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December 20, 2013

Via E-Mail

Ann Bailey
Chief, ENERGY STAR Labeling Branch
U.S. Environmental Protection Agency

batterychargers@energystar.gov

Re: Proposed Sunset of the Battery Charging Systems ENERGY STAR Program

Dear Ms. Bailey:

The Association of Home Appliance Manufacturers (AHAM) and Consumer Electronics Association (CEA) (collectively, the Joint Commenters) respectfully submit the following comments to the Environmental Protection Agency (EPA) on the proposed sunset of the battery charging systems (BCSs or battery chargers) ENERGY STAR program.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes over 150 companies throughout the world. In the U.S., AHAM members employ tens of thousands of people and produce more than 95% of the household appliances shipped for sale. 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.

CEA is the preeminent trade association promoting growth in the \$195 billion U.S. consumer electronics industry. CEA represents more than 2,000 corporate members involved in the design, development, manufacturing, distribution and integration of audio, video, in-vehicle electronics, wireless and landline communications, information technology, home networking, multimedia and accessory products, as well as related services that are sold through consumer channels. For

many years, CEA has supported and advanced energy efficiency in consumer electronics as part of the industry's broader commitment to environmental sustainability. CEA's comprehensive approach to energy efficiency includes industry initiatives related to public policy, consumer education, research and analysis, and industry standards. One of these initiatives, industry's involvement in the successful ENERGY STAR program, is now 20 years old.

The Joint Commenters support EPA and the Department of Energy (DOE) in their efforts to provide incentives to manufacturers, retailers, and consumers for continual energy efficiency improvement, as long as product performance can be maintained for the consumer. We recognize that there are specific cases in which it is necessary and appropriate for EPA to sunset an ENERGY STAR program for a particular product. We do not believe, however, that the time is ripe yet to sunset the ENERGY STAR program for battery chargers—EPA should assess energy savings potential only after DOE publishes a final rule on Federal energy conservation standards for battery chargers.

I. EPA Should Evaluate Whether to Sunset the BCS Program Only After DOE Publishes a Final Rule on Federal Energy Conservation Standards for BCSs

EPA indicated that it has determined that “limited additional, cost-effective savings are available and that the presence of a California Energy Commission (CEC) standard, more stringent than the current ENERGY STAR level, will serve as a back-stop for these globally traded products.” Thus, EPA proposed to sunset the ENERGY STAR BCS product program.

The Joint Commenters do not agree that a state standard should form the basis for EPA to sunset the BCS ENERGY STAR program. DOE has a final rule on Federal energy conservation standards for BCSs pending (currently at the Office of Management and Budget for review). That rule will preempt the California standard. EPA should, thus, evaluate the potential savings from a continued BCS ENERGY STAR program against the Federal standard levels, not the state standards which will be preempted. As we have previously commented, DOE's standards are the foundation of the ENERGY STAR program and EPA should not stray from those foundations.

EPA's decision to sunset the BCS program based on the California standards is a significant departure from the plan EPA outlined in December 2010 and thus, was a complete surprise to partners. In December 2010, EPA adjusted its timeline “with the intention of aligning more closely with DOE's standard development work for the consumer BCS product category. In particular, EPA propose[d] to delay development of portions of the specification that would be impacted by the DOE test procedure and standard.” (emphasis added). EPA indicated that a final BCS ENERGY STAR specification would be published one week after the DOE's final rule. Now, with no warning, EPA has proposed to end the program. EPA should adhere to its original plan to await the final DOE rule, which, based on the fact that it is currently undergoing OMB review, should be close to being finalized. It is both premature and inappropriate for EPA to determine that there is little savings opportunity without knowing what the pending Federal standards will be.

II. EPA Did Not Provide Sufficient Notice of its Plan to Sunset the BCS Program

EPA announced its intention to sunset the BCS ENERGY STAR program for the first time on November 22 and provided less than 30 days for partners to evaluate the proposal and provide comments to EPA. Furthermore, EPA did not include the data or analysis upon which it relied to make its proposal until partners requested it.¹ As we mentioned to EPA when requesting an extension of the comment deadline, a three week comment period to respond to a major proposal such as the sunset of a program is insufficient. This is particularly true given the fact that 1) EPA's proposal came with no warning and, as described above, is contrary to the prior timeline EPA communicated to partners and upon which partners have been relying; 2) EPA did not include its underlying data and analysis with the proposal; and 3) the brief comment period included the Thanksgiving holiday. We appreciate that EPA granted an (albeit brief) extension to the comment period in order to review the proposal and newly provided underlying data and analysis. But we do not understand why EPA suddenly seems to be in such a rush to sunset this program, particularly given DOE's pending final rule and EPA's previous announcement that it would wait for DOE to publish that final rule before making final changes to the ENERGY STAR specification. This is further supported by the fact that EPA proposed to stop certifying new products to the BCS ENERGY STAR program as of January 6, 2013, which would allow EPA less than three weeks to consider and respond to stakeholder comments (leading us to question whether EPA will be able to meaningfully consider comments opposing the proposed sunset).

EPA should not hastily sunset the ENERGY STAR program for battery chargers, particularly in light of our comments in Section I above. Instead, EPA should wait until DOE publishes its final rule and then engage in an analysis

III. EPA Should Not Punish Those Who Participate in the BCS Program

EPA indicated that program participation in the BCS ENERGY STAR program has been "relatively low . . . despite many years now marketing the program to prospective partners." Since the start of the program, 29 manufacturers have participated in the program. EPA should not now punish those manufacturers who joined EPA in delivering more efficient products to consumers by suddenly ending the program and providing partners with little time to accomplish the cost and labor intensive transition marketing materials and strategies.

As discussed above, AHAM and CEA members were surprised by EPA's proposal to sunset the BCS ENERGY STAR program in light of EPA's prior statements that it would align its revision with the final Federal standards and the fact that, as far as we know, EPA did not reach out to stakeholders before making this proposal. The proposed milestones for sunsetting the ENERGY STAR BCS program are, therefore, too sudden. Should EPA decide to finalize its proposal to sunset the ENERGY STAR BCS program, despite our comments that EPA should wait to assess energy savings potential until DOE issues a final rule, we respectfully request that EPA extend the milestones as indicated below.

¹ AHAM notes that it has made repeated requests for EPA's underlying data in past specification drafts for other products. EPA has recently been providing them as a matter of course and, so, we were disappointed that EPA did not do so in this case.

It will be incredibly difficult, if not impossible, for manufacturers to cease production of promotional materials by January 6. Furthermore, we do not understand why EPA would dictate when production on promotional materials must cease. Each manufacturer is different and has different promotional needs. Given that, under EPA's proposal, ENERGY STAR certified products will continue to be recognized until June 3, 2014, manufacturers should be permitted to manage their own internal resources such that they can stop using the ENERGY STAR name and mark in association with products manufactured on or after June 3, 2014.² Manufacturers have an interest in ensuring they do not have excess packaging and promotional materials as of that date—EPA need not mandate when production of promotional materials must end. Should EPA nevertheless decide to mandate such a date, it should be a date at least three months after the sunset is finalized, not January 6, 2014.

In addition, the January 6 cutoff for certified product information is far too early. For manufacturers that use third party laboratories to test and certify products, there could be certifications currently pending that will not be complete by that deadline. Such testing and certification can take up to six weeks. Thus, to avoid stranded investments, we would request that, should EPA continue with sunseting the battery charger program over our objection, it accept certified product information for at least three months after the final announcement.

The date after which certified products will continue to be recognized, and the associated mandate to stop using the ENERGY STAR name and mark on products manufactured after that date, should be one year after the sunset is finalized instead of June 3, 2014. That additional time will allow the manufacturers who have long partnered with EPA to deliver more efficient products to consumers to transition their business plans. The shorter time period, on the other hand, is too sudden and will significantly disrupt existing product plans.

EPA proposed that the qualified product list will cease on June 3, 2014. We request, however, that EPA continue to post the QPL, in a static form, for a year after the sunset date. After the sunset date, EPA could indicate on the QPL that the program for battery chargers has ended, but that if a consumer (or retailer) were to purchase a product manufactured before the sunset date, this list can confirm which products were qualified to the program. We make this request to account for products that will still be on store shelves after the sunset—we anticipate that retailers will continue want to confirm the legitimacy of the ENERGY STAR mark on remaining product (just as they do today) and, without the QPL, it will be difficult for them to do so without challenging manufacturers or consulting EPA itself. Should EPA not find it feasible to maintain a static, historical QPL on its website for a year, we request that EPA at a minimum, confirm that it will provide information to retailers regarding products that were qualified prior to the sunset.

The Joint Commenters appreciate the opportunity to submit comments on the proposed sunset of the battery charging systems ENERGY STAR program and would be glad to further discuss these matters should you so request.

² We reference the June 3, 2014 date in this paragraph for ease of reference, but note that our comments request that that date be extended to one year after EPA publishes a final sunset decision.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer Cleary". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

Jennifer Cleary
Director, Regulatory Affairs
Association of Home Appliance Manufacturers

A handwritten signature in black ink, appearing to read "Douglas Johnson". The signature is written in a cursive style with a large initial "D" and a long horizontal stroke at the end.

Douglas Johnson
Vice President, Technology Policy
Consumer Electronics Association