Development Commission Re:
Order Instituting Information Proceeding Docket No. 12-HERS-1**

**From: U.S. Energy Raters Association, LLC, (USERA) a California Approved HERS Provider
Comments to the Order Instituting Informational Proceeding Docket No. 12-HERS-1**

How do the QA requirements impact the Providers business model?

- What changes should be made to the current QA requirements?

USERA: A timeline should be implemented. Every QA verification should be done to preclude, as much as possible, any significant events or changes that may occur. The longer the period of time involved, the greater the possibility that some event/change could affect the original verified reading.

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

USERA: Some QA failures can be easily identified as training matters in which the rater has limited opportunities for a broad assortment of conditions. Providers should take these instances, utilizing training staff, to further instruct the rater. Subsequent QA performed would ensure understanding and correction have taken place.

- Would requiring Continuing Education Credits keep Raters informed as to the latest techniques and requirements?
USERA: While there is little doubt that would help, implementing such a process would be time intensive and may not be warranted unless there are obvious QA failures occurring. If such failures occur, USERA would take it upon itself to offer such add-on training via a webinar or other reasonable means. In addition, by virtue of code changes, raters are required to obtain classroom training approximately every three years.
- How can the QA program be leveraged so that a Rater's re-certification depends on meeting QA requirements?
USERA: Just as it says. If they have continued QA issues then there can be a probationary period enacted or a suspension of their certification. This should apply uniformly across ALL providers for the market segment in question, i.e. prescriptive alterations.
- 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?
USERA: USERA does not believe that a third party should be involved in this process and believes that QA is a primary function and responsibility of HERS providers.

Communication to the Rating community needs to improve.

- Should home owners be notified of QA failure?
USERA: USERA believes the homeowners have rights and that ultimately this process is in place to protect them. However, USERA is not of the belief that the homeowner should be made aware of the QA failure per say (not opposed to this) but rather the contractor, when notified of the system failure should be required to correct the issue(s) involved and have a subsequent verification done. Perhaps additional code language is needed in this area.
- QA potential as an educational tool benefits rater and homeowner.
USERA: USERA believes and has used QA situations to help raters garner a better understanding of field practices. While using QA situations as teaching moments USERA seen improvement in rater understanding and subsequent performance.

What is the Providers' current progressive disciplinary process?

If any, what are the consequences for each violation?

USERA: USERA believes disciplinary processes should be uniform throughout the industry and made by the CEC in conjunction with providers. Distinguishing between matters of fraud and true knowledge/experience gaps would be essential.

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

USERA: YES. However USERA feels this decision for decertification should ultimately be made by the CEC. Proper documentation from the provider would be validated by the CEC in which to make any determination. If decertification is warranted, it should be implemented across all providers. It makes no sense when a provider decertifies a rater to have them then go across the street and resume the same practices with a different provider. As this is fraught with numerous potential issues, it also does nothing to safeguard ethical practices within the industry or protect the home or business owner.

- 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?

USERA: USERA believes that decertification is decertification. However, USERA believes, as stated above, that the CEC has to make this final call based on the information collected by the provider and validated through investigation by the CEC.

- Should the disciplinary decision be overseen by an independent group? If so, how should this group be constituted and how should it function?

USERA: NO, this decision should be made by the CEC and the provider. USERA believes that the disciplinary processes should be uniform across all providers and the process for decertification should be uniform as well. However, the final determination should be made by the CEC and the provider pending investigation by the CEC.

Further statements/questions identified by staff: Disciplinary process should be more clearly defined by Energy Commission.

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

USERA: Yes, but only in conjunction with all providers. There should be no unilateral implementation of disciplinary processes (without Providership input).

What steps or processes occur by providers for decertification?

USERA: USERA would like to see the providers in conjunction with the CEC create this process so there is uniformity in the industry.

Should the owner/operator of a Rater Company be required to be a certified HERS Rater in good standing? If so, should the regulations require the owner/operator to have additional certification and training?

USERA: Not necessarily. But the rating company should be required to adhere to all other practices and regulations represented in the rating process. I.e., adhering to clearly defined conflict of interest rules and regulations.

If so, what should that training consist of?

USERA: NA

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

USERA: Not necessarily. But, if the rating company is found to be complicit in the violation (they knew of/or instructed all raters to perform their jobs in such a manner) then they should be held accountable company wide. The only caveat to this might be if a rater left the company and went back to independent practice.

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

USERA: NO, but they have to be clearly identified as administration staff and document authors and not the rater or contractor (separate login and password with no signing privileges). This does not mean that the rater or contractor is not responsible for what their administration person has entered and raters and contractors must acknowledge that they are accepting FULL responsibility for those entries. An employee of a contractor who has been given the authority to act on the contractors behalf is acceptable to USERA as signatory. A rater on the other hand should be required to sign their own documents with their certified signature as the responsible party. This does not mean that an administrator of a rating company cannot author the document, but, the rater must sign off directly as the responsible party.

Further statements/issues identified by staff: Need for better Rater company oversight.

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

USERA: Yes, this would represent a conflict of interest as identified in code:

Code 1673 (j) and Independent Entity Definition

Independent Entity means **having no financial interest** in, and **not advocating or recommending the use of any product or service** as a means of **gaining increased business** with, firms or persons specified in Section 1673(j).

1673(j) Conflict of Interest.

(1) Providers shall be independent entities from Raters.

(2) Providers and Raters shall be independent entities from the builder and from the subcontractor installer of energy efficiency improvements field verified or diagnostically tested.

(3) Providers and Raters shall be independent entities from any firm or person that performs work on the home for a California Home Energy Audit or a California Whole-House Home Energy Rating.

There is a noted exception:

EXCEPTION to Section 1673(j)(3): California Whole-House Home Energy Raters, who are working as or for a Building Performance Contractor certified under an Energy Commission-approved Building Performance Contractor program as part of a Provider's Rating System as specified in Section 1674(e) of the regulations and in the HERS Technical Manual, shall not be required to be an independent entity from the person(s) or firm(s) performing the work on a home. This exception shall not apply to California Field Verification and Diagnostic Testing Raters performing field verification and diagnostic testing of newly constructed homes or alterations to existing homes to verify compliance with the requirements of Title 24, Part 6.

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?

USERA: YES, but USERA believes further discussion and clarification is warranted on this topic.

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?

USERA: YES

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

USERA: Absolutely YES

Further statements/issues identified by staff: Need for uniformity of conflict of interest practice amongst providers.

May Raters provide other services? Example Permit Pulling.

USERA: NO, if we are to adhere to how code is currently written which appears to be very clear on this matter as stated in the conflict of interest/independent entity section Title 20, 1673 (j).

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What is denied for HERS Raters under the Independent Entity clause is explicitly granted for TPQCP, certified by the CEC to do so:

Excerpt from the Residential Appendix RA2.7

***“The Third Party Quality Control Program shall meet the requirements imposed on a HERS Rater specified in the Commission’s HERS Program regulations (California Code of Regulations, Title 20, Division 2, Chapter 4, Article 8, Sections 1670 -1675), including the requirement to be an independent entity from the builder, the HERS Rater that provides independent field verifications, and the subcontractor installer as specified by Section 1673(j). However, a Third Party Quality Control Program may have business relationships with installers participating in the program to advocate or promote the program and an installer’s participation in the program, and to advocate or promote products that the Third Party Quality Control Program sells to installers as part of the Program.*”**

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

USERA: NO, see above comments on Title 20, 1673 (j) and “Independent Entity” definition.

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

USERA: NO. Precedence has already been established for this. Specialization has not been shown to have a negative or detrimental impact on the industry.

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

USERA: YES, specialization can have a positive impact on compliance issues.

How does segmenting the HERS industry impact consumers?

USERA: There is no research to suggest either a positive or negative effect.

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

USERA: Since specialization is part of the Providers' prerogative, this question would need some clarification or dialogue.

Further statements/issues identified by staff:

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

USERA: USERA does not believe that there is a current issue in this area. CEC Code has some reckoned proper definitions and other standard language. The CEC should seek to develop code language that is clear, accurate and comprehensive.

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

USERA: Depends on the infraction and severity just as with raters. Again, these would be devised in conjunction with all Providers.

What other measures should be considered to improve consistency and uniformity between Providers?

USERA: Possibly a common digital signature process that could be incorporated by all.

Should the Energy Commission lower QA?

USERA: No

Should Providers be required to provide QA within a certain timeframe i.e. 30, 45, or 60 days?

USERA: Yes, implementation of a QA timeframe would benefit the process.

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

USERA: Yes. But publicly available needs to be defined as it relates to the provider.