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ENERGY STAR Certification Mark



1. Certification Mark & Sample

The ENERGY STAR label appears on refrigerator manufactured by Kenmore sold at Sears¹.

ENERGY STAR is an international standard for energy efficient consumer products. It is a voluntary, public-private joint program of the U.S. Environmental Protection Agency (EPA)² and the U.S. Department of Energy (DOE)³ to reduce energy use, related air pollution and greenhouse gas emissions through energy efficient products and practices.

2. Legal Status

The ENERGY STAR program was established by EPA in 1992, under the authority of the Clean Air Act Section 103(g)⁴, among others. Section 103(g) directs the Administrator to "conduct a basic engineering research and technology program to develop, evaluate, and demonstrate *non-regulatory* strategies and technologies for reducing air pollution." Additionally, it calls on the Administrator to provide opportunities for industry, public interest groups, scientists, and other interested persons to participate in strategy development to decrease pollution.

The ENERGY STAR label was first introduced to recognize energy-efficient computers. However, in 1996, EPA partnered with DOE so that the ENERGY STAR program could reach more products. Today, the label has grown to identify efficient products across more than 60 product categories. In addition, EPA has developed criteria for certifying ENERGY STAR homes, commercial businesses, and industrial plants. In 2005, Congress enacted the Energy

¹ Sears is the nation's fourth largest broadline retailer with approximately 3,900 full-line and specialty retail stores in the United States and Canada. <http://www.sears.com/>

² The U.S. Environmental Protection Agency : about EPA, <http://www.epa.gov/epahome/aboutepa.htm>.

³ The Department of Energy: About DOE, <http://www.energy.gov/about/index.htm>

⁴ 42 U.S.C. § 7403.

Policy Act. Section 131⁵ requires, among other provisions, that the Administrator of EPA and the Secretary of DOE work jointly 1) to promote ENERGY STAR compliant technologies as the preferred technologies in the marketplace for achieving energy efficiency and reducing pollution; 2) to enhance public awareness of the ENERGY STAR label; 3) to preserve the integrity of the ENERGY STAR label; 4) to regularly update ENERGY STAR products criteria; and 5) to solicit comments from interested parties prior to establishing or revising an ENERGY STAR product category, specification, or criterion.

3. Standard Setting

The EPA and DOE are in charge with setting the ENERGY STAR standards. In setting standards, the Agencies use a set framework (1) to assess the feasibility for applying the label to a product category; (2) develop performance specifications that must be met in order to earn the label; and (3) to reassess performance specifications as market conditions change.⁶ This standard setting process requires extensive market, engineering, and pollution savings research.

In addition, EPA and DOE consider how significant energy savings will be realized on a national basis; whether product energy consumption and performance can be measured and verified by testing; whether product performance will be maintained or enhanced; whether purchasers of the product will recover any cost difference within a reasonable time period; whether specifications unjustly favor any one technology; and how labeling will effectively differentiate products to purchasers.⁷

On an international level, the EPA and the DOE have made partnerships and agreements with other government agencies to promote energy efficient products and set a uniform standard. Australia, Canada, Japan, New Zealand, Switzerland, and Taiwan as well countries in the EU through their respective agencies (such as the Australian Greenhouse Office and the Energy Conservation Centre Japan) now use the Energy Star certification mark.

4. Standard Adoption

Participating in the ENERGY STAR program is voluntary. If manufacturers want to become partners of the program, they can do so by following a number of steps including joining, qualifying, labeling, and reporting, etc.⁸ If the manufacturer's product meets the EPA and DOE standards, the product can bear the Energy Star mark for consumers to see. If manufacturers of products do not want to or cannot meet the requirements of the Energy Star certification mark, they simply market their product without the Energy Star mark.

⁵ 42 U.S.C. § 15824

⁶ The Energy Star Label: A Summary of Product Labeling Objectives and Guiding Principles, http://www.energystar.gov/ia/partners/prod_development/downloads/guiding_princip.pdf. Accessed November 9, 2009.

⁷ ENERGY STAR Product Specification Development and Revision Process, http://www.energystar.gov/index.cfm?c=prod_development.prod_development_spec_rev. Accessed November 9, 2009.

⁸ Id., Accessed November 9, 2009.

5. Standard Implementation

The standard is being implemented by Kenmore, a manufacturer of home appliances such as refrigerators, microwaves, washers and dryers. Kenmore sells its products exclusively at Sears, The Great Indoors and Kmart.⁹ Many other manufacturers have adopted the standard, thus becoming an ENERGY STAR “Partner”.¹⁰

6. Conformity Assessment

ENERGY STAR conformity assessment is accomplished by manufacturer self-certification. The EPA and DOE promulgate specifications, called “program requirements”, for each type of item manufactured.¹¹ For example, in order to become an ENERGY STAR partner, a refrigerator manufacturer must comply with the ENERGY STAR criteria for refrigerators and/or freezers, which are set at a percentage below the federal maximum energy consumption standard by product class.¹² As of April 28, 2008, all refrigerators and freezers must be 20% more efficient than required by the minimum federal standard in order to meet the ENERGY STAR criteria.¹³

In order to determine energy efficiency, the manufacturer must self-test their equipment according to the DOE’s test procedure and, if the product meets these specifications, the manufacturer must submit a Qualifying Product Information form.¹⁴ The manufacturer also submits a Manufacturer Partnership Agreement and Commitment Form.¹⁵ If the forms are approved, the manufacturer becomes an ENERGY STAR partner.

Once an ENERGY STAR partner, the manufacturer must provide clear and consistent labeling of the qualified refrigerator and/or freezer.¹⁶ The ENERGY STAR label must be clearly displayed on the top/front of the product, on the manufacturer’s website and in product literature.¹⁷ In order to remain on the list of participating product manufacturers, the manufacturer must provide an annually updated list of ENERGY STAR qualifying refrigerator models.¹⁸ Additionally, the DOE states that it may, at its discretion, conduct tests on products referred to as ENERGY STAR qualified.¹⁹

⁹ Kenmore website, <http://www.kenmore.com/>. Accessed November 11, 2009.

¹⁰ ENERGY STAR partner list, http://www.energystar.gov/index.cfm?fuseaction=find_a_product. Accessed November 11, 2009.

¹¹ ENERGY STAR Manufacturer Resources, http://www.energystar.gov/index.cfm?c=manuf_res.pt_manuf. Accessed November 11, 2009.

¹² ENERGY STAR Program Requirements for Residential Refrigerators and/or Freezers, http://www.energystar.gov/ia/partners/product_specs/program_reqs/refrig_prog_req.pdf. Accessed November 11, 2009.

¹³ *Id.*

¹⁴ *Id.*; DOE Test Procedure Statement, http://www.energystar.gov/ia/partners/manuf_res/Test_Procedure_Statement.pdf. Accessed November 11, 2009.

¹⁵ ENERGY STAR Manufacturers: Join, http://www.energystar.gov/index.cfm?c=join.manuf_retail_agree. Accessed November 11, 2009.

¹⁶ ENERGY STAR Program Requirements, *supra* note 4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

7. Enforcement

EPA and DOE are in charge of enforcing the ENERGY STAR compliance for its respective product categories in which it sets standards.²⁰ Thus, EPA is responsible for enforcement of electronic product categories and heating, ventilating, and cooling equipment. While DOE is in charge of enforcement for eight other product categories, including windows, doors, dishwashers, washer/dryers, dehumidifiers, and refrigerators.

Environmental Protection Agency

EPA relies on self-certification, product verification testing, and product label utilization monitoring to ensure compliance with ENERGY STAR requirements.²¹ The EPA Office of Inspector General outlined EPA's self-certification procedure as follows:²²

“For manufacturers to participate in the ENERGY STAR program, they must enter into an ENERGY STAR Partnership Agreement. After entering into this agreement the manufacturers consent to:

- Test their products according to established specifications and guidelines.
- Provide a list (or notification) to EPA of the qualified products, certifying that these products are ENERGY STAR qualified and meet the ENERGY STAR performance specifications.
- Provide certification summary data as required per individual product specifications.
- Provide EPA with annual shipping data for all ENERGY STAR qualified products.
- Agree to put ENERGY STAR labels on qualified products only and to include ENERGY STAR literature.
- Agree to follow all rules pertaining to the application and use of ENERGY STAR labels/logos.”

In 2002, EPA began its ENERGY STAR Compliance Testing Program²³. In general, EPA selects which product to test based on popularity in the market. The most popular products are identified based on unit sales, and then targeted for testing. EPA Office of Inspector General identifies the following key components of EPA's ENERGY STAR Compliance Testing Program:

- Testing is completed by an independent lab(s) which obtain units directly from the marketplace for testing.
- [Manufacturers] whose units are selected for testing are notified prior to testing in writing. Also, they are notified of completed testing results.
- For failed testing results, the [manufacturer] has 30 days to submit additional information in support of the original certification.

²⁰ See http://www.energystar.gov/index.cfm?c=about.ab_index, accessed November 12, 2009.

²¹ *ENERGY STAR Program Can Strengthen Controls Protecting the Integrity of the Label*, The EPA Office of Inspector General, published August 1, 2007.

²² See *Id.* at 5-8.

²³ *Id.* at 7.

- If a [manufacturer] fails to adequately respond with 30 days, the test data still do not meet ENERGY STAR requirements, or if the [manufacturer] acknowledges that the product is mislabeled, only then will EPA remove the model in question from the ENERGY STAR qualified product list. EPA allows 6 months for the existing labeled ENERGY STAR products to be sold. At the end of the 6 months, retailers and wholesalers are required to cover the ENERGY STAR label on any unqualified product they still wish to sell.

ENERGY STAR is a registered trademark owned by the EPA and is therefore protected under federal trademark law.²⁴ EPA tracks the use of the ENERGY STAR logo to prevent unauthorized use or confusion to the public. The monitoring activities include monthly print advertisement and article monitoring, quarterly internet monitoring, and retail assessments. If a possible trademark infringement is identified, EPA contacts the manufacturer and informs it of the violation. In rare cases, EPA may choose to terminate the partnership agreement between itself and the manufacturer²⁵.

In a 2007 report, *ENERGY STAR Program Can Strengthen Controls Protecting the Integrity of the Label*, the EPA Office of the Inspector General found numerous flaws in EPA's enforcement of ENERGY STAR. The 2007 report found that EPA relied heavily on self-certification. Furthermore, the report pointed out that EPA lacked any quality assurance for the Federal Standards, which it depends on to set ENERGY STAR requirements, and third-party testing, which it depends on for enforcement. As a result, the report concluded, among other things, that the effectiveness of the ENERGY STAR program could not be accurately measured.

Department of Energy

DOE requires manufacturers of solid-state lighting, compact fluorescent lighting, and windows to use independent testing services to verify compliance with DOE's ENERGY STAR specifications.²⁶ However, for the other five product categories, including refrigerators, washer/dryers, dishwashers, water heaters, and room air conditioners, DOE allows manufacturers to self-certify compliance.²⁷

In a 2009 report released by the DOE Office of Inspector General entitled, *The Department's Management of the ENERGY STAR Program*, a panel of outside experts found that DOE's self-certifying enforcement policy was resulting in a number of false certifications.²⁸ For instance, a 2008 independent audit conducted on refrigerators found that some well-known refrigerators were using as much as *two* times the amount of energy allowed for by the DOE ENERGY STAR program.²⁹

To make matters worse, the 2009 DOE Inspector General report found the following major

²⁴ *Id.*

²⁵ *Id.*

²⁶ *The Department's Management of the Energy Star Program*, The US Department of Energy Office of the Inspector General, published October 2009.

²⁷ *Id.* at 1.

²⁸ *Id.* at 2.

²⁹ *Id.* at 2-3.

deficiencies in DOE's enforcement of its ENERGY STAR program:

- DOE has not developed a formal quality assurance program to help ensure that product specifications were adhered to;
- DOE has failed to effectively monitor the use of the ENERGY STAR label to ensure that only qualifying products were labeled as compliant;
- DOE has failed to formalize procedures for establishing and revising product specifications and for documenting decisions regarding those specifications;³⁰
- DOE relies solely on EPA retailer assessments to ensure compliance with the ENERGY STAR program in the marketplace, and was in a number of cases failing to take action against retailers who EPA identified as potential violators of the ENERGY STAR requirements.