



Setting Standards for Excellence

August 6, 2010

NEMA Comments on Energy Star Final Draft “Conditions and Criteria for Recognition of Certification Bodies”

Thank you for the opportunity to provide the following comments.

General Comments

Before we review suggestions for changes to specific sections, here are a few general comments.

Although not explicitly stated in the Conditions and Criteria, it is presumed that existing certified products will follow the recertification procedures in the existing program requirements and will not need to be recertified by a Certification Body (CB) to maintain their existing certification.

Furthermore, the scope of the CB role is vague. It is our understanding that Accrediting Bodies (ABs) accredit laboratories, meaning that they employ a process to determine that a laboratory is competent for the testing within its scope. We further understand that Certification implies that a specific product has been demonstrated to meet performance standards.

Is the primary role of the CB to review the data and decide whether the data indicates that the product complies with the Energy Star requirements and then to “officially” allow the Energy Star label on the product? This would then imply that the government does not trust that the processes of an accredited laboratory are followed and the results are legitimate unless a third party reviews them.

Is the CB role also to perform ongoing verification of both the AB and the testing laboratory including on-site inspections and direct implementation of proficiency testing? This seems to constitute a duplication of the laboratory accreditation process and the AB registration process.

We request clarification about the role of the CB process, with a clearer explanation of the justification for each step in the qualification process.

In addition, NEMA members are very concerned about the handling of confidential business information (CBI). The handling of CBI is not specifically outlined in this document, and it is crucial that CBs have clear and legally-binding obligations to manage sensitive information properly according to government CBI guidelines. We request that these guidelines and expectations be clearly laid out in these criteria.

Comments on Elements of the Draft CB Requirements

Section 1

This Section introduces new terms that are not defined. For example, in the Energy Star CFL V4.0 specification (pages 20-21), an entire page and a half outlines procedures should a product fail testing. The product is retested, there is an appeals process, there is a timeframe under which these procedures are to follow, etc. The CFL specification does not define any concepts such as “suspending” or “reducing” certification, which this section of the proposed CB requirements states will be a responsibility of the CB. What do these terms mean, how do they fit within the current Partnership structure, and by what authority is the CB allowed to take any extra measures that are outside the scope of the Partnership, related to product certification?

In the General Requirements and Responsibilities section, a) iv), ENERGY STAR is proposing, with the appointment/recognition of CBs, to outsource much of the decision-making and certification processes that are inherently governmental work. Specifically, we are confused by the term “be responsible for decisions...” Does this imply that the CB will be making final decisions about product certification/verification, a responsibility that is an inherently governmental function?

Furthermore, item v) of this section suggests that the CB, rather than EPA, will “decide whether or not to certify a product...” This shifts the responsibility of product certification under a government program away from the government. In addition, this section allows the CB to decide the fate of a product based on “any other relevant information” beyond the information gathered during the evaluation process. To what “other relevant information” does this refer? It is our understanding that product testing data would determine certification. Is there a new or different set of criteria that will be used in this process other than the product testing data from the approved laboratory?

Under the existing scheme, the Energy Star logo is the certification mark and appearance on the certified products list is proof of certification. Section 1) a) iv) of the final draft criteria indicates that the CB is responsible for all decisions related to “...granting, maintaining, extending, suspending, reducing, and withdrawing certification ...” As the EPA will control the certified products list (section 2b ii), we would suggest the following changes:

- Section 1) a) vii): Change “... make available upon request a directory of products...” to “... make available upon request *by the EPA* a directory of products...”.

The rationale behind this request is that there is one list of certified/qualified products and the EPA maintains that list. It would be confusing to the market if each certification body maintained a public list of what they had certified. Thus the list of products that each CB has certified should be available only to the EPA.

Item 1) c). This comment is linked to the EPA’s previous draft for Approved Laboratories, but as it is mentioned in the Conditions and Criteria for Recognition of CBs for the Energy Star program, it is worth referencing again. NEMA would like confirmation that laboratories

accredited by NVLAP for the Energy Efficient Lighting Program will be recognized as EPA accepted laboratories. Some manufacturers have invested significant time, energy and effort in establishing and maintaining quality, high-integrity, accredited labs, and their approval is yet unclear. If they are not recognized, will all completed product certifications be deemed invalid, requiring recertification at a cost of millions of dollars? Section ii) of this Item is confusing, as it outlines another program for manufacturers' testing laboratories that is described in Appendix A. We are concerned that this new "program" (WMTL/SMTL) is costly and unnecessary, and we are unclear how this overlaps or relates to NVLAP accreditation. We are seeking clarification and confirmation on this point.

One specific question involves the note in appendix A, 1), b) where it says, "It is the EPA's intention that an EPA-recognized CB will take the steps it deems necessary to establish confidence in a laboratory form which the CB intends to accept data, but that those steps shall be reduced in the event that the EPA has formally recognized the laboratory as currently meeting the "Conditions and Criteria for Recognition of Laboratories for the Energy Star Program". Will there be a difference between how a third-party, NVLAP accredited, laboratory and a Supervised Manufacturers' Testing or Witnessed Manufacturers' Testing, NVLAP accredited, laboratory will be treated, and if so, what is the justification for that difference?

Item 1) e). The way this is written, it implies that the CBs may determine additional certification criteria over and above what is defined by the EPA. Please clarify this statement and, if necessary, reword to reflect appropriate intent. If the intent is to allow the CBs to determine additional certification criteria, we question what authority allows this.

Item 1) f) reads in part: "permit relevant EPA ENERGY STAR authorities to examine any information used in making certification decisions, including test data". This also needs clarification as to who to be permitted: "relevant" authorities, "EPA" authorities or "ENERGY STAR" authorities, which under the MOU would include DOE.

Please make the list of relevant Energy Star authorities public and have signed confidentiality agreements.

Add clause k) to Section 1:

k) Use of the CB's own certification/verification mark to indicate certification is not allowed.

The rationale here is that the Energy Star program has its own certification mark that has extensive brand recognition. Permitting each CB to require use of their own certification mark dilutes the value of the Energy Star mark and can create confusion in market as to whether a product is actually certified.

Section 2

The note box reads, in part: “EPA will evaluate the CB’s product data review procedure to ensure it meets the needs of ENERGY STAR partners.”

A major concern of our companies is the lack of capacity and the real danger of delayed/slow throughput at the CB level for product qualifications.

Section 3

Although this application of this section is not to apply to lighting products per the statement in the Note box, we have some concerns since these proposals may one day be made to apply to lighting products.

Section 3) c) Challenge Testing raises concerns over the possibility of different challenge procedures applied by various Certification Bodies and the section should be removed. The CB should not be permitted to define a challenge procedure. A single challenge procedure defined by the EPA should be implemented.

Section 3) c) ii), EPA states “A challenge may be initiated only when the CB has received...[e]vidence that the challenger has conveyed details of the challenge to the challengee”. This raises concerns related to competition laws since it requires that two Energy Star partners communicate with one another regarding one’s claim that the other’s qualified product does not in fact meet one or more Energy Star requirements. Thus, we suggest that any challenge procedure require the challengers to disclose themselves only to the EPA.

Thank you for your consideration of these comments. We look forward to further work with you on these matters. If you have any questions regarding these comments, please contact Craig Updyke at NEMA via 703 841 3294 or cra_updyke@nema.org.