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Via E-Mail

Katharine Kaplan
U.S. Environmental Protection Agency
ENERGY STAR Appliance Program
appliances@energystar.gov

Re: Interim Document for Specification Residential Refrigerators and Freezers Draft 3,
Version 5.0—Section 4A Connected Language

Dear Ms. Kaplan:

On behalf of the Association of Home Appliance Manufacturers (AHAM), I would like to provide our comments on the ENERGY STAR Program Requirements Product Specification for Residential Refrigerators and Freezers, Eligibility Criteria, Draft 3, Version 5.0.

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.

AHAM supports 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. AHAM has comments regarding EPA's proposal to include minimum economic qualification criteria for connectivity and connected product criteria into the specification in order to qualify for the five percent allowance. As industry has devoted several years of time and efforts into thinking through smart appliance and ENERGY STAR issues, we now realize that certain criteria in the specification are unwise or at least premature.

I. Section 4A Second Paragraph—Removal of “economical”

EPA proposes in the second paragraph of the Document released on December 21, 2012, to include the requirement that manufacturers enable “economical consumer-authorized third party access to the functionalities provided for in sections 4D- 4H.” AHAM does not support the inclusion of the term and concept “economical” in the second paragraph and requests its removal. It is inappropriate for EPA to attempt to regulate the economics of smart products. Nor should EPA effectively compel manufacturers to discuss collectively economic/cost/financial issues. As AHAM has stated in its previous comments, AHAM strongly disagrees with the expansion of functionalities into the specification where specific economic or cost criteria must be met. AHAM believes market forces and individual companies should drive customer authorized third party access and other functionalities without referencing “economical” in the specification.

ENERGY STAR’s intent is not clear, and necessarily cannot be, as to how “economical” would be defined and by what entity. Should dispute resolution with third parties be required, there is no authorized agent with expertise to arbitrate, and therefore, each manufacturer must assess risk individually regarding third party access within their own business models.

Individual, not collective manufacturer assessment is necessary and required due to existing anti-trust policies of AHAM. There can be no discussion or development of consensus on economic or cost criteria of different business models that might provide customer authorized third party access among appliance manufacturers.

II. Section 4A Connected Product Criteria—Justification for Exclusion of Remote Management from the Specification

EPA proposes in Section 4E that “the product shall be capable of receiving and responding to consumer authorized remote requests, via a communication link, similar to consumer controllable functions on the product. The product is not required to respond to remote requests that would compromise performance and/or product safety as determined by the product manufacturer.” With the addition of “economical” into Draft 3 of the specification and upon further consideration, AHAM strongly disagrees with the inclusion of Section 4E—Remote Management in the specification and requests its removal. Whatever justification there eventually may be for such requirements, there is insufficient experience to impose them now on refrigerator/freezers. A more thorough vetting of legal implications, such as warranty, and other liabilities, is required. Consideration of the technical/policy/intellectual property implications of requiring as a mandate such open communications cannot be fully and rationally ascertained at this time. After there has been experience with deployment of smart appliances under ENERGY STAR, more rational judgments can be made.

Remote management technology is much different than the technologies in the other sections of the specification. There is little precedent, experience or understanding for what constitutes a normal set of remote management features and by what means and restrictions they are

employed. Section 4E relies on significant vagueness to allow for flexibility and inclusion of various approaches that may be employed given the lack of precedent. However, this lack of definition results in no definable parameters or limitations that can be tested or vetted. This results in the very real potential for significant confusion and disagreement regarding what is required to meet Section 4E.

In contrast, Sections 4G-Delay Defrost and 4H-Demand Response, have been discussed, properly vetted, and have established specific conditions. The utility industry, as well as studies such as the Pacific Northwest National Laboratory (PNNL) study, further define and establish these requirements and allow them to be specified clearly in the Specification. Furthermore, these two sections were the basis for the joint industry-advocate petition that provide a demand load asset to the electrical grid. These sections, 4G and 4H, are not as complex as remote management and have been vetted, something that cannot be achieved with section 4E.

Manufacturers need to reserve the right to scrutinize the third parties who seek to access smart appliances remotely. Manufacturers must make sure the third party's software programs do not interfere with product performance, security or safety. Companies are entitled to protect their intellectual property and economic opportunities. Third parties who do not manufacture appliances are not likely to be familiar with non-governmental safety requirements (UL) or performance standards that apply to the industry's products and are, therefore, not able to evaluate how their software will impact appliances. These third parties may range from legitimate to uninformed business enterprises to IP pirates-public or private. Manufacturers may be able to implement solutions that can reduce or alleviate the burden and necessity of verifying each solution – at the cost of predefining and limiting the scope and behaviors of third party interactions.

Without a clear and specific definition of the features that are to be provided, some third parties may argue that the manufacturer implementation is excessively restrictive, proprietary oriented in nature, or other arguments that are potentially uninformed regarding the safety and operational needs the manufacturer must maintain but nonetheless could become the subject of controversy, complaints and even possibly litigation. Without sufficient definition, these arguments, petitions, or filed actions (to ENERGY STAR) will represent an additional risk and burden to manufacturers. This is again due to the inability to define 4E in a meaningful and practical manner given the lack of field experience and the current state of the technology. Such definition cannot occur until an experiential base is developed and such a database cannot be acquired until all affected parties, including EPA, have data from a launched smart ENERGY STAR program. It must be recognized that the initial program may well require modification in the future based on these data. It is not helpful, and could be very harmful, for EPA to overreach now by imposing requirements that are ill-defined and whose implications are not well known.

III. Effective Date

EPA proposed an effective date of March 1, 2014. AHAM continues to vigorously oppose that effective date and, instead, again proposes an effective date of September 15, 2014, to align with the compliance date for DOE's revised standards.

As we have previously commented on a number of occasions, the magnitude of the change to the standards and test procedure in 2014 is the biggest it has been since energy labeling began. The work is not just on the part of manufacturers, but trade partners as well. The required change is very difficult to accomplish during the peak buying season, which is the summer months (roughly April through September, but it may vary) because of production schedules and promotions, as well as other factors. The fact that the transition will occur during this period (September 2014), only further increases the magnitude of the change.

Having an ENERGY STAR specification change just a little over six months prior to a federal standards change provides unnecessary complication and marketplace confusion in an already complex regulatory climate. ENERGY STAR generally requires certifications for a new specification to occur five or six months before the effective date, and so harmonizing with DOE's standard change on September 15, 2014, would require manufactures to comply with the new standard in the March timeframe anyway. The cumulative regulatory burden that is brought about by two federal agencies (that are supposed to be working *together*) pursuing two different effective dates for the same product only a few months apart is unnecessary and overly burdensome to manufacturers and is confusing to consumers. In addition, there is little to no benefit to consumers or the environment that will result from an effective date six months prior to the mandatory compliance date with the DOE standards.

AHAM appreciates the opportunity to submit comments on the ENERGY STAR Residential Refrigerators and Freezers Interim Document for Draft 3, Version 5.0 Specification and would be glad to further discuss these matters.

Best Regards,



Charlotte Skidmore
Director, Energy & Environmental Policy