

## COMMENT

### AMERICAN COUNCIL OF INDEPENDENT LABORATORIES (ACIL) NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY (NIST) REQUEST FOR INFORMATION (RFI)

**Subject:** Effectiveness of Federal Agency Participation in Select Technology Sectors for National Science and Technology Council's Subcommittee on Standardization

March 7, 2011

ACIL hereby submits comments to the NIST RFI on the effectiveness of federal agency participation in select technology sectors for National Science and Technology Council's (NSTC's) Subcommittee on Standardization.

ACIL was founded in 1937 as the national trade association representing the leaders in the independent testing laboratory industry. An independent laboratory is one that is not affiliated with any institution, company or trade group that might affect its ability to conduct investigations, render reports, or give professional counsel objectively and without bias. ACIL is comprised of more than 150 member companies that operate approximately 400 laboratory facilities across the U.S. and abroad. They range from one-person specialty laboratories to multi-disciplined, international corporations employing thousands of engineers, scientists, technicians, analysts, consultants and support staff.

The RFI offers a number of models for Federal agency participation in standards development and conformity assessment activities. ACIL has long supported the principle of reliance of private sector standards and conformity assessment organizations consistent with the requirements under OMB Circular-119.

There is no question that there is more maturity in Federal participation in private sector standards setting and coordination than in conformity assessment. This is due, in large part, to the fact that the role of conformity assessment in the protection of the public health, safety and the environment, as well as a key market access worldwide, only became apparent in the mid-1980's. As such, Federal participation in conformity assessment at this point is evolving.

#### Leveraging Established Conformity Assessment Structures

The testing and conformity assessment systems in the US have a strong history of success in providing compliance tools. Utilizing accreditation criteria for technical qualifications and recognition of qualified laboratories within the existing conformity

assessment systems can be easily leveraged to meet the needs of regulators. As government entities seek to establish programs for compliance, it is both cost effective and technically superior for the government to leverage existing structures in the private sector to meet the outlined needs of their programs. The NSTC can serve as a platform to elevate awareness of existing conformity assessment processes and encourage best practices be leveraged in regulatory initiatives.

### Coordination and Participation

It is clear that coordination of conformity assessment activities in the United States rests with NIST under the National Technology Transfer and Advancement Act (NTTAA). However, it is less clear on how organizations such as ACIL can engage and “partner” with NIST under the Act. In the coming months, ACIL will be submitting to NIST its experience in trying to participate in the Smart Grid efforts. Our initial attempts to provide input into this process were rebuffed. While the process has improved, it is clear to ACIL there is something wrong with a process that does not allow the only U.S. trade association representing independent laboratories a seat at the table on the Smart Grid Testing and Certification Committee.

### Market Access

When the Federal government is involved in conformity assessment matters, especially in evolving technologies and where trade agreements have been or are being negotiated, maintaining competition at all levels of conformity assessment in foreign markets is paramount. In addition, ensuring that U.S. conformity assessment bodies are treated as equally as foreign-based conformity assessment bodies in those markets is critical. The NSTC is well positioned within the Office of Science and Technology Policy (OSTP) to ensure market leverage is exercised to protect US manufacturers and service providers, as without such protections there are detrimental impacts to U.S. exports and ultimately the U.S. balance of payments.

NSTC should consider the strategic importance of standards and conformity assessment schemes to economic development, trade and the competitiveness of US industry. When the frameworks for standards and conformity assessment are managed in a way to ensure fair global competition, they can actually serve to optimize trade channels. Bringing attention to the role of standards and conformity assessment in trade matters should be a priority of the NSTC. Attention to providing national treatment for U.S. standards developers and conformity assessment providers will help ensure that U.S. manufacturers and service providers do not lose market advantage to global competitors. There is a need to ensure that testing and certification organizations, with facilities located in the US, are protected from unfair competition. Reciprocity provisions should be required when considering acceptance of non-

domestic testing/certification organizations. Such provisions would insure a level playing field for all global service providers and the manufacturers which they serve.

#### Composition of NSTC

Finally, ACIL is concerned about the lack of private sector representation on the NSTC. ACIL would welcome the concept of a "private sector advisory council" to assist the committee in the coordination of conformity assessment in the United States.

#### Next Steps

In the coming months, ACIL will develop a survey for its membership to answer some of the questions outlined in the RFI, focused on our concerns outlined above regarding: coordination, participation and market access.

ACIL appreciates the opportunity to comment and looks forward to an on-going relationship with the NSTC.

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