



Response to Public Comments  
Received on the  
Draft WaterSense<sup>®</sup> Certification Scheme  
(Dated May 2007)

March 23, 2009

## Background

This document provides WaterSense's responses to public comments received on the Draft WaterSense Certification Scheme, released May 24, 2007. The actual comments can be viewed at [www.epa.gov/watersense/docs/cert\\_scheme\\_comments508.pdf](http://www.epa.gov/watersense/docs/cert_scheme_comments508.pdf).

Note: As part of the revisions to the Draft WaterSense Certification Scheme, WaterSense has changed the title and references from "WaterSense Certification Scheme" to "WaterSense Product Certification System." Throughout this comment response document, references to the draft are referred to as the "draft certification scheme" and references to the final are referred to as the "final product certification system."

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## I. General Comments

### Lack of Precedence and Infrastructure for Irrigation Industry

- a. Several commenters felt that the lack of precedence of third-party certification within the irrigation industry will necessitate the building of a certifying body infrastructure that will ultimately lead to higher costs, slower product development, and less innovation.

One commenter recommended that EPA be proactive in building a product testing and certification infrastructure for WaterSense labeled irrigation products. This infrastructure should include consideration of:

- Issuing a request for proposal (RFP) or request for quotation (RFQ) for irrigation testing services;
- Contracting directly with organizations willing to conduct testing to the WaterSense specification, as in the interim process for plumbing products; and
- Providing monetary incentives or awards (alone or on a matching basis with WaterSense utility partners) for an initial group of competent organizations willing to enter the new field of irrigation product testing and certification.

In the interim, while such an infrastructure is being built and in order to avoid delay in bringing WaterSense labeled irrigation products to market, commenters recommended that EPA defer adoption of the final certification process and begin work immediately on an interim certification scheme specifically for irrigation products. An interim process for irrigation products should be designed to be functional before the end of 2008. Key elements that should be considered for the interim process for irrigation products should include:

- Provision for third-party testing;
- Manufacturers' declaration of conformity, based on publicly available test results;
- Market surveillance by EPA or its agent, testing random samples of labeled products on the market; and
- Sanctions for shipping nonconforming products and other misuse of the WaterSense label.

*Response:* EPA has a responsibility to maintain the integrity of the WaterSense label. Independent third-party certification is one of the mechanisms that EPA has established to meet this responsibility. Certification provides a means of evaluating product conformity with WaterSense specifications not only when the product is initially tested, but on an ongoing basis after the products are being sold to consumers. It is a process demanded by stakeholders, such as utilities, looking to rely on WaterSense to identify high-efficiency, high-performance products. It brings value to the WaterSense label and it is an accepted and established practice in other industries.

That being said, EPA understands the hesitation of adopting a rigorous certification process for an industry that has never before had products certified and has no prior relationship with product certifying bodies. For this reason, EPA held a meeting with irrigation manufacturers and its current licensed certifying bodies to discuss the certification process and provide a sense of how the infrastructure may be built and

expanded to include irrigation products. Certification is a competitive market, and as expressed during the meeting, there is significant interest from EPA licensed certifying bodies to provide certification services to new sectors. In fact, irrigation manufacturers were given the opportunity to follow up directly with licensed certifying bodies to answer any questions about the process or cost, and to begin building the relationships necessary to participate in the process when the final specification for irrigation control technology is released.

In addition, EPA considered and made several modifications to the draft WaterSense certification scheme (hereafter referred to as the draft certification scheme) to balance the cost and burden of the process with the rigor the program needs to maintain the WaterSense label's integrity. These modifications include reducing the number of samples required for ongoing surveillance and allowing the annual testing of products in the marketplace to satisfy the requirements for recertification every five years.

With regard to a specific or unique process for irrigation products, EPA does not want the WaterSense label to have multiple meanings in the marketplace, depending on which product is labeled. The requirements must be equally established for all partners because they all have a vested interest in the process and in protecting and preserving the value of the WaterSense label for consumers.

- b. Several commenters expressed concern that few or no certifying bodies exist in the irrigation industry that would be willing to police the industry they serve.

*Response:* As specified in the WaterSense product certification system (hereafter referred to as the final product certification system), any certifying body that wants to test irrigation control technology must be assessed and accredited by an independent accreditation body to ensure that they have skilled personnel with the capability and competence to understand the product and run the tests against the WaterSense specifications. When the final specification for a new product is released, WaterSense will post a list of licensed certifying bodies that have been accredited to conduct certification for that particular specification.

For the irrigation industry, WaterSense has initiated dialogue between irrigation control technology manufacturers and potential licensed certifying bodies that expressed interest in certifying irrigation products. The manufacturers have had time to become familiar with the process and costs associated with certification prior to the release of the draft or final specifications for irrigation control technology. In addition, they can utilize this time to discuss their business with multiple certifying bodies to find the best possible services to meet their budget and needs.

## **Compliance With Existing Standards**

- a. To participate in WaterSense, several commenters expressed concern that they will have to duplicate much of the testing and administrative work required for certification of their products to federal water-efficiency standards, including the expense involved. Several commenters recommended that EPA work out an agreement with the U.S. Department of Energy (DOE) and Federal Trade Commission (FTC) in which

WaterSense certification would satisfy all of the requirements of the Energy Policy Act of 1992 (EPAAct 1992), and more, and therefore the duplicative EPAAct filings would be waived, so long as the WaterSense certification is maintained.

*Response:* WaterSense is a voluntary program and compliance and certification to its specifications is not equivalent to meeting the legal requirements under EPAAct 1992. In addition, the certification process, as defined by International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 65, *General requirements for bodies operating product certification systems*, results in a statement of conformity, which conveys only the assurance that the specified requirements have been fulfilled. Such an assurance does not, of itself, afford contractual or legal guarantees. Therefore WaterSense is not in a position to make an agreement with the DOE or FTC indicating that any manufacturer that has a product certified for WaterSense is also in compliance with other federal requirements.

## II. Comments on Section 1.0 – Introduction

### Emphasis of the Certification Scheme

- a. One commenter recommended that the major emphasis of the draft certification scheme should be on the development of performance testing protocols that characterize the product's ability to apply and manage water.

*Response:* WaterSense agrees that the certification process should focus on the testing of the product's water efficiency and performance. There are, however, other factors that influence the ability of a product to meet the specification initially and on an ongoing basis, including the production process and quality management system of the manufacturing facility. An assessment of the production process and quality management system provides WaterSense with confidence that as products are produced, even if they are not directly tested, they can and will continue to meet the WaterSense specification criteria for water efficiency and performance.

### The Licensed Certifying Body

- a. One commenter suggested that the makeup of the certifying body must be carefully balanced to reflect all segments of the general public. The balance is required because ultimately decisions on specific issues will be decided by voting.

*Response:* For clarification, EPA determines the specific requirements that a product must meet in order to bear the WaterSense label. These requirements are developed with careful consideration and input from a variety of interested parties. The certifying body has no direct responsibility for developing the specific requirements contained in the WaterSense specifications or the established performance levels. Licensed certifying bodies serve to assess the products conformance with those requirements specified by WaterSense.

With regard to the makeup of the certifying body, ISO/IEC Guide 65, which is incorporated by references as the foundation for the product certification system, establishes the specific requirements that an organization must meet to be an accredited certifying body. These requirements ensure that the certifying body is balanced, capable, and competent to perform certifications and make certification decisions. Some of these requirements include:

- Impartiality;
- Responsibility for certification-related decision making;
- A management structure (committee, group, or person) responsible for certification and all that is involved;
- Demonstration that it is a legal entity;
- Separation of responsibility with regard to the evaluation and the certification decision;
- Ability to cover liabilities arising from its operations;
- Financial stability and resources;
- Employment of sufficient personnel with the necessary education, training, technical knowledge, and experience for performing the type, range, and volume of work performed;
- Quality system; and
- Freedom from commercial, financial, or other pressures that might influence the results of the certification process.

## Terminology

- a. One commenter felt that it is misleading to use the term “certification,” which implies a go/no go judgment when describing the responsibility of the third-party testing agency. The testing agency tests products to established protocols and certifies the results. The product certification body would frame the results to be effective in public programs.
- b. One commenter suggested that “certification” should be a guarantee that the product performs to the advertised results.

*Response:* ISO/IEC Guide 65 defines certification as a third-party attestation related to products, processes, systems, or persons. Attestation is the issuance of a statement, based on a decision following review, that fulfillment of specified requirements has been demonstrated. The resulting statement of conformity only conveys that the specified requirements have been fulfilled and does not afford contractual or other legal guarantees.

For this reason, WaterSense has included the following statement in the final product certification system (see Section 1.0 of draft certification scheme and final product certification system):

“Certification by a licensed certifying body is not a statement that the licensed certifying body guarantees the efficiency and performance of a WaterSense labeled product. It is also not a guarantee that all of the aspects of a relevant WaterSense product specification are being met or will continue to be met, at all times. The certification and labeling of a product for WaterSense is a statement that the manufacturer’s products have been demonstrated to conform to the

relevant WaterSense product specification, and that the validation and verification of conformance to the WaterSense product specification has been evaluated and determined to meet the necessary requirements.”

- c. One commenter sought clarification of the statement “produced in accordance with” in the following statement: “The certification and labeling of a product for WaterSense is a statement that the manufacturer’s products have been produced in accordance with the relevant WaterSense product specification...”

*Response:* WaterSense clarified this sentence, which now reads: “The certification and labeling of a product for WaterSense is a statement that the manufacturer’s products have been demonstrated to conform to the relevant WaterSense product specification...”

### ISO/IEC Guide 65 Clarification

- a. One commenter asked for clarification on the sentence “It [the certification system] provides guidance on ISO/IEC Guide 65 in order to satisfy the requirements implicit in the certification of products for WaterSense and provides the basis for consistent application of WaterSense certification by product certification bodies.”

*Response:* WaterSense intended to convey that the product certification system supplements and explains the requirements in ISO/IEC Guide 65. It provides any specific additional requirements not explicitly specified in ISO/IEC Guide 65 or guidance for interpreting requirements applicable to the WaterSense program.

WaterSense revised this sentence to read: “It provides specific requirements in the application of ISO/IEC Guide 65 in order to satisfy the requirements implicit in the certification of products for WaterSense and provides the basis for consistent application of WaterSense certification by licensed certifying bodies.”

- b. One commenter was unsure how the ISO/IEC Guide 65 addressed the specific standards for turf and landscape equipment.

*Response:* ISO/IEC Guide 65 requirements are not specific to any one product category. Instead, its purpose is to specify the general requirements that a third party operating a product certification system shall meet if it is to be recognized as competent and reliable (e.g., have sufficient structure, stability, impartiality, and ability to hire competent personnel). Once the third-party certifying body has generally been assessed for its ability to offer certification services in accordance with ISO/IEC Guide 65, it can apply to certify products related to specific product categories. For each product category, the certifying body is further assessed for its capability and competence to conduct specific certification services (i.e., assessing the production process and testing turf and landscaping equipment). Upon successfully demonstrating competence in certifying products for a specific product category, the certifying body’s scope of accreditation is amended.

WaterSense will require that all licensed certifying bodies be generally accredited to meet the requirements of ISO/IEC Guide 65. In addition, each licensed certifying body



must also be further assessed for competence to certify products to each specification for which they want to offer certification services. The particular specifications for which they are accredited to certify products must appear in their scope of accreditation.

### III. Comments on Section 2.0 – Technical Requirements

*Note: This section has been renumbered to be Section 3.0 Technical Requirements in the final WaterSense product certification system.*

#### Terminology

- a. One commenter questioned whether the application of the draft certification scheme to the “technical requirements or relevant product specifications” also included application to the performance requirements.

*Response:* The technical requirements are specified in the scope of each WaterSense specification and can include water efficiency and performance requirements.

- b. One commenter sought clarification on the use of the term “minimum requirements for certification.” This minimum definition could be a matrix of values established for a range of parameters that also affect the product certification decision.

*Response:* With reference to the minimum requirements for certification, WaterSense intended to convey that the specifications and the final product certification system provide only the minimum criteria for certification and labeling. The process allows for flexibility to go above and beyond the criteria that WaterSense has established, either in terms of the product’s water efficiency and performance characteristics or the testing and ongoing surveillance conducted by the licensed certifying body to ensure the product meets and continues to meet the specifications. The minimum is not intended to be a matrix of values that impact a product certification decision, but is instead a fixed requirement that defines the threshold to facilitate the product certification decision.

For instance, manufacturers are free to develop products that exceed the minimum requirements for water efficiency and performance as outlined in the WaterSense specifications (e.g., a manufacturer can seek certification for a tank-type toilet that has an effective flush volume of 1.0 gallon per flush (gpf) versus the WaterSense specified 1.28 gpf, provided the toilet meets the other performance requirements contained in the WaterSense High-Efficiency Tank-Type Toilet Specification). Likewise, licensed certifying bodies are free to impose certification requirements that are more stringent than those outlined in the final product certification system (e.g., they can reserve the right to conduct audits of the production process more frequently than once per year if they have concerns regarding the quality or consistency of products produced).

#### Scope

- a. One commenter questioned why WaterSense needed to include all processes and services used to make a final product. The commenter suggested that WaterSense

should only be concerned with the performance and certain design features, including, for example for irrigation control technology, end connections, pressure rating, and possible head loss as it relates to energy implications.

*Response:* WaterSense has expanded the final product certification system to include all processes and services required to make a product because the process (i.e., production or manufacturing process) and services can impact and dictate the ability of the product to meet and continue to meet the WaterSense specification requirements. WaterSense is concerned with the performance and design features of the product, but how the product is made and the quality management of the process is equally as important for ensuring the continuing and long-term conformance, performance, and water savings of WaterSense labeled products.

## References

- a. One commenter suggested that WaterSense review existing materials available from other organizations such as the American National Standards Institute (ANSI), the American Water Works Association (AWWA), and the Uniform Plumbing Code.

*Response:* The references provided in Section 3.2 References, of the final product certification system (previously Section 2.2 in the draft certification scheme) relate only to the documents that govern product certification. References related to specific products or product categories, including national consensus-based standards, where appropriate, will be included in the individual product specifications.

## IV. Comments on Section 3.0 – The Product Certification Body

*Note:* This section has been renumbered to Section 5.0 Product Certifying Body, in the final WaterSense product certification system.

### Establishing and Funding Product Certification Bodies

- a. One commenter questioned how EPA intended to establish and fund product certification bodies. This type of formal operating organization requires significant permanent staff. Ad hoc committees like the Irrigation Association's Smart Water Application Technologies (SWAT) committee can be mobilized for relatively short-term assignments, but there must be some coordinating entity providing long-term continuity. Organizations such as the Irrigation Association may be prepared to take on this role, if sanctioned by EPA.
- b. One commenter suggested that the Irrigation Association's SWAT committee be a licensed certifying body in the case of the "smart" irrigation system controllers.

*Response:* EPA does not establish or fund certifying bodies. ISO/IEC Guide 65 establishes the criteria that an organization must meet in order to receive accreditation to certify products. EPA may license any organization that meets these criteria and that

is accredited by an EPA approved accreditation body to certify products for WaterSense in accordance with this final product certification system and a specific WaterSense product specification. Further, ISO/IEC Guide 65 requirements ensure that any accredited certifying body has sufficient structure, including staff and funding, to foster confidence in its certifications.

### Requirements for Accreditation Bodies

- a. One commenter questioned the inclusion of requirements for the accreditation body to be an International Laboratory Accreditation Cooperation (ILAC) or International Accreditation Forum (IAF) signatory. This requirement appears to be related to a laboratory testing scheme and not a certification scheme and is particularly confusing since ISO/IEC Guide 65 already requires certifying bodies to use data from an ISO/IEC 17025 recognized laboratory.

*Response:* WaterSense agrees that for the purpose of the final requirements for accreditation bodies, including the credential for the ILAC Mutual Recognition Agreement (MRA) signatory may cause confusion because this credential relates specifically to laboratory accreditation and not to product certification accreditation. The IAF Multilateral Recognition Agreement (MLA) signatory for products, however, remains the appropriate credential for this final product certification system. An accreditation body with this status operates an accreditation program for the certification of products that meets international criteria and is equivalent to and peer reviewed by other countries that are also IAF MLA signatories. This credential ensures that accredited certification bodies are capable and competent to not only test products using data from an ISO/IEC 17025 recognized laboratory, but to evaluate the production process and conduct ongoing surveillance to ensure that products continue to conform to the relevant WaterSense specification criteria. This credential indicates reduced risk for business and consumers by providing assurance that accredited certifications may be relied upon, thereby reducing barriers to global trade.

In recognition of the need for clarification, WaterSense has specified requirements for accreditation bodies (see Section 4.0 in the final product certification system) separate from the requirements for certifying bodies (see Section 5.0 in the final product certification system). WaterSense has also developed a set of final and transitional accreditation body requirements (see Sections 4.1 and 4.2, respectively, in the final product certification system). Transitional requirements were established to accommodate potential accreditation bodies that are working toward obtaining the IAF MLA. This transition is only open for a limited period of time, with the ultimate intent to require all EPA approved accreditation bodies to obtain IAF MLA signatory status.

## V. Comments on Section 4.0 – Product Certification Scheme

*Note: This section has been renumbered to Section 6.0 Product Certification in the final WaterSense product certification system.*

## Acronyms

- a. One commenter suggested that the term URL be expanded for those not familiar with the acronym.

*Response:* For clarification, WaterSense replaced the term “URL” with the term “Web site.”

## List of Licensed Certifying Bodies

- a. One commenter suggested that EPA reference the list of licensed certifying bodies on its Web site. This list is important and should be placed where it can be easily found and also updated in a timely manner by WaterSense staff.

*Response:* WaterSense agrees that it is important to inform stakeholders of the organizations that have been licensed to certify products for WaterSense along with the WaterSense product specifications for which they have been accredited to provide certification services. This list will be posted on the WaterSense Web site and kept up to date. Section 6.1 Application of the final product certification system (previously Section 4.1 of the draft certification scheme) has been updated to acknowledge this list.

## Initial Evaluation

- a. One commenter questioned how the initial evaluation worked when a manufacturer has to buy a product that already bears the WaterSense label then ensuring the product is in compliance with the WaterSense specification.

*Response:* The licensed certifying body will conduct an initial evaluation prior to issuing the WaterSense label. This evaluation includes product testing of a sample taken from the production run, not from the retail outlet. The product receives the WaterSense label upon successful completion of the initial evaluation. At that point, the manufacturer can begin labeling and selling the products that have been certified. Manufacturers may only be required to buy a WaterSense labeled product as part of the ongoing surveillance requirements (once the product has been labeled) if the licensed certifying body is selecting and retesting products from the retail outlet where the product is being sold.

## Production Inspection

- a. One commenter recommended that WaterSense deal exclusively with product performance and not engage in the manufacturing or design process. This commenter was unsure of what a production inspection has to do with manufacturing useable products and questioned its purpose and how the assessment is conducted.

*Response:* An evaluation of the production process and quality management system is necessary to ensure that a product can and will continue to meet the WaterSense specification criteria on an ongoing basis and to provide confidence in the performance of labeled products sold to consumers. This is an important component of the evaluation because the licensed certifying body cannot test every labeled product.

WaterSense has added clarification to Section 6.3.2 Initial Production Inspection in the final product certification system (previously Section 4.2.2 in the draft certification scheme), which now says, “The purpose of this inspection is to give the licensed certifying body confidence that the manufacturer’s system has the capability to produce products that conform to the technical requirements of the WaterSense specification.” The specific elements included in the production inspection will be determined by the licensed certifying body, but will be adequate for the assessment of the manufacturer’s capability for production and quality management.

- b. One commenter questioned how the production inspection applies to and deals with offshore manufacturing or the integration of multiple parts manufactured across the world.

*Response:* The licensed certifying body has a responsibility to assess the production process for the product regardless of whether it is manufactured in the United States or elsewhere in the world. WaterSense clarified in Section 6.1 Application in the final product certification system (previously Section 4.1 of the draft certification scheme) that as part of the application to the licensed certifying body, the manufacturer must note its locations where the product is manufactured. The licensed certifying body will coordinate with the applicant manufacturer to determine how and where the product or component parts are manufactured. The licensed certifying body will conduct evaluations of the various production processes and quality management systems at each manufacturing location, as necessary, to ensure that the product can and will continue to be produced in accordance with the technical requirements contained in the WaterSense specification.

- c. One commenter questioned what happened when a manufacturer “fails” the production inspection but the manufacturer’s product(s) perform satisfactorily. Is this manufacturer still eligible for certification?

*Response:* As specified in this final product certification system, certification is dependent not only on the outcome of the product testing, but the capability of the manufacturer to continue to produce products that conform to the WaterSense specification. The licensed certifying body will collectively evaluate all of the information gathered in the initial evaluation, including the comprehensive review of quality management documentation and product literature, the initial production inspection, and the product test to determine whether the product initially meets the criteria for certification and if it can continue to do so on an ongoing basis. If problems in one or more areas are discovered, the licensed certifying body will inform the manufacturer and will coordinate corrective action and repeat portions of the evaluation as necessary. If problems are not resolved to the satisfaction of the licensed certifying body, it may deny certification and the WaterSense label to the applicant manufacturer.

### **Licensed Certifying Body Responsibilities**

- a. In reference to the statement in Section 4.2.1 General (under the Section 4.2 Initial Production Inspection and Product Testing of the draft certification scheme), “The product certification body shall accept responsibility for all actions included in the

WaterSense certification scheme, including product sampling and testing, assessment of the production process or quality system (if applicable), and the surveillance of certified products,” one commenter indicated that the SWAT Committee has the responsibility for defending and modifying its test protocol. The committee also has the option for delegating some of its responsibilities to an approved third-party laboratory. Product sampling and testing details are included in the testing protocol.

*Response:* For clarification, WaterSense specifications (not this product certification system) contain the water-efficiency and performance criteria that a product must meet, including the testing procedures and sampling details, in order for the product to bear the WaterSense label. The product certification system, on the other hand, outlines the general procedures for product certification, which includes the minimum product sampling and testing requirements, assessment of the production process or quality management system, and surveillance of certified products—all of which go into the evaluation of the product and the ultimate decision on certification. The requirements contained in the product certification system are applicable to all product categories and are intended to be implemented in conjunction with the test procedures and performance criteria outlined in each specific product specification. Both components, the product specification and the product certification system, together ensure that a product meets, and will continue to meet, the criteria specified by EPA.

EPA is responsible for the development, defense, and modification of its product specification criteria and the criteria contained in the product certification system. EPA does, however, delegate the responsibilities for implementing the product certification system, and subsequent decisions on product certification, to independent third-party licensed certifying bodies.

## Product Sampling

- a. One commenter indicated that the current Irrigation Association protocol requires the vendor to bring 10 production units to the testing lab, where one unit is selected from random for testing. The tested unit is retained for historic reference purposes. The test unit is identified by model and serial number. Testing documents contain reference to these numbers.

*Response:* The protocol for product sampling (e.g., number of units to sample and procedures for assessing compliance of the sample population) for each product category will be identified in the relevant product specification, not in this product certification system. The final product certification system does specify the general requirements for sample selection, including selecting samples that are representative of the model to be certified and made using components and subassemblies identical to those used in production. Specifically how the samples are selected to ensure representativeness and what documentation is obtained and retained regarding the tested samples is up to the discretion of each licensed certifying body. These procedures for sample selection and testing are identified in the licensed certifying bodies internal policies and procedures and its compliance is overseen by the EPA approved accreditation body.



- b. One commenter indicated that the requirement for the product certification body to select the initial samples for testing should be modified to allow samples to be selected and sent for testing by the applicant manufacturers. This is currently allowed by ISO/IEC Guide 65 and is a normal practice so that testing and initial audit activities can occur in parallel. During the surveillance audits, the samples are selected by the auditors for testing.

*Response:* WaterSense agrees that the requirements for sampling need to allow flexibility so as not to delay the certification process or add undue burden and costs associated with certification. WaterSense has clarified Section 6.3.3.1 Selection of Samples in the final product certification system (previously Section 4.2.3.1 in the draft certification scheme) to read, “The licensed certifying body shall determine the appropriate method for the selection of samples of products for testing that are representative of the model to be certified and made using components and subassemblies identical to those used in production.”

### Testing Laboratories

- a. One commenter was confused regarding the difference between an independent testing laboratory and product certification body and questioned whether both had to be in compliance with ISO/IEC 17025.

*Response:* A licensed product certifying body is responsible not only for testing the product, but for evaluating the production process and performing ongoing surveillance of WaterSense labeled products on the market. The requirements for product certifying bodies are outlined in ISO/IEC Guide 65 *General requirements for bodies operating product certification systems*, which covers the competence of a product certifying body to conduct all of these functions inclusive of product certification. ISO/IEC Guide 65 forms the basis for the accreditation and approval of licensed product certifying bodies to certify products for WaterSense. An independent testing laboratory that is in compliance with ISO/IEC 17025 *General requirements for the competence of calibration and testing laboratories* (and not ISO/IEC Guide 65) cannot in and of itself become a licensed certifying body because it may only have the capability and competence to conduct the product testing aspect of the certification process.

As part of the product certifying body's normal operating procedures, it can subcontract the product testing portion of the certification process to an independent testing laboratory. If the testing is subcontracted, WaterSense ensures the capability and competence of the testing laboratory by requiring its demonstrated compliance with ISO/IEC 17025.

- b. Several commenters recommended that WaterSense include the use of the certifier and manufacturer's laboratory category certification. They indicated that this long-established and successful practice allows manufacturers with ISO/IEC 17025 compliant laboratory facilities to conduct in-house testing that is overseen by an approved accreditation organization. Audits are conducted a minimum of four times per year to ensure that testing is conducted by qualified laboratory personnel, that all testing has been conducted in accordance with the approved testing protocol, and to conduct random

actual retesting on certified models. Any certification scheme that does not allow manufacturers to employ category certification measures that they have earned with the certifying body will increase certification costs and introduce delays into the product development process. Certification agencies should continue to be provided the flexibility to develop product certification programs that offer robust compliance verification, while limiting expense and delay.

*Response:* At this time, WaterSense has concluded that the certifier and manufacturer's laboratory category of certification should not be included as an option for product testing. WaterSense is uncertain as to whether current practices for this category of certification provide an equivalent level of assurance and oversight as the testing options currently allowed by the final product certification system. Once WaterSense has had sufficient experience with the implementation of the final product certification system and the testing process as outlined has a proven track record of performance, it may revisit this option, provided specific procedures can be established, with appropriate input from a variety of stakeholders, to provide adequate oversight.

- c. One commenter indicated that subcontracting the testing work is a multistep approach that would lead to even higher costs.

*Response:* WaterSense has decided to maintain the allowance for subcontracting product testing. Subcontracting provides flexibility for the licensed certifying body to find the most cost-effective way to provide certification services, depending on their staffing levels and deployment of equipment. Retaining this option will ensure that WaterSense is not imposing undue burden or expense associated with the certification process by requiring all licensed certifying bodies to maintain permanent staff to conduct the testing for each and every WaterSense specification. If there is concern about added costs associated with subcontracting product testing, the manufacturer can take its business to a different licensed certifying body who does not engage in subcontracting.

### **Competence of Licensed Certifying Body Personnel**

- a. One commenter questioned the meaning of the term "qualified" in reference to the following criteria in Section 4.2.3.2 Conduct of Initial Testing of the draft certification scheme: "Onsite Testing (Witness Testing): Qualified staff from the product certification body oversee testing conducted by the manufacturer at its own facility."
- b. One commenter questioned what the standards for production inspection are, who carries out the inspection, and indicated that it would take a team of specialists to field the knowledge required to carry out the inspection.

*Response:* ISO/IEC Guide 65 requires that the certifying body define the minimum relevant criteria for the competence of its personnel. This includes documenting the relevant qualifications, training, and experience of each member of the personnel involved in the certification process. The accreditation body that accredits the product certifying body is responsible for ensuring that the personnel meet these requirements and are qualified to conduct product certifications, including production inspection and product testing or oversight.



## Product Evaluation

- a. One commenter questioned how absolute standards of performance will be established. All products represent a compromise of cost and quality related to the value of water saved. Since the value of water saved varies by location, the optimum cost-verses-quality judgment varies by location.

*Response:* The specific water-efficiency criteria (or absolute standards of performance) for a product are not relevant to this product certification system. The certification system only relays the process that a manufacturer must go through in order to have a product certified and labeled for conformance with the criteria contained in a WaterSense specification.

EPA specifies in the WaterSense specifications the water-efficiency criteria a product must meet to bear the WaterSense label. In general, WaterSense attempts to label products that are at least 20 percent more efficient than conventional models in the marketplace. WaterSense realizes that the cost savings associated with the water savings may vary by location, therefore, WaterSense attempts to label products that are relevant nationwide and that will realize water savings no matter where they are installed. The local economic climate that impacts the cost-effectiveness of WaterSense labeled products is not something that can be directly controlled or influenced by WaterSense, but WaterSense can help consumers across the country select products that are more water-efficient than the average models available.

- b. One commenter asked whether the licensed certifying bodies should be required to issue a report to the manufacturer that contains a listing of the models that can use the WaterSense label.

*Response:* WaterSense intends that the licensed certifying bodies will be required to issue a report to the manufacturer that contains a listing of the models that are certified to bear the WaterSense label. WaterSense has revised Section 6.4.2 of the final product certification system (previously Section 4.3.2 of the draft certification scheme) to read, “When the certification decision and report has been made, the licensed certifying body shall provide a certification decision to the manufacturer and authorize the use of the WaterSense label in conjunction with that certified product.”

## Product Certification Listing

- a. One commenter suggested that the certified product listing should contain precise descriptions of the products tested and the test results. It should also contain a statement to the effect that nothing can be assumed relative to the manufacturer’s other products.

*Response:* WaterSense agrees that there should be some minimum standards for the type of information contained in the certified product listing. WaterSense describes this information in Section 6.3.5 of the final product certification system (previously contained in Section 4.3.1 of the draft certification scheme), which states, “As part of

the responsibilities for certifying products and authorizing the use of the WaterSense label, the licensed certifying body shall maintain on its Web site a certification file for each manufacturer, which shall contain a listing of WaterSense labeled products". EPA will utilize this listing to verify the information submitted by manufacturers. The listing shall include, at a minimum:

- A statement that only WaterSense labeled products are listed;
- Manufacturer name and contact information;
- Brand/model/model number for every certified model;
- Certification file number;
- Certification date; and
- Any additional companies that intend to private label or rebrand the manufacturer's products and the brand name and model numbers that the additional company will use to identify and sell the labeled products.

WaterSense disagrees that it should require that the specific test results be made publicly available on the product listing. The WaterSense label and compliance with the specification represents only a minimum threshold that a product must meet in terms of its efficiency and performance. The WaterSense specifications and the label are not established to provide tiered differentiation of products. For this reason, WaterSense does not promote one labeled product over another based on its efficiency above and beyond the minimum requirements contained in the specification. In addition, EPA cannot require the specific test results (i.e., the product's specific water-efficiency and performance characteristics) to be made public, particularly if the specific results are held confidential between the licensed certifying body and the manufacturer. The manufacturer is free, however, to advertise and market the efficiency and performance of its product above and beyond the minimum requirements for WaterSense. For these reasons, WaterSense is not requiring the licensed certifying body to post the specific test results on its WaterSense labeled product listing.

- b. One commenter suggested that monthly updates to the product listing are too frequent for a water provider to effectively manage rebate programs. Water providers may not communicate with their customers monthly, and having the WaterSense Web site announcing items ahead of the utility's announcement may be confusing for their customers.

*Response:* The WaterSense Web registry of labeled products serves as a resource not only for utilities offering rebate programs, but for consumers looking to identify and ensure that they are purchasing WaterSense labeled products. In addition, the Web registry provides recognition for manufacturers that have gone through the rigorous certification process. Therefore it is imperative that the list be kept up to date.

WaterSense will update its product Web registry approximately every two weeks as manufacturers submit new certified product notification forms. Utilities seeking to rebate WaterSense labeled products can interface between their organization's Web site and the EPA WaterSense Web site to streamline the rebate process and minimize the chances for customer confusion. For resources on branding, communicating with the public, working with the media, and materials specifically for water utilities to use as part of ongoing water conservation efforts and to assist in marketing directly to customers,

please visit the WaterSense Web site at  
[www.epa.gov/watersense/partners/resources/r\\_promote.htm](http://www.epa.gov/watersense/partners/resources/r_promote.htm).

### **Certification Body Audits**

- a. One commenter suggested that it is the accreditation body, and not the licensed certifying body, that allows EPA to accompany accreditation organizations on routine assessments of the licensed certifying body's accreditation as it relates to the WaterSense program.

*Response:* WaterSense agrees that it also needs to seek permission from the accreditation body for EPA to accompany them on routine assessments of the licensed certifying body's accreditation as it relates to the WaterSense program. WaterSense also has determined that it is necessary to seek permission from any contracted testing laboratories and any manufacturers that will be affected by any routine assessments. WaterSense has updated Section 6.4.1 of the final product certification system (previously Section 4.3.1 in the draft certification scheme), which states, "Allow EPA to accompany accreditation organization on routine assessments: EPA reserves the right, for EPA or agents acting on behalf of EPA, to accompany the accreditation organization on any routine or follow-up assessments of the licensed certifying body's accreditation, including any contract testing laboratories, as it relates to the WaterSense program."

Arrangements will be made with approved accreditation bodies and manufacturer partners, as appropriate and applicable, to ensure that EPA has permission from all parties involved to accompany accreditation bodies on routine assessments of the licensed certifying body's accreditation as it relates to WaterSense.

### **Post-Market Surveillance**

- a. One commenter questioned how the product certification body verifies that the manufacturer continues to market a product meeting the standard's requirements.

*Response:* The licensed certifying body verifies ongoing conformance with WaterSense specifications through the surveillance procedures described in Section 6.11 of the final product certification system (previously Section 4.10 in the draft certification scheme). This includes periodic inspections of the production process and quality management system, annual random retesting of certified products, and continual surveillance of the use of the WaterSense label in the marketplace. When problems with any of the ongoing surveillance measures are discovered, the licensed certifying body engages in corrective action with the manufacturer.

- b. One commenter questioned what actions will be taken by the certifying body to disqualify that product from receiving the WaterSense label when a product is found to be nonconforming during a post-market surveillance.

*Response:* Nonconformity discovered during market surveillance does not automatically equate to disqualification from receiving or using the WaterSense label. The disqualification decision may depend on the nature and degree of the nonconformity

issue. The licensed certifying body, in accordance with ISO/IEC Guide 65, is required to deal by suitable action with incorrect references to the product certification system, misleading use of the license, certificate, or marks found in advertisements, catalogues, etc. This suitable action is documented and evaluated as part of the licensed certifying body's accreditation and can include corrective action, withdrawal of the certification, publication of the transgression, and if necessary, other legal action. If the licensed certifying body determines that the nonconformity warrants suspension or withdrawal of the use of the WaterSense label, it is required to notify EPA of the suspension, reinstatement, and withdrawal within 30 days of occurrence. The manufacturer also is then prohibited from using the WaterSense label in conjunction with the suspended certified product during the period of suspension, or indefinitely, in the case of withdrawal. In such instances, EPA reserves the right to terminate the manufacturer's partnership agreement.

- c. One commenter suggested that EPA define post-market surveillance. The commenter went on to suggest that the manufacturer's warehouse is not "post-market" and asked EPA to consider that at least 50 percent of all post-market surveillance samples be taken at retail and/or supply chains in the geographic market areas served by the manufacturer and that ALL samples shall be taken "post-market."
- d. Several commenters offered comments to the contrary indicating that while it is recognized that the purchase of a product from retail outlets may be necessary on some occasions, this option should be exercised only if the product is not available from the other sources listed (i.e., manufacturer's warehouse). This will minimize program compliance costs, whenever possible.

*Response:* WaterSense agrees that it must more clearly define its intentions in terms of market surveillance outlined in Section 6.11.2 of the final product certification system (previously Section 4.10.2 in the draft certification scheme). For this reason, WaterSense has removed the term "post-market," which implies testing of the product at the retail or supply outlet. Instead, WaterSense is referring to the surveillance simply as "market surveillance," which can include testing of the product at the manufacturer's warehouse or at the retail or supply outlet, as determined by the licensed certifying body.

This option for warehouse or retail surveillance is permitted by ISO/IEC Guide 65 and is in keeping with the common practice allowed by federal regulations for the certification of the water efficiency of certain plumbing products. Though the manufacturer's warehouse is not an exact characterization of the products in the marketplace, it is the last point in the distribution chain where the manufacturer exerts direct control over the product and its labeling (i.e., beyond this point the manufacturer loses direct custody of the product). In addition, WaterSense requires the products to be randomly selected by an inspector appointed by the licensed certifying body and not the manufacturer. WaterSense feels that even with the option for retesting at the manufacturer's warehouse, it has sufficient assurance that the product would be representative of what is available in the marketplace.

In addition, WaterSense felt that it needed flexibility for how it defined market surveillance. Some products, which WaterSense may label in the future, are not

conducive to “post-market” surveillance at the retail outlet because they may be sold directly by the manufacturer (or manufacturer’s representative) to the end user and installed in place (e.g., steam sterilizers or other large laboratory equipment). For this reason, WaterSense clarified Section 6.11.2 of the final product certification system (previously Section 4.10.2 in the draft certification scheme) to say, “Except when the WaterSense specification indicates otherwise, the licensed certifying body shall conduct annual market surveillance of the product.” The process must remain flexible enough to allow for ongoing surveillance as applicable for emerging product categories.

Regardless of how the surveillance is conducted by the licensed certifying body, members of the public, including WaterSense’s promotional partners, can purchase and test products at the retail or supply outlet or conduct surveillance of the label use and inform EPA of any instances of nonconformance.

- e. One commenter suggested that EPA require the licensed certifying body to post the results of the post-market surveillance product testing to the certification listing and notify the manufacturer of a product that fails to meet the certification requirements before the results are posted.

*Response:* WaterSense does not agree that the licensed certifying body should be required to post the results of the post-market surveillance product testing to the publicly available WaterSense labeled product listing, whether the results show conformance or nonconformance. This is because if problems are discovered, depending upon the nature and degree of the nonconformance, the manufacturer and the licensed certifying body can engage in corrective action. If such corrective action is successfully completed, the manufacturer can maintain its certification and should not be subject to discreditation that may result from public disclosure of the issue. In addition, the intent of the WaterSense labeled product listing is not to show specific test results, but to inform WaterSense and the public which products have been certified and authorized to bear the WaterSense label. As long as the product maintains its certification, its WaterSense labeled product listing should be maintained intact. If the licensed certifying body determines that the nonconformance warrants label suspension or withdrawal, EPA will be notified and the WaterSense labeled product Web registry will be updated to remove the affected products. This is the signal to the public that there were significant issues associated with the product’s conformity.

- f. One commenter questioned who would pay for the post-market program.

*Response:* The surveillance of certified products for continued conformance to the WaterSense specification criteria and for proper use of the WaterSense label should be included as part of the certification fees that the manufacturer pays to the licensed certifying body. Surveillance is vital to maintaining the integrity of the WaterSense label, and as such, is included in the product certification process in order to maintain the product’s certification and authorization to bear the WaterSense label.

## Product Retesting

- a. One commenter questioned whether the post-market surveillance required 100 percent of the products to be retested or if EPA intended to include each certified product group.

*Response:* Annually, EPA only requires retesting of one model of each product category, or group. This means that for manufacturers that have multiple models certified in more than one product category, not all models will be retested every year. To ensure that all models are eventually retested, every five years the licensed certifying body will retest and recertify all models. Models randomly selected for annual retesting do not, at the discretion of the licensed certifying body, need to be retested on the fifth year.

- b. One commenter suggested that on the fifth-year retest, if the product continues to perform to the specifications, the results should be posted on the licensed certifying body's Web site. If the product fails to meet the specifications, the results should also be posted and the manufacturer will be required to pay for a retest. The third-party testing agency should be required to contact the manufacturer, alert them to the negative results and offer to demonstrate the lack of compliance.

*Response:* Again, WaterSense does not agree that the licensed certifying body should be required to post the results of the post-market surveillance product testing (including the fifth-year retest) to the publicly available WaterSense labeled product listing, whether the results show conformance or nonconformance. This is because if problems are discovered, depending upon the nature and degree of the nonconformance, the manufacturer and the licensed certifying body can engage in corrective action. If such corrective action is successfully completed, the manufacturer can maintain its certification and should not be subject to discreditation that may result from public disclosure of the issue. In addition, the intent of the certification listing is not to show specific test results, but to inform WaterSense and the public which products have been certified and authorized to bear the WaterSense label. The product listing should be maintained in tact as long as the product maintains its certification. If the licensed certifying body determines that the nonconformance warrants label suspension or withdrawal, EPA will be notified and the WaterSense labeled product Web registry will be updated to remove the affected products. This is the signal to the public that there were significant issues associated with the product's conformity.

The fees and cost associated with any product retesting will be negotiated between the licensed certifying body and the manufacturer.

- c. One commenter suggested that the retest should be expanded to cover any product enhancements made since the original test evaluation.

*Response:* ISO/IEC Guide 65 requires the licensed certifying body to require the manufacturer to notify it about any changes that will impact the certification including intended modifications to the product, manufacturing process, or, if relevant, the quality management system. The licensed certifying body will determine whether the changes require further investigations. If further investigation is necessary, the manufacturer is not allowed to release the certified products resulting from the changes with the WaterSense label until they receive notification from the licensed certifying body. The



notification of changes to the product is required as the changes are planned, thus any changes or enhancements to the product or production process would be evaluated well in advance of any product retesting.

- d. Several commenters suggested that WaterSense remove the retesting requirement. Periodic retesting of products previously certified is unnecessary and will not increase product conformance. Also, this is only usually required for products that present a health or safety issue. Other plumbing products are usually retested using a statistical sampling program developed by the licensed certifying body, which would seem to be more appropriate for the WaterSense certifications. One commenter indicated that there is no need for multiple testing if the first test (such as the Maximum Performance (MaP) test) is authentic and done by a third party. Other tests would be a waste of resources.

*Response:* WaterSense decided not to remove the requirements for product retesting because it is a vital component for maintaining the integrity of the WaterSense label. Retesting implies the product is continually evaluated once it is certified to ensure it continues to meet the WaterSense specification criteria. Though the WaterSense label is not associated with requirements that present a health or safety issue, it is in everyone's interest, including the manufacturer, to ensure that the integrity of the label is protected and continues to be valued by consumers.

WaterSense does agree that it needs to balance the retesting requirements with the cost and burden associated with the surveillance process, so it has modified Section 6.11 of the final product certification system (previously Section 4.10 of the draft certification scheme) to (1) allow the licensed certifying body to reduce to one unit the number of samples of each model retested and (2) allow the models retested during the annual market surveillance to satisfy the fifth-year recertification requirements for the those models.

### **The WaterSense Label**

- a. One commenter suggested that the WaterSense label is complicated by including the third party certifying body's name. This may confuse the consumers and could indicate that certain products have less equity in the marketplace, depending upon who provided the certification.

*Response:* While there may be some concern that the identification of the licensed certifying body's name may cause confusion in the marketplace, WaterSense believes that it is important to identify the organization that provided the certification for several reasons. First, it provides a way to identify counterfeit labels. Any label that appears without the "Certified by [Licensed Certifying Body's Name]" is assumed to be counterfeit or modified. Second, identifying the licensed certifying body's name indicates to the consumer that a known entity actually certified the product and is responsible for ensuring that the product continues to conform to the WaterSense specification. Third, the identification helps the licensed certifying body police the products that they have certified and allows WaterSense to follow up directly with the licensed certifying body responsible for the certification should EPA, its partners, or the public at large discover any issues of nonconformity, including label misuse or product nonconformance.

- b. One commenter questioned how products will be labeled for small products and wondered if the program uses a physical label applied to the product or whether it can be applied to packaging or other literature.

*Response:* The proper use of the WaterSense label is outlined in the WaterSense label guidelines. These guidelines indicate that for products, the label can be used on product packaging, labels, or, at the manufacturer's discretion, directly imprinted on or adhered to the product, in direct association with the certified product(s), as long as the product maintains its certification to the WaterSense criteria for efficiency and performance. The WaterSense label should only be used in conjunction with and directly adjacent to a specific WaterSense labeled product.

### **Publicity About a WaterSense Labeled Product**

- a. One commenter questioned whether a manufacturer could maintain a WaterSense listing even if it chose not to use the WaterSense label.

*Response:* A manufacturer partner can maintain a WaterSense labeled product listing with a licensed certifying body even if it chooses not to use the WaterSense label. Use of the WaterSense label is voluntary, not mandatory. The manufacturer is not required, but is encouraged to use the WaterSense label to differentiate its products in the marketplace. If the label is used, the manufacturer must use it in accordance with the WaterSense label guidelines.

- b. One commenter indicated that Section 4.7 Publicity About a WaterSense Labeled Product (in the draft certification scheme) seemed to indicate that the program may exclude manufacturers who do not have every product certified to meet WaterSense specifications.

*Response:* It is not WaterSense's intent to exclude manufacturers from the program who do not have every product certified to meet WaterSense specifications. In fact, the final product certification system explicitly states in Section 6.8 Publicity About a WaterSense Labeled Product (previously Section 4.7 in the draft certification scheme) that the "WaterSense label must not be used to signify WaterSense labeling of every product from the manufacturer, wholesaler, distributor, or retailer...". The label is only applicable to, and a market differentiator for, those products that the manufacturer has had certified to meet the WaterSense specification criteria. WaterSense added further clarification to this section by stating "The WaterSense label only applies to products that have been certified to a relevant WaterSense product specification..."

### **Policing of Conformity**

- a. One commenter indicated that the responsibility of the product certifying body to police, identify, and respond to any misleading, incorrect, or unauthorized uses of the WaterSense label is vague in its application and appears only to address the label itself, and not the nonconforming product that is the subject of the label. The commenter suggested that WaterSense needs to clarify and clearly state that the responsibility of



the licensed certifying body also encompasses the product's conformance to the actual specification.

*Response:* WaterSense has clarified the responsibilities of licensed certifying bodies with respect to product market surveillance. These responsibilities include periodic inspection of the production process and quality management system, annual product retesting to ensure the product's continued conformance to the specification criteria, and surveillance of the label's use in the marketplace. Each of these aspects is vital for ensuring the ongoing performance of the product and for protecting the integrity of the WaterSense label. The requirements for surveillance in each of these areas are specified in the final product certification system in Sections 6.11.1, 6.11.2, and 6.11.3, respectively.

- b. One commenter suggested it was not clear that EPA will be insisting that the certifying bodies adhere to strict reporting guidelines that would be designed to monitor the performance of any follow-up resulting from an allegation of nonconformity. The commenter expressed concern that there is a lax and undefined relationship between EPA and the certifying body when nonconformance is being investigated and requested more specificity.

*Response:* The requirements for monitoring performance and the necessary follow-up resulting from an allegation of nonconformity are described in ISO/IEC Guide 65 and are further defined in the internal policies and procedures of the individual licensed certifying bodies. ISO/IEC Guide 65 requires incorrect references to the product certification system or misleading use of certificates or the mark found in advertisements, catalogues, etc., to be dealt with by suitable actions, which could include legal or corrective action or publication of the transgression.

The accreditation body that accredits the licensed certifying body will oversee and ensure that the licensed certifying body adheres to its specified reporting guidelines and maintains conformance with the requirements of ISO/IEC Guide 65. In addition, as issues of nonconformance are elevated to the level warranting WaterSense label suspension or withdrawal, the licensed certifying body is required to inform EPA. EPA reserves the right to deal directly with the manufacturer if necessary, including termination of the partnership agreement. If issues are brought to EPA's attention, it will inform the appropriate licensed certifying body and the licensed certifying body will implement corrective actions in accordance with its policies and procedures.

- c. One commenter indicated that the last paragraph in Section 4.12 (of the draft certification scheme), describing when issues related to product nonconformity or improper use of the WaterSense label come to the attention of EPA, should be moved into its own section. In addition, WaterSense should elaborate on how inquiries or allegations from program partners, outside water-efficiency organizations and water utilities, and consumers will be handled. The commenter also questioned what evidence of nonconformity is required and recommended that there be a clear process and timetable for resolution upon receipt of an inquiry or allegation.

*Response:* WaterSense agrees that it is important to emphasize the process by which it handles issues related to product nonconformity or improper use of the WaterSense label as they come to its attention. For this reason, WaterSense has moved, as suggested above, the last paragraph from Section 4.12 in the draft certification scheme to Section 6.9 in the final product certification system.

As indicated in this section, when inquiries or allegations are brought to EPA's attention, whether they come from program partners, outside water-efficiency organizations, water utilities, or consumers, EPA will relay the issue to the appropriate licensed certifying body that provided the affected product's certification. The licensed certifying body then engages in corrective action in accordance with its internal policies and procedures as outlined in ISO/IEC Guide 65. In instances where it comes to EPA's attention that a product has the WaterSense label but has not been certified, EPA will engage in appropriate corrective action with the infringing manufacturer.

For the purposes of this final product certification system, EPA does not define the evidence of nonconformity required or the process and timetable for resolution. These procedures are defined by each licensed certifying body, provided their policies and procedures conform to the minimum requirements of ISO/IEC Guide 65. The accreditation body that accredits the licensed certifying body will oversee and ensure that the licensed certifying body adheres to its specified reporting guidelines and that it maintains conformance with the requirements of ISO/IEC Guide 65. This is in accordance with the internationally recognized process as it is established for product certification.

### **WaterSense Label Suspension and Withdrawal**

- a. One commenter suggested that any actions related to the suspension of the WaterSense label be posted on the product certifying body's Web site.

*Response:* WaterSense does not dictate how the licensed certifying bodies specifically deal with the suspension of the WaterSense label other than requiring the prohibition of manufacturers from using the WaterSense label in conjunction with any product associated with a suspended WaterSense label and notification to EPA within 30 days of any WaterSense label suspension or reinstatement. If a manufacturer engages in incorrect reference to the product certification system or misleading use of the WaterSense label, the licensed certifying body will follow its own policies and procedures in accordance with the minimum requirements specified in ISO/IEC Guide 65, which can include corrective action, withdrawal of the certification, publication of the transgression, and, if necessary, other legal action.

- b. One commenter suggested that if misuse of the WaterSense label on a single product continues for more than six months after official notice, the certification and use of the WaterSense label on the manufacturer's other certified products should be withdrawn.

*Response:* The requirements for certification suspension and withdrawal are outlined in ISO/IEC Guide 65. As granted by EPA, the licensed certifying body has the authority to determine when the WaterSense label should be withdrawn from a specific

nonconforming product or from other/all certified products. The licensed certifying body will immediately notify EPA upon the withdrawal of the label from any product, and EPA will decide whether termination of the manufacturer's partnership agreement or other corrective action is warranted. Upon termination of the partnership agreement, the manufacturer is no longer allowed to use the WaterSense label in association with any of its products.

### Specification Revision

- a. One commenter suggested that EPA be required to notify all current holders of WaterSense certifications of the changes made to specifications, policies, or procedures, and provide its partners with an effective date for compliance.

*Response:* WaterSense agrees with this comment. ISO/IEC Guide 65 requires licensed certifying bodies to inform manufacturers of changes to applicable certification requirements. Upon any substantive changes to the WaterSense specifications, policies, or procedures, WaterSense will communicate such changes to all of its stakeholders, including the affected parties and to its licensed certifying bodies. The licensed certifying bodies will also communicate these changes to its manufacturers. In the case of changes to WaterSense product specifications, the transition period will be identified in the relevant product specification.

### Figure A-1

- a. One commenter suggested replacing the words "Controlling Documents" in the far left hand column with "Required Documentation."

*Response:* WaterSense has decided not to update Figure A-1 per this suggestion because the documents in the upper section of the figure control and guide the operation of the final product certification system for each party; they are not all required documentation.

- b. One commenter suggested adding "and" between Certification (and) Labeling in the very left hand column.

*Response:* WaterSense agrees with this suggestion and has updated Figure A-1.

- c. One commenter suggested adding "test" between "manufacture" and "product" in the second block under Manufacturer Partner.

*Response:* WaterSense agrees with this suggestion and has updated Figure A-1.

- d. One commenter suggested adding "certifies" under "Certification Body."

*Response:* WaterSense believes the block under "Certification Body" that says "certifies product/authorizes label use", adequately addresses this concern.

## VI. Comments on Annex A – WaterSense Product Specifications

- a. Several commenters provided comments on Annex A of the draft certification scheme.

*Response:* To clarify, the purpose of Annex A was to incorporate the product specifications into the final product certification system structure because the specifications are a vital component for the application and operation of the product certification system. The final high-efficiency tank-type toilet specification contained in the annex, subsequently was not open for public comment with the draft certification scheme.

To avoid confusion in the future, WaterSense has removed Annex A from the final product certification system and simply incorporates by reference the product specifications, which are now contained in a compendium of WaterSense product specifications (which are available on the WaterSense Web site).

## VII. Other Changes

As part of the process for finalizing this WaterSense product certification system, WaterSense has evaluated the implementation and operation of its interim certification process that has been in effect since January 2007. WaterSense has identified several areas for clarification and improvement, which are being addressed through changes to this final product certification system. These changes were developed with input from EPA's current licensed certifying bodies and potential accreditation bodies and are described below.

### General

- a. WaterSense changed the title and references from "WaterSense Certification Scheme" to "WaterSense Product Certification System." Since the release of the draft WaterSense certification scheme, WaterSense has developed a process for the certification of WaterSense labeled new homes and needed to clarify that this certification process applies only to the certification of products. In addition, the term "system" better encompasses the procedures and requirements for the product certification process than does the term "scheme."
- b. WaterSense changed the references from "product certification body" to "licensed certifying body" in order to clarify that the product certifying bodies are licensed by EPA to certify products for WaterSense. This is also consistent with the terminology and logo use guidelines that WaterSense has developed to guide how certifying bodies advertise their services for WaterSense under the interim certification process.
- c. WaterSense has incorporated by reference into the final product certification system the International Accreditation (IAF) Guidance on the Application of ISO/EIC Guide 65. This IAF document provides additional guidance for the interpretation and implementation of ISO/IEC Guide 65 requirements for product certifying

bodies operating product certification systems. It forms the basis of IAF mutual recognition arrangements and serves to harmonize the application of standards (or in this case the final product certification system) between accreditation bodies. According to IAF, this guidance is considered necessary for the consistent application of ISO/IEC Guide 65. Further, as part of the IAF MLA, members and applicants for membership will assess each others' implementation of ISO/IEC Guide 65 and this IAF guidance.

- d. WaterSense has added a new section to the final product certification system, Section 2.0 Effective Date. This addition resulted in a renumbering of the subsequent sections in the final product certification system.

As indicated, this final product certification system is effective April 1, 2009. Any certifying bodies not currently licensed by EPA to operate under the interim certification process should be accredited directly to these requirements. For those certifying bodies currently licensed by EPA under the interim certification process, EPA has provided a transition period through April 1, 2010, to seek accreditation in accordance with this final product certification system.

- e. WaterSense has moved Section 4.13 Amendments to These Rules of Procedure in the draft certification scheme to its own section, Section 7.0 Amendments to These Rules of Procedure. The process for amending the product certification system is not directly applicable to the section describing the requirements for the product certification system.
- f. WaterSense has removed the product specifications as an annex to the final product certification system. The placement of the specifications directly within the product certification system was cumbersome and confusing. In addition, the relatively static nature of the product certification system complicated the process for updating specifications as they are revised, developed, or clarified. To simplify the mechanism for incorporating product specifications into the final product certification system, WaterSense now references a compendium of WaterSense product specifications, which are available on the WaterSense Web site. As existing specifications are revised, new specifications are developed, or clarifications are published for existing specifications, this compendium will be updated and the changes automatically reflected by reference in the final product certification system.

**Accreditation Body Requirements** (new Section 4.0 under the final product certification system)

- a. WaterSense has created a new section, Section 4.0 The Accreditation Body, outlining the specific requirements that accreditation bodies must meet and the application process for EPA approval to offer accreditation services for WaterSense.
- b. WaterSense has added a requirement that accreditation bodies be U.S. domiciled. This change is important because EPA has limited ability to oversee the accreditation of certifying bodies that may be done internationally. In addition, EPA must focus its resources on transforming the market for products and services that impact water efficiency in the United States.

- c. WaterSense has decided to ultimately remove the requirement for the ILAC MRA as a recognized criterion for approval of accreditation bodies. This credential is not appropriate for WaterSense because it relates specifically to laboratory accreditation and not to product certification accreditation. The IAF MLA signatory for products remains the appropriate credential. An accreditation body with this status operates an accreditation program for the certification of products that meets international criteria and is equivalent to and peer reviewed by other countries that are also IAF MLA signatories. This credential ensures that accredited certification bodies are capable and competent to test products, evaluate the production process, and conduct ongoing surveillance to ensure products continue to conform to the relevant WaterSense specification criteria. EPA has established a transitional approval process for accreditation bodies, but by April 1, 2011, EPA will only approve accreditation bodies with the IAF MLA for products, as outlined in Section 4.1 of the final product certification system.
- d. To accommodate accreditation bodies that are currently in the process of obtaining the IAF MLA, WaterSense has developed transitional application and approval requirements. These transitional requirements outlined in Section 4.2 of the final product certification system are only in effect until April 1, 2011, at which time EPA will only approve accreditation bodies with the IAF MLA. Applications for EPA approval under the transition must be received by April 30, 2009 and must be accompanied by proof of progress toward obtaining the IAF MLA by the April 1, 2011, deadline.
- e. WaterSense requires final and transitional accreditation bodies to have procedures for recognizing and accepting accreditations for licensed certifying bodies previously accredited by another EPA approved accreditation body. Accreditation bodies must also have a process for disclosing these procedures and associated costs to certifying bodies at the time of application or upon any subsequent changes to the procedures. This requirement is important because it provides transparency in the process for certifying bodies to switch accreditations, should their accreditation body not maintain its status in the WaterSense program.

**Product Certifying Body Requirements** (renumbered to Section 5.0 under the final product certification system)

- a. WaterSense has separated the requirements for the approval of accreditation bodies (see Section 4.0 of the final product certification system) from the requirements for product certifying bodies (see Section 5.0 of the final product certification system).
- b. WaterSense has also indicated that applicant certifying bodies can consult the WaterSense Web site for a list of EPA approved accreditation bodies from which to seek accreditation.
- c. As part of the transition from the interim certification process to accreditation under the final product certification system, EPA is now requiring that all product certifying bodies seeking licensure from EPA to certify products for WaterSense be accredited by an approved accreditation body by April 1, 2010. After this date, licensure under the interim certification process ends and EPA will only license certifying bodies that have been accredited in accordance with ISO/IEC Guide 65, IAF Guidance on the application of



ISO/IEC Guide 65, the final WaterSense product certification system, and the relevant WaterSense product specification(s).

- d. WaterSense has added in a protection clause for licensed certifying bodies, should its accreditation body not maintain its approval to accredit product certifying bodies for WaterSense. In this instance, WaterSense will notify the affected licensed certifying bodies and will provide them with a transition period of one year to seek and obtain accreditation from another currently EPA approved accreditation body. After this transition period, if the licensed certifying body does not obtain accreditation by an EPA approved accreditation body, EPA may terminate its licensing agreement.
- e. EPA has likewise added in a protection clause for its manufacturer partners. Licensed certifying bodies shall have procedures in place to accept certifications for a manufacturer's products previously certified by another EPA licensed certifying body. These procedures should include the general acceptance of all data and information generated from the product's certification, so as to reduce or eliminate requirements for product reevaluation. This acceptance is contingent upon the manufacturer's good standing with its previous licensed certifying body and its certifying body's loss of accreditation as a result of its accreditation body not maintaining its status in the WaterSense program.

### **Product Certification Application**

- a. In Section 6.1 of the final product certification system (previously Section 4.1 of the draft certification scheme), WaterSense has clarified that it requires the manufacturer's application to a licensed certifying body be accompanied by an executed copy of the manufacturer's partnership agreement with WaterSense, signed by both EPA and the applicant manufacturer.

### **Private Labeling/Rebranded Products**

- a. WaterSense has added a new section, Section 6.2 Private Labeled/Rebranded Products, to outline the requirements for manufacturers who intend to have their products private labeled or rebranded. WaterSense has also added clarification to Section 6.3.4.1 Preparation for Evaluation (previously Section 4.2.4.1 of the draft certification scheme) to indicate that the licensed certifying body must verify that the manufacturer who intends to have its products private labeled or rebranded has provided the brand name and model numbers the additional companies will use to sell the WaterSense labeled products.

### **WaterSense Labeled Product Listing**

- a. WaterSense has added a new section, Section 6.3.5 WaterSense Labeled Product Listing, to specifically outline the requirements for the licensed certifying bodies to maintain a WaterSense labeled product listing. These requirements were originally contained in Section 4.3.1 of the draft certification scheme, but WaterSense determined that the information warranted its own section. Specifically, WaterSense clarified that the listing is to include only those products that have received certification and authorization

to bear the WaterSense label. Products that have been certified to the WaterSense specification criteria, but are not eligible to be labeled (e.g., the manufacturer is not eligible to become a WaterSense partner because they do not plan to sell products in the United States) would not be included on this listing. WaterSense will use this listing as an indicator for who has been authorized to use the WaterSense label and will verify the information that the manufacturers submit with their new product notification forms.

- b. WaterSense has also added in a requirement that this listing contain a statement that “only products included on the WaterSense labeled product listing are WaterSense labeled products.” This statement further clarifies that only the products included on the listing have been authorized to bear the WaterSense label.
- c. WaterSense also now requires the WaterSense labeled product listing to contain any additional companies that intend to private label or rebrand the manufacturer’s products and the brand names and model numbers that the additional companies will use to identify and sell the labeled products. These additional companies would be identified by the manufacturer in its application to the licensed certifying body. This provides a mechanism for WaterSense to keep track of other parties that may have authorization to use the WaterSense label and the brand names and model numbers of the products that will ultimately be sold to consumers (as they are changed through the distribution process). This also allows WaterSense to trace the lineage of certification should there be a question about a product’s conformance to the specification or its authorization to bear the label.
- d. WaterSense added a requirement that in all cases, the WaterSense labeled product bear the name of a WaterSense partner who holds or is included on (i.e., an additional company) a WaterSense labeled product listing. If a labeled product appears on the market and it is not included on the WaterSense Web registry or a licensed certifying body’s WaterSense labeled product listing, WaterSense can easily verify the authenticity of the certification, the specific nature of the label violation, and the corrective action that is necessary. For instance, WaterSense would know whether the product was never certified, whether the party labeling the product is not a partner and has yet to agree to abide by the WaterSense label guidelines, or whether the party labeling the product did not go through the proper channels with the licensed certifying body to document that product’s certification.
- e. In some cases, WaterSense recognizes that an additional company controls the design and specification of the product, but may outsource its manufacturer, and for confidential business reasons may want to protect the identity of the original manufacturer. For these instances, WaterSense has clarified that separate WaterSense labeled product listings may be obtained by both the original manufacturer and the additional company, provided the licensed certifying body keeps a record of the linkage between the listings. This linkage is important because WaterSense annually evaluates the number of units shipped by its manufacturer partners to assess the water savings and impact associated with the program. Therefore, WaterSense needs to be careful not to double count the shipments for the same products (with different brand names or model numbers) that may be reported by multiple manufacturers.



## Licensing Agreement Between Licensed Certifying Body and Manufacturer

- a. In Section 6.4.1 (previously Section 4.3.2 of the draft certification scheme), WaterSense added clarification to the requirements for the licensing agreement between the licensed certifying body and the manufacturer. The licensing agreement shall outline the terms and conditions for certification and authorization to use the WaterSense label in accordance with the relevant WaterSense product specification, the final product certification system, and the WaterSense label guidelines.

## Surveillance

- a. In Section 6.11 (previously section 4.10 of the draft certification scheme), WaterSense reduced the number of samples required for the conduct of ongoing surveillance to a minimum of one and provided an example clarifying the intent of this change. If the initial product testing required the selection and testing of four product samples, for the purposes of ongoing surveillance, the licensed certifying body is only required to select and test one sample of the product. The licensed certifying body does remain free to select and test as many product samples as it deems necessary to provide adequate assurance that the product continues to conform to the relevant WaterSense product specification. Reducing the number of samples required for the conduct of ongoing surveillance may help reduce some of the cost and burden associated with the product certification process.
- b. WaterSense added a new section, Section 6.11.3, outlining the specific requirements for surveillance of the label use in the marketplace. This information was previously undefined. Specifically, WaterSense is requiring licensed certifying bodies to conduct annual surveillance of label use at the manufacturer's warehouse or project site or retail outlet where the product is being used or sold. Surveillance includes reviewing a random sample of WaterSense labeled products and assessing whether the manufacturer is using the WaterSense label on products or product packaging in accordance with the WaterSense label guidelines. The intent of this section is to ensure that the licensed certifying bodies are policing the use of the WaterSense label, but in a manner that can be coordinated with its other surveillance activities, including product retesting.