NRDC Comments on DOE's April 22, 2011 Verification Testing in Support of Energy Star Proposal

Submitted by:

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On behalf of the Natural Resources Defense Council (NRDC) and it's more than 1.3 million members and e-activists, we respectfully submit comments on DOE's Verification Testing in Support of ENERGY STAR proposal. Verification testing programs are critical to ensure that products are performing as promised and consumers are receiving the energy and utility savings claimed by the manufacturer. **With one exception, NRDC strongly supports DOE's proposal for conducting verification testing of ENERGY STAR.** The proposal does not, however, address issues regarding data access and we recommend DOE add new language that ensures public access to the test results prior to finalizing its program.

Background:

NRDC has been a long time proponent of verification testing to determine compliance with: a) ENERGY STAR; b) DOE standards; and c) model specific claims made on FTC's Energy Guide label. We are very encouraged by the approach and comprehensiveness of DOE's proposal for testing various ENERGY STAR product categories.

Key themes of our prior input that we would like to reemphasize here include:

- Sample must be collected at retail by an independent 3rd party (e.g. not the manufacturer)
- Testing must be done by a qualified, independent 3rd party.
- Develop and publish clear rules regarding which models to test, sample size, test method, etc.

- Develop, publish and implement rules regarding the processes for evaluating test results (e.g. allowable tolerances), appealing test results, and steps the agency will take in the event non-compliance was determined.

- Where possible, the results from testing one model that demonstrate non-compliance should be used to trigger enforcement action for other identical models made by that manufacturer but sold under another model number or brand name.

- Coordinate testing and enforcement activities amongst other agencies (ENERGY STAR (EPA), DOE and FTC). This way the test results obtained by one agency can be leveraged by the other.

- DOE should make the results of verification testing publicly available.

We also want to share our experience with the ENERGY STAR lighting program for CFLs and the enforcement actions taken by EPA and DOE upon receipt of data demonstrating non-compliance. NRDC served as the Board Chair of a testing program called PEARL that collected samples of ENERGY STAR labeled CFLs from retail and tested them for compliance with the current version of ENERGY STAR. While the agency in charge often delisted the non-complying model, there were many occasions where the model was not delisted and the agency failed to provide any explanation on why delisting did not occur. In addition, none of the test results were made public. A more transparent program would make the data public and provide the reason why the agency chose not delist a specific model or family of products.

NRDC Recommendations

With the exception of the topic of data access, we believe the DOE proposal is a solid one and satisfies each of our above stated objectives. Below we provide our recommendations on data access and feedback on a few other topics:

Ensure Test Results are Made Public – A successful verification and enforcement program must ensure the results of the testing are made public. We strongly recommend DOE add to its program a section on data access. Within 60 days of receiving the test data for a product category, DOE and/or EPA should publish the following information:

a) High level summary of findings– number of models tested, % failure rate, etc., and a list of models that were determined to be out of compliance with the applicable ENERGY STAR specification.

b) Model specific data – manufacturer, model number, key product attributes (e.g. screen size, LCD or plasma; or for refrigerator – volume, top or bottom freezer, etc) and actual energy performance test results. For those models where the results are

being appealed, the results can be temporarily masked pending the completion of the investigation.

It is not sufficient to simply report pass or fail as models that "passed" may meet the ENERGY STAR level but still trigger follow-up action by FTC for under reporting energy use. Similarly, a model that failed to meet the ENERGY STAR requirements may also be out of compliance with the DOE minimum efficiency standards.

As currently outlined by DOE, delisting activities would be the responsibility of EPA. DOE has indicated that they will coordinate with EPA on determining whether a model passes or fails, and on potential retests and appeals. We support this approach provided the information in (b) above is published along with agency rational for not delisting a product in the event the test results indicate non-compliance with ENERGY STAR.

Public data creates program transparency and credibility. On the other hand, failure to make this data public prevents stakeholders and the public from being able to assess how well the program is working. Without this data, one cannot adequately determine how much testing is occurring and whether the models being tested are sufficiently representative of the market, and whether the agency is failing to delist models that are clearly out of compliance. In addition, access to this data is important to determine if the manufacturer is under reporting the model's energy use on the FTC label (eg. a scenario where a model still meets ENERGY STAR but is under reporting its energy use by a considerable amount), and/or the model is out of compliance with the DOE standards. Access to this data helps interested stakeholders track and determine whether or not DOE and FTC have followed up on test data indicating potential non-compliance with their respective programs.

As we have repeatedly commented in the past, there is nothing secret or confidential about the energy consumption of a product offered for sale, particularly one that is subject to mandatory energy standards, must report its energy performance, and/or, in the case of ENERGY STAR, is seeking entry to a public voluntary energy performance program. We find absolutely no validity in the argument that making verification data will improperly benefit passing tested models over and above untested models. The public rightfully expects that *all* models carrying the ENERGY STAR label pass the ENERGY STAR performance requirements. To the extent that DOE is concerned that manufacturers, labelers or retailers will inappropriately use information from a verification testing regime, it should create a mandatory disclaimer for any commercial use of the test data that indicates that verification testing does not imply any advantages over and above other ENERGY STAR labeled products.

Support for Proposed Sample Sizes and Determining Compliance – NRDC supports DOE's proposed samples sizes and techniques for determining compliance as outlined in section 6.4 of DOE's proposal, including DOE's usage of a 5% value for assessing whether the results of spot check testing for products certified under DOE's certification program trigger testing three additional samples.

When Multiple Samples are Collected, Obtain Samples from Multiple Locations – Section 6.4.2 contains language about the situation when three additional samples should be purchased. To help ensure the samples are random, we recommend the samples be collected from different store chains and ideally from different regions, where feasible. Otherwise the three samples collected may well be from the same date of production and most definitely from the same production facility. To the extent there are wide variations in production from the manufacturer (lack of tight QA programs, and/or use of multiple factories), buying all three samples from the same store will not capture this effect.

Add Big Selling Models to the Product Nomination Criteria – NRDC agrees with the priorities that DOE proposes to apply in determining what models to select for testing (see section 5.2). One other factor that we think should be added is models with high market share. The overall lost energy savings are dramatically increased for models that have high unit sales.

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Finally, we appreciate the significant progress DOE has made in the past two years to advance certification, compliance and enforcement of energy efficiency standards and voluntary programs. However, we note that **DOE has left open several key policy questions related to the verification testing of mandatory energy efficiency standards**. We strongly encourage DOE to quickly work to develop a robust program for independent verification testing to compliment its recently completed rule on certification requirements and enforcement testing.