



Statement of the National Electrical Manufacturers Association

Before the

Energy and Air Quality Subcommittee,

Committee of Energy and Commerce

U.S. House of Representatives

May 1, 2007

“Achieving – At Long Last – Appliance Efficiency Standards”

Chairman Boucher, Ranking Member Hastert, and Members of the Subcommittee:

On behalf of the National Electrical Manufacturers Association (NEMA), I am Evan Gaddis, NEMA president and CEO. NEMA is the trade association of choice for the electrical manufacturing industry. Founded in 1926 and headquartered near Washington, D.C., its approximately 450 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity. These products are used in utility, medical imaging, industrial, commercial, institutional, and residential applications. Domestic production of electrical products sold worldwide exceeds \$120 billion. In addition to its headquarters in Rosslyn, Virginia, NEMA also has offices in Beijing, São Paulo, and Mexico City.

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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 to offer our comments on experiences involving consensus standards, legislative changes to the statute, and role of federal pre-emption.

I would like to note that our member companies strongly support advancing energy efficiency in the marketplace. Energy efficiency is the cheapest, cleanest, and quickest source of energy. Our industry stands at the very heart of our national effort to achieve a reduced dependence on fossil fuels, a cleaner environment, and a higher standard of living across the globe. Energy efficient technologies exist, and NEMA companies are actively engaged in the research, engineering, manufacturing and promotion of them. 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, product labeling, 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 am aware that the Subcommittee is interested in the role that negotiated consensus standards play as part of the national program, so let me briefly highlight some of NEMA's views:

Consensus Standards

Electric Motors

Electric motors consume 65-70% of the electrical energy used in commercial and industrial motor-driven systems, like pumps, fans, and compressors. Thus, increases in motor efficiency translate to significant energy savings for industrial and manufacturing end-users.

NEMA developed the first energy-efficient motor standard (MG-1) and defined levels for an "energy efficient" electric motor in 1987. In the Energy Policy Act of 1992, Congress adopted the NEMA definitions and integral 1-200 horsepower, general-purpose, poly-phase electric motors became federally-covered products. In 2002, NEMA, in consultation with the Consortium for Energy Efficiency, established new "premium efficiency" motor levels and began a significant marketing and promotion effort for NEMA Premium® by its members and through the Motor Decisions Matter national campaign. The Energy Policy Act of 2005 (Section 104) requires the use of NEMA Premium motors for federal procurement and purchasing.

In late 2006, NEMA began discussions with state representatives and advocacy groups to explore changes and expansion of the 1992 motor efficiencies in light of motor

performance changes, technology, and market changes. The result of these discussions has yielded a significant consensus proposal, which NEMA and ACEEE transmitted to the House and Senate on March 22, 2007. The consensus proposal expands motor efficiencies in three important ways:

1. Increases the minimum efficiency standards for the 1-200 HP category to the “NEMA Premium” levels,
2. Adds 7 motor designs in the 1-200 HP range that were excluded from EPACT 1992 to current federal efficiency levels, and
3. Adds general purpose motors 201-500 HP to current federal efficiency levels.

The Department of Energy is currently scheduled to complete a final rule on possible revisions to the existing standard for integral 1-200 horsepower motors by June 2011, with an effective date likely to be 2014. Our consensus recommendations would accelerate this timetable if enacted by legislation by three years to achieve savings as early as 2011, and would greatly increase the scope of federally-covered products.

ACEEE estimated the savings attributable to these joint recommendations to be 8 billion kilowatt hours by 2030, with a net energy savings to consumers of almost \$500 million.

Incandescent Reflector Lamps

Incandescent reflector lamps, used in downlights/recessed lighting fixtures, were added as a federally-covered product pursuant to the Energy Policy Act of 1992. NEMA participated in the negotiations and development of the 1992 act, and worked closely with the Department of Energy, Federal Trade Commission, and energy efficiency advocate stakeholders in implementing the bill. Certain incandescent reflector lamp shapes known as bulged reflector, elliptical reflector, and blown PAR were not subject to federal

efficiency regulations as defined by Congress. It should be noted that DOE did prescribe a wattage cap of 65 watts on ER/BR products. During intervening decade, there has been market growth in the ER/BR designs, along with improved technologies and new product options.

In 2005, NEMA joined with the American Council for an Energy Efficient Economy (ACEEE), states, and non-governmental organizations to negotiate a consensus agreement to revise the definition of federally-covered product and set lamp efficacy levels. A consensus agreement was reached, which has served as the basis for several state efficiency bills.

On May 31, 2006, DOE announced (71 FR 30834) the opening of a lamp rulemaking proceeding to consider changes to the 1992 lamp rules affecting general service incandescent, incandescent reflector, and general service fluorescent lamps. NEMA participated in the informational June public hearing, and announced along with ACEEE and others that a consensus proposal would be submitted for DOE consideration. On November 20, 2006, a submission was made to the Department of Energy with proposed rulemaking language for the consensus agreement. DOE's lamp rulemaking schedule is planned to be final by June 2009, with rules effective June 2012.

On July 18, 2006, NEMA and ACEEE transmitted to the House and Senate the set of proposed recommendations for possible inclusion in an energy efficiency standards title in future energy legislation with an effective date of January 1, 2008.

Our experience with the negotiations on the incandescent reflector lamps was positive, and we urge the Committee to consider incorporating our consensus agreement in new energy efficiency legislation. The proposal is included in S. 1115 introduced

April 17, 2007, and we believe that it should be legislated rather than wait for the DOE rulemaking to conclude and take effect in 2012.

General Lighting

Lighting use in the U.S. consumes some 20-22 percent of all electricity generated. Thirty percent of the energy consumed in an office building is used for lighting, and 5-10% of residential energy use is for lighting.

I am pleased to report that on April 3, 2007, the member companies of the NEMA Lamp Section (representing over 95% of the “light bulb” market) announced a joint industry commitment to support public policies that will transform the U.S. market to more energy-efficient lighting within a decade. This joint position came about in response to a growing number of proposals at the international, state and local levels that called for the banning of incandescent lamps in the marketplace.

NEMA views such a market transformation as a matter of national importance. Accordingly, new rules for this paradigm shift need to be established on a national level and require federal action and oversight in order to avoid confusion in the marketplace. Central to this commitment is the setting of standards that will eliminate the least efficient products from the market, based on the following six principles:

- The market transformation must be orderly and target as a starting point the least efficient medium screw base A-line incandescent lamps from 40 through 100 watts in widespread use today.
- Performance standards must be used to accomplish the transformation.
- Performance standards must be technology-neutral.
- The market transformation will take up to a decade.

- The set of A-line incandescent lamps to be addressed includes clear, frost, soft white and enhanced spectrum. Performance standards will be needed for each of these types.
- The market transformation should begin with strategies that will save the most energy.

We note that in the absence of a federal solution, states and localities should follow these principles when deliberating on this matter.

Prior to the April 3 announcement and subsequent to it, NEMA lamp members have been engaged in a series of negotiations with non-government organizations, advocacy groups, state government representatives, and industry organizations with an aim to develop a standards consensus proposal for submittal to Congress. Those negotiations are on-going at the time of preparing this testimony, and we will report to the Committee on their status.

Energy Policy Act of 2005

I would also like to note that NEMA worked with on six consensus agreements with advocacy organizations that were ultimately included by Congress in the Energy Policy Act of 2005 (EPACT 2005). These include:

- Illuminated Exit Signs (effective January 1, 2006)
- Traffic Signal and Pedestrian Crosswalk Modules (effective January 1, 2006)
- Medium-Screw Base Compact Fluorescent Lamps (effective January 1, 2006)
- Low Voltage Dry-Type Distribution Transformers (effective January 1, 2007)
- Energy Saving (T34) Fluorescent Lamp Ballasts (January 1, 2009)
- Mercury Vapor Lamp Ballasts (January 1, 2008)

Expediting New Energy Efficiency Standards

We believe, based on our experience with consensus standards negotiations and agreements, that the Energy Policy and Conservation Act should be amended to include procedure whereby such consensus agreements can be quickly acted upon by the Department of Energy. To-date, our consensus agreements have been enacted through legislative action. While this has had the desired effect of setting minimum efficiency levels and advancing the energy savings to be realized, it is not practical to expect that Congress should have to legislate each time a consensus agreement is reached. That is why we support changes to EPCA to permit stakeholders to submit through a petition process their consensus agreement, and for the Department of Energy to expeditiously consider and act upon it.

The Secretary of Energy has submitted a proposal for “expedited rulemaking” authority, and in the Senate, S. 1115 “The Energy Efficiency Promotion Act of 2007” contains a Section 204 to provide the Secretary of Energy the authority to conduct an expedited rulemaking based on an energy conservation standard or test procedure if submitted as a “consensus proposal”.

We believe the benefits of accelerating adoption of consensus proposals benefit the Nation when more efficient, competitive products enter the marketplace at an earlier date than would otherwise be the case if handled in the regular DOE rulemaking proceedings. In addition, manufacturers benefit by improvement in their planning processes occasioned by the increased certainty of earlier finalization of consensus standards. Finally, federal regulators and all stakeholders would benefit from reduced

burdens of paperwork, unnecessary rounds of otherwise mandated process and procedures, and legal costs.

NEMA supports an “expedited rulemaking” authority and recommends the Committee include such a procedure as a meaningful modification to the EPCA statute.

Federal Pre-Emption

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, and NEMA supports efforts to improve and strengthen the operation and administration of a national energy conservation program.

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.

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. In both cases, conscious decisions were made to exclude from regulation a certain subset of covered products because the expected energy savings was small compared to the burden of achieving that savings. For example, in 1992, when Congress enacted energy efficiency standards for electric motors, it specifically excluded from regulation certain definite purpose and special purpose motors. At the same time, Congress excluded from regulation certain “special applications” of general service fluorescent lamps and general service incandescent lamps, and delegated to the Secretary of Energy the authority to further determine by rule that standards “would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably suitable lamp types. Current “special application” lamps include, for example, medical and dental uses.

Where Congress or the Secretary of Energy have declared that there shall be no regulation for a federally-covered product (or subset of products) because agency determination concluded regulation will not result in significant energy savings, or because substitutes are not available, federal pre-emption remains intact. To do otherwise would grant States the ability to regulate after the Secretary of Energy, in the course of a rulemaking to prescribe standards for new covered products or in any amended standards, has determined that a covered product should be excluded from regulation. In making this determination, a public process has been followed that

includes evaluation of the projected amount of energy savings, technical feasibility of a standard, economic impact on manufacturers, the decline in the performance of products, and any lessening of competition, and other factors.

When a State or an interested citizen believes that the exclusions from federal regulation should be revisited, Congress should insist, as it always has, that the interested parties bring the policy debate on this important Federal question to Congress or the Secretary of Energy. Congress has always eschewed opening a wide door to the development of “a patchwork of numerous conflicting State requirements,” H.R. Rep. No. 100-11 at 19 (1987). Energy efficiency is a national issue that requires a national solution.

Some have proposed that federal pre-emption for a federally-covered product should lapse if the Department of Energy, as the administrator of the national program, misses a rulemaking deadline for that product. To us, this “stick” misses the point. Manufacturing should not be penalized because of the Government’s lapse. If deadlines are missed, the agency must be called to task by Congress (as it did in Section 141 of EPACT 2005). Resources and budgets need to be adequate to perform the tasks and workload assigned by Congress and statute, efficiencies need to be internally evaluated, and document review and clearance processes must be streamlined within the agency.

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.

Conclusion

In closing, Mr. Chairman, let me thank you for having this oversight hearing on the DOE standards program. It is a key component of our Nation's energy efficiency efforts, and NEMA is committed to supporting and working with you and the Subcommittee to make appropriate changes to strengthen and enhance the statute and operation of the program.

From our experience, we believe that:

1. An expedited rulemaking authority by the Department of Energy to adopt consensus standards agreements would benefit the Nation.
2. Absent an expedited rulemaking process, Congress should legislatively enact consensus standards proposals.
3. Federal preemption for federally-covered products needs to remain intact.
4. Document review and clearance processes must be streamlined within the agency.
5. Resources and budgets for the Codes and Standards program must be adequate to perform the tasks, workload, and timelines assigned by statute.