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Nick Gillespie
Government Relations

June 23, 2010

U.S. Environmental Protection Agency
ATTN: Ann Bailey
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Draft Conditions and Criteria for recognition of Certification Bodies for the Energy Star® Program

Dear Ms. Bailey:

Before implementing any changes, we urge you to consider and address Whirlpool Corporation's concerns with the EPA's Draft Condition and Criteria for Recognition of Certification Bodies for the Energy Star Program, which are outlined in this letter. In particular, please consider our support for the AHAM verification program, our recommendation on the timing for updating the ENERGY STAR Qualified Products Listing, the appropriate definition of a "base model" and the preferred source for the procurement of units for verification testing.

We appreciate your continued efforts to strengthen the ENERGY STAR program. Integrity is a key factor to maintaining the strong value of the ENERGY STAR brand and we're excited about the opportunity, through the collaborative effort that has been shared between the EPA, DOE and stakeholders, to help ensure that consumer have confidence that ENERGY STAR products are delivering the savings they expect.

Our ongoing commitment to the growth, success and integrity of the ENERGY STAR promise continues to be a strong source of pride for Whirlpool Corporation as a leader in designing, producing and marketing ENERGY STAR qualified appliances that reduce water and energy usage, save consumers money on utilities and reduce greenhouse gas emissions through superior energy efficiency.

Sincerely,

A handwritten signature in black ink that reads "Nick Gillespie". The signature is written in a cursive, flowing style.

Nick Gillespie
Government Relations Senior Specialist

Whirlpool Comments on the EPA's Draft Conditions and Criteria for Recognition of Certification Bodies for the ENERGY STAR Program

1) General Requirements and Responsibilities:

EPA Proposal; Page 1-

Maintain accreditation to ISO/IEC 65, "General requirements for bodies operating product certification systems," by a signatory to the International Accreditation Forum (IAF) Multilateral Recognition Agreement (MLA) that operates in accordance with ISO/IEC 17011.

Whirlpool Comments:

As we indicated in our comments to the EPA on May 24, 2010, Whirlpool Corporation believes the approach taken by the EPA should be that a Certification Body, such as the Canadian Standards Association, regularly (annually) visit, test and certify manufacturers' laboratories in order for them to qualify for submitting Energy Star data to the EPA. The certified in-house laboratory of the manufacturer would perform energy & water efficiency testing and submit the qualifying product data directly to the EPA. We would support the proposed approach by the EPA that this body would also be required to submit data to the EPA, which demonstrates the certification of the manufacturer's lab, along with ENERGY STAR products. Currently our laboratories are certified annually by the Canadian Standards Association. We work closely with them in rigorously demonstrating that the appropriate principles outlined by ISO/IEC 17025 are within our process for ENERGY STAR product qualification. The Whirlpool process includes rigorous equipment maintenance and calibration, detailed lab procedures and comprehensive record keeping on both equipment and test results.

We believe the certification body should meet the requirements of ISO/IEC 65, but need not be a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement (MRA).

2) Energy Star Qualification:

EPA Proposal; Page 2-

- a) Determination of qualification
 - iii) Report information on certified products to EPA. EPA will use this specific information to create the ENERGY STAR Qualified Product Lists. Several possibilities are under consideration regarding the timing of this reporting: 1) no less than monthly; 3) within a set amount of time following the certification of the product; or, 3) by the product release date.

Whirlpool Comments:

It is imperative the ENERGY STAR program continue to update the Qualified Product List no more than one week following the certification of a product with the EPA. Any timeframe longer than that would stifle innovation through slower product releases to the market, thereby damaging consumers, manufacturers and the ENERGY STAR program. Regarding the "product release date" option, that would be difficult to achieve as dates often change (forward and backward), which would risk the integrity of the reporting program.

3) ENERGY STAR Verification:

EPA Proposal; Page 3-

(2) Number of Products

- (a) Test at least 10% of all ENERGY STAR qualified base models² per year. In the event of significant product failures, models tested may increase in subsequent years. The minimum number of products tested may differ by product category.

² EPA will define the term, "base model", within the individual ENERGY STAR program requirements since its meaning can vary between product categories. For example, for certain product categories it may be defined as the basic model of a product family composed of models that differ in terms of performance along ENERGY STAR criteria; in other product categories, the base model may differ from other models only cosmetically.

Whirlpool Comments:

AHAM has worked closely with the EPA to insure the AHAM designed verification program meets the objectives of the ENERGY STAR program. Whirlpool Corporation strongly supports this program for all verification testing. As AHAM has outlined in their refrigerator/freezer verification program, verification should be executed as more of a random "spot-check". One advantage of this approach is that any sample may be selected any year, keeping Licensees vigilant. As such, the AHAM program will select models for verification testing from 20% of each Licensee's Model Groups provided in the product selection template, with at least two models selected from each Licensee, per year. Total number of models will be rounded up from the 20% value. The program also has specific processes to insure an appropriate selection on ENERGY STAR models takes place annually. In addition, as we indicated in our previous comments, we propose selection of a supplemental sample that will be randomly selected from a pre-determined product class/energy platform. The product class/energy platform selected for supplemental testing may be determined by shipments, configuration or new technology. If testing shows energy and/or water consumption to be 5% greater than manufacturers ratings, that is to be viewed as noncompliance. If the 5% level is exceeded then three additional units would be tested and averaged. The 5% level would again be applied to the average of the four to assess compliance.

Regarding the definition of a "base model", it should be defined by the applicable product category, configuration and performance efficiency data, not by model number. Within our various brand nomenclature, generally speaking, characters 3-8 signify a level of features that provide consumer benefit, but may or may not impact energy and/or water performance of the product. As we introduce models in a given series, it is necessary that we maintain flexibility by reporting all characters, excluding colors, in order to avoid consumer confusion in the reading of the ENERGY STAR website. When a series is first introduced there may or may not be differences in energy/water efficiency among the models. Regardless, future additions to that series may well have different efficiencies. For example, the Whirlpool brand washers WTW6300W and WTW6500W are from the same series, but have features sets that resulted in different energy and water efficiency ratings. We do not believe this is unique to Whirlpool Corporation.

EPA Proposal; Page 3-

(4) Procurement of unit(s) for testing:

- (a) The CB shall procure or obtain the units(s) for testing, prioritizing the source of those units in the following order (from most favored to least favored)
 - (i) Off-the-shelf (i.e., from the open market);
 - (ii) Warehouse (i.e., from the storage depot): or
 - (iii) Off-the-line (i.e., from the manufacturer's facility).

Whirlpool Comments:

The manufacturer warehouse or distribution center is the fastest, lowest cost, most expedient means for the procurement of unit(s) for testing. The EPA can select units at random from that inventory as they see fit. Moreover, the product selected needs to be in its original packaging to insure it is indeed a new product. Many of the third-party laboratories already involved in verification testing have existing procedures and specific personnel who select samples from manufacturer warehouses around the world. An off-the-shelf option is an unreasonable one since it would force manufacturers to purchase their own product at retail prices when they could provide randomly select units from their inventory.

EPA Proposal; Page 3 & 4-

(5) Location of verification testing:

- (a) Verification testing shall be performed at an EPA-recognized, third party laboratory; or,
- (b) If the unit is obtained off-the-line from the manufacturer's facility, the verification testing may be performed at an EPA-recognized, in-house laboratory provided that qualified CB personnel witness the test

Whirlpool Comments:

As we indicated earlier in this document, we believe a verification testing program can be properly administered by AHAM, working in concert with a Certification Body such as the Canadian Standards Association. The AHAM program has not only been adapted to meet the needs of the ENERGY STAR program, but it is designed by those who know products the best: manufacturers.

EPA Proposal; Page 4 & 5-

c) Challenge Testing:

- ii) A challenge may be initiated only when the CB has received the following:

- (2) Identification of the challenged parameters and the basis for the challenge. This basis may be but is not limited to marketing literature that claims better performance than the data the CB has on record, or the results from a product test the challenger performs on its own, and for which it pays without reimbursement by the CB no matter the results of the CB's subsequent challenge test; and,
- (3) Payment deposited by the challenger with the CB that covers all costs associated with obtaining suitable test samples and conducting the necessary testing.

- iii) Upon the failure of a product to meet the product performance requirements of the relevant ENERGY STAR program requirements, the CB shall notify the manufacturer and EPA immediately.

- (1) If test results show the challenged model does not meet ENERGY STAR requirements,

the CB shall refund the deposited payment to the challenger, and invoice the product manufacturer for all costs associated with the challenge test. Otherwise, the CB shall retain the payment the challenger deposited.

Whirlpool Comments:

We fully support the DOE and EPA responding promptly and aggressively to any possibility of non-compliance. However, given the cost and seriousness of a challenge, it is important the challenger support their claim with appropriate documentation that would justify a challenge. EPA would move forward with the challenge only after determining that the documentation supports the claim. We fully support that the cost of the challenge be paid by the party in the wrong.

In the case of a difference between marketing material claims and actual product performance, the manufacturer shall be provided an opportunity to remedy the situation at their expense without initiating product testing. Failure to remedy would constitute grounds for a full challenge.

Appendix A: Requirements for the operation of a Supervised Manufacturers' Testing Laboratory (SMTL) or Witness Manufacturers' Testing Laboratory WTML Program

EPA Proposal; Page 6-

3) Requirements specific to the operation of an SMTL program:

- b) As the CB gains experience with and confidence in the SMTL, supervision may gradually shift from witnessing tests to examining the quality process underpinning the design, production, and testing of the product(s) to be certified;

Whirlpool Comments:

The Certification Bodies role should be limited to product testing and processes which underpin that testing (e.g. procedures, documentation, training, record keeping, etc). The Certification Body should not have any role in product design or production.