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**Statement of**

**Mr. Kyle Pitsor**

**Vice President Government Relations**

**National Electrical Manufacturers Association**

**Before the**

**Energy and Natural Resources Committee**

**United States Senate**

**On the “Appliance Standards Improvement Act of 2009”**

**March 19, 2009**

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Chairman Bingaman, Ranking Member Murkowski and members of the Committee:

On behalf of the National Electrical Manufacturers Association (NEMA), I am Kyle Pitsor, Vice President for Government Relations. NEMA is the trade association of choice for the electrical and medical imaging equipment manufacturing industry. Our approximately 430 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity, and represent about 400,000 jobs. These products are used in utility, medical imaging, industrial, commercial, institutional, and residential applications. Domestic production of electrical products sold worldwide exceeds \$120 billion.

I am pleased to be here today to present our Association’s views on the importance and role of the national energy efficiency standards program and the Energy Star voluntary program, and to offer our comments on the “Appliance Standards Improvement Act of 2009.”

I would like to note that our member companies strongly support advancing energy efficiency in the marketplace. NEMA members and their employees are at the very heart of our national effort to reduce energy use through the research, development, manufacturing, and deployment of energy-efficient products and technologies. Many energy efficient technologies exist, and what we all must strive for is wider recognition,

deployment, and use of today's state-of-the-art products and technologies, and support for emerging technologies.

Advancing energy efficiency in our economy through greater deployment and use of energy efficient technology comes about through a mix of policy approaches: building codes, product standards, consumer education, labeling of products, voluntary programs like Energy Star®, government procurement, and energy tax incentives.

NEMA supports a robust national energy conservation standards program under the Energy Policy and Conservation Act (EPCA), as amended. We believe that a strong national program of standards, test procedures and labeling/information disclosure is critical to effectively maximize energy savings for the Nation and the consuming public. Products are manufactured and distributed on a national (and sometimes global) basis, and it is key that energy conservation regulation for products occur at the federal level.

Mr. Chairman, I would like to provide our comment on the legislation and have organized our testimony based on the bill's sections. We also offer comment on several other topics following our section-by-section comments which we hope will be considered as the legislation moves forward.

## **Section 2: Test Procedure Petition Process**

The establishment of energy efficiency standards for federally-covered products and equipment is predicated on the use of recognized and established consensus test procedures. Without agreed upon test procedures, it would be impossible to compare efficiency claims among products. The current program is based on incorporation of relevant test procedures within the regulatory program under EPCA.

Once the Department of Energy (DOE), or in some cases Congress, establishes the test procedure for a regulated product, it is important that the test procedure be evaluated as time passes to ensure that it stays current with the energy efficiency levels mandated for the product. When DOE undertakes reviews of the efficiency standard for a product, it

also undertakes a review of the applicability of the test procedure and whether it needs to be changed or not.

We note that the Energy Independence and Security Act of 2007 (EISA 2007) amended EPCA to require DOE to review test procedures for all covered consumer appliances and industrial equipment at least once every 7 years and to amend test procedures for any such product if DOE determined that the amended procedure would more accurately or fully comply with the EPCA requirement to be

“reasonably designed to produce test results which measure energy efficiency, energy use, water use ..., or estimated annual operating cost of a covered product during a representative average use cycle or period of use..., and shall not be unduly burdensome to conduct.”

The EISA 2007 amendment also directed DOE to publish notice in the *Federal Register* of any determination not to amend a test procedure.

The proposed legislation would permit DOE to consider amending a test procedure as a result of petition, conduct a public rulemaking to determine if the test procedure should be amended or not, and set deadlines. It should be noted that the granting of the petition does not establish a presumption that the test procedure should be amended, only that DOE must undertake a rulemaking to make a decision on what changes to the procedure are warranted, if any, and to publish such a determination. In addition, for industrial equipment, the legislation would require DOE to conduct a test procedure rulemaking at a minimum of once every seven (7) years on a mandated basis.

NEMA supports the need to keep test procedures current based on the use of recognized and established consensus test procedures. Petitions under the proposed legislative changes need to include detailed information on why a current procedure should be amended, otherwise we fear that very general petitions could be filed that would tie up DOE resources unnecessarily and be counterproductive to the administration of the appliance standards program.

Section 2 also permits the DOE to adopt a “consensus” petition to amend a test procedure on an expedited basis per changes made in EISA 2007 applicable to “consensus” petitioning to amend efficiency requirements. NEMA supported the changes to EISA 2007 for an expedited process via a direct final rule for new efficiency standards where there exists a broad consensus of stakeholders (including representatives of manufacturers, efficiency advocates, states, utilities, etc.). It is critical that such “consensus” petitions have broad support, and if they do, then considerable resources can be saved by the government and the private sector in a direct final rule. With respect to the current legislative proposal to extend this same approach to test procedures, NEMA supports the proposed change.

### **Section 3: Energy Star Program**

Since they help direct consumers to the leading edge and highest performing products and buildings in terms of energy efficiency and consumer satisfaction, the voluntary Energy Star market transformation programs must also undergo periodic review and updating to ensure they are meeting their mandate from Congress in the Energy Policy Action of 2005 (EPACT 2005) to

“identify and promote energy-efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards.”

In Section 131 of EPACT 2005, Congress specifically authorized the Energy Star program within the Department of Energy and Environmental Protection Agency (EPA). Further, Congress specified certain duties of the agencies including to preserve the integrity of the Energy Star label, to regularly update Energy Star product criteria, to solicit comments from interested parties prior to establishing or revising an Energy Star product category or specification, to provide a reasonable notice of any changes along with an explanation of the changes, and to provide an appropriate lead time (270 days) prior to the effective date of applicable changes.

The legislation under consideration today further elaborates on the duties of the two agencies charged with administering the Energy Star program. We endorse the provisions encouraging measures to verify that Energy Star labeled products can demonstrate compliance with the program criteria and find that the approach taken in the legislation is properly balanced to ensure protection of the Energy Star brand and consumer interests while minimizing additional burdens on manufacturers. We stress the importance of providing flexibility to the agencies in determining the appropriate, if any, method by which compliance is demonstrated to Energy Star criteria by qualified products. Given the over 50 product categories in the Energy Star program, one scheme of verification of compliance is not appropriate for all products, and we are encouraged that the legislation as drafted allows for consideration of different approaches based on the product category in question. The determination of the appropriate approach must be conducted in an open and transparent manner by the respective agency in consultation with interested parties including manufacturers. We also support the application of a cost/benefit analysis provided for in the draft legislation.

The draft legislation also establishes timetables for when the agency should undertake a review of the product criteria and specification. Each product category would be reviewed at least once every three (3) years or when the market share for an Energy Star category reaches thirty-five (35) percent. The market share trigger would be adjusted during the first review to take into account technology and market attributes for that specific product. We believe it is important for the respective agency to undertake periodic reviews of the specification, and we note that just because the market share of a particular product exceeds 35 percent it does not automatically mean that the specification is somehow out-of-date, since that determination is technology-specific for a product category. Indeed, what we are striving for is greater penetration of Energy Star products in the market place so one measure of success is higher market share of Energy Star products as compared to lower efficiency products. For example, in the case of Energy Star Compact Fluorescent Lamps, Energy Star CFLs comprise over 70 percent of the CFL products but CFLs represent only 25 percent of the general lighting market, which is the target of the transformation effort.

We also strongly endorse the requirement set out in this section for the Environmental Protection Agency and the Department of Energy to renew and update their 1996 Energy Star memorandum of cooperation. As specified in the legislation, the updated agreement should be based on resources and expertise available within each agency, as well as on other factors, provide for mechanisms to resolve disagreements between them, and include structures for regular consultations, planning sessions and program reviews.

This brings me to our lighting industry's ongoing concerns and market confusion engendered by competing Energy Star programs within the Environmental Protection Agency and the DOE that address solid state lighting (SSL) technologies. SSL technologies like LED (light-emitted diode) lighting represents a major paradigm shift from conventional lighting, and portends significant energy savings, if we do it right.

As you may recall, Congress recognized the importance of SSL when it created Section 912 of the Energy Policy Act of 2005 (EPACT 2005) and authorized annually \$50 million thru 2013. Section 912 directed the DOE to create a Next Generation Lighting Initiative "to support research, development, demonstration, and commercial application activities related to advanced solid-state lighting technologies based on white light emitting diodes." NEMA is the secretariat of the Next Generation Lighting Industry Alliance, selected by DOE as its industry partner in this effort. NEMA and NGLIA member companies are deeply involved in the private-sector committees that are writing rigorous performance and testing standards for this technology area. Since the initial NGLI program plan was developed, an Energy Star program for solid state lighting has been one of the goals of the commercialization activity.

In 2006, DOE began consultations with the lighting industry about possible requirements for an Energy Star program for solid-state lighting products. After many rounds of drafts, meetings and comments from the lighting industry and other stakeholders, Version 1.0 of the requirements were finalized in March 2008, and took effect September 2008. DOE has also undertaken review of these specifications with a view to adding additional application categories in light of the dynamic changes taking place with SSL.

During this process, I have personally written to both EPA and DOE on behalf of our industry several times to encourage the agencies to work together to resolve any disagreements and cease any redundant activities standing in the way of support for research, development, standardization, commercialization and consumer adoption of quality solid state lighting products. However, in June 2008, with apparently no coordination with DOE, EPA's Energy Star program for residential light fixtures began to allow qualification of fixtures that use solid state lighting as the primary source of illumination. As you might imagine, this caused some confusion and consternation in the marketplace, and among lighting manufacturers, market transformation organizations, and utilities. For example, Pacific Gas and Electric, a major California electric utility, stated openly that it would not recognize the EPA requirements.

We raised our concerns about two competing and confusing specifications to both agencies, and also to the White House Council on Environmental Quality and we understood that the two agencies were directed to work out a way to cooperate in this important area, but each agency has seemingly continued to pursue its own path.

Given the significant investments that companies are making in SSL technologies, we cannot afford market confusion and competing government programs. Accordingly, NEMA and American Lighting Association (ALA) recommend that Energy Star programs involving solid state lighting be under the jurisdiction of one agency, the Department of Energy. DOE has a solid expertise in SSL and it very familiar with lighting technologies and products.



#### **Section 4: Petition for Amended Standards**

The proposed legislation would establish deadlines for DOE action with respect to petitions to amend the efficiency requirements for products and equipment. This petition process would be in addition to the DOE process for considering updates to the efficiency standards. We note that the petition needs to contain detailed information on why the efficiency standards need to be revised, and that the granting of the petition does not presume that an amended efficiency standard is warranted, only that DOE will undertake a rulemaking to make a decision on amending the standards. In considering the petition proposed in the legislation, DOE should be able to take into consideration the review cycle for that particular product/equipment. Ramping up the necessary analysis and consultations with stakeholders is costly and DOE will need to have flexibility to make programmatic adjustments. NEMA supports appropriate deadlines for DOE to respond to petitions, taking into account these issues.

#### **Section 5 and 6: Portable Light Fixtures and GU-24 Base Lamps**

Portable light fixtures, such as table lamps, are presently not a federally-covered product. The legislation proposes to establish for the first time federal efficiency requirements and test procedures for portable light fixtures. This proposal is based in part on language adopted by the California Energy Commission during its Title 20 rulemaking in 2008. NEMA participated in that rulemaking with respect to lighting products since we represent the manufacturers of light bulbs, including LED replacement bulbs, and we coordinated with the American Lighting Association (ALA), which represents manufacturers of the portable light fixtures themselves. NEMA supports the establishment of portable light fixture efficiency standards and test procedures under EPCA.

### **Section 7: Study of Compliance with Energy Standards for Appliances**

NEMA strongly supports the need for a study of the appliance standards program and the level of compliance and enforcement of efficiency standards. Our industry has invested heavily in the federal program of efficiency standards, test procedures and product labeling, and are concerned about the levels of imported products that are not in compliance with federal requirements for certain federally-covered products. The study will be valuable in making recommendations on how our enforcement regime should be structured in light of today's global competitive environment.

We also suggest that the General Accountability Office (GAO), in coordination with the Department of Energy, conduct the study of compliance, compliance options, and enforcement.

### **Section 8: Study of Direct Current Electricity Supply in Certain Buildings**

The potential energy savings from the implementation of a DC electricity supply for individual buildings could be significant on the basis of elimination of the multitude of individual power supplies used for various information technology, audio-visual and other devices. Use of a centralized DC electricity supply would require major investment in new wiring devices (to prevent misconnection with existing systems), installers would need to establish new practices, and rules for safe use would need to be developed. The most practical use would be for new construction or major renovation, as separation of these circuits from the installed alternating current wiring must be maintained. A study would be highly beneficial to identify the key considerations and limitations for implementation of direct current electricity supply.

### **Section 9: Electric Motor-Driven Systems Assessment**

Section 9 of this legislation is a requirement for the Department of Energy to conduct a motor market assessment and commercial awareness program. NEMA represents all of the major electric motor manufacturers. Electric motors convert 65-70% of the electrical energy used in commercial and industrial applications such as drive pumps, fans, compressors, material handling. The objectives of the Market Assessment are to

develop a detailed profile of the current stock of motor-driven equipment in U.S. and survey how the installed base of industrial horsepower motors is broken down. This updated assessment will support future legislative, regulatory, and voluntary programs aimed at increased motor systems energy efficiency. Other items this study will accomplish are: characterize and estimate the magnitude of opportunities to improve the energy efficiency of industrial motor systems; survey how many systems use drives, servos and other higher technologies; how many systems use process control, by application category, pump, compressor, fan/blower, material handling. Furthermore, it will develop an updated profile of current motor system purchase and maintenance practices; how many companies have motor purchase and repair specifications, including company size, number of employees. And finally, it will develop methods to estimate the energy savings and market effects attributable to the DOE's Save Energy Now Program.

In addition to serving DOE's program planning and evaluation needs, the market assessment is designed to be of value to manufacturers, distributors, engineers, and others in the supply channels for motor systems. It would provide a detailed and highly differentiated portrait of their end-use markets. For factory managers, this study presents information they can use to identify motor system energy savings opportunities in their own facilities, and to benchmark their current motor system purchase and management procedures against concepts of best practice.

### **Outdoor Lighting Efficiency Standards**

As I noted at the beginning of my testimony, NEMA members have been actively engaged and has a proven track record in supporting public policies that transform the U.S. market to more energy-efficient lighting, both at home and in the workplace.

One area that we believe is now ripe for the establishment of national energy-efficiency standards is outdoor lighting. Outdoor lighting consumes over 178 TWh according to Navigant Consulting (data from 2007), the equivalent output of about 17 nuclear plants (1200 MW) or 34 coal-burning plants. We believe that federal efficiency standards should cover new street, roadway, parking and area lot applications, including major

renovations. New federal standards, together with lighting controls, where appropriate, would drive the deployment of today's commercially available energy-efficient products and as well as new advanced solid-state lighting technologies, with the benefit of lowering energy bills and providing users with good quality lighting.

We hope that a proposal to establish federal efficiency standards for outdoor lighting can be added to this legislation.

### **Federal Preemption**

A fundamental tenet of the Energy Policy Conservation Act, as amended, is the significant and longstanding principle of federal preemption for overseeing energy efficiency standards. The twin cornerstones of the “comprehensive national energy policy” enacted by Congress in 1975 to implement EPCA (S. Conf. Rep. No. 94-516 at 116 (1975)) are:

1. The establishment of national standards for energy efficiency, testing and information disclosure for “covered products,” and
2. Express Federal preemption of State laws and regulations respecting energy efficiency standards, testing, and information disclosure for those covered products.

The exceptions to Federal preemption were intentionally narrow: (a) State petitions for waivers required that States show there were “unusual and compelling State and local interests” that were “substantially different in nature and magnitude from those of the Nation generally,” so that achieving the waiver would be difficult; (b) State procurement standards would be permitted; (c) and a narrowly drawn exception for State and local building codes that must meet seven requirements. NEMA supports the current federal and state preemption provisions.

NEMA supports a robust federal program set forth by Congress. For many federally-covered products, standards have been established by Congress in the various acts; in the case of other covered products, Congress has delegated to the Department of Energy and the Federal Trade Commission the authority to determine uniform national standards and policy. EPCA also provides for certain remedies where DOE misses statutory deadlines

by permitting any person to commence a civil action against DOE where there is an alleged failure by DOE to perform any non-discretionary act or duty under EPCA. 42 USC §6305(a). EPCA requires the courts to expedite the disposition of such civil actions. Persons also have the right to petition DOE to commence a rulemaking to enact or amend a rule.

I mention these matters because as Congress considers improvements to the federal program, we need to ensure that resources are provided so that the agencies charged with administering the program are able to do so. In the past, some have proposed weakening pre-emption because of missed deadlines, which ends up penalizing the manufacturers for government's lapse.

### **Technical Corrections to EISA**

Mr. Chairman, since the passage of the Energy Independence and Securities Act of 2007 (EISA 2007), several items have been identified that warrant "technical correction" to address implementation issues and obtain clarification. Over the past 15 months, since the passage of EISA, NEMA has been working closely with various stakeholders, several of which are testifying today, in obtaining a consensus agreement on a technical corrections bill. We have agreed on a package of non-controversial corrections and we urge consideration of inclusion of a technical corrections package as part of the Appliance Standards Improvement Act of 2009.

### **Conclusion**

In conclusion, NEMA urges the Committee to support inclusion of provisions to improve the operation and efficacy of the Appliance Standards Program and the Energy Star Program. These two programs work hand-in-hand to advance the use of energy efficient products and technologies, and it is important that operational coordination between the two programs occur. NEMA members are committed to advancing the use and deployment of energy efficient technologies, and offer the following recommendations:

1. NEMA supports use of recognized test procedures and that a petition to amend a current test procedure needs to contain detailed information on why current test procedure needs to be amended in order to prevent general petitions lacking substantiation.
2. NEMA supports a direct final rule approach for broad “consensus” petitions to amend test procedures for covered products and equipment.
3. Energy Star programs should regularly review their qualification requirements and, in a cost-effective manner, ensure that Energy Star labeled products are able to demonstrate compliance with applicable Energy Star requirements.
4. Based on market and stakeholder confusion due to competing Energy Star specifications and programs for solid state lighting, we support consolidating Energy Star solid state lighting activities in one agency, the Department of Energy.
5. Support the establishment of federal energy efficiency standards and test procedures for portable lighting fixtures.
6. The study on compliance and enforcement of the appliance standard program should contain recommendations for improving enforcement and we recommend that the General Accountability Office conduct the study in consultation with DOE.
7. NEMA supports the Motor Assessment study and the study on benefits and costs of Direct Current supply in certain buildings.
8. We support inclusion of a negotiated consensus proposal on energy efficient standards for outdoor lighting in the legislation.
9. Congress needs to provide sufficient resources for the national standards program and support for federal-preemption.
10. Recommend inclusion of an “EISA 2007 Technical Corrections” package as part of the legislation.

Mr. Chairman, Ranking Member Murkowski and Members of the Committee, thank you very much for the opportunity to provide these remarks and recommendations to the Committee today on behalf of our industry.