



Setting Standards for Excellence

June 4, 2010

NEMA Comments on May 17 “Draft Conditions and Criteria for Recognition of Laboratories for the Energy Star Program”

Thank you for the opportunity to provide the following comments on behalf of companies that are members of NEMA and are also current Energy Star partners.

General Requirements

Many of the relevant tests for Energy Star are based on tests from Safety Certification Standards. The bodies which test to these standards such as UL, CSA, or ETL, have systems in place to evaluate laboratories’ ability to perform these tests. All of these systems are based on ISO/IEC 17025. The evaluation by these independent third party Safety Certification agencies insures that the labs participating in the program meet the requirements of ISO/IEC 17025 in terms of the noteworthy elements in the draft as these bodies are looking to ensure the same elements are present prior to accepting data from the lab. In light of this, the first bullet point under General Requirements would be more appropriately written:

Maintain accreditation to ISO/IEC 17025, “General requirements for competence of testing and calibration laboratories,” by an EPA–recognized Accreditation Body (AB) or participate in an ISO/IEC 17025 based data acceptance program through an EPA-recognized third party Certification Body.

This would allow acceptance of tests from labs in programs such as those from UL, CSA, or ETL even though these programs aren’t evaluated to the full ISO/IEC 17025 requirements and therefore can’t be deemed ISO/IEC Accredited.

The sub bullets under the first bullet do not need to be listed since they are covered by the accreditation or participation in an ISO/IEC 17025 based program and are reviewed at each accreditation assessment by the accrediting body.

That said, in the case of Energy Star lamps and luminaires, the measurement of luminous flux is paramount. The measurement expertise does not lie with CSA, UL, or ETL, but with accredited laboratories outside of NRTL scopes of expertise. The photometric expertise resides primarily with NVLAP-accredited laboratories. For example, measurements for solid state luminaires under the IES LM-79 standard are difficult and require specific expertise not normally found in the safety NRTLs.

Separately, the proposed requirement to have an EPA or EPA-appointed representative observe testing related to Energy Star qualification or verification would need to be applied with the understanding that the laboratory may have testing underway that is unrelated to the Energy Star testing and that is proprietary either in terms of testing procedures or product research and

development. Therefore, the selection of EPA appointees and the lead-time for an on-site observation must be considered in implementing such a requirement.

Reporting

It is understandable and correct that Energy Star wants to ensure, to the greatest extent possible, unbiased results. That said, we appreciate Energy Star's recognition that "in-house" laboratories are an important piece of the product qualification process. However, the proposal – encapsulated in the second bullet point under this section and the four sub-bullets – to place additional requirements on "in-house" labs is misguided. Many of the requirements listed in the Section are already part of ISO/IEC 17025 and NVLAP Handbook 150.

Specifically, with the proposed requirements on compensation, personnel movement and career advancement, Energy Star is proposing overly intrusive and virtually impossible steps.

On the first sub-bullet: The existence or administration/management of an "in-house" laboratory cannot be completely financially independent from the parent company. The overall financial performance of the company determines the compensation and bonus levels on a company-wide basis whether positively or negatively.

The concern about "independence" that Energy Star is trying to address is also present at third-party laboratories, which base compensation and bonus plans on company performance as measured by revenue and income from external customers. For third-party laboratories there is a connection between compensation and bonus plans and income from customers with no less potential to result in a lack of independence.

In addition, dictation of compensation criteria can reduce the ability to acquire and keep qualified measurement professionals. ISO 17025 has enough requirements to shield the lab work against pressures outside of the lab environment.

The second sub-bullet unfairly limits the ability of the company to structure its operations and to develop employees. As to restricting the movement of laboratory employees to the parent company, this limits the ability of the company to distribute expertise to its operations outside of the laboratory through work assignments within the accredited laboratory as part of resource development. It is unclear how transfers in this direction could possibly impact negatively the laboratory's results. As to restricting the movement of parent company personnel to laboratory positions, this severely limits the pool of expertise that the laboratory can access from its own employees while not limiting third-party laboratories from having access to the same personnel whose skills and expertise the company has invested in and developed.

Diligent companies, including those that include "in-house" laboratories, already perform detailed ethics and compliance training programs and audits have "whistle-blowing" mechanisms and procedures in place. Requiring outside third-party ethics and compliance audits will drive up measurement costs and eventually product costs. The third sub-bullet should either be removed or applied to *all laboratories* providing Energy Star data. Third-party status is not a sole

guarantor of integrity or independence. The fourth sub-bullet should be eliminated or at a minimum the requirement for an “external” system should be eliminated.

A clear definition of “third party” and “independent” in the context of Energy Star is necessary. Based on the concerns that are reflected in the proposal, the exact nature of a laboratory’s business becomes important. For example, what percentage of income could a laboratory accept from a particular customer and still maintain its independent or third-party designation?

Also, it is important not to lose sight of the fact that manufacturers invest not only to protect and advance the Energy Star brand but also their own brands in the eyes of customers.

In closing, we encourage Energy Star to work extremely closely with NEMA and NIST as it moves forward to refine and finalize any requirements on laboratories.

Thank you once again for your consideration of these comments. We look forward to further dialogue with you on these proposals and associated issues. If you have any questions, please contact Craig Updyke at 703 841 3294 or cra_updyke@nema.org.