



January 8, 2010

ENERGY STAR Products Program
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: ONCE Innovations, Inc. Comments on "Enhanced Program Plan for ENERGY STAR Products (Dec. 2, 2009)"

VIA EMAIL: mou@energystar.gov

Dear Sir/Madam:

ONCE Innovations, Inc. (ONCE) is in the business of developing, manufacturing, and selling AC LED lighting products. We applaud the ENERGY STAR Products Program goals of energy savings. We too are committed to bringing highly energy efficient lighting to the consumer and industrial markets.

ONCE also applauds ENERGY STAR's rationale as stated in the Enhanced Program Plan, i.e., that "greater investment in energy efficiency is critical to addressing the challenges of climate change, rising energy bills, energy security, and other issues." As the ENERGY STAR Product program transitions according to the Enhanced Program Plan, ONCE offers the following recommendations from the perspective of a small business with investment in developing innovative LED based lighting products.

COMPLIANCE WITH ADMINISTRATIVE PROCEDURES ACT (APA)

In a letter of July 10, 2009 to the EPA, the American Gas Association (AGA) explained how notice and comment procedures and publication in the Federal Register as required under the APA would strengthen the ENERGY STAR program. ONCE endorses and reiterates the AGA's position that ENERGY STAR specifications have become *de facto* "legislative rules" with the force and effect of law, and therefore should be promulgated according to notice and comment

procedures as prescribed in the Administrative Procedures Act (APA). It is insufficient to continue to set ENERGY STAR eligibility criteria by merely soliciting comments via obscure pages on the Internet.

ONCE concurs with the AGA's position that ENERGY STAR products specifications must follow the APA rulemaking procedures because the eligibility criteria are not suggestions – they are regulations in that they (i) are binding and (ii) use mandatory language. These specifications are effectively binding, for example, because the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007 compel federal agencies to procure ENERGY STAR products. The ENERGY STAR specifications also use mandatory language. For example, in the “Program Requirements for Integral LED Lamps” (finalized December 3, 2009), the first paragraph reads:

Below are the product criteria for ENERGY STAR qualified Integral LED Lamps – Version 1.0. A product must meet all of the criteria to be qualified for ENERGY STAR.

Regulations such as the ENERGY STAR Program Requirements for LED Lamps may be established by agencies subject to the requirements of the APA. For the credibility of the ENERGY STAR program, ONCE urges that ENERGY STAR procedures be modified to follow the APA's notice and comment procedures with publication in the Federal Register.

COMPLIANCE WITH REGULATORY FLEXIBILITY ACT (RFA)

Small businesses are the economic engine that will drive development of many innovative and energy saving products worthy of the goals of the ENERGY STAR label. However, small businesses can be dramatically impacted by seemingly minor changes in established ENERGY STAR eligibility criteria. The impact of regulation on small businesses is the concern of the Regulatory Flexibility Act. ONCE believes that the ENERGY STAR program is obligated to comply with the provisions of the RFA, and should do so to foster entrepreneurial investment in innovation that will accelerate energy savings.

This concludes ONCE's comments on the "Enhanced Program Plan for ENERGY STAR Products (Dec. 2, 2009)." ONCE looks forward to working with all stakeholders and agencies in the promotion and improvement of the ENERGY STAR Products Program.

Sincerely,



Zdenko Grajcar
CEO, CTO of ONCE Innovations, Inc.