



October 29, 2010

**Comments on the Proposal by the US Environmental Protection Agency to Create a
Top Tier program
Submitted by
TopTen USA**

These comments are submitted on behalf of TopTen USA. Based upon successful TopTen initiatives in European markets, TopTen USA has been established as a nonprofit organization that employs a consumer friendly web site to identify and rank the top ten most energy-efficient products in each of 10 major categories – with the number of categories to be expanded in the coming months. TopTen provides consumers with educational materials on how to buy, use and dispose of these products. We also provide information on where consumers can purchase TopTen listed products and their current price and we identify any available rebates. The TopTen USA web site is completing revision following beta testing and is now available at www.toptenusa.org. A national launch of the program will occur in early to mid November.

TopTen USA applauds the Environmental Protection Agency (EPA) for working to develop a program that identifies products that are at the highest efficiency levels. If designed well such a program could benefit consumers who desire to buy more efficient products and could complement TopTen USA's efforts to identify the very few superior products.

We offer the following recommendations to help ensure Top Tier program success:

Fix the Core Energy Star Program. Before spending large amounts of resources on a new Top Tier program, it is imperative that EPA—in conjunction with the Department of Energy—fix the problems that have been identified with respect to the core Energy Star program.¹ No one will benefit if EPA takes significant resources from Energy Star to start a new program. Consumers Union has already weighed in with this concern in its October 2010 edition of *Consumer Reports*.

It is especially important for EPA to maintain the number of products receiving the Energy Star at or near the 25% target. If, as proposed for Top Tier, it is possible for EPA to complete a review of product categories on an annual basis, it should be possible for the

¹ For example, see Inspector General, Department of Energy Audit Report, *The Department's Management of the Energy Star Program* DOE/IG-0827 (October 2009); U.S. Government Accountability Office, *Energy Star Program: Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse*, [GAO-10-470](http://www.gao.gov/products/GAO-10-470) (March 5, 2010). To their credit, both DOE and EPA are moving to fix these problems. Our concern is that a new Top Tier program not divert resources from this task.

agency to complete such an annual review for its core program. Indeed, if the goal is to maximize energy efficiency, that goal might best be achieved by tightening the specifications for Energy Star listing to cover 15% of products.

Establish Standards for Qualifying Products. Rather than performing “a case-by-case review of performance data and technology developments for each category”, we recommend that standards be established for qualifying products.

The lack of standards could create several problems including:

- Wide and potentially unfair, variation between product categories.
- Difficult (if not impossible) for manufacturers to predict whether they will qualify for the program when they redesign products.
- Considerable expansion of the Top Tier product lists.
- Difficulty explaining to the public and stakeholders the meaning of a Top Tier.
- Possibility of consumer confusion.

We strongly urge that EPA establish a performance level reflective of the top 5% of product models. This should be a general guideline, but there may be exceptions to this rule, just as there are a few exceptions to the top 25% used to identify current Energy Star products.

Creative Selection of Product Categories. Given that this is a new program, EPA should seize the opportunity to be more creative in category selection. One idea worthy of consideration is to focus on new home construction. EPA could establish a Top Tier of new homes by identifying those that are significantly more efficient than Energy Star, such as those that qualify for the federal new home tax credit and are at least 50 percent more energy efficient than homes built to the 2004 International Residential Code (IRC). Such a broader view might result in greater energy savings rather than focusing on only six consumer product categories.

Coordination with Other Programs. The proposed program should take advantage of, and coordinate with other existing private and governmental programs such as the Super-efficient Equipment and Appliance Deployment (SEAD) Initiative, CEE, EPEAT and TopTen USA. By avoiding duplication and leveraging the efforts of other programs, a Top Tier could be more effective.

Reduce Potential for Confusion. Energy Star is proposing to use the Energy Star name, logo, brand and website to market this program. It is also proposing to provide point-of-sale materials to identify and promote Top Tier products using the Energy Star logo. We are concerned that consumers might have difficulty distinguishing standard Energy Star products from those that meet the more stringent Top Tier criteria. Will consumers

incorrectly conclude that any product with the Energy Star label is also a “most efficient” Top Tier product?

Given the potential risks associated with any disruption of the Energy Star brand, as well as risks for consumer confusion, we recommend that the agency conduct further research to assess understand and mitigate these risks.

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Top Ten USA is supportive of a Top Tier program and provides these comments to help ensure program success. We believe an Energy Star Top Tier program, coordinated with TopTen and other market-based efficient programs, can enhance energy efficiency efforts across the nation.

Appendix A
A Brief Description of TopTen USA
www.toptenusa.org

WHO WE ARE

- A nonprofit organization dedicated to identifying and publicizing the most energy efficient products on the market.
- An organization with a diverse board of directors including representatives from utilities, national environmental organizations, and national and regional energy efficiency groups.
- A resource for consumers, who can find all the information they need—from product rankings to reviews to prices to rebate information—on our website.
- A barometer for manufacturers and retailers, who can see how their products stack up to their competitors’.
- A tool for utilities and governments, who can rely on us to help them meet their energy-use requirements.
- A partner for the many NGOs who wish to limit excessive energy use and its negative impact on the world around us.
- Part of an international alliance of TopTen organizations, each working toward the same mission in their respective countries.

WHAT WE DO

- Identify and rank the top ten most energy-efficient products in each of 10 major categories. The number of categories will grow over time. We intend to cover the full range of energy consuming consumer products.
- Focus primarily on energy-efficiency, but also take environmental, health, and safety concerns into consideration when applicable.
- Rely on the best data available for each product category, including tests and analysis conducted by the government and independent institutions.
- Set criteria and determine rankings independently of any manufacturer, industry, or government influence or funding.

- Go beyond the rankings to provide useful information including product reviews, pricing, retailers, and rebate information, all in one place.
- Promote emerging technologies in cooperation with other market actors

WHY WE DO IT

- To help consumers save money by making energy-efficiency a key factor in their purchasing decisions.
- To encourage manufacturer innovation by building demand in the market for increasingly energy-efficient products.
- To reduce our country's current vulnerability to energy-shortage crises.
- To recognize leaders in the race for energy-efficiency, and to encourage newcomers to enter the competition.
- For the massive trickle-down effect of energy conservation, which impacts issues as diverse as climate change, environmental pollution, national security, and electricity bills.