



January 26, 2018

Via E-Mail

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U.S. Environmental Protection Agency

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Re: ENERGY STAR Draft Standard Operating Procedure For
Revising or Establishing an ENERGY STAR Specification

Dear Ms. Bailey:

The Air-Conditioning, Heating, and Refrigeration Institute (AHRI), Association of Home Appliance Manufacturers (AHAM), National Electrical Manufacturers Association (NEMA), and the North American Association of Food Equipment Manufacturers (NAFEM) (collectively, the Joint Commenters) submit the following comments to the Environmental Protection Agency (EPA) on the ENERGY STAR Draft Standard Operating Procedure for Revising or Establishing an ENERGY STAR Product Specification.

The Joint Commenters support EPA and the Department of Energy (DOE) in their efforts to provide incentives to manufacturers, retailers, and consumers for energy efficiency improvement so long as product performance and choice can be maintained for the consumer. We agree with EPA that stakeholder participation is critical to successful specification development. In order to encourage such participation, EPA's process must be transparent, data-driven, and consistent. We note EPA's efforts to identify process improvements and to seek stakeholder input on EPA procedures for revising and establishing ENERGY STAR product specifications. **Equally important to identifying process improvements, however, is following the final process. It is, thus, crucial that EPA follow the process it establishes to provide predictability and certainty for stakeholders and to ensure the ENERGY STAR brand remains strong.** Moreover, any future changes to these procedures should be made only after notice to and consultation with stakeholders.

I. Scope

EPA indicates that the proposed process applies to the establishment of ENERGY STAR requirements, consistent with program principles, “such that products that meet them reduce greenhouse gas emissions and save consumers money without a sacrifice in performance.” EPA indicates that product specifications are at the heart of the ENERGY STAR program’s work to direct consumers to more efficient products.

The Joint Commenters agree that product specifications are at the heart of the program’s work. We highlight, however, that the ENERGY STAR program was established “to identify and promote energy-efficient products and buildings.” As such, the program should remain squarely focused on energy efficiency and should avoid areas that market forces should determine like product performance, capacity, features, and warranties. The standard operating principles (and the Guiding Principles) should reflect the program’s thrust by indicating that product specifications will focus on energy efficiency, energy use, or water use criteria and will not include non-efficiency/energy use/water use criteria unless manufacturer partners broadly support the inclusion of such criteria to promote improved market adoption.

Moreover, EPA and DOE should recognize that, for some products, the opportunities for additional savings beyond those already achieved are severely diminished as products are nearing maximum efficiency under available technology. For those products, further revised ENERGY STAR specifications are likely to result in limited energy savings, as compared to increased costs to consumers and manufacturers, and, in some cases, degraded performance and functionality. EPA’s specification revision cycle indicates an assumption that specifications will be revised in a continuous cycle. It is past the time to revisit that assumption and consider alternatives to continually revising specifications. These alternatives may vary by industry.

For example, in developing and revising specifications, EPA and DOE should consider whether success has been achieved and consider alternatives to revising the specification. EPA and DOE could consider establishing market penetration targets in an effort to increase the share of ENERGY STAR labeled products. We expect these targets may vary by product and EPA and DOE should work with each product segment to identify targets for when success has been achieved. Upon achieving success, EPA should work with each product segment to determine if there are ways to, for example, expand penetration of ENERGY STAR products in the market rather than simply assuming that it is necessary to revise the specification. It may be that sunset is the appropriate next step when success has been achieved, but EPA should not sunset product specifications without agreement from the majority of its partners in that particular category because partners invest heavily in order to achieve ENERGY STAR status and sunset should not result in a loss of rebate incentives or other consumer benefits.

II. Specification Framework

EPA indicated that it sometimes begins specification revisions or new specifications with a framework document that allows DOE and EPA to get early stakeholder input before a formal proposal. The Joint Commenters support EPA’s and DOE’s efforts to engage stakeholders early. Early stakeholder engagement and input is integral to successful specification criteria. EPA and

DOE should also consider seeking stakeholder views when issuing a framework document or, in cases where the process begins with a first draft specification, prior to the issuance of the first draft.

III. Test Procedures

EPA indicated that, for products subject to federal energy conservation standards, EPA references the federal test procedure. For other products, DOE validates industry consensus standards or drafts a new test procedure through the ENERGY STAR stakeholder process.

The Joint Commenters agree that EPA must cite applicable federal test procedures not just for products subject to federal energy conservation standards, but for all products for which there exists a federal test procedure. Importantly, EPA must rely on only the applicable federal test procedure and not on revised test procedures that are not yet required. Moreover, EPA should not add or change the federal test procedure in any way. Under the Energy Policy and Conservation Act of 1975, as amended (EPCA), manufacturers can only use the federal test procedure to make claims related to energy efficiency, energy use, or water use.

Additionally, there are products for which a federal test procedure exists but there is no standard. In the rare circumstance where an ENERGY STAR specification would be justified for such a product, the federal test procedure must be used. Otherwise, manufacturers would be at risk of running afoul of their legal obligation under EPCA to use only the federal test procedure to make energy related claims.

For products that do not have federal test procedures, the Joint Commenters agree that EPA should rely upon industry consensus standards (i.e., test procedures) when setting specifications. There is no need to reexamine those tests during the specification development process because they have already undergone a transparent and inclusive development process. For example, many industry consensus standards are ANSI accredited and have gone through an extensive review process open to the public and the government.

Consistent with the principles discussed above, the Joint Commenters also recommend that EPA rename the “test procedure development or validation” section as “reliance on existing test procedures.” In cases where mandatory or industry consensus based test procedures exist, EPA and DOE need not “develop” or “validate” the tests—that work has been done already and DOE and EPA can and should minimize burden on industry and maximize federal resources by relying on them.

EPA also indicated that the “ENERGY STAR Program is generally inclusive of all product sizes and capacities unless constrained by practical considerations such as the lack of a relevant test procedure, insufficient available performance data, or associated performance trade-offs.” The Joint Commenters agree that the ENERGY STAR program should be inclusive of various product sizes and capacities. In fact, the Joint Commenters propose that EPA strengthen its statement to indicate that specifications accommodate a range of sizes, capacities, and features and that EPA will not design criteria that would exclude any particular size, capacity, or feature.

IV. Data Analysis

EPA stated that the ENERGY STAR specification process is data driven based largely on data derived from existing certified models and data from manufacturer partners. EPA indicated that it shares the data upon which it relies and protects confidential business information.

The Joint Commenters agree that the ENERGY STAR specification process should be data driven. The standard operating procedures document should expand upon this topic. Specifically, EPA and DOE should rely on scientific, technical, economic, and other information that is publically available or provided, under confidentiality agreements, by manufacturer partners. EPA and DOE should follow their respective policies under the Data Quality Act. And, for DOE covered products, EPA and DOE should utilize DOE's analysis to the extent it is applicable and up-to-date and its analytical assumptions/model are fully transparent. The federal government should not waste resources on duplicative analyses.

The Joint Commenters strongly agree that all data upon which the agencies rely should be shared with stakeholders with appropriate protection of confidential business information. Data should be shared at all stages of the specification development process (unless the need for confidentiality dictates otherwise). Stakeholders should not need to request data; it should be shared as a matter of course.

V. Public Comment

EPA and DOE seek comment throughout the specification development process. Documents are posted on the ENERGY STAR website and notice is provided via email to interested stakeholders.

Transparency is key for any specification development process to allow all interested parties the opportunity to review proposals and provide input. A transparent process requires notice to interested parties and an opportunity to comment. The Joint Commenters believe that the best way to provide all potentially interested parties with notice is to publish notice 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 should not add much time to the release of the proposal and can be done in addition to posting the document on the ENERGY STAR website and circulating email notices. This is the only way to ensure all those who wish to participate can do so and is the best way to avoid notice sent via email inadvertently failing to reach intended recipients.

EPA's proposed procedure would allow for comment periods on draft proposals that are at least four weeks and comment periods for interim decision memos and final drafts that are at least two weeks.

The Joint Commenters suggest that all comments be a minimum of 30 days with an option to allow for industry stakeholders to waive some of the comment period or to request additional time for comment. Thirty days is a generally accepted reasonable period to allow for public input and should be the norm for specification proposals, even interim decision proposals or

interim changes EPA deems less significant. It is possible that stakeholders deem changes more significant or just need enough time to review the potential impact of even more minor changes. But there are some circumstances that may call for shorter or longer periods. For example, certain changes may be urgent and uncontroversial and, thus, not necessitate a full 30 days. The impacted industry should be the one that is able to inform EPA as to whether less time is needed or acceptable. Other proposals may be complex and require additional time for stakeholders to consider them and respond meaningfully to EPA and DOE.

VI. Alignment with the Department of Energy

EPA stated that “EPA’s ENERGY STAR process aligns with the DOE standards process to the greatest extent possible.” For products subject to federal energy conservation standards, EPA references the federal test method and DOE’s definitions take precedence. EPA indicated that it also leverages data manufacturers submit to DOE rather than requesting the same data from manufacturers.

The Joint Commenters strongly believe that, for products covered by DOE (not just those subject to energy conservation standards) EPA should ensure the ENERGY STAR program is based upon the foundation DOE lays in the appliance standards, including product and other applicable definitions, the delineation of product classes, and product scope. EPA should not stray from determinations DOE has made through its lengthy rulemaking process, which has already gone through a rigorous and transparent analysis. Thus, the Joint Commenters suggest the following changes shown in redline:

EPA’s ENERGY STAR process aligns with the DOE standards process ~~to the greatest extent possible~~. For products that are ~~covered by DOE subject to federal minimum efficiency standards~~, EPA references the Federal test method ~~without modification~~. For those products, DOE definitions ~~and product classes and scope~~ take precedence for ENERGY STAR purposes. With respect to ~~energy or water~~ performance data, EPA leverages the data submitted to DOE for purposes of demonstrating compliance with minimum efficiency standards rather than requesting the same data from manufacturers during the development of ENERGY STAR specifications.

For other products, EPA should continue its current practice and rely on consensus-based standards.

VII. Effective Dates

The law requires EPA to provide a minimum 270 day lead-in period before an effective date for new or revised specifications. Although there is statutory flexibility in that lead-in period, the Joint Commenters generally believe lead-in periods should be 270 days. There are, however, circumstances where a longer or shorter lead-in might be justified. For example, a product development cycle may necessitate a different lead-in period. EPA should work with the impacted industry to understand development cycles and reach an agreeable lead-in period that is consistent with that cycle. The same is true in cases where there is an applicable new or

amended DOE energy conservation standard. EPA should ensure effective dates are harmonized with DOE's compliance dates to avoid the need for two rounds of redesign and retooling.

VIII. Appeals Process

In its cover memorandum, EPA indicated that EPA staff is always available to discuss specifications and that EPA management makes themselves available at the request of stakeholders wishing to elevate their interests. The Joint Commenters expect the staff and management to hear concerns. We also propose, however, that, in addition to the existing "appeals process," EPA establish an internal review process with an independent internal body such as through the EPA Office of Administration and Resources Management or the DOE Office of Hearing and Appeals such that stakeholders can bring concerns that may not be addressed through the existing process to a more neutral body in a timely manner. For many industries, the market and customer demands make ENERGY STAR mandatory and, in some cases the *de facto* mandatory standard and, thus, it has real consequences for manufacturers. Accordingly, there should be an opportunity to bring serious concerns to a more neutral body for review.

IX. No Warranty

Although not addressed specifically by EPA's draft standard operating procedures, we note that there are significant penalties for companies who participate in the ENERGY STAR program and have a product disqualified from the program because it does not meet the qualification criteria. When EPA requires that the product be removed from the ENERGY STAR qualified products list (as it should be if it does not comply), Plaintiffs' lawyers have targeted companies whose products are disqualified in costly class action lawsuits. We know that EPA agrees that having private lawyers seek additional monetary damages and attorneys fees, even after EPA has considered and applied the proper remedies to provide consumer redress, was never anticipated by the program.

Recognizing that EPA considers a number of potential remedies when a product is disqualified, we appreciate EPA's support in efforts to preempt ENERGY STAR class action lawsuits based on disqualifications. A federal approach to disqualification, in particular with regard to product control measures, ensures national consistency. It also minimizes inequities among manufacturers, supports a national approach to managing a federal trademark, and provides consistency among the many geographical markets in which products are sold. In addition, it allows the federal government to protect the integrity of the program while keeping compliance costs low enough to encourage participation by consumers and manufacturers. Because ENERGY STAR has its own remedies, allowing class actions—which can cost companies millions of which plaintiffs' attorneys are the main beneficiary—undermines the program and dampens participation. We appreciate that EPA has made it clear that it does not intend the ENERGY STAR program to be used for that purpose and recommend that EPA address this matter.

X. The Joint Commenters

AHRI is the trade association representing over 315 manufacturers of residential, commercial, and industrial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world. The heating, ventilation, air-conditioning, refrigeration (HVACR), and water heating industry employs 1.3 million people and generates \$257 billion in economic activity annually.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

NEMA represents 350 electrical equipment and medical imaging manufacturers at the forefront of electrical safety, reliability, and efficiency. Our combined industries account for more than 400,000 American jobs and more than 7,000 facilities across the United States. Domestic production exceeds \$114 billion per year and exports top \$50 billion.

NAFEM represents more than 550 manufacturers of commercial foodservice equipment and supplies for the food away from home market.

The Joint Commenters appreciate the opportunity to submit comments on the ENERGY STAR Draft Standard Operating Procedure for Revising or Establishing an ENERGY STAR Product Specification and would be glad to further discuss these matters should you so request.

Best Regards,



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