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VIA EMAIL

August 6, 2010

ENERGY STAR Program
Environmental Protection Agency
Washington, DC
ENERGYSTARVerificationProgram@energystar.gov

Re: Comments on the Final Draft Conditions and Criteria for Recognition of Certification Bodies for the ENERGY STAR Program

Dear ENERGY STAR Program:

Mitsubishi Digital Electronics America (MDEA) is proud to be a leader in the effort to minimize the impact of electronics and manufacturing on our environment, and is pleased to participate in many environmental initiatives, including the ENERGY STAR® program. We have devoted significant resources to participating in the ENERGY STAR program and developing large screen televisions that are very energy-efficient (and meet ENERGY STAR qualification requirements).

We have participated in the review process of the changes to the ENERGY STAR program, including the enhanced testing and verification changes. We note, and appreciate, that EPA has acknowledge and accepted some of our suggested changes. Nevertheless, we would also remind EPA that we do not believe that ENERGY STAR testing is as critical as safety testing, and therefore does not deserve the same level of laboratory testing, certification and verification.

In our previous comments, we suggested that speculative verification tests funded by manufacturers, especially absent any reason to suspect noncompliance, is neither cost-effective nor advantageous to consumers. On July 23, 2010, EPA distributed the Final Draft Conditions and Criteria for Recognition of Certification Bodies for the ENERGY STAR Program ("Final Draft"), and indicated that comments would be received through August 6, 2010.¹

The Final Draft includes a requirement that the Certification Body ("CB") perform significant, extensive, manufacturer-funded verification testing. We urge EPA to reconsider the purpose, level and scope of this requirement.

Verification Testing is Unlimited. The Final Draft requires that *at least* 10% of certified base models are tested annually. These tests are partner-funded, and half selected randomly.

Under these requirements, the number of models tested is *unlimited*, as the CB is required to test "at least 10%", but has no upper-bound. If a CB were to verify 100% of models, this would be compliant with the requirements. If CBs were allowed to choose how much testing they perform at the manufacturer's expense and the manufacturer had no control over

¹ See posting of EPA ENERGY STAR, *ENERGY STAR Final Draft Certification and Verification Requirements* (July 23, 2010).

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the quantity of models tested, then the CBs would have a business incentive to test a high proportions of models.

Random Sampling will be Ineffective. Under the enhanced testing and verification program described by EPA, laboratories are accredited and tested models are certified. Given that, we must conclude that the incidence rate of non-compliant certified models is very, very low.² To design a sampling plan that will find noncompliant models with even a low confidence interval on a population with a very low noncompliant incidence rate would require “random” testing of nearly all models. The EPA has correctly rejected this approach – as it amounts to mandatory third party testing.

Directed Testing Issues. Verification of models that are not selected randomly is described in (3)(a)(3)(c), including factor (iii) which suggests that verification should, in part, be aimed at models with “high sales volumes”. Models with high sales volumes are not more likely to be noncompliant—if anything, they are less likely to be noncompliant (due to the attendant downside recall risks for the manufacturer).

Unnecessary Verification Tests are Costly. Random verification testing of devices is unlikely to ever identify noncompliant devices, yet the costs involved are significant. MDEA has a few dozen products, with an average MSRP of several thousand dollars. The costs of the spoiled product,³ the verification testing and associated overhead can be expected to be perhaps \$50,000 per year. These costs must be passed on to consumers, but because there is a nearly zero chance of finding noncompliant devices, consumers receive no added value.

Challenge Testing Opportunities. The requirements for a process for challenge testing seem to yield disincentives for spurious challenges, and describe a mechanism where devices that are suspected (or known) to be noncompliant or marginally compliant can be identified and independent third-party testing performed—when there is good reason.

This is exactly how devices should be selected for verification testing—when there is a reason to suspect noncompliance—and if such a system were adopted for *all* verification testing the sampling problem described *supra* would be appropriately addressed. It is inefficient (or nearly useless) to randomly test devices in an accredited and certified environment; but much more efficient to test devices with a high rate of incidence.

* * *

Therefore, we respectfully recommend that the EPA adopt the following recommendations:

1. Verification testing should be focused entirely on third-party tests on devices that have already been identified as suspect (challenge testing). Random testing and should not be used, and directed tests (such as described by 3(a)(3)(c) in the Final Draft) should be limited to factors (i) and (ii).
2. If non-challenge verification testing is required, models selected for verification testing should be limited to factors (i) and (ii) (see above), without respect to spreading testing across manufacturers or CBs. If some manufacturers have been

² The incidence rate of noncompliant devices that have passed through an accredited laboratory and a certification body will certainly be lower than the incidence rate of noncompliant devices under the old, non-accredited, non-certified ENERGY STAR scheme. Under the old scheme, few models (proportionally) were found to be noncompliant. Under the new scheme, even fewer will be noncompliant.

³ Boxed products that have been opened and tested may no longer be sold as new; there is a significant discount from MSRP for such “B-stock” open-box products.

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- found to be more likely to be noncompliant, those manufacturers should be tested more often (independent of which CB they've chosen to employ).
3. If EPA feels it is necessary to set a minimum proportion of devices that should be subject to verification testing, it should also set a maximum proportion to limit the costs and any incentives for the CB to test more than necessary.
 4. The proposed effective date of the enhanced testing and verification system—January 2011 is now only several months in the future. The new enhanced testing and verification process effective date should be until no earlier than June 1, 2012, which would give manufacturers, accreditation bodies and certification bodies sufficient time to implement the program before it is required.

Please feel free to contact us if you have any questions or if I may be of any further assistance.

Sincerely,

/s/

Harlan Rogers
Senior Manager, Product Compliance
Mitsubishi Digital Electronics America

Cc: Adam Goldberg