

January 26, 2018

Via e-mail: EnergyStarProducts@energystar.gov

Ms. Ann Bailey
Branch Chief
ENERGY STAR Products
U.S Environmental Protection Agency

Subject: **Comments on EPA's proposed standard operating procedure for the ENERGY STAR program, and other opportunities for program improvement**

Dear Ms. Bailey:

The Consumer Technology Association (CTA) submits the following comments in response to the EPA's 20 November 2017 invitation to industry to provide feedback on opportunities to improve the ENERGY STAR program, including EPA's request for feedback on elements of its proposed standard operating procedure (SOP) for the program.

Background

CTA's membership – 2,200 companies, 80 percent of which are small business and startups – spans the breadth of the consumer tech industry and includes component suppliers, device manufacturers, software companies, retailers, distributors, installers and service providers. All of these players have a role regarding energy efficiency, and a large number of our members in these various segments of our industry are partners in the ENERGY STAR program, and some of them award-winning partners.

Energy efficiency, and the overall sustainability of consumer technology products, continues to be an important focus for CTA. For many years, we have advanced energy efficiency with a variety of initiatives related to public policy, consumer education, research and analysis, and industry standards. Regarding public policy, we advocate for approaches that are national, voluntary, market-oriented, globally harmonized, flexible to keep pace with technology, and friendly to innovation and economic growth.

Especially at this time, policymakers and industry have a shared interest in reducing regulatory burdens and related costs for government and businesses. Regarding

ENERGY STAR, CTA has identified significant opportunities which incorporate principles of modern regulatory reform while supporting energy efficiency, reducing regulatory burdens and disincentives, and facilitating innovation and economic growth.

Third-party Certification

In 2011, EPA mandated a third-party certification regime for products in order to participate in the ENERGY STAR program. For consumer electronics, this was neither necessary nor justified based on the industry's successful track record of ENERGY STAR compliance. It also is superfluous in light of the government's post-market verification programs which are much more meaningful and impactful.

As a result of EPA's decision, the ENERGY STAR product qualification process is significantly more expensive and time-consuming to manufacturers than the successful self-certification system which existed previously. Many consumer electronics carry very low margins of profit and face significant time-to-market requirements to maintain competitiveness. Third-party certification increases costs for manufacturers, slows the introduction of new models in the marketplace, and thereby creates a disincentive to participate in the program.

We are very concerned about EPA's current approach to third-party certification as it applies to our products, and we support the balanced and bipartisan solution for our sector that is part of a recent House discussion draft bill as well as part of an energy bill pending in the Senate during the past two Congresses. This solution maintains ENERGY STAR third-party certification authority, but allows electronics manufacturers with a demonstrated track record of compliance to earn their way out of the burdensome requirement. If there is noncompliance, then the more draconian, costly third-party certification requirements reapply. It is a mechanism of appropriate regulation and should be a model for future regulatory efforts. Companies that act in good faith and with demonstrated track records avoid excess regulation. Companies that fail to meet their obligations require greater regulation. Also, the rigorous post-market verification system that exists today would stay in place.

Comment Periods

With respect to the public comment process concerning ENERGY STAR specifications, EPA should publish notices in the *Federal Register* that a draft or final specification is available on the ENERGY STAR website. A simple notice of availability in the *Federal Register* would not add significant time to the release process and could be done in addition to EPA's current practice of posting the document on the ENERGY STAR website and e-mail distribution lists. Government agencies routinely place notices in the *Federal Register*; it is the standard way the federal government communicates with the public.

Regarding comment period timelines, we suggest a minimum of 30 days with an option to allow for industry stakeholders to waive this standard or request additional time for

comment. Thirty days is a generally accepted reasonable period to allow for public input and should be the norm for ENERGY STAR specification proposals and interim changes.

Implementation Timelines

The law requires EPA to provide a minimum 270-day lead-in period before an effective date for new or revised specifications, which we think is generally appropriate. With some ENERGY STAR product categories, there may be instances where a somewhat longer or shorter period is justified based on typical product development cycles. In these cases, EPA should work with the impacted industry to reach an agreeable and appropriate lead-in period consistent with these product development cycles.

Data Transparency

Regarding the use of data, we agree that the ENERGY STAR specification development process should be data driven, and EPA's proposed SOP should expand upon this topic. Specifically, EPA should affirm it will rely on scientific, technical, economic, and other information that is publically available or provided, under confidentiality agreements, by manufacturers. EPA also should adhere to the federal Data Quality Act, and the agency should not waste resources on duplicative analyses.

Additionally, the data upon which EPA relies should be shared with stakeholders with the appropriate protections for confidential business information. Data should be shared at all stages of the specification development process in its raw form, unless the need for confidentiality dictates otherwise. Stakeholders should not need to request such data; it should be shared as a matter of course.

Scalability of ENERGY STAR Specifications

In 2009, EPA stated that "for product categories with large variations in product size (with impacts on energy use), overall limits for energy use may be incorporated into ENERGY STAR specifications." In other words, EPA arbitrarily decided to impose a cut-off based on product size for participation in the ENERGY STAR program. This amounts to a social judgement on appropriate product size, rather than a move to support energy efficiency.

The ENERGY STAR program, following DOE's approach in regulatory standards, should set specifications focused on efficiency that are scalable, giving models across the board, no matter size and performance, something realistic to shoot for –and giving consumers an ENERGY STAR option across the board as well, no matter product size and performance. For example, while larger TVs should be encouraged to be more efficient, these larger TVs, often with the latest innovations and features, will use more energy than smaller TVs with fewer features. For such larger TVs, government should accommodate consumer choice, rather than attempt to dictate it.

With EPA's earlier decision to impose a cap or cut-off, ENERGY STAR seemed to abandon its focus on energy efficiency at a time when it was more important than ever. Having the program become a subjective judgment on power consumption, product size and features (in other words, EPA deciding what uses "too much" energy or is too large or has too many features) means ENERGY STAR would become focused on the smaller, less-featured, less-capable products over time. Under this approach, if less energy consumption regardless of efficiency is better, no energy use must be best, which is an absurd goal for the program. EPA should clarify and affirm that ENERGY STAR specifications remain scalable.

Opportunities for Appeal of Qualification Levels and Compliance

We recognize and appreciate EPA's existing process whereby EPA staff and management are available to discuss ENERGY STAR specifications and compliance. However, in addition, we urge EPA set up an internal review process with an independent internal body, such as the agency's Office of Administration and Resources Management, so that stakeholders could bring concerns not addressed through the existing process to a neutral body in a timely manner.

Reliance on Industry Consensus Standards

Under the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. Section 3701) and OMB Circular A-119, U.S. law and policy evidence clear preference for voluntary and market solutions for standardization. Under the NTTAA, EPA is required to use technical standards that are developed or adopted by voluntary consensus standards bodies unless these standards are inconsistent with applicable law or otherwise impractical. The law codifies OMB Circular A-119, which also explains that the term "use" means incorporation of the standard in whole, in part or by reference for procurement and in regulations. Congressional findings in NTTAA state that the legislation is intended to enhance technological innovation for commercial public purposes and to promote the adoption of technological innovations. Similarly, OMB Circular A-119 notes the use of voluntary consensus standards is aimed at encouraging long-term growth for U.S. enterprises and promoting efficiency and economic competition through harmonization of standards.

EPA, as well as the U.S. Department of Energy, have a history of hiring consultants to develop test procedures for measuring the power consumption of products being considered for ENERGY STAR program specifications and, if applicable, DOE standards. This unnecessary use of consultants is not only costly, but it also is less transparent and open than the private sector's consensus standards development process. Importantly, standards development organizations are accredited by national bodies and are open to all interested parties, including government, NGOs, manufacturers, retailers and others. EPA must rely on these existing and less costly opportunities with private sector standards development organizations for the development and maintenance of test procedures for measuring power consumption of electronics in the ENERGY STAR program.

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CTA appreciates the opportunity to provide comments in response to EPA's solicitation and welcomes the agency's continued focus on opportunities for ENERGY STAR program improvement.

Respectfully submitted,

CONSUMER TECHNOLOGY ASSOCIATION

By: ___/s/_____

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