



August 6, 2010

Katharine Kaplan
Eamon Monahan
Energy Star Program
United States Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: TechAmerica Comments on EPA “Final Draft Conditions and Criteria for Recognition of Certification Bodies for the Energy Star Program”

Dear Ms. Kaplan and Ms. Vokes:

TechAmerica is the leading voice for the U.S. technology industry, which is the driving force behind productivity growth and jobs creation in the United States and the foundation of the global innovation economy. Representing approximately 1,200 member companies of all sizes from the public and commercial sectors of the economy, it is the industry's largest advocacy organization and is dedicated to helping members' top and bottom lines. It is also the technology industry's only grassroots-to-global advocacy network, with offices in state capitals around the United States, Washington, D.C., Europe (Brussels) and Asia (Beijing). TechAmerica was formed by the merger of AeA (formerly the American Electronics Association), the Cyber Security Industry Alliance (CSIA), the Information Technology Association of America (ITAA) and the Government Electronics and Information Association (GEIA).

As stated in TechAmerica's previous comments regarding the U.S. Environmental Protection Agency's ("EPA's") proposed changes under its enhanced Energy Star testing and verification effort¹, TechAmerica supports efforts to protect the integrity of the Energy Star program. TechAmerica's office in the European Union ("EU"), TechAmerica Europe, also submitted comments on EPA's proposed changes on July 5th in partnership with Digital Europe².

¹http://www.energystar.gov/ia/partners/downloads/mou/draft_lab_requirements/TechAmerica_Comments.pdf

²http://www.techamerica.org/Docs/fileManager.cfm?f=delete%20comments%20on%20us%20epa%20energy%20star%20requirements%20rev%205july2010_vf.pdf

Many TechAmerica firms participate in the Energy Star program, and have a substantial stake in ensuring that products labeled with the Energy Star mark accurately represent the most energy efficient products available in the market. TechAmerica firmly believes that a balanced solution, building on existing Energy Star practices, and those of other federal agencies and private sector certifiers, represents the best solution to address concerns about programmatic integrity without creating unintended, negative consequences that could undermine the global value of the Energy Star brand.

I. TechAmerica's Endorsement of ITIC's Comments:

TechAmerica would like to commit its support to the comments that will be submitted by the Information Technology Industry Council (ITIC). In particular, TechAmerica would like to specifically support the following comments that are detailed more fully in ITIC's formal submission:

(1) Section 1(b): The proposed requirement that Certification Bodies that participate in Energy Star possess a "substantial" North American presence.

This proposed requirement contradicts the global nature – both of the IT industry's product development, manufacturing, and testing infrastructure as well as the recognition and use of Energy Star by EPA's global partners, including the EU and Japan. This proposed US-centric requirement may be perceived by EPA's international Energy Star partners as being protectionist in nature. Such country-specific laboratory certification requirements are costly and will delay a product's market introduction. Country-specific laboratory certification requirements will produce absolutely no improvement in terms of a product's actual energy efficiency performance.

(2) Section 1(c): The proposed establishment of two distinct laboratory accreditation processes, one administered by an EPA-recognized Accreditation Body (Subsection i) and one administered by an EPA-recognized Certification Body (Subsection ii and Appendix A).

TechAmerica and its members do not understand why the U.S. EPA has established separate distinct lab accreditation processes, one administered by Accreditation Bodies ("ABs"), and one administered by Certification Bodies ("CBs"). EPA should have a single body responsible for the accreditation of laboratories – either ABs or CBs. The proposed approach would create two separate sets of accreditation requirements, which may create inconsistencies and procedural conflicts and delays. The two accreditation processes will also increase costs for manufacturers, which will need to support two separate and distinct accreditation bodies and processes.

(3) EPA's Proposed Time Frame for Finalization of Energy Star Changes

TechAmerica continues to be concerned that the new accreditation and certification process will not be up and running by January 1, 2011. In particular, the IT product specification updates planned for August and September 2010 would push the expected timeline for initial Energy Star products well beyond the current targets. Furthermore, as discussed *infra*, TechAmerica urges EPA to conduct outreach and consultation with its global Energy Star partners – in particular the EU. TechAmerica urges EPA to delay its timeline to allow for proper resolution of all comments received in response to its proposed changes.

II. TechAmerica's Specific Comments

(1) EPA must consult with international Energy Star partners and, in particular, the European Commission, before proposed changes are finalized in order to preserve Energy Star's international standing.

TechAmerica would also like to provide its specific comments on one particular impact of the proposed changes that appears to have been overlooked in EPA's rush to finalize the proposed changes: the impact of the proposed changes on Energy Star's international standing and, in particular, the impact of the proposed changes on the US-EU Agreement on Energy Star. Because of TechAmerica Europe's leadership role in promoting the interests of the high tech community in Europe, TechAmerica is submitting these comments in order to ensure that the international impacts of EPA's proposed changes are considered, weighed and minimized to the greatest extent possible.

As you are aware, the European Community and the United States have entered into an agreement that commits each government to use the Energy Star program for office equipment. The latest version of this agreement, ("Agreement between the Government of the United States of America and the European Community on the Coordination of Energy-Efficiency Labeling Programs for Office Equipment," hereinafter referred to as "Agreement") was published in the Official Journal of the European Union on December 28, 2006. The Agreement states that the two governments will coordinate to administer the Energy Star labeling program and "shall consult at the request of one of the Management Entities to review the operations and administration of the Energy Star Labeling program, among other things (Article VII)". Article X sets forth the procedures for amending the Agreement and for adding new Annexes. It states, "[a]mendments to this Agreement and decisions to add new annexes shall be made by *mutual* agreement of the Parties (emphasis added)."

It is TechAmerica's understanding that, to date, there has been no outreach by the U.S. EPA to the European Commission, which is the EU's Management Entity on the Energy Star Program, regarding its proposed changes to the Energy Star program. TechAmerica is very concerned about this procedural omission because EPA's proposed changes appear to operate in direct conflict with the EU's existing market access processes and procedures and, thereby, represent a significant modification to the Energy Star program that could undermine future EU efforts to accept and recognize the Energy Star brand.

Specifically, EPA's proposal to require third party certification and verification would operate in direct conflict with existing EU verification schemes that rely on self-declarations of conformity. The EU has embraced self-declarations of conformity as its pillar of EU policy in all matters of market access. Self declarations of conformity have been shown to successfully balance the twin interests of global commerce and regulatory control and we urge EPA to adopt this same approach (which has been used quite successfully in the Energy Star program for many years) in its revised program. We understand the need for greater controls over Energy Star products in light of the recent Government Accounting Office report; however, we urge EPA to make modifications that do not undermine existing internationally accepted market access procedures, which could undermine the future global acceptance of the Energy Star program. We urge the U.S. EPA to consult with the European Commission as soon as possible to establish a collaborative process by which new testing and verification procedures can be considered and *mutually* accepted as envisioned by Article X of the Agreement.

TechAmerica is very concerned that the European Commission may consider EPA's proposed changes as unilateral actions that would significantly modify the program's operations and administration. Finalizing such changes, without first taking steps to engage its European Commission partner, may be interpreted as a violation of the operating principles of the Agreement. Such unilateral action constitutes a significant threat to the future viability of the Agreement. Before any actions are taken to finalize these proposed changes, the EPA must *immediately* reach out to the European Community partner and engage its respective experts in order to abide by the conditions set forth in the Agreement.

In the event that the EPA chooses not to enter into consultations with the European Commission as outlined by the Agreement, TechAmerica fears that the European Community will not renew the US-EU Agreement and the Energy Star label will no longer remain the primary energy efficiency labeling program of the European Union. The US-EU Agreement is a stellar example of how governments can cooperate to promote market driven and voluntary energy efficiency best practices while also respecting the economic benefits that come from the global trade in these high tech products.

TechAmerica is very concerned that, absent US-EU consultation *prior* to these changes becoming final, the European Union will consider the US to have violated the spirit of the Agreement and may choose not to renew the Agreement. A failure to renew the Agreement would represent a significant blow to the international standing of the Energy Star program and would also represent a significant loss for high-tech companies that benefit from the use of the Energy Star program in the EU.

The formal negotiations on the renewal of the Agreement are due to start at the end of this year. If the Agreement is not renewed before it terminates at the end of 2011, the EU Regulation on Energy Star will be repealed and Energy Star will lose its legal status and market position in the EU. If the Agreement lapses, the EU may pursue and implement different energy efficiency requirements for IT products. Such requirements may not be voluntary (as demonstrated by the recent promulgation of several mandatory energy efficiency requirements under the Energy Related Products Directive), which would impose significant new resource and compliance costs burdens on high tech companies at a time when they are trying to survive the global economic downturn. Maintaining the existing bilateral US-EU Agreement on Energy Star is crucial to avoiding such negative consequences and the unnecessary duplication of product labels. This new US-centric, jurisdictional approach may well prompt other countries to develop their own substitutes to Energy Star, thereby, causing significant concern for US and other multi-national technology companies that will need to comply with a patchwork of costly and often redundant global requirements. Such an outcome would be extremely unfortunate - both in terms of compliance costs,³ but also in terms of global trade. Such disparate global requirements would not necessarily result in an improvement in energy efficient and environmental protection.

TechAmerica has learned that the Japanese government has also expressed its concerns about EPA's proposed changes and the impact that these proposed changes would have on Japan's use of the Energy Star label.⁴ In 1995, the EPA and the Japanese Ministry of Economy, Trade and Industry (METI) entered an agreement to implement the Energy Star program in Japan.

³ One TechAmerica company has estimated that the cost for implementing EPA's proposed changes for the products that it manufactures would easily amount to 1% or more of its manufacturing costs, thereby, eroding its already tight profit margins. Other cost impacts would result from logistical delays caused by third-party certification requirements. Should other countries establish different energy efficiency programs for high tech products, each country's requirements will add additional incremental costs, thereby, reducing the ability of TechAmerica companies to compete in the global marketplace.

⁴http://www.energystar.gov/ia/partners/downloads/mou/draft_certification_body_requirements/METI_Comments.pdf

In its comments, METI wrote,

[I]t seems that EPA is requiring other ENERGY STAR implementing countries/regions to ensure the same level of strictness in product qualification process. Such changes which EPA is planning to introduce in ENERGY STAR program will probably demand significant changes in the program in Japan.

One of Energy Star's greatest successes has been the global adoption of the brand. TechAmerica is very concerned that EPA's proposed changes will seriously undermine the ability of EPA's current Energy Star partners to maintain their support of the program. EPA must ensure that its global partners are aware of these proposed changes and understand how the proposed changes will impact their own national programs. To date, it appears that such international outreach has not been done.

In closing, TechAmerica urges the EPA to take the time to consult and engage with its international Energy Star partners and, in particular, the European Commission regarding certain details of the proposed changes before they are finalized. More time is needed to allow full US-EU engagement so that the groundwork is laid for a successful renewal of the US-EU Agreement on Energy Star – an Agreement that protects the environment while also promoting global trade.

Thank you for reviewing TechAmerica's comments on the Final Draft Conditions and Criteria for Recognition of Certification Bodies for the Energy Star Program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip Bond", with a stylized, cursive script.

Phillip J. Bond
President and CEO
TechAmerica