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Kathleen Vokes
United States Environmental Protection Agency
1310 L St., NW
Washington, DC 20005-4113

Re: Comments to Enhanced Testing and Verification Program Plan for Energy Star Products

Dear Kathleen,

Intertek appreciates the opportunity to participate in the stakeholder process and offer comments on the Enhanced Testing and Verification Program Plan for ENERGY STAR® Products.

Intertek is a leading provider of quality and safety solutions serving a wide range of industries around the world. From auditing and inspection, to testing, quality assurance and certification, Intertek has the expertise, resources and global reach to support its customers through its network of more than 1,000 laboratories and offices and over 25,000 people in more than 100 countries around the world.

Intertek currently participates as an ISO 17025 accredited laboratory in a number of ENERGY STAR® programs, and operates as an ISO Guide 65 accredited certification body for products covered by the ENERGY STAR® scope. Intertek fully supports the efforts of EPA and DOE to improve the credibility of the ENERGY STAR® program. We believe many of the proposed improvements will help build consumer confidence in the ENERGY STAR® brand. In doing so, Intertek believes that EPA and DOE must address those program elements which reinforce the integrity of energy efficiency claims made under the ENERGY STAR® program. This is critical to ensuring trustworthiness of the ENERGY STAR® brand, and delivering the intended benefits of the ENERGY STAR® program to consumers, industry, EPA and DOE. It's important to note, while EPA is working diligently to revamp its ENERGY STAR® program, this is a shared concern for both EPA and industry. As a selling advantage for manufacturers and as a trusted consumer guide to energy efficient products, the continued integrity and trustworthiness of ENERGY STAR® is paramount to all stakeholders, requiring all-hands support. Without appropriate action by EPA and all stakeholders to restore program integrity in the minds of consumers and prevent future scrutiny of the ENERGY STAR® program, then all stakeholders will ultimately lose.

Intertek offers the following comments and recommendations.

Qualification Testing Prior to Labelling with ongoing Verification Testing

Issues of non-compliance can only be addressed by a comprehensive, continuing qualification and verification (certification) program. Historically this has been the weak point of the ENERGY STAR® Programs. Qualification testing prior to product labelling is essential to determining product compliance to the EPA/DOE requirements before being placed on the market. Verification testing is also essential to prove continued product compliance. As was identified in a recent GAO and Consumers Union reports, confidence in the ENERGY STAR® Programs has decreased due to lack of confidence in the veracity of the energy efficiency claims. The most effective way to remedy this situation is to require third-party pre-market qualification testing followed by ongoing third-party verification testing.

A manufacturer's costs for these services are negligible, in relation to the enormous marketing benefit the ENERGY STAR® mark provides. When weighed against the paramount need to ensure long-term program integrity, and the sheer volume of ENERGY STAR® products produced, the expense of testing and verification is nominal in context of the overarching ENERGY STAR® strategy and brand. Further, products must comply with the program requirements regardless of where testing is performed. A manufacturer or a third party laboratory must use the same type of test equipment, must take the same amount of time to run the required tests, and must use the personnel with the same level of training to run the tests. Intertek believes that the use of independent third party laboratories and certification bodies can actually minimize costs due to the economies of scale available to these organizations.



Qualification and Verification by Independent Third Parties

Intertek supports the use of third party qualification and verification (certification) by accredited independent laboratories and certification bodies. We believe that products can also be tested for compliance through approved manufacturer-funded verification programs (i.e. AHRI, AHAM), providing the testing is performed in independent accredited laboratories. We believe that the EPA and the DOE do not need to establish third party administrators to manage ongoing verification testing for the ENERGY STAR® Programs. There are currently many ISO Guide 65 accredited certification bodies that can supply these services.

One of the most cost effective and efficient programs that could be used as a model for the ENERGY STAR® program improvements is the Department of Labor OSHA NRTL (Nationally Recognized Testing Laboratory) Program. In this program the NRTL is accredited as both a laboratory and certification body. The NRTL, acting as a testing body, tests and verifies that the initial product complies with the standard. The NRTL, acting as a certification body, then conducts factory surveillance at the manufacturers' facilities, to provide a low cost ongoing review of the manufacturers' production practices for the product, and ensures ongoing product compliance. Under this streamlined model there is no need for a separate administrator, as the certification bodies have significant experience and competence in managing these types of programs, as well as an existing infrastructure of inspectors throughout the world operating within ISO Guide 65 certification requirements for surveillance. Moreover, by leveraging this existing testing and certification system, EPA/DOE would eliminate the need, and unnecessary cost to the taxpayer, for an additional administrator to oversee the testing and certification organizations.

Accreditation

Intertek supports the need for meaningful accreditation. Intertek recommends that the EPA use ISO Guide 65 (certification) and ISO/IEC 17025 (laboratory) as a basis for accreditation. Accreditation of certification bodies to ISO/IEC Guide 65 provides assurance that the certification body is not only competent to manage a certification scheme, but also that the certification body is independent and free from undue influence. This independence is a key component of a credible program and constitutes a significant upgrade from a self declaration system. As a requirement of ISO Guide 65 compliance, laboratory compliance to ISO/IEC 17025 can provide assurance that the laboratory is competent to test and evaluate the product in relation to the appropriate standards.

Additionally, it is Intertek's position that the ENERGY STAR® Programs do not have such unique or particular needs as to require going outside of the ISO/IEC rules as a basis for accrediting third party certifiers and independent laboratories. Creating a separate accreditation scheme would duplicate efforts, increase costs and limit competition in the testing and certification business without providing a corresponding benefit to the ENERGY STAR® Programs. Certainly, for laboratories that already have achieved recognized ISO Guide 65 and ISO/IEC 17025 accreditation for the specific scope from a qualified accreditation organization, creating a new accreditation scheme would not ensure greater quality.

Accreditation to the proper scope is a necessary requirement for the EPA/DOE to have confidence that any EPA/DOE qualified third party organization is competent to test and manage a certification program. However, it is necessary to establish that the accrediting organization is in fact qualified to provide that service by determining whether their auditors are familiar with the EPA/DOE requirements. For that reason, Intertek recommends that the EPA/DOE conduct its own assessment of accreditors to be used within the ENERGY STAR® Programs. Some accreditors only offer minimal assurance that their members understand the requirements of ISO/IEC 17025 and ISO Guide 65. These accreditors do not necessarily have the technical expertise in the ENERGY STAR® Programs to allow them to properly assess the qualifications of certification and testing bodies. The EPA/DOE should audit the accreditors to ensure an understanding of the ENERGY STAR® Programs and the standards and regulations to which products must comply. In addition, such an EPA/DOE review



would include examination of each accreditor's technical resources to ensure auditing competence. Therefore Intertek does not support the blanket acceptance of all accreditation bodies and it must be the responsibility of EPA/DOE to individually assess the competence of these accreditors.

A peripheral issue also involves the lack of reciprocity requirements. Specifically, the countries of non-US based test laboratories that wish to participate in a certification program such as this should, as a prerequisite, be mandated to offer recognition to US-based test laboratories and certification bodies for its certification programs. Without reciprocity there is the lack of a level playing field; regulators of other countries are free to block external competition for its certification programs, eliminating any choice of service providers by manufacturers. Lack of reciprocity impacts both U.S. manufacturers and conformity assessment bodies by causing market access restrictions and causing requirements for duplicative testing. Intertek urges the EPA/DOE to require reciprocity and National Treatment be accorded to U.S. organizations as a condition for participation as a service provider in the ENERGY STAR® Program. A good example of this requirement is found in the OSHA NRTL accreditation program.

Capacity Concerns

There currently is a large testing and certification infrastructure in the U.S. which provides a competitive market for services and ample capacity for ENERGY STAR® testing and certification of products. For example, there currently are 15 testing and certification organizations accredited by OSHA under the NRTL program. These 15 organizations have multiple laboratories located throughout the world to serve the needs of manufacturers. Beyond the NRTLs, many manufacturers maintain testing capability that could also be used in the ENERGY STAR® Programs, similar to the Data Acceptance systems put in place by OSHA within the NRTL Program.

We support the use of third-party data acceptance programs, provided certain criteria are met, to insure confidence in the accuracy and veracity of the data. Our experience in this area has shown that for these systems to operate in a credible manner there must be a defined system implemented to ensure uniformity of acceptance of this test data by the certification bodies.

To give industry more choice, and additional cost- and time-saving options Intertek believes that EPA should consider third-party data acceptance programs. Such an alternative would allow for the ENERGY STAR® testing data to be generated in qualified manufacturer labs and subsequently third-party reviewed for accuracy and engineering judgement of product compliance. This program approach of course would be audited to ISO/IEC 17025 and ISO Guide 65 requirements for the specific standards specified in the program.

The OSHA NRTL program and IECCB Scheme are two systems in which Intertek participates that have data acceptance provisions for manufacturer generated test data. These systems have a number of things in common that allow the third party organization to have confidence in the quality of the data generated in the manufacturer's test laboratory, including: lab accreditation, ongoing correlation testing, factory audits, third-party engineering reviews, and certification.

Qualification and Quality Assurance Testing

Intertek supports ongoing Qualification and Quality Assurance Testing as long as it is provided by a third party certification scheme, such as AHRI or AHAM, in order to supply the necessary confidence in the compliance of the products in these programs. These trade association schemes have a proven track record. It is important to note that no product that is currently in a third party certification scheme (such as AHRI or AHAM) has been found to be non-compliant with the ENERGY STAR® guidelines.



The same cannot be said for the product categories covered by the proposed Qualification and Quality Assurance Testing proposal. We are concerned that the current proposal to set up a special system to handle these products is not only more complicated to enforce, but does not appear to be designed to significantly improve the current issues of non-compliance. If the manufacturer trade associations for these product categories set up similar schemes, then Qualification and Quality Assurance Testing could be an effective improvement to the ENERGY STAR® Programs. Otherwise, it's encouraged that EPA consider leveraging the competent network of ISO 17025 and ISO Guide 65 accredited laboratories and certification bodies to fill this need.

Testing by Government Labs and Restraining Competition

It is Intertek's position that the EPA/DOE must carefully define the role of government owned and sponsored laboratories within the ENERGY STAR® Programs. With appropriate firewalls in place, we support the use of government owned and sponsored laboratories for research and development testing, particularly in the area of ongoing ENERGY STAR® standards development. However, we do not believe that government laboratories should be involved in conducting the commercial production or marketplace testing that is at the heart of the ENERGY STAR® Programs. Currently there is significant capacity for this type of testing to be performed in private sector laboratories, and it would be in clear violation of OMB Circular A-76 and A-119 to use government laboratories to essentially compete with private sector's accredited organizations that can perform these testing and certification functions.

Intertek is also concerned that some ENERGY STAR® Programs, partly resulting from decisions made in their original formation, currently limit private sector certification body participation. For example, current ENERGY STAR® fenestration criteria mandate the use of a single body, NFRC (National Fenestration Rating Council), for verifying product ratings. This organization was initially funded to develop energy efficiency standards for the product category, but the firewall failed. Over time it established a certification program for verification of product compliance, a service that is clearly available from testing and certification organizations in the private sector. ENERGY STAR® currently only accepts verification testing data from this source directly, although independent laboratories generate this data. This places an additional cost burden on manufacturers without seeming to have a corresponding benefit. This structure further constitutes a discriminatory certification requirement for other qualified bodies. DOE's sponsorship and direct funding of NFRC and its acceptance solely of NFRC's certification program protects NFRC from direct competition. This has the appearance of a conflict of interest and is a restraint of trade. Intertek supports open competition and supports ENERGY STAR® Programs designed to accomplish this goal.

Administration

Intertek does not support proliferation of "administrators" that are responsible for "managing" laboratory participation in the programs' verification testing. Third party ISO Guide 65 accredited certification bodies are well qualified to provide the necessary confidence needed to verify ongoing product compliance to the ENERGY STAR® requirements. The additional expense and layer of non-value added service of an "administrator" seemingly does little to improve the credibility of the ENERGY STAR® Programs and only increases chances for miscommunication, errors and delays. As stated above, the existing system of ISO Guide 65 accredited certification bodies is able to efficiently and consistently provide these administrative functions. If the EPA/DOE determines to maintain separate administrators for some of the ENERGY STAR® Programs, it is Intertek's position that the EPA/DOE should articulate a strong rationale for such a structure.

Corresponding to Intertek's comments regarding use of government owned or sponsored laboratories above, the initial structure implemented for these ENERGY STAR® Programs will, in large measure, dictate their success or failure. It is Intertek's position that a significant opportunity exists in this reconsideration of the ENERGY STAR® Programs to not only



improve the effectiveness of the testing and certification services applied to these products, but also to make the overall system more efficient and functional for the participants.

Conclusion

Thank you for the opportunity to offer comments. Intertek believes that the ENERGY STAR® Programs have a significant impact, not only in the marketplace but more significantly on the environment. Intertek fully supports this EPA/DOE effort to improve the quality and consistency of the ENERGY STAR® Programs. The current proposal represents a dramatic shift in how the EPA and DOE are moving forward. Intertek looks forward to working with the EPA and DOE to support improvements to the very important ENERGY STAR® program.

Sincerely,

A handwritten signature in black ink, appearing to read "MP", is positioned below the word "Sincerely,". The signature is fluid and cursive, with a large loop at the beginning.

Mike Parker
Vice President
Global Marketing
Government & Association Affairs