# DISCUSSION DRAFT, ENERGY STAR REFORM ACT OF 2017 AND H.R. 3477, CEILING FAN ENERGY CONSERVATION HARMONIZATION ACT

## HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY

OF THE

## COMMITTEE ON ENERGY AND COMMERCE
## HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

NOVEMBER 7, 2017

**Serial No. 115–74**

Printed for the use of the Committee on Energy and Commerce
*energycommerce.house.gov*

U.S. GOVERNMENT PUBLISHING OFFICE
28–284 WASHINGTON : 2019

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# CONTENTS

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**TUESDAY, NOVEMBER 7, 2017**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2123 Rayburn House Office Building, Hon. Pete Olson (vice chairman of the subcommittee) presiding.

Members present: Representatives Olson, Barton, Shimkus, Murphy, Latta, Harper, McKinley, Griffith, Johnson, Long, Bucshon, Flores, Mullin, Cramer, Walberg, Walden (ex officio), Rush, McNerney, Peters, Green, Castor, Sarbanes, Welch, Tonko, Loebsack, Schrader, Kennedy, Butterfield, and Pallone (ex officio).

Staff present: Ray Baum, Staff Director; Allie Bury, Legislative Clerk, Energy/Environment; Kelly Collins, Staff Assistant; Zachary Dareshori, Staff Assistant; Wyatt Ellertson, Research Associate, Energy/Environment; Adam Fromm, Director of Outreach and Coalitions; Jordan Haverly, Policy Coordinator, Environment; A.T. Johnston, Senior Policy Advisor, Energy; Ben Lieberman, Senior Counsel, Energy; Mary Martin, Deputy Chief Counsel, Energy & Environment; Alex Miller, Video Production Aide and Press Assistant; Brandon Mooney, Deputy Chief Energy Advisor; Annelise Rickert, Counsel, Energy; Dan Schneider, Press Secretary; Peter Spencer, Professional Staff Member, Energy; Madeline Vey, Policy Coordinator, Digital Commerce and Consumer Protection; Hamlin Wade, Special Advisor, External Affairs; Jeff Carroll, Minority Staff Director; Caitlin Haberman, Minority Professional Staff Member; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; John Marshall, Minority Policy Coordinator; Alexander Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief Counsel; Tuley Wright, Minority Energy and Environment Policy Advisor; and C.J. Young, Minority Press Secretary.

## OPENING STATEMENT OF HON. PETE OLSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. OLSON. Good morning.

The Subcommittee on Energy will now come to order. The chair now recognizes himself for 5 minutes for an opening statement.

When the Trump administration proposed to zero out the Energy Star program earlier this year, it got people talking. Many manufacturers said Energy Star is worth saving but that there is room for improvement.

This is a discussion draft. I repeat, discussion draft, and offers possible solutions—and I repeat, possible—possible solutions and reforms.

It would make the DOE the lead agency for Energy Star while requiring them to consult with the EPA. Today, each administration can choose whether EPA or DOE runs the show. This is an energy program, which is why some want the Department of Energy in the driver's seat.

This draft also has liability protections like what's in a bill by my friends Bob Latta from Ohio and Peter Welch from Vermont. Energy Star has its own penalties for those who break the rules. We don't need more lawyers involved on top of that. And I say that as a member of the Texas Bar and active with a UT law degree on my wall.

This draft also creates more chances for industry input in the program. I look forward to hearing your thoughts about any and all sections.

One other point—last Friday, our Democratic colleagues sent a letter asking to delay this hearing because they wanted a government panel. You should know that staff tried but couldn't get the appropriate witnesses. We need to have a high level panel with live bodies confirmed by the Senate. Our friends there have to move forward.

But both EPA and DOE have submitted statements and comments and will respond to any questions for the record that they get. And we will remind them that they need to be prompt with their answers.

At this point, I would like to give the balance of my time to Mr. Latta, who has been a leader on these issues for years.

[The prepared statement of Mr. Olson follows:]

## PREPARED STATEMENT OF HON. PETE OLSON

When the Trump administration proposed to zero out the Energy Star program earlier this year, it got people talking. Many manufacturers said Energy Star is worth saving, but that there is room for improvement.

This discussion draft offers several possible reforms.

It would make DOE the lead agency for Energy Star, while giving them the power to bring EPA in. Today, each administration can choose whether EPA or DOE runs the show. This is an energy program, which is why some want DOE in the driver's seat.

The draft also has liability protections like what's in a bill by my friends Rep. Latta and Welch. Energy Star has its own penalties for those who break the rules—we don't need to get more lawyers involved on top of that. And I say that as someone with a UT Law degree on my wall.

The draft also creates more chances for industry input in the program, among other things. I look forward to hearing thoughts about any and all sections.

One other point. Last Friday, our Democratic colleagues sent a letter asking to delay this hearing because they wanted a government panel. I'm told that staff tried but couldn't get the right witnesses. I think we need a few more live bodies confirmed by our friends in the Senate.

BUT, both EPA and DOE have submitted statements and will respond to any questions for the record they get. We will remind them that they need to be prompt with the answers.

At this point I would like to yield my time to Mr. Latta who has been a leader on these issues for years.

Mr. LATTA. Well, thanks very much, Mr. Chairman, and thank you very much for yielding, and to our panel of witnesses today, thanks very much for being here. We really appreciate it for this discussion that we are going to have today.

Energy Star program has been a win-win for consumers and manufacturers over the past 25 years. This program has proven to be a successful tool in advancing the development and use of efficient energy technologies. It has also promoted economic expansion and job growth for participating manufacturers across the nation including many across my home State of Ohio.

This hearing today is a starting point for reforming Energy Star program. We have heard from stakeholders that reforms are needed to Energy Star and that this draft is an opportunity to discuss those ideas.

I want today to be a step in the process toward building a strong bill that shows support for this program while making the necessary changes that we need.

I am looking forward to the testimony. I hope that the engagement of these issues will not stop after today's hearing. We need to hear from all the stakeholders about reform ideas so that we can move this package forward. I have an open-door policy and I hope that anyone who is interested will share their thoughts, concerns, and suggestions with me.

One provision in the draft directly addresses a recent trend that has led to a chilled participation in the program. This language protects manufacturers that have fallen out of compliance if they have complied with all corrective measures and penalties from litigation related to noncompliance. The draft also moves the primary responsibility of the program to the Department of Energy since the heart of this program is helping consumers make energy-efficient choices.

Additionally, we will look at opportunities for more transparency and public engagement in the standard-setting process. The Energy Star program is widely recognized by consumers and has seen major investments by the manufacturing community over the past two decades.

The updates we are considering today are important for ensuring that this program remains strong. I want to again thank the committee for holding today's hearing and I also look forward to hearing from our witnesses, and I yield back.

Thanks, Mr. Chairman.

Mr. OLSON. Thank you.

Now the chair calls upon a man who's very happy that my Houston Astros took the place of his Chicago Cubs as the World Series champs, the subcommittee ranking member, Mr. Rush, for 5 minutes for an opening statement.

**OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. Mr. Chairman, I have never been introduced like that before and I am stunned with that introduction. But thank you anyway, Mr. Chairman.

Mr. Chairman, as you know, Ranking Member Pallone and myself, we sent a letter to you and Chairman Walden on Friday asking that this hearing be postponed until representatives from the EPA and from the DOE were made available to testify before this subcommittee.

Mr. Chairman, it is highly unusually and wholly unacceptable that we are now in the month of November and the administration witnesses have been allowed to repeatedly thumb their noses at requests made by this subcommittee to get them to come here and to testify before the representatives of the American people.

Mr. Chairman, I am very deeply concerned and disturbed that this subcommittee seems to be completely feckless in persuading the administrative officials to provide testimony on pending legislation and to engage members in person as has been the tradition of this subcommittee for as long as I can remember and for as long as I have been on this subcommittee. At some point very soon, Mr. Chairman, I would hope that we would use all the power available to us to convince representatives of this administration to answer our call when they receive an invitation from this subcommittee to come before us.

Mr. Chairman, I think it does not do us well for us to continue to accept these refusals to come before this subcommittee, to continually accept this restraint and disregard for this subcommittee.

And Mr. Chairman, to me it's the epitome, rather, of foolhardiness for us to continually give government officials from this administration namby-pamby excuses for not coming here before this subcommittee.

Mr. Chairman, I can only imagine the howls and the growls and the threats that we would have heard from your side of the aisle if former EPA administrators, Gina McCarthy or Lisa Jackson, would have simply refused to even show up in person or even send a representative in their place to answer members' questions.

Mr. Chairman, I think it is time to bring this kind of disrespect to a screeching halt and I hope that you and the Republican members of this subcommittee will be as outraged at this inaction and this disrespect from the administration. Show up before us and let's have some real discussion about politics.

Mr. Chairman, for these two bills before us, I support H.R. 3477, the Ceiling Fan Energy and Conservation Harmonization Act, and I strongly oppose the Energy Star Reform Act of 2017.

Mr. Chairman, I am going to yield right now the balance of my time to the gentleman from Vermont.

Mr. WELCH. Thank you very much, Mr. Rush.

This Energy Star draft is a step, and I appreciate the intent of the drafters. Energy Star has had 25 years of a fantastic success.

It has done a lot since 1992 on a voluntary program, saving consumers and businesses $430 billion on their utility bills and reducing carbon emissions by 3 billion metric tons, and I appreciate the work of Mr. Walden, Mr. Upton, and Mr. Latta, who I have worked with very, very closely in putting this draft out there.

I appreciate the effort of Mr. Latta to maintain the development of energy efficiency appliances through Energy Star by preventing the need for class action, something he and I worked on.

That said, here's the concerns I have about proposed changes in the current draft that I hope we can address. I think moving the program from EPA to DOE is a significant issue, instituting the Administrative Procedure Act standards and allowing for self-certification of certain products. All of these, in my view, could be detrimental to the continued effectiveness of this program.

So I look forward to working with my colleagues. This is a bipartisan effort and I thank the authors of the draft legislation for getting us moving.

Thank you. I yield back.

Mr. OLSON. Gentleman yields back.

The chair, responding to the ranking member's concerns about the people ignoring this committee, I remind my good friend it took us 10 months—10 months to have our first cabinet secretary, Rick Perry, speak before this committee.

The problem about this committee, it's a slow confirmation process in the Senate. We tried to get witnesses. We tried. We tried. But there is none available that have the stature we need to do our job.

And so we're going forward. With that, I yield to the chairman of the full committee, Mr. Walden, for 5 minutes' opening statement.

**OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON**

Mr. WALDEN. I thank the gentleman and appreciate his comments. That is what we face. We share the frustration the minority has expressed today about the inability to have the administration's people confirmed by Senate and in place so we would have somebody that could give us the administration's perspective on these matters of legislation.

Our committee's energy focus is not limited to energy production and delivery. As you all know, we are also interested in policies that promote energy efficiency. Doing more with less is always a win for consumers, for manufacturers, for jobs, the environment, and for the economy overall.

H.R. 3477, the Ceiling Fan Energy Conservation Harmonization Act, authored by my good friend from North Carolina, Mr. Hudson, is one of the two bills that we will examine today. This legislation would align the compliance date of the next efficiency standard for ceiling fans with the compliance date for ceiling fan lights so the manufacturers can deal with both at the same time. What a concept. Amazing we have to pass legislation to fix something like this.

Shifting gears, I believe the Energy Star program is a nice complement to the mandatory federal energy efficiency standards for many energy-using products in that it helps consumers identify those models that go above and beyond the minimum standards. I know I look at that and my wife does when we buy different appliances and things. It's a guide. Surveys show that consumers are aware of the Energy Star label, that many of them look for it when making their purchasing decisions. In addition to appliances, Energy Star also helps building owners and renters save on energy.

The Energy Star program received a great deal of attention earlier this year when the administration's FY 2018 budget proposed to zero out the program. I certainly disagreed with this approach but I do believe the program could be improved upon and now is a great time to kick off that dialogue. Today's hearing will focus on our discussion draft of Energy Star reforms. Keep in mind this is just a draft. We welcome constructive criticisms of what it contains as well as suggestions for things that we should add onto it.

One of the quirks of the Energy Star program is that it has no permanent lead agency. Each new administration can decide how to divide responsibilities between the Department of Energy and the Environment Protection Administration, or agency. And in 2009, the Obama administration shifted the lead to EPA. In my mind, Energy Star is fundamentally an energy program and belongs at the Department of Energy. I understand that many participants in the program are happy with it being at EPA now. The discussion draft proposes to make DOE the lead agency while still giving EPA an important role. And, again, I stress that this is just a discussion draft and we welcome all comments on how the program should be structured.

As I mentioned, Energy Star is a well-functioning program overall but there are areas for improvement. The discussion draft addresses some of these such as protections against unhelpful class action litigation as well as assurances that companies have a chance to comment on major actions under the program. It also has provisions to help safeguard consumer choice.

I would also like to note that thoughtful legislating often takes time. This is the first of what I am sure will be several hearings and markups on legislation. Today's hearing is focused on a discussion draft and has yet to be formally introduced. I am looking forward to receiving feedback again from all the stakeholders including EPA and DOE as we continue to move through the legislative process.

As we discuss potential changes to the program we can't lose sight that consumers are the reason for the Energy Star and that the focus should always be on what is best for the consumer. Any ideas that improve the process by which consumers get the information they can use to save on their energy bills is something we would like to hear about. So I thank the witnesses for participating in this hearing. I look forward to your testimony.

With that, Mr. Chairman, I yield back the balance of my time.

[The prepared statement of Mr. Walden follows:]

## PREPARED STATEMENT OF HON. GREG WALDEN

Our committee's energy focus is not limited to energy production and delivery—we are also very interested in policies that promote energy efficiency. Doing more with less is always a win for consumers, for manufacturers, for jobs, the environment, and for the economy overall.

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standards. Surveys show that consumers are aware of the Energy Star label and that many of them look for it when making their purchasing decisions. In addition to appliances, Energy Star also helps building owners and renters save on energy.

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One of the quirks with the Energy Star program is that it has no permanent lead agency. Each new administration can decide how to divide responsibilities between DOE and EPA, and in 2009 the Obama administration shifted the lead to EPA. In my mind, Energy Star is fundamentally an energy program and belongs at DOE, but I understand that many participants in the program are happy with EPA. The discussion draft proposes to make DOE the lead agency while still giving EPA an important role, but again I stress that this is just a discussion draft and I welcome all comments on how the program should be structured.

As I mentioned, Energy Star is a well-functioning program overall, but there are areas for improvement. The discussion draft addresses some of these, such as protections against unhelpful class action litigation as well as assurances that companies have a chance to comment on major actions under the program. It also has provisions to that help safeguard consumer choice.

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As we discuss potential changes to the program, we cannot lose sight that consumers are the reason for Energy Star and that the focus should always be on them. Any idea that improves the process by which consumers get the information they can use to save on their energy bills is something we would like to hear about.

I thank the witnesses for their participation in this hearing.

[H.R. 3477 follows:]

115TH CONGRESS
1ST SESSION

# H. R. 3477

To deem the compliance date for amended energy conservation standards for ceiling fan light kits to be January 21, 2020.

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IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2017

Mr. HUDSON (for himself, Mr. BUTTERFIELD, Mr. CARTER of Georgia, and Mr. KRISHNAMOORTHI) introduced the following bill; which was referred to the Committee on Energy and Commerce

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# A BILL

To deem the compliance date for amended energy conservation standards for ceiling fan light kits to be January 21, 2020.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Ceiling Fan Energy Conservation Harmonization Act".

**SEC. 2. COMPLIANCE DATE FOR AMENDED ENERGY CONSERVATION STANDARDS FOR CEILING FAN LIGHT KITS.**

(a) IN GENERAL.—The compliance date for the amended energy conservation standards established for ceiling fan light kits in the final rule entitled "Energy Conservation Program: Energy Conservation Standards for Ceiling Fan Light Kits" published at 81 Fed. Reg. 580 (January 6, 2016) is deemed to be January 21, 2020.

(b) CONFORMING CHANGES.—Not later than 60 days after the date of enactment of this Act, the Secretary of Energy shall make such technical and conforming changes to any regulation, guidance document, or procedure as may be necessary to implement subsection (a).

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[The Energy Star Reform Act of 2017 follows:]
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(Original Signature of Member)

115TH CONGRESS
1ST SESSION

# H. R. _____

To amend the Energy Policy and Conservation Act to provide for limitation on warranty and revision of certification requirements under the Energy Star program, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

M__. _____ introduced the following bill; which was referred to the Committee on _____

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# A BILL

To amend the Energy Policy and Conservation Act to provide for limitation on warranty and revision of certification requirements under the Energy Star program, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Energy Star Reform Act of 2017".

**SEC. 2. ENERGY STAR PROGRAM.**

Section 324A of the Energy Policy and Conservation Act (42 U.S.C. 6294a) is amended—

(1) in subsection (a), by inserting "to be known as the Energy Star program" after "voluntary program";

(2) in subsection (b), by striking "divided between the Department of Energy and the Environmental Protection Agency in accordance with the terms of applicable agreements between those agencies" and inserting "held by the Department of Energy and may be delegated to the Environmental Protection Agency, as determined appropriate by the Secretary";

(3) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking "Administrator and the Secretary" and inserting "Secretary, in consultation with the Administrator,";

(B) by amending paragraph (5) to read as follows:

"(5) to the extent practicable, establish Energy Star product categories, specifications, and criteria, as applicable, for products of all available sizes, capacities, and features; and";

(C) by striking paragraph (6) and redesignating paragraph (7) as paragraph (6); and

(D) in paragraph (6) (as so redesignated), by striking "(which shall be 270 days, unless the Agency or Department specifies otherwise)" and inserting "(which shall be not less than 270 days)"; and

(4) by adding at the end the following:

"(e) PROCEDURE.—After the date of enactment of this subsection, the Secretary, in consultation with the Administrator, shall establish or revise, by rule in accordance with section 553 of title 5, United States Code, any Energy Star—

"(1) product category, specification, or criterion;

"(2) certification or verification requirement; and

"(3) general program operating principle.

"(f) NO WARRANTY.—

"(1) IN GENERAL.—Any disclosure relating to participation of a product in the Energy Star program shall not create an express or implied warranty, or give rise to any private claims or rights of action under State or Federal law relating to the

disqualification of that product from the Energy Star program, if—

"(A) the product—

"(i) has been certified by a third-party certification body recognized by the Energy Star program; or

"(ii) is exempt from third-party certification pursuant to subsection (g);

"(B) the Secretary, in consultation with the Administrator, has approved corrective measures, including a determination of whether or not consumer compensation is appropriate; and

"(C) the responsible party has fully complied with all approved corrective measures.

"(2) STATUTORY CONSTRUCTION.—Nothing in this subsection shall be construed to require the Secretary or the Administrator to modify any procedure or take any other action.

"(g) THIRD-PARTY CERTIFICATION.—

"(1) IN GENERAL.—Subject to paragraph (2), not later than 180 days after the date of enactment of this subsection, the Secretary, in consultation with the Administrator, shall revise the certification requirements for the listing of consumer, home, and

office electronic products under the Energy Star program for program partners that have complied with all requirements of the Energy Star program for a period of at least 18 months.

"(2) ADMINISTRATION.—The revised certification requirements under paragraph (1) for the listing of products described in such paragraph under the Energy Star program shall provide that the Secretary—

"(A) shall, except as provided in paragraph (4), exempt program partners described in paragraph (1) from third-party certification requirements; and

"(B) may require such program partners to submit test data and other product information to facilitate product listing and performance verification by the Secretary, in consultation with the Administrator, for a sample of such products.

"(3) THIRD PARTIES.—Nothing in this subsection shall be construed to prevent the Secretary or the Administrator from using third parties in the course of the administration of the Energy Star program.

"(4) LIMITATION ON APPLICATION.—

"(A) TERMINATION OF EXEMPTION.—Subject to subparagraph (B), if the Secretary, in consultation with the Administrator, finds that a program partner exempted from third-party certification requirements under paragraph (2) has violated any requirement of the Energy Star program with respect to 2 or more separate products listed under the Energy Star program during a 2-year period, such exemption shall no longer apply to the program partner.

"(B) RESUMPTION OF EXEMPTION.—If the Secretary, in consultation with the Administrator, finds that a program partner to which an exemption no longer applies pursuant to subparagraph (A) has complied with all Energy Star program requirements for a period of at least 3 years, the application of the exemption to the program partner shall resume.".

Mr. OLSON. The chairman yields back.

The chair now calls upon the ranking member of the full committee, Mr. Pallone, for 5 minutes.

**OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY**

Mr. PALLONE. Thank you, Mr. Chairman.

Today's hearing will look at two pieces of legislation relating to energy efficiency, a very troubling discussion draft entitled the Energy Star Reform Act of 2017 and another bill, H.R. 3477, the Ceiling Fan Energy Conservation Harmonization Act, that seems to have no opposition.

But before I discuss the legislation, I must say that it's totally unacceptable to have a legislative hearing on a bill that will make major changes to the Energy Star program without witnesses from the Environmental Protection Agency and the Department of Energy.

Unfortunately, the Trump administration's blatant refusal to participate in our committee's legislative process has been a common theme since President Trump took office in January.

It is now November and we are expected to believe that there is not a single person at EPA who can discuss the impact of a bill that completely moves the Energy Star program to DOE.

I have looked at the committee records and both the Obama and Bush administrations were able to get EPA witnesses including the administrator up here within 3 months of taking office.

It has been almost 10 months now and this committee has yet to have a single EPA witness before us and that is simply unacceptable. If the administration's absence is due to a scheduling conflict then today's hearing should have been postponed. But if they're just refusing to appear before our committee to discuss any legislative proposal then we should not accept that. On Friday, Ranking Member Rush and I asked that this hearing be postponed until we could have both EPA and DOE before us. Clearly, that did not happen.

But I would hope that committee Republicans would join us in saying enough is enough. The days of the administration hiding are over. It is time that they appeared before us so that we can hear their thoughts on the legislation that we are considering.

Now let me move to one of the bills before us. I have serious concerns with the Energy Star Reform Act of 2017 discussion draft, which makes several significant changes to the Energy Star program, and I have one question. What problem are we trying to solve with this proposal? The Energy Star program is extremely successful, reducing energy consumption and saving consumers money. According to EPA, in 2014 alone this completely voluntary program saved consumers $34 billion on their utility bills while stopping the release of 300 million metric tons of greenhouse gasses into the atmosphere. This program is a win-win for consumers and the environment and yet this bill is proposing major changes including taking the program out of EPA and moving it to DOE.

Energy Star was originally established at EPA and the program was codified into law with EPA as the co-lead agency in the Energy

Policy Act of 2005, which was produced by a Republican Congress and president. It remains an extremely effective and popular volunteer program so, again, why the need for change.

I have yet to hear a credible argument from anyone as to why this is necessary. The discussion draft also requires that product certifications and other program specifications be done using the administrative procedure act process which would require every product certification be published in the Federal Register and be subject to public notice and comment. And I worry that this will make the program less nimble and harm both consumers and companies by opening the process to new needless litigation from companies who otherwise couldn't meet Energy Star standards.

Two other provisions in the draft would harm consumers who purchase products under this popular program. The no warranty subsection would create a liability shield, blocking consumers from recovering costs when the Energy Star labeled product they bought turns out to be mislabeled and doesn't achieve the energy savings promised. And another provision would allow companies to once again deem their products to be energy efficient with little to no outside verification of those claims. GAO warned us back in 2010 that the Energy Star program was vulnerable to waste, fraud, and abuse due to its self-certification policy.

So EPA implemented reforms including a third party certification program to ensure products with the Energy Star label actually save energy. Rolling back this critical reform would endanger the long-term viability of the Energy Star program. It is particularly reckless when combined with the liability shield because it would leave consumers with no outside verification of manufacturer claims or removing a critical avenue for consumers to make whole if the manufacturer's claims prove to be wrong.

So, again, Energy Star is a program that enjoys broad support from American consumers, manufacturers, and efficiency advocates. It is a voluntary program and companies can choose not to participate. The changes in this draft would undermine the integrity of the Energy Star label, Incentivize companies to cheat the system, and allow bad actors who lie about the efficiency of their products to get off scot free. In all these scenarios, consumers are left paying the price for the legislative mistakes proposed in this draft.

And I yield back. Thank you, Mr. Chairman.

Mr. OLSON. Gentleman yields back.

We have now concluded with member opening statements. Chair would like to remind all members that pursuant to the committee rules, all members' opening statements will be made part of the record. And we want to thank all the witnesses for being here on this cold day and taking the time to testify before this subcommittee.

Today's witnesses will have the opportunity to give opening statements followed by random questions from members. These statements are limited to 5 minutes. You will have a green light. At one minute left you'll have a yellow light and at 5 minutes you'll have the red light.

Our witness panel today includes, first of all, Mr. Joseph M. McGuire, the President and CEO of the Association of Home Appliance Manufacturers.

You have 5 minutes, Mr. McGuire. Hit the bottom of the microphone there.

**STATEMENTS OF JOSEPH MCGUIRE, PRESIDENT AND CEO, ASSOCIATION OF HOME APPLIANCE MANUFACTURERS; KATERI CALLAHAN, PRESIDENT, ALLIANCE TO SAVE ENERGY; GREG MERRITT, VICE PRESIDENT, MARKETING AND PUBLIC AFFAIRS, CREE; CHRISTOPHER DREW, EXECUTIVE VICE PRESIDENT, CHIEF MARKETING AND STRATEGY OFFICER, AIR-CONDITIONING, HEATING AND REFRIGERATION INSTITUTE; DOUGLAS JOHNSON, VICE PRESIDENT, TECHNOLOGY POLICY, CONSUMER TECHNOLOGY ASSOCIATION**

**STATEMENT OF JOSEPH MCGUIRE**

Mr. MCGUIRE. Thank you for the opportunity to discuss the future of Energy Star.

The Association of Home Appliance Manufacturers represents the producers of the vast majority of home appliances purchased by U.S. consumers. Our members are strong supporters of the Energy Star program. AHAM has significant experience with the Energy Star program, having worked closely with EPA and DOE since the program's inception for home appliances in 1996.

AHAM is an Energy Star verification testing body approved by both agencies. Because the Energy Star brand is known to more than 80 percent of consumers nationwide, AHAM strongly supports maintenance of the program within the federal government. This program should not be privatized or eliminated. The program should be adequately funded. But we strongly believe the program should be improved in recognition of its significant role in the marketplace.

Energy efficiency gains across core major appliance categories have been dramatic over the past decades. A new clothes washer today uses 70 percent less energy than it did in 1990 and less than half the water. Energy Star has played a critical role in educating consumers on the benefits of energy efficiency and it had become so ubiquitous that it is now referenced in building codes. It is part of utility rebates, federal procurement, and retail buyer specifications. Thus, the voluntary program has effectively become mandatory in the marketplace. As such, manufacturers must make significant investment decisions to qualify products for the program just as they must invest products to comply with mandatory appliance efficiency standards.

The Energy Star program for home appliances originally was administered by DOE so that critical coordination with appliance standards and test procedures could occur. However, in 2009, the program was transferred from DOE to EPA. The lack of expertise within EPA has led to complications with verification testing requirements and EPA officials began to broaden the scope of the program into non-energy related product requirements such as product performance and warranty terms. This expansion has added consideration confusion for manufacturers and diminishes

the brand. Energy Star has drifted from its original mission and operates at many levels as it if were still an experimental program.

Within 25 years from its creation, the Energy Star program is a full matured de facto mandatory federal program that needs additional statutory authorization to keep it focused and to create long-term stability and certainty. It must maintain its focus on its intended and sole purpose—energy efficiency. To address these concerns, AHAM proposes the following.

First, move the Energy Star for home appliances from EPA back to DOE and provide funding for a reform program. I believe Secretary Perry was receptive to this suggestion when he appeared before this committee recently. While Energy Star can be transferred back to DOE administratively, and we support that, statutory requirement to house the program at DOE will keep it from becoming a ping pong ball. We respectfully suggest that the draft bill indicate that authority over the Energy Star program be held by DOE and except for home appliances covered under EPCA may be delegated to EPA as determined by the secretary.

Secondly, we support the bill's revision to increase transparency and long-term certainty of the program by establishing administrative procedure process requirements. There should be a formal and transparent process for changing and developing Energy Star specifications for all stakeholders. The APA will not slow down the Energy Star processes.

Finally, we support the draft bill's provision to stop Energy Star class action lawsuits that undercut fair enforcement by the federal government. Because Energy Star has its own remedies, allowing class actions undermines the program and fosters a system of double jeopardy for Energy Star partners. Congress should make clear it does not intend this program to be used for that purpose. Our members must earn the trust of consumers each and every day, as our products are so vital to their well-being.

We look forward to working with the committee to improve the Energy Star processes and make the program stronger to deliver reliable energy efficiency tools to consumers purchasing home appliances.

On behalf of our industry, I'd like to thank the subcommittee for its work on this issue including this draft bill and I respectfully request that my written statement be included as part of the hearing record.

I would be pleased to answer any questions you may have.

[The prepared statement of Mr. McGuire follows:]


*Leadership ▸ Knowledge ▸ Innovation*

**Testimony**

**Joseph M. McGuire**
**President and Chief Executive Officer**
**Association of Home Appliance Manufacturers**

**Before the**
**Energy and Commerce Subcommittee on Energy and Power**
**U.S. House of Representatives**

# Discussion Draft, Energy Star Reform Act of 2017

**November 7, 2017**

Chairman Upton, Ranking Member Rush and members of the Committee, good morning and thank you for the opportunity to testify on behalf of the Association of Home Appliance Manufacturers (AHAM) regarding the ENERGY STAR program. We appreciate the Committee holding this important hearing and the work that went into developing the DRAFT ENERGY STAR reform bill. As President and CEO of AHAM, I am pleased to appear before the Committee to discuss ENERGY STAR, a program that is vital to our member companies, best housed within the federal government, and in need of reform to create stability, certainty, transparency, and to further the goals of advancing energy efficiency.

Importantly, reforms are needed to ensure the ENERGY STAR program continues to deliver on the energy saving mission Congress intended and does not stray from this successful mission into other experimental areas that are programmatic and ideologically driven. Specifically, AHAM requests that Congress do the following:

1. Move ENERGY STAR for home appliances from EPA back to DOE where the program originated, thus allowing full and seamless integration with the appliance standards rulemaking process, with funding for a reformed and right-sized program;
2. Apply the Administrative Procedure Act due process requirements to ENERGY STAR; and
3. Preempt ENERGY STAR class action lawsuits.

**Reform is Needed for a Continued ENERGY STAR Program**

Energy efficiency gains across core major appliance categories have been dramatic, and the creation of the ENERGY STAR program in the 1990s has played a critical role in educating consumers on the benefits of energy efficiency. The success of this program is evident in that this once truly voluntary program is now referenced in building codes, rebate requirements, federal procurement, and retailer buying specifications. For example, many retailers require in some categories that all or nearly all models be ENERGY STAR in order to obtain floor space for models. And because the Federal Acquisition Regulations mandate ENERGY STAR products, government purchasers can only consider ENERGY STAR products—companies have been excluded from government bids because of the mandate to procure ENERGY STAR products. Thus, the program has effectively become mandatory in the marketplace. Manufacturers must make significant investment decisions to qualify products for the program just as they must invest for products to comply with mandatory appliance efficiency standards authorized by the Energy Policy and Conservation Act (EPCA) and administered and enforced by the U.S. Department of Energy (DOE).

The ENERGY STAR program for home appliances was, therefore, located within the DOE appliance standards program for critical coordination with the development of appliance standards and test procedures. However, in 2009, the ENERGY STAR appliance program was transferred from DOE to the U.S. Environmental Protection Agency (EPA). Unfortunately, the lack of expertise within EPA led to complications with verification testing requirements and officials within EPA began to broaden the scope of the program beyond energy efficiency and

into product performance and warranties. This expansion threatens to diminish the ENERGY STAR brand.

The transfer from DOE to EPA was done administratively and administrative action could, likewise, reverse the transfer. AHAM supports the transfer back to DOE, but we also support legislation that would permanently house the program for appliances at DOE where it belongs. We support the DRAFT bill's provisions that would improve transparency of and establish consistent procedures for the ENERGY STAR program. The DRAFT bill also addresses the parasitical class action lawsuits regarding disqualified products that are a disincentive to and punishment for participation in the 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 improving a person's lifestyle and health, and saving people time. Through its technology, employees, and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances are also a success story in terms of energy efficiency and environmental protection. New appliances often represent the most cost effective choice a consumer can make to reduce home energy use and costs.

AHAM and its members have been major stakeholders in the ENERGY STAR program since its commencement. When most people think of the blue ENERGY STAR label, they probably think of refrigerators or clothes washers or other home appliances under AHAM's scope. We have engaged with ENERGY STAR in all its forms and through its various reorganizations and have a major stake in its continued success. ENERGY STAR has drifted significantly from its original mission and EPA operates it at many levels as if it were still an experimental program in its infancy. AHAM supported the first statutory authorization for ENERGY STAR and at least some minimum level of due process and procedures for what otherwise was a completely discretionary, de facto regulatory program run by EPA. Now the program, 25 years from its creation, is a fully matured federal program that needs additional statutory authorization to keep it focused and minimize its ability to stray from its mission while increasing its long-term stability and certainty.

For our major appliances, since it was transferred to EPA, the program has strayed from its energy efficiency mission. It has become increasingly obvious that in an attempt to maintain relevance since many product categories no longer had room for significant efficiency improvements, EPA has migrated from an energy-related program into other areas beyond the program's ambit and EPA's expertise and authority. This drift must be considered in concert with the reality that the success of the program has essentially made it mandatory in the marketplace. It now is necessary for Congress to bring this program under DOE's authority, at least for products such as home appliances, which are regulated by DOE under the Appliance Standards Program. Further, Congress should require more traditional procedures and criteria for public notice and comment, such as the Administrative Procedure Act, which applies to

virtually every other mature program EPA and DOE administer. Even "voluntary" participation in federal procurement, for example, is governed by numerous statutes and regulations.

Moreover, there are significant penalties for companies who participate and have a product disqualified from the program. Not only does EPA require that the product be removed from the ENERGY STAR qualified products list (as it should be if it does not comply), but Plaintiffs' lawyers have targeted companies whose products are disqualified in costly class action lawsuits. Having private lawyers seek additional monetary damages and attorney fees even after EPA has considered and applied the proper remedies to provide consumer redress was never anticipated by the law or the program.

That is why today's hearing is so critical. The ENERGY STAR program has provided a valuable benefit to consumers, but for it to continue to do so reform is needed. I will focus my remarks today in three major areas, and will provide input into the DRAFT ENERGY STAR Reform Act circulated by the Committee in recent weeks. AHAM's proposed key solutions to address the need for ENERGY STAR reform include:

1. Move ENERGY STAR for home appliances from EPA back to DOE where the program originated, thus allowing full and seamless integration with the appliance standards rulemaking process, with funding for a reformed and right-sized program;
2. Apply the Administrative Procedure Act due process requirements to ENERGY STAR; and
3. Preempt ENERGY STAR class action lawsuits.

**ENERGY STAR Reform Solutions**

AHAM supports a continued ENERGY STAR program in the federal government. Privatizing or eliminating the program is not a viable nor desirable option to maintain its neutrality and consumer confidence. But, in order to retain this program—which has become entrenched in building codes, federal procurement, rebate programs, and the market—it must be housed at DOE for home appliances and subject to rigorous, transparent procedures that recognize its effectively mandatory status in the market. Moreover, Congress should insulate ENERGY STAR manufacturer partners from class action litigation given that, upon disqualification of a product from the program, a federal agency has already considered and applied the appropriate remedy.

**Move ENERGY STAR for Home Appliances From EPA to DOE and Provide Funding for a Reformed Program**

The fiscal year 2018 Budget request eliminates the ENERGY STAR program within EPA, but it is silent on this program within the DOE budget. AHAM supports appropriate funding for a reformed ENERGY STAR program for home appliances at DOE. AHAM worked with House and Senate Appropriations Committees this year to affirm this position, which was reflected in legislative language in the reports accompanying the FY18 House Interior and Environment Appropriations bill and the Senate FY18 Energy and Water Appropriations bill. AHAM is awaiting the introduction of the Senate version of the FY18 Interior and Environment Appropriations bill and is hopeful that language reflecting this position is also included. The Appropriations Committee report language appears in Appendix A to this testimony.

Next, AHAM supports the repeal of the latest 2009 MOU, which transferred responsibilities for the ENERGY STAR program for home appliances from DOE to EPA. Congress also should provide permanence and certainty to ENERGY STAR partners and consumers by moving the ENERGY STAR program for home appliances back home to DOE. DOE has the necessary expertise over these products through the Appliance Standards Programs and continues to be the federal government's experts on the analysis of technical and economic justification for energy conservation standards and the test procedures that are needed to test energy and water consumption of our products. The 2009 MOU can be repealed through an inter-agency agreement between the EPA and DOE, and AHAM and other stakeholders have engaged both agencies in numerous discussions to that end. However, what would benefit consumers and industry most is for this issue to be addressed statutorily to provide continuity across administrations and to manage taxpayer dollars by leveraging DOE's expertise and analysis rather than EPA attempting to duplicate this expertise and failing to do so, resulting in inconsistencies and confusion.

AHAM applauds the Committee's effort to address AHAM's concerns in its DRAFT bill. Specifically, AHAM requests that the Committee strengthen Section 2 of the DRAFT in order to maintain all of the critical factors outlined in my written statement. AHAM's interpretation of DRAFT Section 2(2) is that although Congress would give DOE authority over the ENERGY STAR program, it also would allow DOE to, at will and with no defined criteria, transfer responsibility for any or all aspects of the program to EPA. Although we appreciate the intent to move the authority to DOE, allowing DOE the discretion to transfer its authority to EPA does

not solve the challenges I have outlined in this testimony. Rather, it unfortunately maintains the status quo, because in 2009 DOE voluntarily transferred the program to EPA.

Instead, AHAM suggests that the bill indicate that authority over the ENERGY STAR program be "held by the Department of Energy and, except for covered products under the Energy Policy and Conservation Act, may be delegated to the Environmental Protection Agency, as determined appropriate by the Secretary." This language will ensure that two federal agencies are not doing duplicative work. It will also create certainty and continuity for the program for those products subject to coverage under the Appliance Standards Program as those products will only ever be subject to evaluation by DOE. Alternatively, major appliances can be explicitly transferred without the option to be later moved to EPA.

**Create Administrative Procedure Act process requirements for ENERGY STAR**

EPA's process for changing and developing ENERGY STAR specifications is inconsistent and uncertain. As required by the statutory authorization, EPA put in place a general process, but it is not formalized and EPA picks and chooses which parts of the process to follow in any given case. While the ENERGY STAR Guiding Principles provide factors EPA often reviews in developing new or revised qualification criteria, the principles do not mandate that all of the factors be reviewed every time, nor do they provide sufficient insight into when EPA will review each of the factors. And, though EPA provides opportunity for public comment, there is no formalized notice and comment process for specification levels and test procedures, no defined allotted time for comments, and there is not always a reasoned or fact-based agency response to all the comments.

Moreover, EPA does not regularly share all of the data supporting its qualification criteria revisions for home appliances. For example, during the development a recent revision to the dehumidifier specification, AHAM requested data regarding EPA's analysis of the consumer payback period and EPA refused to provide it. It appears that EPA publicly shares data in other categories such as consumer electronics, but fails to share that same data for appliances unless or until stakeholders request it (and even then, EPA sometimes refuses to provide data). Without regular access to that data, stakeholders cannot evaluate the proposed specifications. In addition, it is not clear that all decisions are supported by data. For example, meaningful data on consumer energy savings is needed as is a better-defined and more transparent consumer payback period analysis. EPA uses only a count of models to do this analysis, which ignores the saturation of those models in the market. DOE, on the other hand, conducts an extensive analysis of consumer payback, which relies on shipment data, and thus accounts for saturation of models in the market, in its analysis under the Appliance Standards Program. This is yet another example of the efficiencies created by moving the ENERGY STAR program back to DOE for home appliances. DOE can leverage its extensive analysis instead of EPA creating a new, less accurate one and, if time has passed, DOE is in the best position to update its analysis.

Furthermore, EPA's processes for determining its agenda on specification updates is lacking to say the least. Last year, EPA engaged in a "road mapping" effort for major appliances in which it sought feedback from stakeholders on a limited number of topics such as connectivity and performance requirements. The main method EPA employed for seeking feedback was through a series of webinars in which it solicited oral comments. EPA attempted to collect "data" by

using audience polls during the webinar on various questions without knowing who was on the phone answering the questions, which had only limited, arguably biased, responses available. There was little insight into what EPA would do with the "data" it gathered. This process is arbitrary and makes it difficult to meaningfully participate.

These basic administrative due process deficiencies cannot continue. As I described earlier, the ENERGY STAR program is effectively mandatory in the marketplace. The program can no longer operate as it did when it was in its infancy 25 years ago. It is a mature, well-recognized and utilized program and needs a formalized process that provides consistency and certainty while requiring a fuller technical analysis. Accordingly, there should be a formal process for changing and developing ENERGY STAR specifications and the program should be subject to review by the White House Office of Management and Budget and applicable Executive Orders. The APA has offered that for over 60 years. The agencies know how to comply.

AHAM thanks the committee for recognizing in the DRAFT bill the additional value that applying the Administrative Procedures Act (APA) to ENERGY STAR brings to the program and to consumers. Implementing APA provisions will ensure that the agency implementing the program—which we hope will be DOE—provides stakeholders with an opportunity to comment on proposals with sufficient time, responds to comments it receives, and makes transparent decisions based on thorough analyses and sufficient data. It will also ensure that decisions are subject to judicial review, which will help to ensure that ENERGY STAR decisions are made based on a well-reasoned foundation.

AHAM is aware that concerns exist regarding application of APA to ENERGY STAR. Concerns focus on the idea that, under the APA, an agency will no longer have the flexibility it needs to move nimbly through a process to set new or revised criteria on a quick timeline. This is empirically incorrect. Appendix B depicts the average DOE Rulemaking timeframe and compares it to an average timeline for ENERGY STAR determinations based on analysis of past rulemakings and specification development processes. AHAM looked at its products as well as some other products under both programs and found that the APA timeline can actually be almost one-third the time that an average ENERGY STAR specification takes to develop (see table below).

| Time Period Comparison | ENERGY STAR | APA Time Period* | EPCA Rulemakings** |
|---|---|---|---|
| All Products (only measured products) | 1 year, 5 months | 7 months | 2 years |
| *Estimate based on typical required time for a rulemaking | | | |
| **Average time for a proposed rulemaking to develop to a final rule only | | | |

To be clear, the APA can take longer or shorter as can an ENERGY STAR specification. The point is that APA is not inherently a process that moves slowly—it can move quickly in appropriate cases and if done correctly, and it provides certainty in the process and increased transparency.

AHAM offers a couple of minor revisions to DRAFT Section 2(4)(e)(2). First, AHAM respectfully requests that Congress make it clear that the application of the APA to certification and verification requirements include third party certification only if the Secretary determines it is necessary to ensure the integrity of the ENERGY STAR program. If appliances are moved back to DOE, then DOE can leverage its existing certification database for manufacturers to

indicate whether a product meets the ENERGY STAR criteria at the same time they certify compliance with the applicable energy conservation standard. As a result, it would be unnecessary to have a duplicative certification for a product meeting ENERGY STAR criteria. AHAM surveyed its members regarding the cost for duplicative certification of ENERGY STAR products and found that the average cost for a company to qualify all product categories to ENERGY STAR specifications is more than $200,000. [1] Eliminating duplicative certification requirements would not only eliminate costly burdens for manufacturers, but it would also mean that ENERGY STAR qualification would be made under the same rigorous certification requirements applied to a product meeting the applicable energy conservation standard. Moreover, there are rigorous verification requirements for the ENERGY STAR program, which includes surveillance and testing of products in current production and provides consumers, the federal government, retailers, and even competitors, with certainty that products in the program meet its stringent requirements. Under such rigor, a separate certification for ENERGY STAR would be unnecessary and duplicative.

Second, AHAM also respectfully requests that final compliance determinations be subject to the APA and judicial review. Currently, manufacturers have no obvious, formal recourse if they do not agree with EPA's decision to disqualify a product. Manufacturers are essentially left to appeal a decision to the same entity that made the decision. Such decisions have impactful consequences given the mandatory nature of the ENERGY STAR program in the marketplace. For example, manufacturers may need to offer a suite of ENERGY STAR products to retailers

[1] There is significant fluctuation in this cost as it is highly dependent on the product, the number of models, and specific requirements (e.g., third party testing, fees for reporting certification, and deleting models from EPA's Qualified Products List, etc.). Refrigerator/freezers are the most costly and burdensome product to certify according to the survey.

and those products also will no longer be eligible for certain rebates. Thus, it makes sense that such decisions be subject to review.

**Create ENERGY STAR preemption of class action lawsuits**

When EPA determines that an ENERGY STAR qualified product does not meet the ENERGY STAR criteria, it considers a number of potential remedies. For products that are disqualified, EPA requires that the manufacturing partner submit a corporate certification detailing product control and corrective measures undertaken to manage the sale, distribution, and marketing of the disqualified model, such that ENERGY STAR is no longer associated with the product. EPA also implements control measures based on certain factors such as consumer expectation and investment. EPA generally requires that product control/corrective action measures include notice or posting of disqualification and may require, where market feasible, that the manufacturing partners compensate consumers in a commensurate and appropriate manner. EPA acts to protect the ENERGY STAR trademark's integrity.

A federal approach to disqualification, in particular with regard to product control measures, ensures national consistency. It also minimizes inequities among manufacturers, supports a national approach to managing a federal trademark, and provides consistency among the many geographical markets in which products are sold. In addition, it allows the federal government to protect the integrity of the program while keeping compliance costs low enough to encourage participation by consumers and manufacturers. Because ENERGY STAR has its own remedies, allowing parasitical class actions—which can cost companies millions of which plaintiffs' attorneys are the main beneficiary—undermines the program and dampens participation.

Congress should make clear it does not intend this program to be used for that purpose. Accordingly, we thank the Committee for including in the DRAFT bill section 2(4)(f), and AHAM strongly supports inclusion of that section in the bill.

**Background**

The ENERGY STAR program was established by the EPA in 1992, under the authority of the Clean Air Act Section 103(g). ENERGY STAR touts itself as a voluntary, public-private partnership designed to reduce energy use and related air pollution and greenhouse gas emissions. Twenty-five years later, ENERGY STAR is a brand recognized by more than eighty percent of consumers nationwide. In addition, both federal and state governments rely on ENERGY STAR when making procurement decisions. ENERGY STAR qualification is required at the state and local level to meet many building code specifications. Retailers, when staging showrooms, usually require ENERGY STAR products to be displayed and require manufacturers to provide them with a high percentage of ENERGY STAR qualified products. Each of these factors has effectively transformed a once voluntary program into an effectively mandatory program.

In 1996, home appliances became part of the ENERGY STAR program. DOE administered ENERGY STAR for these products leveraging the expertise it gained by regulating home appliances under the federal Appliance Standards Program. The Appliance Standards Program, as established by the Energy Policy and Conservation Act of 1975, as amended (EPCA), was designed to improve energy efficiency for consumer products, including home appliances and certain commercial and industrial equipment nationwide. The Appliance Standards Program

consists of essentially four parts: (1) testing, (2) labeling, (3) minimum energy conservation standards, and (4) certification and enforcement procedures. Therefore, the ENERGY STAR program for home appliances was placed under DOE's authority. This just makes sense. DOE already has expertise in these products; the agency develops and establishes test procedures to test the energy use; and the ENERGY STAR program builds from the minimum energy standards. For example, the current ENERGY STAR refrigerator qualification level is ten percent more efficient than the federal minimum energy standard; it is directly linked to the Appliance Standard program. It makes no sense to have another federal agency try to duplicate this expertise and all the regulatory bureaucracy that surrounds such a program. Nor do we want to see ENERGY STAR test procedures at variance with DOE's, a source of cost and confusion for manufacturers, which cannot occur in the private sector or the states.

In 2009, EPA and DOE signed a Memorandum of Understanding (MOU) that established EPA as the lead agency for all products. DOE transferred its responsibility of setting performance levels for home appliances away from DOE to EPA, which had no previous experience with the products. The responsibility for developing and consulting on test procedures remained at DOE, but EPA did not always use DOE's current test procedures.

Due to manufacturer innovation, rebates, ENERGY STAR and appliance standards, energy efficiency gains across all of the core major appliance categories have been dramatic. Refrigerator/freezers are being produced at larger capacities, and yet are 50 percent more efficient than they were 20 years ago. Refrigerators, refrigerator-freezers, and freezers with an added ENERGY STAR designation are at least 10 percent more efficient than the federal

standard. The most commonly purchased modern refrigerator/freezer uses on average only the same amount of electricity as a 50-Watt light bulb. Tub capacity for clothes washers have grown and are growing larger while energy consumption has declined; this is another example of an energy efficiency success. A new clothes washer uses 73 percent less energy than it did in 1990. In fact, replacing an 8-year old washer with one of current average efficiency will save the American consumer $130 per year in utility bills, and more than 5,000 gallons of water per year.

ENERGY STAR models enjoy additional energy and water savings. Dishwashers, room air conditioners, freezers and other major appliances offer similar energy efficiency gains. However, in an almost mechanistic fashion, all this accomplishment is only used by EPA as a predicate for ever-stricter qualification levels with the assumption that these product categories will always be ripe for more. But that is wrong.

Faced with decreasing energy savings opportunities for home appliances on products such as dishwashers and room air conditioners, EPA has been struggling to remain squarely focused on energy efficiency and has been delving into areas like product performance, capacity, features and warranties, which should be determined by market forces rather than the federal government's program.[2] Additionally, EPA has made proposals in the ENERGY STAR specification revision processes that would encroach on other regulations or government programs such as environmental sustainability, recyclability, toxic chemicals, ozone depleting substances, and climate change. Moreover, the requirements can have a real life impact—for

[2] In many cases, ENERY STAR products save only a few dollars per year as compared to similar non-ENERGY STAR models.

example, cycle times for clothes washer, clothes dryers or dishwashers may be lengthened in order for a product to meet the ENERGY STAR criteria.

The 2009 EPA-DOE MOU states that EPA should manage the program "in consultation with DOE." The reality is that the basic logistics and coordination of differing internal processes of two federal agencies attempt to coordinate changes in specifications and test procedures cause wasteful, undue resource expenditures by the private sector and the Federal government, but also inconsistent and problematic results. At times, EPA's specifications, in draft or final form, either conflict with or depart from DOE's foundational regulations for the same products. Those differences, even seemingly minor ones, cause confusion and uncertainty for consumers and regulated parties.

For example, over AHAM's strong objection, EPA finalized a specification for clothes dryers that required use of a test procedure not yet required by DOE for compliance with standards. To do this, EPA relied on a loophole in DOE guidance (which has since been closed). This means that, today, ENERGY STAR qualified clothes dryers are tested differently than clothes dryers that are not qualified for ENERGY STAR and meet minimum efficiency standards. Consumers are not aware that clothes dryer energy efficiency is not measured the same way across products. Thus, though consumers believe they are comparing apples to apples when they evaluate energy efficiency claims, they are really comparing apples and oranges when they select and ENERGY STAR product.[3] Moreover, there is considerable confusion for manufacturers who must be conversant in and employ resources for two different test (the differences are significant).

[3] Although there is no EnergyGuide label, energy use is reported on DOE's database which consumers can search and some manufacturers may choose to make energy related claims.

For clothes washers alone, there have been five appliance standard changes and five ENERY STAR changes in just the last 10 years. That's on average one change per year. Due to this high frequency of changes, manufacturers need to invest significant resources to make products comply. Further, DOE and EPA interpretation, auditing, pending regulation and specification changes, and other clerical work have created additional organizational structure in companies simply to maintain compliance due to the frequency and scope of activity.

Other examples include:

- EPA has instituted a number of non-efficiency metrics in the ENERGY STAR specifications. Examples include a drying time limit on ENERGY STAR clothes dryers (which was developed without data to indicate it was necessary or what the appropriate time limit should be); an optional reporting requirement for dishwasher cleanability (and a minimum cleaning performance score to achieve the ENERGY STAR Most Efficient designation); a humidistat control requirement for dehumidifiers; a required "energy saver mode," a filter reminder requirement, and installation requirements for room air conditioners. EPA has also investigated refrigerant requirements for room air conditioners and refrigerators and warranty requirements for clothes dryers.
- Some ENERGY STAR requirements are designed to disadvantage certain sizes of products that EPA deems undesirable. For example, EPA insisted upon different product classes for dehumidifiers—the ENERGY STAR product classes are collapsed to two, which limits consumer choice of available ENERGY STAR dehumidifiers because it is

biased against smaller dehumidifiers. EPA also proposed, and AHAM eventually defeated, refrigerator levels that were biased against larger refrigerator/freezers.

- AHAM had to advocate, often up to the political level within EPA, to avoid effective dates for ENERGY STAR specifications that differed from approaching energy conservation standards changes for refrigerator freezers, room air conditioners, and laundry products. Misalignment of these effective dates would have cost manufacturers millions of dollars in reflooring costs without a comparable benefit in energy savings.
- EPA maintains a separate database of qualified products—the Qualified Products List—which requires manufacturers to certify separately to EPA that products meet the ENERGY STAR requirements. And this must be done through third party certification. This requires manufacturers to report the same data to two Federal agencies—it is redundant and a waste of resources for manufacturers and the Federal government. A more streamlined approach would be for DOE to allow manufacturers to indicate that a product meets the ENERGY STAR criteria on its database.

**Conclusion**

Our ultimate objective is to improve the ENERGY STAR program to ensure it capitalizes on DOE's product expertise and extensive analysis; is fair, predictable, open, and transparent; and encourages continued manufacturer participation by eliminating class action lawsuits that duplicate remedy decisions the Federal government has already made. Accordingly, we call on Congress to send the ENERGY STAR program for home appliances back home to DOE, apply the APA's open and transparent notice and comment requirements to the program and subject final compliance determinations to judicial review, and preempt class action lawsuits in

situations where the federal government has already determined the appropriate punishment and remedy.

Chairman Upton and Ranking Member Rush, on behalf of the home appliance industry, I would like to thank the Committee for working with industry and interested stakeholders to address issues in the DRAFT bill and for allowing AHAM to testify this morning. I respectfully request that my written statement be included as part of the hearing record. I would be pleased to answer any questions that you may have.

# APPENDIX A

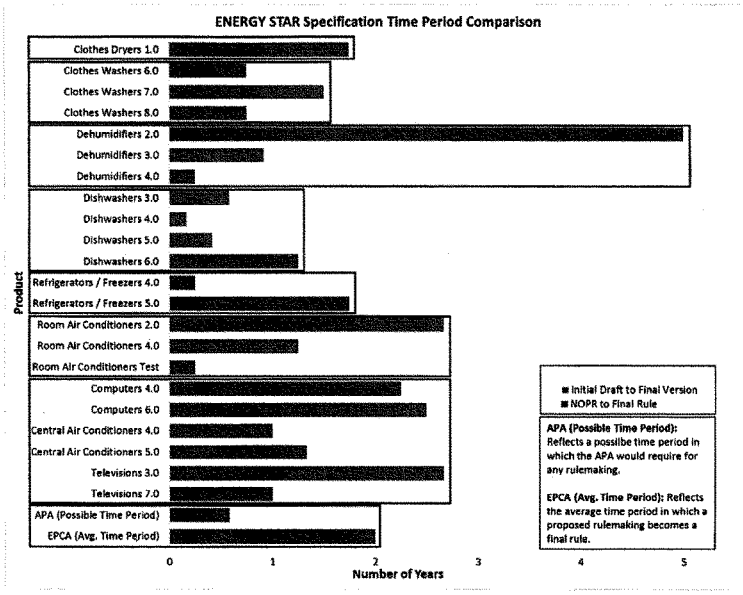
**House Appropriations Committee**
**Fiscal Year 2018 Interior and Environment Appropriations bill**
**Committee Report**

Clean Air.—The Committee recommends $227,142,000. Within this amount, the Committee includes $3,000,000 to enhance the efficiency and effectiveness of both preconstruction and operating permitting programs. In addition, the Committee continues to support the EnergySTAR program and does not terminate the program as proposed. However, program adjustments or reforms may be warranted. In 2009, EPA and the Department of Energy signed a Memorandum of Understanding that reallocated roles and responsibilities between the Department and the Agency. The Committee believes those responsibilities should be reviewed. In addition, EPA appropriately took action to restructure the program in 2011 following questions about program integrity. The Agency established third party certification requirements that directed many product review responsibilities to outside vendors. As such, the Committee finds that historical funding levels exceed the needs for internal product reviews leading to the recommended level of $31,000,000 for fiscal year 2018. Further, the Committee does not support the termination of voluntary programs such as Natural GasSTAR, AgSTAR, and other partnership programs where EPA works collaboratively with non-governmental entities to identify beneficial methods to reduce emissions, pollution, and increase efficiency.

**Senate Appropriations Committee**
**Fiscal Year 2018 Energy and Water Development Appropriations bill**
**Committee Report**

Energy Star.—In 2009, the Department and the Environmental Protection Agency [EPA] signed a Memorandum of Understanding [MOU] related to the Energy Star Program, which shifted some functions related to home appliance products from the Department to the EPA. The Department shall work with the EPA to review the 2009 MOU and report to the Committees on Appropriations of both Houses of Congress within 90 days after enactment of this Act on whether the expected efficiencies for home appliance products have been achieved.

# APPENDIX B


ENERGY STAR Specification Time Period Comparison
Clothes Dryers 1.0
Clothes Washers 6.0
Clothes Washers 7.0
Clothes Washers 8.0
Dehumidifiers 2.0
Dehumidifiers 3.0
Dehumidifiers 4.0
Dishwashers 3.0
Dishwashers 4.0
Dishwashers 5.0
Dishwashers 6.0
Refrigerators / Freezers 4.0
Refrigerators / Freezers 5.0
Room Air Conditioners 2.0
Room Air Conditioners 4.0
Room Air Conditioners Test
Computers 4.0
Computers 6.0
Central Air Conditioners 4.0
Central Air Conditioners 5.0
Televisions 3.0
Televisions 7.0
APA (Possible Time Period)
EPCA (Avg. Time Period)
Product
0
1
2
3
4
5
Number of Years
Initial Draft to Final Version
NOPR to Final Rule
APA (Possible Time Period): Reflects a possilbe time period in which the APA would require for any rulemaking.
EPCA (Avg. Time Period): Reflects the average time period in which a proposed rulemaking becomes a final rule.

Mr. OLSON. Without objection, so ordered. And thank you, Mr. McGuire.

The chair now calls upon Kateri Callahan, the President of the Alliance to Save Energy. I am sorry if I butchered that first name with that thick Texas drawl but——

**STATEMENT OF KATERI CALLAHAN**

Ms. CALLAHAN. Sir, you did it just right and a Kentucky drawl appreciates that Texas drawl.

Good morning, Mr. Chairman, and members of the subcommittee. I have the pleasure of serving as the President of the Alliance to Save Energy, which is a nonprofit coalition comprised of over 130 different businesses and organizations and I would note that all the witnesses before you today are members of the Alliance to Save Energy's associate's program and our businesses represent about $870 billion in market cap.

We were founded way back in 1977 by Senators Chuck Percy of Illinois and Hubert Humphrey of Minnesota, and our bipartisan heritage had continued the 40 years since.

Today, we have 15 members of Congress who serve in an honorary capacity on our board representing both sides of the Capitol and both sides of the aisle and I am just honored and delighted that five members of this committee serve on the Alliance's honorary board including Dr. Burgess, Mr. Kinzinger, Mr. McKinley, Mr. Tonko, and Mr. Welch. We thank them for their support.

The Alliance's history with the Energy Star program is long. We supported the creation of the program and we worked then with the Congress, with EPA, DOE, and all the Energy Star partners to keep the voluntary program both robust and impactful. For this reason, we very much appreciate and applaud the subcommittee members and staff for fully engaging all the key stakeholder groups as you seek to craft legislation that will impact this program. While we are open to continuing to improve the program, we have to caution the subcommittee to be very careful to assure that there are no unintended negative consequences as you consider changes.

As many have already mentioned and as detailed in my testimony and those of other businesses and organizations that are offering comment on the discussion draft, Energy Star today is a venerable program. It is widely recognized as the world's gold standard for public-private partnerships. More than 90 percent of Americans recognize and trust that familiar blue label.

Energy cost savings to consumers have grown to over $430 billion and we are still counting. The program has driven $165 billion in private sector investment and new technology and innovation.

Ten percent of the homes built today are built and proudly display the Energy Star label and over 50 percent of the commercial building floor space—50 percent—is using the Energy Star portfolio manager to monitor and control energy consumption. I think it was Mr. Pallone who mentioned this, but if the old adage ever stood true—if it ain't broke, don't fix it. That is the case with today's Energy Star program and it should be the test against which the subcommittee determines the content of any bill that will impact its future.

Our greatest concerns with the discussion draft are twofold—the proposed wholesale move of the program from EPA to DOE, and the application of the Administrative Procedures Act, or APA. We oppose a wholesale move of the Energy Star program from EPA to DOE. As Joe said, such a shift in responsibility for parts of the programs can be done and the flexibility is there under current law for EPA and DOE to assign or reassign responsibilities to assure the most effective and streamlined management of the program.

So we encourage the stakeholders and the committee to look to the administration to move any parts that may make the most sense over and back and forth between the two agencies. We also oppose the broad application of the APA, which was designed and intended for regulatory programs that carry the force of law, not voluntary programs like the Energy Star.

We do believe, however, that there should be adequate transparency and predictability to the specification-setting process for Energy Star products and we'd very much like to work with the agencies and the subcommittee to consider provisions that can accomplish this goal.

The Alliance appreciates the efforts made by the subcommittee to reduce costs for manufacturers that are in good standing to the program. But we do not support an exemption of third party certification for only certain manufacturers of consumer electronic devices. We stand ready to work with the subcommittee, EPA, and its partners to consider options that could lower certification costs for all manufacturers who are in good standing.

Finally, the Alliance does support the discussion draft provision to explicitly put in a no-warranty clause to defend against class action suits. In our experience, the agencies have actively enforced specification compliance and have delisted products and assessed penalties in an appropriate fashion.

In conclusion, I would note, as other members of the committee have, that the subcommittee's deliberations are coming at a time when the Energy Star program is under threat of elimination by the administration and significant budget cuts by the Congress. We urge this subcommittee, therefore, to continue to work closely with all of us who support this gold standard public-private partnership and make sure that the program has the congressional support, it has the guidance, and, very importantly, it has the funding it needs to continue to deliver the enormous energy and dollar savings that American consumers and businesses have come to expect from the Energy Star label.

Thank you, and I look forward to your questions.

[The prepared statement of Ms. Callahan follows:]

**Ms. Kateri Callahan**

**President, Alliance to Save Energy**

**U.S. House of Representatives**

**Committee on Energy and Commerce**

**Subcommittee on Energy**

**Tuesday, November 7, 2017**

**Introduction**

The Alliance to Save Energy is a nonprofit, bipartisan coalition of business, government, civil society and academic leaders that work together to drive greater U.S. energy productivity to achieve economic growth, a cleaner environment and greater energy security, affordability and reliability.[1] The Alliance enjoys the participation of nearly 130 businesses and organizations that collectively represent more than $870 billion in market capital. The Alliance was founded in 1977 by U.S. Sens. Charles Percy (R-IL) and Hubert Humphrey (D-MN) and today has 15 Members of Congress on its Honorary Board of Directors including five members of the this committee: Reps. Burgess, Kinzinger, McKinley, Tonko and Welch.

The Alliance appreciates the opportunity to testify on the subcommittee's discussion draft legislation regarding the ENERGY STAR program. The Alliance supported the creation of this program by the Congress in 1992 as a means of reducing energy waste and lowering energy costs for consumers and businesses. The Alliance has worked since then with the Congress, the Environmental Protection Agency (EPA), the Department of Energy (DOE) and the ENERGY STAR partners to insure the viability and integrity, as well as the expansion and growth, of this important and effective voluntary program.

The Alliance has continually sought meaningful ways to improve the ENERGY STAR program and we therefore appreciate the subcommittee has invited stakeholders, including the Alliance, to comment upon legislative suggestions for changes to the program. We urge the subcommittee to move forward cautiously,

[1] The complete roster of the Alliance's Board of Directors is available at: http://www.ase.org/about/leadership/board. The complete roster of the Alliance's Associate members is available at: http://www.ase.org/involved/join/members.

however, as this venerable program already is working very effectively and is understood and trusted by consumers not only in the U.S. but also globally. ENERGY STAR is recognized widely as the world's gold standard for public-private partnerships; it is licensed and used by the European Union, Canada, Japan, Iceland, Liechtenstein, Norway, Switzerland and Thailand. The old adage, "if it ain't broke, don't fix it" applies very well to today's ENERGY STAR program and should be the test against which the subcommittee determines the content of any bill designed to change or improve the program.

**Why ENERGY STAR® Matters**

ENERGY STAR is an important source of information for consumers, businesses and governments. More than 90% of Americans surveyed recognize the familiar blue label that instills confidence and an expectation of energy efficiency and cost savings across a diverse programmatic portfolio. The program is run at a relatively modest cost to taxpayers of about $42 million a year, and the return on this investment in gigantic. In 2015, consumers and businesses saved $34 billion through the program and since its inception, ENERGY STAR and its partners have delivered $430 billion in utility bill savings to consumers and businesses.

While brand recognition most typically is associated with consumer goods and products, the program is driving energy efficiency – and therefore cost savings – in real estate across the country. Homeowners and building energy managers alike rely on this voluntary program to reduce their energy costs. In 2016, nearly 10% of new homes built proudly displayed the ENERGY STAR brand; and nearly 2 million homes in America built since 1995 have earned the label. On the commercial side the story is equally compelling; 50% of building floor space has been benchmarked for energy consumption using the ENERGY STAR portfolio manager.

In addition to the billions of dollars saved by Americans every year, ENERGY STAR also catalyzes huge investments by the private sector; since its inception, the program has driven more than $165 billion in private sector investment in new technologies and innovation.

**Existential Threats to the ENERGY STAR Program**

The subcommittee is considering ENERGY STAR legislation at a time when the program is facing significant threats to its continuation. The administration's FY2018 budget proposes to eliminate the ENERGY

STAR program. The FY2018 House Interior Appropriations bill includes only $31 million for ENERGY STAR, which represents at least a 25% reduction from FY2017 levels,

In addition to these direct financial threats to the program, debilitating cuts to the DOE's Office of Energy Efficiency and Renewable Energy (EERE) that have been proposed by the administration (FY2018 funding reduced roughly 80% compared to FY2017 appropriated levels) and the House (DOE energy efficiency program funding reduced by about 40%[2] as compared to FY2017) must be considered as the subcommittee considers a move of the program from EPA to DOE.

**ENERGY STAR Discussion Draft — Comments and Suggestions**

The Alliance's gravest concerns about the proposed ENERGY STAR legislation are two-fold: the proposed move of the program from EPA to DOE -- particularly at a time when the program already is under threat of elimination and/or sharp budget cuts; and the application of the Administrative Procedures Act (APA) which will add unnecessary costs and time-consuming bureaucracy to a voluntary program.

**The Alliance does not support the proposal to shift responsibility to DOE.** Amending the statute as proposed would be tremendously disruptive. The shift would put strain on DOE's current resources – both financial and human; it would distract from the administration, growth and promotion of the program while the internal program infrastructure is dismantled and rebuilt in another agency; and, the institutional knowledge and deep partner relationships that have been established between EPA and its 16,000 partners would be lost.

Further, and importantly, Congress appropriates funding to EPA to administer the program. The discussion draft is silent on the issue of funding so it is very unclear where and how DOE could secure the funding to administer the program effectively. And, as the administration already has announced its intent to eliminate the program, it appears unlikely that DOE or EPA would seek to reprogram or repurpose funds to insure that the program continues without specific direction from the Congress to do so.

Finally, current law allows EPA and DOE to assign and/or reassign responsibilities to allow for the most effective and streamlined management of the program. This has been done as recently as 2009 through the use

[2] "FY2018 Budget Chart - House And Senate Appropriations," http://www.ase.org/resources/fy2018-budget-chart-house-and-senate-appropriations, Alliance to Save Energy, July 25, 2017, last accessed November 3, 2017.

of a budget-neutral memorandum of understanding (MOU). Such flexibility allows for input by the key stakeholders and program partners and can insure that responsibilities are assigned to the agency best-resourced, with respect to financial, technical and human resources. We suggest stakeholders looking for changes in the administration of particular parts of the program should work with and through the agencies rather than the Congress to effectuate such changes.

**The Alliance also does not support the application of the APA to the development of product specifications and other program requirements.** Application of the APA is intended and appropriate for federal regulatory programs that carry the force of law; we do not believe it is appropriate for a *voluntary* program. The APA's full notice and comment process can take years to complete. A slow and burdensome process likely would erode consumer confidence and serve as a disincentive to companies to participate and introduce new products. We do believe, however, that there should be adequate transparency and predictability to the specification-setting process for products under the ENERGY STAR program and we would support changes made administratively or even by statute to insure that these tenets are achieved.

**The Alliance appreciates the effort made by the subcommittee to reduce costs for manufacturers that are "in good standing" in the program, however, we do not support an exemption of third-party certification for only certain consumer electronic devices.** Consumer electronic devices account for fully 40% of the savings generated through the ENERGY STAR program, and we do not understand why these products should not be held to the same rules and requirements in place for other products.

EPA implemented third-party certification starting in 2011 in response to a report by the U.S. Government Accounting Office (GAO) that found the ENERGY STAR program was vulnerable to fraud because there was then no independent certification process. Third-party certification enhances the value of the program to partners, including retailers, manufacturers, and utilities, by ensuring that products are properly tested and reviewed prior to being labeled. It is important to note that ENERGY STAR's third-party certification rules leverage existing accreditation and testing infrastructure, including that for product safety, minimizing added manufacturer cost, that help to contain costs.

The Alliance stands ready to work with the subcommittee, EPA and its partners to consider options that could lower certification costs to manufacturers which could free up resources for product development.

**The Alliance does not support the requirement for specifications for product categories for all capacities, sizes, and features.** The agencies already strive to make ENERGY STAR open to products of varying capacities, sizes, and features based on the current statute, which gives the agencies the explicit authority to do so. The discussion draft provision that would require the agencies to create specifications for all capacities, sizes and features would put added strain on a budget that we believe already is inadequate and likely shrinking.

**The Alliance supports the discussion draft provisions to make explicit a "no-warranty" clause for delisted products under certain circumstances.** The Alliance is sensitive to concerns about potential liability risk to manufacturers following the decertification of a product, but before the established administrative process is complete. In our experience, the agencies actively enforce specification compliance and have delisted products and assessed penalties when appropriate.

**The Alliance recommends the inclusion of an explicit authorization of funding to the ENERGY STAR program.** We believe annual appropriations at-or-above current appropriated levels (approximately $42 million) are warranted and suggest that the Committee consider a funding level as high as $75 million annually. And, as we already have indicated, we believe that EPA should remain the "home" of the ENERGY STAR program and therefore would ask that the funds be authorized specifically to that agency. An explicit authorization of appropriations would give partners and the public greater certainty about the long-term viability of ENERGY STAR and clearly signal to the administration that Congress will not allow the federal government to shut down this important public-private partnership program.

**Conclusion**

The Alliance applauds the subcommittee members and staff for inviting comments and input before a bill is finalized. In the instance of ENERGY STAR, it is exceedingly important to include the stakeholders in the legislative process as they have much to gain or lose by the actions of Congress. The list of stakeholders is long and covers almost every sector of the U.S. economy including:

- National retail chains who stock and sell ENERGY STAR certified products;
- ENERGY STAR product suppliers;
- Real estate companies who benchmark their buildings with Portfolio Manager;
- Service provider partners;
- Utilities who use ENERGY STAR as the platform for the energy efficiency programs they execute;
- Fast food chains who outfit their kitchens with ENERGY STAR certified food service equipment;
- ENEGY STAR equipment distributors;
- Commercial laboratories who offer testing services
- Independent certification bodies to certify ENERGY STAR products;
- Home energy raters who verify the energy savings;
- ENERGY STAR home builder partners;
- School districts who leverage ENERGY STAR resources and install ENERGY STAR certified equipment to spend less on energy and more on books; and,
- Members of thirty industrial sectors – such as the petrochemical and aluminum casting industries – who use ENERGY STAR to improve energy efficiency and reduce environmental risk across their plants.

Any changes in the administration of the program, the process for establishing criteria and testing products, and funding will impact the 16,000 partners and could impact the ENERGY STAR brand which is now highly trusted and almost universally recognized. As we stated at the outset, the Alliance is very open to changes that we believe can improve the integrity, cost-effectiveness and impact of the program, but any such changes must be considered very carefully to assure that there are no unintended, negative outcomes for the partners or those consumers, businesses and governments who have come to rely on the ENERGY STAR brand to deliver energy and cost savings while improving the environment.

**Ms. Kateri Callahan, President**

**Alliance to Save Energy**

**Summary of Major Points**

1. ENERGY STAR is widely recognized as the world's gold standard of public-private partnerships having over 16,000 partners; brand recognition above 90%; verified and delivered savings of $430 billion to American consumers and businesses. The program needs to be nurtured and protected.
2. ENERGY STAR has been targeted by the administration for elimination and House-approved FY2018 appropriations are 25% lower than 2017. Funding for energy efficiency programs at the DOE also are under significant threat of draconian cuts.
3. The Alliance opposes moving the ENERGY STAR program from EPA to DOE as it will be not only disruptive, but also could put the program's continuance in question given the funding situation.
4. The Alliance opposes application of the APA to a ***voluntary* program**, APA was created for ***regulatory programs*** that carry the force of law. The Alliance is open to working with the subcommittee to find other ways to insure program transparency and to lower costs to partners.
5. The Alliance opposes an exemption from third-party certifications for consumer electronic devices; third-party certification was deemed necessary by GAO to insure the program's integrity.
6. The Alliance supports the "no-warranty" provision for delisted products as the agencies currently insure remedial action and compensation for consumers.
7. The Alliance does not support the requirement for specifications for product categories for all capacities, sizes, and features. The agencies already have the discretion to take such action, and requirement is costly and burdensome to a program already under-funded and facing more cuts.
8. The Alliance recommends the inclusion of an annual authorization for appropriations for $75 million to EPA for the ENERGY STAR program.

Mr. OLSON. And as the people of Kentucky and Texas say, much obliged.

Our next witness is Mr. Greg Merritt. Greg is vice president at CREE. You have 5 minutes for an opening statement.

**STATEMENT OF GREG MERRITT**

Mr. MERRITT. Thank you, and good morning. I'd like to thank the committee, the chairman, and ranking member for the opportunity to speak to you today.

CREE is a U.S.-based developer and producer of advanced technology LEDs, LED lighting products, and power and wireless semiconductor components. We are headquartered in North Carolina and have facilities in Wisconsin, Arkansas, and California with over 6,000 employees worldwide. Our technologies, products, and solutions are all focused on advancing energy-efficient improvements across the lighting, communications, electric transportation, renewable energy, and energy storage industries. We helped to launch what we called the LED lighting revolution over 10 years ago and have witnessed firsthand the important role Energy Star has played in helping guide consumers to higher quality energy-efficient products driving adoption by facilitating rebates and incentive programs and providing a trusted brand among the confusion of new technologies and many unknown manufacturer which, by the way, included CREE in those early days.

Energy Star continues to be a trusted brand to consumers and a valued partner to suppliers like CREE. The program's remarkable success is undeniable, as you've heard earlier, and as a marketing executive I will tell you that there are many companies around the world that would envy the 90 percent brand recognition that Energy Star enjoys today. This brand is an incredibly valued asset and we should fiercely protect it. As a participating Energy Star company with over 400 Energy Star-rated products, CREE is very supportive of changes that will improve the program and help secure its future but is also wary of those that may do otherwise.

Our foremost interest, and I think you've heard this earlier, is to ensure that Energy Star is fully funded, retains its experience and capable staff and management, and continues to deliver multiple valued programs including product certification, commercial buildings, and homes. Furthermore, we would advocate specific authorization of funding to ensure that the appropriated levels going forward are adequate to keep the program strong and viable and at least match historical levels of funding.

Among the proposals included in the discussion draft we are addressing today we are particularly concerned by the proposed transfer of the program to DOE and the proposal to apply the Administrative Procedures Act to the development of Energy Star specifications. We believe the wholesale transfer of the program to DOE threatens to severely disrupt funding, staffing, and operations, and while there are always improvements that can be made and we believe they could be made under the existing structure, we believe Energy Star is running smoothly and is well managed at EPA.

EPA has a talented team of professionals, years of institutional knowledge and experience, not to mention established and strong

working relationships with 16,000 Energy Star partners. We are, therefore, opposed to moving Energy Star to DOE, an agency that does not have budget authority appropriations or staff who are trained and experienced in the critical marketing, brand management, and partnership aspects of this important program.

As for the proposal to apply the APA to Energy Star specifications, we are adamantly opposed. We believe this proposal would add unnecessary, time-consuming, and burdensome regulation and process to a voluntary program that by its very nature must be nimble, flexible, and responsive to rapidly-changing products, technologies, and markets.

We believe imposing APA will eliminate the ability of program staff to make quick adjustments to the specification that are necessary in response to technology evolution and the program will forever be chasing technology and market evolution, rendering it ineffective. I would also note that recent experience with Energy Star, at least by my company, has reflected improved engagement of product manufacturing and specification process, multiple rounds of comment and drafts, and many of these have been in response to our earlier requests to EPA.

We would also be opposed to providing exemptions for specific manufacturers or products from third party certification. Third party certification was added to the program to prevent bad actors from misusing the program with products that don't meet Energy Star standards, depriving consumers of their promised savings.

We believe allowing exemptions would create the opportunity for this bad behavior to happen. While external testing does create a longer process and adds some costs, we believe it is a necessary and worthwhile trade-off. The trustworthiness of the Energy Star certification and label is the most valuable attribute of the program and it should not be risked for convenience.

Finally, while we don't have a firm position on the warranty provision, we would oppose it if it is paired with exemptions from third party certification for the reasons I delineated above.

Thank you very much for your time today and for the ability to share CREE's perspective on this important issue. I will be happy to answer questions.

[The prepared statement of Mr. Merritt follows:]

**U.S. House Energy and Commerce Committee**
**Subcommittee on Energy**
**Hearing on "Energy Star Reform Act of 2017"**

**Statement of Greg Merritt**
**Vice President, Marketing and Public Affairs**
**Cree, Inc.**

**November 7, 2017**

I'd like to thank the committee, Chairman Upton and Ranking Member Rush for the opportunity to speak with you today.

Cree is a U.S.-based developer and producer of advanced technology LEDs, LED lighting solutions and power and wireless semiconductor components. We are headquartered in North Carolina with facilities in Wisconsin, Arkansas and California and over 6,000 employees worldwide.

Our technology, products and solutions are focused on advancing energy efficient improvements in our lighting, communications, electric transportation, renewable energy and energy storage industries – driving productivity improvements.

We helped launch the LED lighting revolution over 10 years ago, and have witnessed firsthand the important role ENERGY STAR has played in helping guide consumers to higher quality, high-efficiency products, driving adoption by facilitating rebates and incentive programs and providing a trusted brand among the confusion of new technologies and many unknown manufacturers – which included Cree in those early days.

ENERGY STAR continues to be a trusted brand to consumers and a valued partner to suppliers like Cree. The program's remarkable success is undeniable. As a marketing executive, I will tell you there are many companies around the world that would love to have the 90 percent brand recognition that ENERGY

STAR enjoys. That brand is an incredibly valuable asset that should be fiercely protected, particularly given the economic and environmental benefits that result from improved energy efficiency.

As a participating ENERGY STAR company with many ENERGY STAR-rated products, Cree is supportive of changes that will improve the program and help to secure its future, and we are wary of those that may do otherwise.

Our foremost interest is to ensure that ENERGY STAR is funded fully, retains experienced and capable staff and management and continues to deliver multiple valued programs for product certification, commercial buildings and homes. Furthermore, we would advocate specific authorization of funding to the EPA to ensure that appropriated levels going forward are adequate to keep the program strong and viable. As others have proposed, we believe a funding authorization of $75 million is appropriate. As you know, ENERGY STAR is facing significant potential funding cuts, including here in the House, and we believe those cuts would not just harm ENERGY STAR but also the broader economy given then enormous savings that ENERGY STAR helps to create for consumers and businesses.

Among the proposals included in the discussion draft we're addressing today, we are particularly concerned by the proposed transfer of the program to DOE and the proposal to apply the Administrative Procedures Act to the development of ENERGY STAR specifications.

We believe a wholesale transfer of the program to DOE threatens to severely disrupt funding, staffing and operations. And while there are always improvements that can be made, we believe ENERGY STAR is running smoothly and is well-managed at EPA. EPA has a talented team of professionals and 25 years of institutional knowledge and experience not to mention established and strong working relationships with 16,000 ENERGY STAR partners. Again, the results speak for themselves in terms of ENERGY STAR's market penetration and impact. We are therefore opposed to moving ENERGY STAR to another agency

that does not have budget authority, appropriations or staff who are trained and experienced in the critical marketing, brand management and partnership aspects of the program.

As for the proposal to apply the APA to ENERGY STAR specifications and program structure, we are adamantly opposed. This proposal would add unnecessary, time-consuming and burdensome regulation to a voluntary program that by its very nature must be nimble, flexible and responsive to rapidly changing products, technologies and markets. Imposing APA will eliminate the ability of program staff to make quick adjustments to the specifications in response to technology evolution, and the program will forever be chasing technology and market evolutions, making it ineffective or even irrelevant because it would be so far behind the market. I would also note that recent experiences with ENERGY STAR have reflected improved engagement of product manufacturers in the specification process, in response to earlier requests to EPA.

We also are opposed to providing exemptions for specific manufacturers or products from third-party certification. Third-party certification was added to the program for good reason after bad actors were found to be misusing the program with products that didn't meet ENERGY STAR standards, and we believe allowing exemptions would create the opportunity for this to happen again. While external testing creates a longer process and adds costs, we believe it's a necessary and worthwhile tradeoff. The trustworthiness of the ENERGY STAR certification and label is the most valuable attribute of the program, and it should not be risked for convenience.

Finally, while we don't have a firm position on the warranty provision, we oppose it if it is paired with exemptions from third-party certification. Allowing self-certification and removing liability would only increase the risk of bad actors abusing the program and harming ENERGY STAR's credibility and reputation.

Again, thank you for your time today and for your interest in Cree's perspective on this important issue. I am happy to answer questions you might have.

**Summary of Key Points – Greg Merritt, Cree, Inc.**

Cree is a U.S. based company, headquartered in North Carolina, with locations in Wisconsin, Arkansas and California. We are a developer and producer of LEDs, LED lighting solutions and advanced power and wireless communications semiconductors.

We have a long, successful history of working with the ENERGY STAR program, and fully support any changes that will improve the program.

Our foremost interest is to ensure that ENERGY STAR is funded fully, retains experienced and capable staff and management and continues to deliver multiple valued programs for product certification, commercial buildings and homes

Among the proposals included in the discussion draft we're addressing today, we are particularly concerned by the proposed transfer of the program to DOE and the proposal to apply the Administrative Procedures Act to the development of ENERGY STAR specifications.

We are opposed to moving ENERGY STAR to another agency that does not have budget authority, appropriations or staff who are trained and experienced in the critical marketing, brand management and partnership aspects of the program.

We are adamantly opposed to the proposal to apply the APA to ENERGY STAR specifications and program structure.

We also are opposed to providing exemptions for specific manufacturers or products from third-party certification

Finally, while we don't have a firm position on the warranty provision, we oppose it if it is paired with exemptions from third-party certification

Mr. OLSON. Thank you, Mr. Merritt.

The chair now calls upon Mr. Christopher Drew, the executive vice president and chief marketing and strategy officer for the Air Conditioning, Heating, and Refrigeration Institute.

You have 5 minutes, sir.

**STATEMENT OF CHRISTOPHER DREW**

Mr. DREW. Mr. Chairman, Ranking Member Rush, and members of the subcommittee, good morning, and thank you for the opportunity to testify here today on possible reforms to the Environmental Protection Agency's Energy Star program.

My name is Christopher Drew and I am the Executive Vice President for Burnham Holdings. I am also Chairman of the Air Conditioning, Heating, and Refrigeration Institute, an organization representing more than 320 manufacturers.

Currently, our industry as a whole represents 1.3 million employees and generates $257 billion in economic activity. AHRI represents over 90 percent of the domestic HVACR and water heating industry and more than 70 percent of the global industry.

Today, 160 AHRI members participate in the Energy Star program. I am pleased to say Burnham Holdings participates in the Energy Star program and has about a hundred products listed. From our experience, we have enjoyed a positive working relationship with the EPA and we would like the program to continue as a resource consumers can rely on and trust for information on the efficiency of the products they are considering for purchase.

My comments as chairman of AHRI reflecting the concerns held by the HVACR manufacturers are covered in greater detail in the testimony submitted for the record. The industry's concerns are related to the approach taken to move the program, compliance burdens that should be addressed, as well as ensuring the program is able to continue as a valuable and informative tool for educating consumers.

AHRI and its members have concerns about the draft's suggestion to move the program from the EPA where it is currently housed to the Department of Energy. The industry would prefer to maintain the program as it currently stands at the EPA where it has been able to operate successfully for our products since 1992.

Though no doubt well intentioned, the draft does not provide details as to how moving the program could be accomplished without disruption. It is currently operated by a knowledgeable and dedicated staff in a way that generally ensures stakeholder input and successful outcomes. Furthermore, if moved, the draft language leaves much of the administration of the program to the discretion of the Secretary of Energy.

Energy Star's credibility and success over the last 25 years has been partially driven by its stability within the EPA's portfolio and the certainty it provides to consumers that what they are purchasing is government certified. There is no false advertising. Therefore, if the program is to be moved, which is not what our industry would prefer, we would like the committee to provide more details on how it will be managed.

Reduced compliance burdens, the AHRI has also urged the federal government to recognize voluntary certification programs as a

way to comply with federal energy efficiency standards and the Energy Star program. Relying on industry consensus certification programs reduces duplicative efforts between the federal government and industry, encourages compliance with energy efficiency regulations, reduces regulatory burdens, and saves taxpayer dollars, all while enhancing market surveillance.

AHRI is currently an EPA-designated certification body. This allows AHRI program participants to realize significant savings as they are able to meet Energy Star requirements without any additional testing on the products they wish to have labelled. The draft does include a promising improvement to allow for good actors—those participants have met all requirements of the program for a period of at least 18 months to be eligible for reduced compliance burdens. Unfortunately, the draft makes this available only to certain products. We believe this section should be broadened to include all products as a stated policy is to recognize those who are compliant with the program to prove themselves trustworthy, not based on a specific product type.

Additionally, while the Administrative Procedures Act is the most commonly used method of ensuring stakeholder input, Energy Star is not a regulatory process. It is a voluntary program and applying a full APA process could create an unnecessary burden for a program like Energy Star. Ensuring proper stakeholder input and notification could easily be achieved through agreeing on a process that is transparent and predictable without the burdens APA would place on the agency and participants.

Another area of concern for our industry, related to moving the program from EPA to DOE, is the potential disruption it might cause to highly successful and impactful Energy Star building programs like Portfolio Manager. Portfolio Manager is EPA's tool for building owners and managers to understand how their properties operate and how to improve their economic performance. Fifty percent of U.S. commercial floor space uses Portfolio Manager and it is also used by the commercial real estate industry to comply with the numerous state and local laws.

In addition, under Energy Star's New Homes program, houses are designed and built with a system-wide approach in mind so that all energy efficiency systems and features work together to deliver better performance. Quality installation of these products is essential for consumers to gain the full benefits of their highly efficient equipment.

Finally, sufficient funding for Energy Star is vital to the continued success of the program no matter where it resides within the federal government.

I would like to thank the committee members and staff for being so inclusive of stakeholders and inviting comments on this discussion draft.

We look forward to working with you to improve the Energy Star program and the regulatory environment for HVAC-R and water heating manufacturers.

Thank you.

[The prepared statement of Mr. Drew follows:]


**Testimony of Christopher Drew**
**Executive Vice President of Burnham Holdings Inc.**
**and**
**Chairman of the Board of Directors,**
**Air-Conditioning, Heating and Refrigeration Institute (AHRI)**
**Before the**
**House Committee on Energy and Commerce,**
**Subcommittee on Energy and Power**
**Hearing on**
**Discussion Draft, ENERGY STAR Reform Act of 2017**
**November 3, 2017**

Chairman Upton, Ranking Member Rush, and Members of the Subcommittee, good morning and thank you for the opportunity to testify here today on possible reforms to the Environmental Protection Agency's (EPA) ENERGY STAR program. My name is Chris Drew, and I'm the Executive Vice President for Burnham Holdings, Inc. I'm also Chairman of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI), an organization representing more than 320 manufacturers of residential, commercial, and industrial air conditioning, space heating, water heating, and commercial refrigeration equipment and components for sale in North America and around the world. As an internationally recognized advocate for the industry, AHRI develops standards for, and certifies the performance of, many of these products. The heating, ventilation, air conditioning, refrigeration (HVACR), and water heater industry serves many basic requirements of the household, industry, and commercial sectors. These include home and building climate control, supply of hot water, and refrigeration for food, beverage, and industrial needs. Currently, the manufacturing part of the industry employs 125,000 people in the United States providing over $10 billion in labor compensation annually and is responsible for $44.6 billion in total industry output.[1] When coupled with upstream suppliers, downstream distributors, and the contractor jobs associated with related installation, construction, and maintenance of this equipment, our industry represents 1.29 million employees, and generates $256.7 billion in economic activity.[2] As the association for manufacturers of HVACR and water heating equipment, AHRI represents over 90 percent of the domestic industry and more than 70 percent of the global industry.

The EPA's ENERGY STAR program was established in 1992 to promote energy efficient products, including heating, air conditioning, water heating, and commercial refrigeration equipment. In various

[1] *An Economic Analysis of the U.S. HVACR and Water Heating Industry,* The Center for Manufacturing Research in Partnership with Inforum, July 1, 2017, pg1-6

[2] "

categories, highly efficient products that meet the applicable ENERGY STAR specification can be recognized by the program and earn the right to use the very well-known yellow ENERGY STAR label. ENERGY STAR itself has become its own brand, and 85 percent of consumers recognize it as a trustworthy brand.[3] More than 7,400 partner organizations – including 160 of AHRI members, participate in the ENERGY STAR program. Products within our membership covered under the ENERGY STAR program include boilers, central air conditioners and air source heat pumps, commercial boilers, commercial ice makers, commercial refrigerators and freezers, commercial water heaters, furnaces, geothermal heat pumps, light commercial HVAC, and non-solar electric and gas water heaters. The specifications for ENERGY STAR designation are continuously updated by the EPA in collaboration with its partners and various stakeholders to ensure energy and financial savings for businesses and families buying ENERGY STAR products.

As a manufacturer of thermal and interior comfort solutions used in a wide range of residential, commercial, and industrial applications, Burnham Holdings participates in the ENERGY STAR program. Together with its subsidiaries, our company is a market leader in the design, manufacture, and sale of boilers and related HVAC products and accessories, including: furnaces, radiators, and air conditioning systems. Products are manufactured at company operated facilities in the East, South, and Midwestern United States. I personally have found our working relationship with EPA to be generally positive and I would like the program to continue as a resource consumers can rely on and trust for information on the efficiency of the products they are considering for purchase.

[3] https://www.energystar.gov/index.cfm?c=about.ab_index%20

Central to today's discussion is a discussion draft (hereafter referred to as "draft") to reform the ENERGY STAR program, on which I will focus my comments today as Chairman of the Air-Conditioning, Heating, and Refrigeration Institute (AHRI).

**Administration of ENERGY STAR**

AHRI believes the ENERGY STAR program should continue largely in its current form, but there are improvements in the implementation of the program the Committee should consider. While the draft contemplates moving the program from the EPA where it is currently housed to the Department of Energy, AHRI and its members have concerns about that approach. Chief among those concerns would be the disturbance of a successful program with a sudden re-assignment to a new agency. Though no doubt well-intentioned, the draft does not provide details as to how this could be accomplished without interruption or disruption. It is currently operated by a knowledgeable and dedicated staff in a way that generally ensures stakeholder input and successful outcomes. There are several questions we could not answer with the draft in its current form, such as how the responsibilities of the program could successfully be transferred from one agency to the other? What office within the Department of Energy (DOE) would take ownership? Would current institutional knowledge held by those who have run this program be lost? Would the current approved products and procedures be maintained?

The HVACR industry would prefer to maintain the program as it currently stands under the Office of Atmospheric Programs at the EPA, where it has been able to operate successfully for our products since 1992.

The draft language also leaves much of the administration of the program to the discretion of the Secretary of Energy, which raises questions about the level of predictability this arrangement could mean for manufacturers. Most concerning is the prospect of the program bouncing back and forth between agencies depending on the prerogative of the agency head or the President of the United States, when stability and certainty are so important to ENERGY STAR's success. If the program is to be moved, which is not what our industry would prefer, the Committee should provide clarity rather than ambiguity.

To continue to ensure robust participation from equipment manufacturers, it is imperative that any reforms improve the program, and allow for it to continue where successful with as little disruption as possible. A great deal more specificity is needed as to the arrangement between the EPA and DOE, if the current Memorandum of Understanding (MOU) between the agencies were rescinded or amended. HVACR manufacturers would oppose any arrangement that leaves us without the predictability of knowing where the program is to be housed from one Administration to the next.

**Certification of Equipment**

AHRI has long urged the federal government to recognize voluntary certification programs for air conditioning, furnace, boiler, heat pump, refrigeration, and water heating products as a way to demonstrate compliance with federal energy efficiency and conservation standards and the ENERGY STAR program. Relying on industry-consensus certification programs reduces duplicative efforts between the federal government and industry, encourages compliance with energy efficiency regulations, reduces regulatory burdens, and saves taxpayer dollars—all while enhancing market surveillance.

To maintain the program's success, the EPA relies on accredited third-party voluntary certification programs to validate manufacturers' efficiency claims. These certification programs save businesses time and money, while ensuring a robust ENERGY STAR program and safeguarding consumer protection. As part of its effort to strengthen the ENERGY STAR program, the EPA created a path for recognizing these certification programs as Certification Bodies (CB)[4] to assist manufacturers with the EPA requirements for testing and reporting ENERGY STAR products. AHRI is currently a designated CB (See Qualification Chart below for process). This allows AHRI program participants to achieve significant savings by serving various certification needs through AHRI verification testing. AHRI certification program participants can meet EPA ENERGY STAR certification and verification requirements without any additional testing on the products they wish to have ENERGY STAR labeled (see Table 1 for illustration of ENRGY STAR categories and AHRI certifications).

**Qualification Process**
**Step 1: Establish partnership with EPA**
**Step 2: Submission to AHRI**
**Verification**

- AHRI shall select at least 10 percent of each Participant's ENERGY STAR Basic Model Groups or BMGs (that are registered or certified with AHRI) as part of the AHRI Annual Testing Requirement, with a minimum of one (1) model tested annually depending on the requirement of the AHRI Certification Program.

**Fees**

- Annual testing for ENERGY STAR program requirements is included in the AHRI Annual Participation Fee Invoice.
- Participant laboratory audit fees are not included in the AHRI Annual Participation fee. The Participant shall be invoiced separately for the audit.

Table 1:

[4] https://www.energystar.gov/index.cfm?c=third_party_certification.tpc_cert_bodies

| EPA Product Category | Corresponding AHRI Certification Program |
|---|---|
| **Boilers** | Residential Boilers (RBLR) |
| **Central Air Conditioners and Air Source Heat Pumps** | Unitary Air Conditioner & Heat Pump Equipment (USAC/USHP) |
| **Commercial Boilers** | Commercial Boilers (CBLR) |
| **Commercial Ice Machines** | Automatic Commercial Ice-Makers (ACIM) |
| **Commercial Refrigerators and Freezers** | Commercial Refrigerated Display Merchandisers and Storage Cabinets (CRM) |
| **Commercial Water Heaters** | Commercial Water Heaters (CWH) |
| **Furnaces** | Residential Furnaces (RFRN) |
| **Geothermal Heat Pumps** | Geothermal Heat Pumps (WSHP/DGX) |
| **Light Commercial HVAC** | Unitary Large Equipment (ULE)<br>Unitary Air Conditioner & Heat Pump Equipment (USAC/USHP)<br>Variable Refrigerant Flow (VRF) |
| **Water Heaters Non Solar Electric and Non Solar Gas** | Residential Water Heaters (RWH) |

The draft neglects to specify how the reassignment of the program would affect successful partnerships between voluntary industry certification programs and ENERGY STAR moving forward. This is central to ensuring we do not disrupt a successful program and maintain current participation levels within the HVACR industry. These type of arrangements, as noted earlier, also save taxpayer dollars by avoiding duplicate testing and certification.

The draft does include a promising improvement to allow for "good actors" – those that are ENERGY STAR participants and have complied with all requirements of the program for a period of at least 18 months -- to be eligible for an exemption from additional EPA certification requirements as long as they remain in good standing. Unfortunately, however, this only applies to products in the consumer, home, and office electronics product categories.

As an industry that prides itself on maintaining world-class voluntary performance standards and certification programs, we would hope this approach would be made available to all the "good actors" that participate in the ENERGY STAR program. If one of our goals is to preserve the partnerships that

industry currently utilizes for compliance, we see this area as an alternative option to improve it. Were this section to be broadened to include all products, as the stated policy within the provision is to recognize those who are compliant with the programs and proved themselves trustworthy, and not based on a specific need of a product type, this would be a reasonable path to ensuring HVACR manufacturers do not receive disruption in this reform process.

AHRI would also suggest "grandfathering" those products that have been in compliance for at least 18 months prior to the enactment of this language. Compliance assistance proposals such as this are beneficial to encouraging participation in the program, particularly for small businesses.

One of the purposes of ENERGY STAR is to aid consumers in purchasing of energy efficient products, and rewarding innovation and encouraging the manufacture of those products. The program can and should recognize participants that have demonstrated a sustained commitment to achieving this objective by providing relief from additional compliance burdens unless or until an infraction is found.

**Additional Regulatory Burden**

As participants in the ENERGY STAR program, we have often found the partnership with EPA to be productive and collaborative. Yet, HVACR manufacturers have had circumstances when information was transmitted without time to provide substantive input. AHRI believes that public participation in the agency decision-making process is an essential mechanism to ensuring accountability and good results. As an industry, we value a predictable and transparent regulatory process that allows for robust industry engagement.

While the Administrative Procedure Act is the most commonly used method of ensuring stakeholder input, ENERGY STAR is not a regulatory process. It is a voluntary program, and applying a full Administrative Procedures Act (APA) process would likely create an unnecessary burden for a program like ENERGY STAR.

Ensuring proper stakeholder input and notification could easily be achieved through agreeing on a process that is transparent and predictable, without the burdens APA would place on the agency and participants. Use of APA would slow the process and make it more adversarial rather than cooperative, which would have an adverse effect on having products labelled and available to consumers in a timely manner. Applying the APA could also have the unintended consequence of opening up to lawsuits all determinations made by the ENERGY STAR program.

**Beyond Equipment**

The ENERGY STAR buildings programs and their focus on promoting a switch to higher efficiency equipment in homes and commercial buildings has been a great success. These programs should not be overlooked when considering reforms to ENERGY STAR because of their incredible impact on the industry. In the most recent Energy Information Administration (EIA) Commercial Building Energy Consumption Survey (CBECS), of the 5.557 million commercial buildings in the United States, 2.094 million buildings constructed before 2008 have been renovated in some way, with HVAC upgrades being by far the most common building renovation project to improve energy consumption (1.101 million –

more than half – have had an "HVAC equipment upgrade").[5] One tool HVACR and water heating manufacturers believe has been an important catalyst to this renovation trend is Portfolio Manager.

Portfolio Manager is EPA's free, online tool for building owners and managers to understand how their properties operate and how to improve their economic performance. Fifty percent of U.S. commercial floor space uses Portfolio Manager to track energy use, water consumption, and waste. Approximately 500,000 buildings, representing 44 billion square feet of commercial floor space, use EPA's benchmarking tool. Half of the Fortune 100® as well as the largest U.S. healthcare organizations, major league sports teams, colleges and universities, and even entire cities use Portfolio Manager.[6] EPA's Portfolio Manager benchmarking tool is the industry standard for commercial real estate to comply with numerous "mandatory benchmarking" laws enacted at the state and local level. Without Portfolio Manager, hundreds of thousands of buildings would lack a uniform, nationwide standard to comply with state and local energy regulation mandates.[7]

The ENERGY STAR label also has tremendous value for real estate businesses to gain competitive advantage in markets across the U.S. by branding their assets as leaders in innovation and energy efficient building technologies. Currently, 29,500 buildings, representing 4.34 billion square feet of buildings, are ENERGY STAR certified.

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[5] https://www.eia.gov/consumption/commercial/data/2012/bc/pdf/b8.pdf, Renovations in buildings constructed before 2008

[6] https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager

[7] https://www.energystar.gov/sites/default/files/tools/ES_Government-Factsheet_09292017.pdf; and https://www.energystar.gov/buildings/program-administrators/state-and-local-governments/see-federal-state-and-local-benchmarking-policies

The ENERGY STAR New Homes program helps families save on energy costs by offering a labelling designation to ensure application of rigorous requirements to new home construction, giving consumers standards to deliver on better durability, better comfort, and reduced utility and maintenance costs. ENERGY STAR-certified homes are designed and built with a system-wide approach in mind, so that all energy efficiency systems and features work together to deliver better performance. Quality installation of these products, in accordance with ACCA's 2015 HVAC Quality Installation Standard, is also essential for consumers to gain the full benefits of their highly efficient equipment. The EPA has been working in concert with contractors and industry to ensure consumers receive the full benefits of highly -efficient equipment by ensuring proper installation and maintenance of their mechanical and water heating systems.

The ENERGY STAR Buildings and Plants program plays an important role in helping to encourage those energy saving renovations and overseeing the labelling program favored by real estate, while the New Homes program gives consumers guidelines to help make more efficient system-wide choices. The current draft does not specify the administration of this program. ENERGY STAR is so much more than just consumer electronics, appliances, and HVACR equipment standards. HVACR manufacturers have concerns about how these building programs would continue in their current form were they to be shifted to DOE.

**Stable Funding for ENERGY STAR**

Sufficient funding for ENERGY STAR is vital to the continued success of the program no matter where it resides within the federal government. For U.S. manufacturers, the many employees involved in

producing and installing energy-efficient equipment, and consumers that rely on these products daily, adequate funding to improve and protect the program must be ensured in legislation.

**Other ENERGY STAR Program Improvements**

HVACR manufacturers are pleased to see the draft included the "no warranty" language, which had been previously negotiated between industry and efficiency advocate representatives. It has been a long-held position that the ENERGY Star program was not intended to expose manufacturers to costly class-action lawsuits, and we believe this provision should remain in future versions of any ENERGY STAR reform legislation.

There are provisions not included in the draft that HVACR manufacturers believe should be considered as the Committee considers ways to improve the current program.

For instance, if the goal of ENERGY STAR is to recognize top performing products, there should be a justification process established to determine when and at what level the ENERGY STAR program sets a new specification for products. This process could be focused on capturing a specified percentage of the marketplace that would justify its placement into the ENERGY STAR program. Reliance on industry input, vetting, and certification directories to establish the new specification ratings would help in capturing the desired percentage of the market. A cost – benefit analysis may also be helpful in this determination.

Secondly, current warranty requirements for ENERGY STAR products should be removed. Specifically, ENERGY STAR has certain warranty requirements established for qualified water heaters that do not

directly impact the ENERGY STAR rating or the performance of the product. ENERGY STAR should maintain its focus on promoting high energy efficiency and saving consumers money rather than involve itself in business decisions such as warranty requirements on products.

Finally, the agency responsible for administration of the ENERGY STAR program should be required to use industry consensus test procedures for certification testing to ENERGY STAR specifications when available. In addition, duplicative test procedures should be removed where they exist. This would make the ENERGY STAR testing process more streamlined and less burdensome on manufacturers.

**Conclusion**

The ENERGY STAR program is a proven and successful tool in advancing the development and use of energy efficient technologies. The program provides real value to consumers in the form of energy savings, a universally recognized brand to help consumers make educated decisions about the products they purchase, and the financial incentives tied to ENERGY STAR equipment by utilities that reward the installation of high efficiency equipment. All of these factors help manufacturers, consumers and the environment.

I want to thank the committee members and staff for being so inclusive of stakeholders and inviting comments on this discussion draft. We look forward to working with you to improve the ENERGY STAR program and the regulatory environment generally for HVACR and water heating manufacturers.

Mr. OLSON. Thank you, Mr. Drew.

And our final witness is Mr. Doug Johnson, and Doug is the vice president of Consumer Technology Association.

Mr. Johnson, you have 5 minutes for an opening statement.

**STATEMENT OF DOUGLAS JOHNSON**

Mr. JOHNSON. Vice Chairman Olson, Ranking Member Rush, members of the subcommittee, on behalf of the Consumer Technology Association, thank you very much for the opportunity to provide feedback from our membership on how best to improve the Energy Star program. We thank the committee and Congressman Latta for their work on this discussion draft.

CTA's membership includes 2,200 companies, 80 percent of which are small businesses and startups. CTA also owns and produces CS, the global stage for innovation in Las Vegas in January. A large number of our members are partners in the Energy Star program and some of them are award-winning partners. As of 2015, more than half of the electricity savings in the Energy Star products program came from electronics.

Regarding energy efficiency policy, we advocate for approaches that are national, voluntary, market oriented, globally harmonized, flexible, collaborative, and friendly to innovation and economic growth. Most recently our efforts have included groundbreaking industry-led voluntary agreements for energy efficiency in set-top boxes and small network equipment.

This is a great time to identify and pursue regulatory reform opportunities related to energy efficiency programs. Based on our members' experience with the Energy Star program, we have six recommendations we'd like to make regarding the discussion draft.

First, we support the balanced and bipartisan solution to third party certification that is part of the discussion draft bill. This solution maintains Energy Star third party certification authority but allows electronics manufacturers with a demonstrated track record of compliance to earn their way out of the burdensome requirement. If there is noncompliance, then the more draconian costly third party certification requirements reapply. It is important to keep in mind that the rigorous post-market verification system that exists today would stay in place.

Second, regarding moving program leadership to DOE, we know our members' experience with EPA and Energy Star has been collaborative in some categories and less so in others.If program leadership were to move to DOE, which is used to traditional regulatory rulemakings, we would need assurances that DOE would work collaboratively in partnership with industry in the voluntary Energy Star program.

Third, regarding application of the APA to Energy Star, our view is that some changes are needed to ensure Energy Star program transparency and accountability. Something elective and less restrictive than full-blown application of the APA may be best since we want to avoid encumbering the program and undermining its ability to keep pace with the tech industry. But APA could apply in some measure to ensure due process, transparency, and rational decision making in the administration of the program and the development of product specifications. Increasing Energy Star pro-

gram transparency and accountability also could include a review of program decisions by the Office of Management and Budget.

Our fourth recommendation concerns the provision about application of Energy Star to products of various sizes and capabilities. A few years ago, EPA decided it could impose a cutoff based on product size for participation in the program. We think Energy Star's specification should be scalable, giving models across the board no matter size and performance something realistic to shoot for and giving consumers an Energy Star option across the board as well.

Our last two points concern topics not addressed in the discussion draft but relevant to the Energy Star program and its administration. At times over the years the EPA has attempted to broaden the scope of Energy Star to cover non-energy factors such as greenhouse gas emissions of manufacturing processes and supply chains not related to the energy efficiency of the product itself. This Energy Star mission creep has appeared in past EPA proposals for new Energy Star specifications for computers, displays, and televisions.

We think Energy Star should stay focused on energy efficiency. Our final point concerns standard test procedures on which Energy Star and other programs depend. DOE and EPA have hired consultants to develop test procedures for measuring the power consumption of products being considered for Energy Star specifications and, if applicable, DOE standards. This use of consultants is not only costly but also less transparent than the open private sector's consensus standards development process. We think Energy Star program administrators should rely on these existing and less costly opportunities already developed by the private sector.

In conclusion, I would reiterate that this committee's focus on Energy Star reform and improvement opportunities is important and necessary.

Thank you for the opportunity to contribute our industry's views and ideas and we look forward to further engagement with the committee.

[The prepared statement of Mr. Johnson follows:]

Before the Committee on Energy and Commerce
Subcommittee on Energy
United States House of Representatives

Written Statement of Douglas K. Johnson
Vice President, Technology Policy
Consumer Technology Association

November 7, 2017

**INTRODUCTION**

Chairman Upton, Ranking Member Rush and members of the subcommittee:

On behalf of the Consumer Technology Association (CTA), thank you very much for the opportunity to provide feedback from our membership on how best to improve the Energy Star program, and we applaud the committee for its work on this discussion draft.

This voluntary energy efficiency program began a quarter century ago with a specification for computers, a product of our industry. Over the years, Energy Star grew to become the preeminent public policy for advancing energy efficiency in the consumer technology sector, not only in the U.S. but also in several other countries and regions. As of 2015, more than half of the electricity savings in the Energy Star products program came from electronics. Based on our history of involvement and contribution, we would like to explain what we value in the Energy Star program, what works well for our sector, what should be improved through legislation, and our specific feedback on the discussion draft.

CTA's membership – 2,200 companies, 80 percent of which are small business and startups – spans the breadth of the consumer tech industry and includes component suppliers, device manufacturers, software companies, retailers, distributors, installers and service providers. All of these players have a role regarding energy efficiency, and a large number of our members in these various segments of our industry are partners in the Energy Star program, and some of them award-winning partners. CTA also owns and produces CES® – the world's gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA's industry services.

CTA has been at the vanguard of energy efficiency for many years. Innovation is producing lighter, thinner, more energy-efficient products – even as the number of tech products we own has increased, their share of U.S. household electricity has declined.

For example, today's televisions are consuming less energy and saving consumers more money – even as TVs increase in size and resolution capabilities – according to a recent study commissioned by CTA. The study finds that LCD TVs from 2015 consume 76 percent less energy (per screen area) than they did in 2003, now costing consumers on average only six cents a day to power one TV. The study also confirms that voluntary, market-driven initiatives, such as Energy Star, have been most effective in promoting energy efficiency while also keeping up with the rapid pace of innovation. Today, more than 70 percent of the TVs sold in the U.S. satisfy the Energy Star program's increasingly stringent voluntary efficiency requirements.

Regarding policy, we advocate for approaches that are: national, voluntary, market-oriented, globally harmonized and flexible to keep pace with technology; involve close collaboration between the public and private sectors; and friendly to innovation and economic growth. Most recently, this has included groundbreaking voluntary agreements for energy efficiency in set-top boxes and small network equipment. Our association also produces peer-reviewed studies of energy use of consumer tech products, and we use our standards development capability to create needed standards for measuring power consumption. We have also invested in consumer education initiatives, including promotion of Energy Star to consumers.

Energy Star covers a broad range of electronics products and equipment in the residential and commercial markets, and it has worked very well for the electronics industry as a voluntary energy efficiency program. A government-industry partnership, Energy Star succeeds in our sector for several reasons: the program benefits from strong participation by manufacturers; it offers a competitive market incentive for energy savings; it takes a holistic approach to energy use by covering all power modes of a product; and it has high brand recognition by consumers.

**COMMENTS ON THE DISCUSSION DRAFT**

Regarding public policy, this is a great time to identify and pursue regulatory reform opportunities related to energy efficiency programs. Based on our members' experience with the Energy Star program, we have identified significant opportunities which incorporate principles

of modern regulatory reform while supporting energy efficiency, reducing regulatory burdens and disincentives, saving consumers money, and facilitating innovation and economic growth. Following are CTA's comments on several topics addressed in the discussion draft legislation:

**Third-party certification**

In 2011, EPA mandated a third-party certification regime for products in order to participate in the Energy Star program. Although this benefits for-profit laboratory companies around the world, for consumer tech products this was neither necessary nor justified based on the industry's uniformly successful track record of Energy Star compliance.

As a result of the EPA's decision, the Energy Star product qualification process is significantly more expensive and time-consuming to manufacturers than the successful self-certification system which existed previously, particularly for smaller companies and new entrants to the market. Many consumer technology products carry very low margins of profit and face significant time-to-market requirements to maintain competitiveness. Third-party certification increases costs for manufacturers, slows the introduction of new models in the marketplace, and thereby creates a disincentive to participate in the program. Third-party certification also disrupted harmonized adoption of the Energy Star program internationally, which both EPA and industry have worked many years to achieve.

We are very concerned about EPA's current approach to third-party certification as it applies to our products, and we support the balanced and bipartisan solution for our sector that is part of the discussion draft bill. This solution maintains Energy Star third-party certification authority, but allows electronics manufacturers with a demonstrated track record of compliance to earn their way out of the burdensome requirement. If there is noncompliance, then the more draconian, costly third-party certification requirements reapply. It is a mechanism of appropriate regulation and should be a model for future regulatory efforts. Companies that act in good faith and with demonstrated track records avoid excess regulation. Companies that fail to meet their obligations require greater regulation.

Please keep in mind that the rigorous post-market verification system that exists today would stay in place.

**Moving program leadership from EPA to DOE**

We recognize the tremendous success of voluntary programs such as Energy Star for the electronics industry during the past 25 years, and we do not want to disrupt continued success. Our members' experience with EPA on Energy Star has been collaborative in some categories, but less so in others. If program leadership were to move to the Department of Energy (DOE), which is used to traditional regulatory rulemakings, we would need assurances that DOE would work collaboratively in partnership with industry in the voluntary Energy Star program. Under the discussion draft bill, it is feasible DOE takes the lead but delegates to EPA certain sectors within the program, which of course could include electronics, but what gets delegated is not proscribed in the discussion draft.

**Applying the APA to Energy Star**

Participation in the Energy Star program is practically mandatory given its incorporation in federal and state government procurement requirements, in addition to private sector initiatives. Yet, EPA is under only the barest of procedural requirements. Changes are needed to ensure Energy Star program transparency and accountability. Something selective and less restrictive than full-blown application of the Administrative Procedure Act (APA) to Energy Star may be best, as we want to avoid encumbering the program and undermining its ability to keep pace with the tech industry. APA could apply in some measure to ensure due process, transparency and rational decision making in the administration of the program and the development of product specifications. Increasing Energy Star program transparency and accountability also could include review of program decisions by the Office of Management and Budget.

**Ensuring the scalability of Energy Star specifications**

In 2009, EPA stated that "for product categories with large variations in product size (with impacts on energy use), overall limits for energy use may be incorporated into Energy Star specifications." In other words, EPA arbitrarily decided to impose a cut-off based on product size for participation in the Energy Star program. This amounts to a social judgement on appropriate product size, rather than a move to support energy efficiency.

The Energy Star program, following DOE's approach in regulatory standards, has set specifications focused on efficiency that are scalable, giving models across the board, no matter

size and performance, something realistic to shoot for –and giving consumers an Energy Star option across the board as well, no matter product size and performance. For example, while larger televisions should be encouraged to be more efficient, these larger TVs, often with the latest additions and features, will use more energy than smaller TVs with fewer features. For such TVs, government should accommodate consumer choice, rather than attempt to dictate it.

With EPA's decision to impose a cap or cut-off, Energy Star seemed to abandon its focus on energy efficiency at a time when it was more important than ever. Having the program become a subjective judgment on power consumption, product size and features (in other words, program administrators deciding what uses "too much" energy) means Energy Star would become focused on the smaller, less-featured, less-capable products over time. Under this approach, if less energy consumption regardless of efficiency is better, no energy use or de-featured products must be best, which is an absurd goal for the program.

**Other issues**

We offer the following additional comments on topics not addressed in the discussion draft, but relevant to the Energy Star program and its administration:

***Energy Star "mission creep"***

At times over the years, EPA has attempted to broaden the scope of the Energy Star program to cover non-energy factors, such as greenhouse gas emissions of manufacturing processes and supply chains, not related to the energy efficiency of the product itself. This Energy Star "mission creep" has appeared in past EPA proposals for new Energy Star specifications for computers, displays and televisions. EPA's action could be based on recognition that in some product categories, the straightforward energy paybacks for higher efficiency levels are questionable. It also could be based on the agency's desire to move beyond its limited congressional mandate toward a more comprehensive sustainability or climate program.

The EPA's efforts to go beyond energy use by including multi-attribute criteria in Energy Star specifications is not what Congress had in mind, and it effectively duplicates the private sector's existing EPEAT eco-labeling program, which EPA actually helped to fund several years ago. Another concern about EPA's effort to include non-energy criteria in the Energy Star program is that measurement methodologies for some criteria of previous interest to EPA, such as

"embedded" carbon in products, are not well developed and suffer from the same problems as the use of "social cost of carbon" in regulatory programs.

***Reliance on international and domestic consensus standards, and the overuse of consultants***

Energy Star program administrators should defer to private-sector voluntary consensus standards, as opposed to hiring consultants to develop test procedures, which represents wasteful government spending.

Under the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. Section 3701) and OMB Circular A-119, U.S. law and policy evidence clear preference for voluntary and market solutions for standardization. Under the NTTAA, DOE and EPA are required to use technical standards that are developed or adopted by voluntary consensus standards bodies unless these standards are inconsistent with applicable law or otherwise impractical. The law codifies OMB Circular A-119, which also explains that the term "use" means incorporation of the standard in whole, in part or by reference for procurement and in regulations. Congressional findings in NTTAA state that the legislation is intended to enhance technological innovation for commercial public purposes and to promote the adoption of technological innovations. Similarly, OMB Circular A-119 notes the use of voluntary consensus standards is aimed at encouraging long-term growth for U.S. enterprises and promoting efficiency and economic competition through harmonization of standards.

DOE and EPA appear to spend significant sums hiring unnecessary consultants to develop test procedures for measuring the power consumption of products being considered for Energy Star program specifications and, if applicable, DOE standards. This use of consultants is not only costly, but also less transparent and open than the consensus standards development process. Importantly, standards development organizations are accredited by national bodies and are open to all interested parties, including government, NGOs, manufacturers, retailers and others –as well as government consultants. Energy Star program administrators should rely on these existing and less costly opportunities with private sector standards development organizations for the development and maintenance of test procedures for measuring power consumption of consumer tech products.

**CONCLUSION**

The committee's focus on Energy Star reform and improvement opportunities is important and necessary. As policymakers consider ways to encourage the efficient use of energy, we urge Congress to support innovation and promote voluntary, market-oriented programs including Energy Star. Policies such as these are what work best to advance energy efficiency in our highly innovative and fast-moving sector. Traditional regulation that depends on government-mandated limits just does not work for consumer tech. Thank you for the opportunity to contribute our industry's views and ideas, and we look forward to further engagement with the committee.

Mr. OLSON. Thank you, Mr. Johnson, and I thank all of you for your testimony, and now the fun begins.

We'll move into member question and answers, 5 minutes per member. I will begin by recognizing myself for 5 minutes, and my first question is for you, Mr. Johnson.

One of the provisions this bill changes is third party verification rules in Energy Star. It creates exemptions for electronics manufacturers that are in good standing with the program.

Can you go into some detail on why this is important and how we can make sure companies don't abuse this?

Mr. JOHNSON. There are three thoughts along this line that I have. One is why just electronics, as was mentioned earlier, and the Energy Star program covers something like 60 different product categories across various industry sectors.

We are rather unique in the sense that we have extremely competitive time to market pressures in this industry, product life cycles that may only be a few months long, and to take the time and the cost at the pre-market stage to test products is a particular burden in the case of our sector.

The second point I'd like to make is the track record of industry performance under Energy Star. Our industry has an excellent track record of compliance in the program. EPA acknowledged that several years ago when they imposed third party certification on everybody in order to tackle discrete problems that could have been tackled in a discrete way. But the blanket went over everybody and we were covered as well and have been ever since. I think a tailored approach would have been better, but what we are talking about here is a balanced approach to let the good actors earn their way out of the burden and if they mess up then they're back in for, as the language says, at least three years.

The third point I'd like to make is that post-market verification stays in place and that's really important. That's testing products off the store shelf to make sure that they adhere to the requirements of the Energy Star program. We don't touch that.

So I think that the tailored and balanced approach we are looking for is in this discussion draft. It is also reflected in the Senate and has been for the past couple Congresses. So we are happy to see it here and we look forward to supporting it as it advances.

Mr. OLSON. And more fun for you, Mr. Johnson. I know that one controversial issue is class action lawsuits in the Energy Star program.

Can you give an example of how one of your members was impacted by a class action lawsuit and whether you think that lawsuit was appropriate? No names. Just one member.

Mr. JOHNSON. Sure. Actually, this question may be best directed to another witness. This is a provision that we are not agnostic about in the sense of understanding what it's trying to accomplish and that it would cover actually all sectors in the program. But this is not part of the discussion draft that we are particularly advocating.

Other witnesses may have a different view.

Mr. OLSON. I was going to say, that witness is Mr. Drew. Any comments, sir, about how was one of your members impacted by a class action lawsuit and whether you think that was appropriate.

And no names. But just has this happened. I suspect it has but an example of how this has gotten out of whack with class action lawsuits.

Mr. DREW. I admit, I am not familiar that any of our members have been caught up in a class action lawsuit specific to Energy Star at this point in time.

Mr. OLSON. OK. Another question for—well, the first one for Mr. McGuire.

In your testimony about EPA and Energy Star, you mentioned the problem of mission creep and Mr. Johnson mentioned mission creep and some examples are climate change and other sorts of focuses.

Energy Star's primary purpose is to help consumers save money on energy bills by identifying those products that go above and beyond mandatory efficiency standards. Give some examples like Mr. Johnson did about climate change about mission creep happening under Energy Star. Any example of mission creep?

Mr. MCGUIRE. There have been instances where the EPA has added performance requirements to the Energy Star specifications. In the case of dishwashers, they wanted to not only control the energy and the energy used to heat water but how the product would perform, and they have done that in the case of clothes dryers too and have attempted to do that in other products. They also, in the case of clothes dryers, wanted to include requirements for warranty terms.

So our view is that the law that underpins the appliance standards program itself requires that maximum energy is saved, its cost effect to the consumer, and the requirement does not jeopardize the product's functionality and performance. That's what is left up to the manufacturer dealing with the customers. They want to compete on performance and quality.

This is not an area for the government to be laying on top of the energy efficiency requirements. So we've experienced it firsthand since the program was moved to EPA.

Mr. OLSON. Sorry, sir. I missed you at first. Any example of class action lawsuit for your members that's happened because of overreach of the Energy Star program?

Mr. MCGUIRE. The Energy Star program has a very robust penalty system to it where partners can be eliminated from the program. They can be required to pay compensation to consumers if the energy efficiency requirement was incorrect, and this is all put on the Energy Star website.

It is very visible to consumers, to retailers. The penalty is fit to the infraction. Having a class action lawsuit on top of that is another layer of penalty that is totally unnecessary and is not going to make the company—the partner, if you will—change its behavior because it's already doing that with regard to the penalty requirements of the program. It is double jeopardy.

Mr. OLSON. Thank you, sir. I am 50 seconds over so I recognize the ranking member of the subcommittee for 5 minutes and 50 seconds. Mr. Rush.

Mr. RUSH. I want to thank you, Mr. Chairman.

Ms. Callahan, as stated previously the Energy Star program is one of the more popular and trusted programs that's out there and

also is a voluntary program. So this bill that we are considering is not only unnecessary but it would also turn a good program into a bad program and I oppose disrupting this program by moving it from EPA to DOE. I am opposed to making this voluntary program to APA. I oppose undermining the integrity of the program by limiting accountability for manufacturers and I oppose revising the third party certification requirements that lead to fraud and abuse.

That said, Ms. Callahan, in your opinion, if this bill were to become law and these changes to Energy Star were to go into effect, how would this impact the integrity of the overall Energy Star program and how would it impact consumers' confidence in the program?

Ms. CALLAHAN. Thank you for your question, Mr. Rush.

I think our concern as an energy efficiency organization is if this discussion draft as it's currently crafted were written into law, that it would have very, very significant damaging consequences on the program and on consumers' ability to have confidence in that program.

You mentioned several things that we are very concerned with. One is a wholesale movement of the program for EPA over to DOE. Some of my fellow witnesses have talked about this as well as members that there's 25 years of history of brand management, of partnership relations, of IT and databases that have been built that won't be easily moved. And there is not appropriations at DOE to support that size of program. It is about $42 million at EPA currently. There is not the expertise and the staff that is there to do the brand management and the marketing and we are very concerned that the program, even for the period of time to dismantle an infrastructure and rebuild it over in another agency will take away from the focus on the program.

So we are very, very concerned. With respect to certification, third party certification resulted from a GAO study that found that there were folks that were not self-certifying appropriately and were basically cheating the system. So there are very good reasons for putting in that third party certification. We are open to looking at ways to minimize burdens and costs on manufacturers but we have to protect the integrity of the program. If consumers cannot rely on that blue label to indicate that there are energy savings in that product as top of the market then we really lose what we have and what we have built over 25 years.

Mr. RUSH. Thank you.

I want to move to Mr. Merritt. Mr. Merritt, Energy Star is a completely voluntary program but yet the legislation full force will apply the APA specification to the program. What impact would that have on the Energy Star program overall and on your industry specifically?

Mr. MERRITT. Thank you for the question, Mr. Rush.

So as I mentioned in my testimony, the application of APA, we believe, would limit the ability of the program to be nimble and responsive to changes in technology and the market.

Currently, the Energy Star program is able to make what we will refer to as tweaks and specification based on developments in the market without going through a long process of formal notification, comment period, posting, et cetera.

We believe the current structure of the program allows the program to work effectively with partners and participating vendors to revise these specifications.

We are concerned about making the process so long and burdensome that we are unable to keep up with the changes in the market and the technology.

Mr. RUSH. Ms. Callahan, as you know, the president's FY 2018 budget zeroes out the Energy Star program. But a proposal put forward by the majority would enact major cuts to it.

Currently, the program is operating at $42 million pursuant to the most recent continuing resolution. What level of funding do you think is appropriate for the Energy Star program to effectively operate at and what type of return will we see if Congress funded the program at its optimal level?

Ms. CALLAHAN. Thank you again for the question, Mr. Rush.

As you mentioned, the current appropriations are about $42 million over at EPA and DOE also contributes funding for some of specification and the technical work that they do to support EPA. We believe that that funding is insufficient to continue the program and to look at including more products, more different ranges and sizes of products.

We've suggested in our testimony an authorization level and appropriation levels of up to $75 million. Historic levels for the program have been $50 million but that's historic, and there has been increase in funding for the 14 years that I have been at the Alliance to Save Energy. It has been, roughly, stable to falling and we believe that there have been increases, of course, in cost of living and programs going forward.

So we believe that this program should grow and should have more funding than it does and have direction from the Congress for what those levels should be, which is not currently there.

The other thing that I would add to that is on the return. I think the EPA studies show that for every dollar invested there are about $4.50 in energy savings that are realized, and as I mentioned in my oral statement, this little program that could at $42 million a year has driven $165 billion in private sector investment in new technology and innovation.

So I think dollars here are very well spent and it's penny wise and pound foolish to continue to decline the funding when really it should go the other way.

Mr. RUSH. I yield back, Mr. Chairman.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the pride of Ennis, Texas, the vice chairman of the full committee, Mr. Barton, for 5 minutes of questions.

Mr. BARTON. Thank you, Mr. Chairman. You're in fine form today.

I appreciate this hearing and the witnesses being here. I want to make sure I am clear on this.

Mr. McGuire, this is a voluntary program, right? Manufacturers don't have to participate if they don't want to. Isn't that correct?

Mr. MCGUIRE. It is a voluntary program. However, over its 21 years in existence for home appliances it has become in effect mandatory in the marketplace. Utility rebate programs specified, build-

ing code specified, federal procurement specifies it, and many retailers will not carry your products if you don't have Energy Star.

So while it is voluntary, manufacturers have to have Energy Star products and what we are saying may be different from the rest is appliances began their Energy Star career at DOE. The very reason that the test procedures that allow manufacturers to test a product to see how much energy it uses are changing all the time because of technology. And so those test procedures are needed to determine if you meet Energy Star requirements. When it went to EPA and they began experimenting with performance and warranty terms and other non-energy features, that's where disruption and confusion occurred.

So Energy Star has been great for consumers. We just want it to be stable and provide certainty so that our companies can comply with it.

Mr. BARTON. All I really needed was a yes.

[Laughter.]

I got a lot more than I bargained for. Let me go to part two of the question. The reason I wanted to get on the record explicitly that it was voluntary is because I don't think you need to have a voluntary program subject to class action lawsuits. Do you agree with that?

Mr. MCGUIRE. I do.

Mr. BARTON. OK. That's a——

Mr. MCGUIRE. That would be yes.

Mr. BARTON. That's a good answer. All right. And I will come back to you one more time. The draft discussion draft makes the Department of Energy the primary agency and it, to some extent, redefines the responsibilities of the Department of Energy and the Environmental Protection Agency.

I happen to believe, and this will surprise my friends on the Democratic side, that we need a strong enforcement capability at EPA.

But I think EPA should focus on enforcement and not on setting policy, and as you pointed out, EPA more and more has used the role under the current system to move into policy areas that they really don't have a, in my opinion, a legitimate reason to move into. Would you agree with that?

Mr. MCGUIRE. I would, Mr. Chairman.

Mr. BARTON. Good. So you're getting better at it.

Mr. MCGUIRE. I am coachable.

Mr. BARTON. If we were starting over and we had never had an Energy Star program and we created an Energy Star program, why would you not make the Department of Energy the standard setter and EPA the enforcement oversight? Why wouldn't you do that? What's wrong with that?

Mr. MCGUIRE. Well, that's the way it did begin, and that made total sense because of the technical nature of the standards and the test procedures. And all the verification testing that's done for Energy Star today is overseen by DOE because of the complicated nature.

We do the verification testing. So it made total sense to have it there at the beginning. It makes total sense to have it there now, for consumers and for manufacturers.

Mr. BARTON. I will go to Mr. Johnson for my last question. How long does it take to go through the system and get a product certified for Energy Star right now under the current system?

Mr. JOHNSON. Thank you for the question.

Our members report that it can take a few days or a couple of weeks. But, again, for an industry whose product life cycles are relatively short and measured in months, that's a significant amount of time to be off the store shelf.

Mr. BARTON. Is there anybody that would state under the current system it takes an excessive amount of time to get certified? Anybody?

So in terms of actually submitting your product for review, once you do it, the Department of Energy and the EPA act expeditiously. Is that a fair statement? Not a fair statement?

Mr. JOHNSON. If I may, I think once you are certified there are steps after that take less time.

But it is the time out of the product development cycle to send your product to a third party to have it tested, information to be sent to another and back to EPA.

It takes a while and, certainly, in contrast to self-certification, which, again, worked for us quite well for many years under Energy Star and in other regulatory arenas. It is a relative burden.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. OLSON. Gentleman yields back.

The chair now calls upon a gentleman who doesn't share Mr. Rush—my admiration for the Houston Astros' victory, the man from California, home of the Los Angeles Dodgers, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. OK. You're right, I don't. But we can move on from that, Mr. Chairman.

I thank the witnesses and I thank the chairman this morning. Mr. Johnson, what determines an adequate track record for companies on the Energy Star program and who should determine this?

Mr. JOHNSON. When we talk about third party certification improvement, I would stress that we are not talking about eviscerating the EPA's capability to have this.

I think it was important for EPA to recognize, and they did, when they instituted third party certification that we had an excellent track record and we've maintained that after third party certification as well.

The problem we are trying to avoid is the burden that is too much for a company that wants to maybe put a product on the market that qualifies for Energy Star but doesn't want to take the time and cost involved with testing. So we've heard feedback from our manufacturer members who tell us that they may not want to pay the bill or take the time. They'll just meet the spec and get the product to market. So we end up with the store shelf where you have Energy Star labelled products and products that meet the Energy Star spec but don't have a label because they didn't want to take the time and I don't think that's very good for the program.

And we would still support EPA oversight, obviously, and in the case of companies that violate and they would, of course, be subject to the requirements of third party certification once again. So I think, if anything, we have weighted this in this language toward

penalty. But I think the track record speaks for itself in this industry. We were not the problems that they were trying to address when they instituted this and we would sure welcome a good actor's opportunity to earn our way out.

Mr. MCNERNEY. Thank you.

Ms. Callahan, the 2008 memorandum of understanding between the DOE and the EPA helped the program. Is there any room for improvement on that MOU?

Ms. CALLAHAN. I think that it's a good thing to go back and review the memorandum of understanding regularly and it's my understanding that EPA and DOE are in discussions now about that MOU and changes that may be made. Current law gives them the ability, just as it did to put in force that MOU in 2008—I think it was 2009, actually.

They can rewrite that and change and move around elements of the program to make it most streamlined and most cost effective. So we are encouraging stakeholders, and this is in my testimony, to work with the agencies to seek improvements to the program.

We are not convinced as the Alliance to Save Energy that it takes a statutory change. We believe that the program can be improved and that the agencies are motivated to improve the program. So we would like to see it happen there first.

Mr. MCNERNEY. Well, we don't have the agencies in front of us today. But you're saying that there may be a new MOU in the works?

Ms. CALLAHAN. I said they are in discussions about ways to improve the program, sir. I wouldn't want to overstate. I have had no conversation to indicate that they are looking at and rewriting the MOU.

Mr. MCNERNEY. So how would you go about increasing the predictability in Energy Star specification settings, as you've suggested?

Ms. CALLAHAN. I think working with the stakeholders and with EPA and DOE to look at best practices and maybe regularizing time frames between product specifications in a way that makes sense. I think it's a bit tricky. As Doug Johnson has indicated, some of these products are changing so dramatically the technology in the marketplace.

So I think we have to preserve the flexibility and that's working with the agencies and with the program administrators and putting in place some best practices and guidelines, to me, makes a lot more sense to keep that program flexible and nimble rather than trying to codify something into law.

Mr. MCNERNEY. Thank you.

Mr. McGuire, you seem to be the only one that is favorable toward moving this back to the DOE. How would you address the concerns of the other panelists that that would be disruptive of a very successful program?

Mr. MCGUIRE. Well, I am also the only one representing an industry sector whose life at Energy Star began at DOE. All the other products started at EPA.

So what I am saying is that there was disruption when our appliances were moved to EPA in 2009—and some of the examples I cited with that—created diversions and inefficiencies. I think they

should be back at DOE where they can be tied more to the standards and test procedures work and make it more predictable for our members and for the customers.

And so this can be done administratively, as Kateri indicated, through a change to the memorandum of understanding. We would support the memorandum being changed to bring home appliances back to DOE. We would all support——

Mr. MCNERNEY. You're just saying bring the home appliances, not the whole program, back to the DOE?

Mr. MCGUIRE. I am speaking only for home appliances. We believe they should be back at DOE. I am not speaking for the other products of the other industries.

Mr. MCNERNEY. Right. Mr. Chairman, I yield back.

Mr. OLSON. Gentleman's time has expired.

The chair now calls upon the gentleman from the land of Lincoln, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman. It is great to be with you all. I may be the fly in the ointment.

I have always struggled with the Energy Star issue. First of all, I think the budget is, I was told, $50 million. It has been cut to $41 million, and the president proposes zero.

And Ms. Callahan, you think it should be $75 million.

Ms. CALLAHAN. Up to.

Mr. SHIMKUS. So then it's really a fundamental debate about government and kind of government's role and manufacturing and consumer choices and education. So that's why I always struggle with it. Yes, I understand that eventually consumers will get a lower cost but there's a lot of gaming of the system that I don't like.

I don't like the fact—and you can disagree—building new homes today costs more because of these standards. Would anyone disagree with that? If you're going to purchase a new home, that cost of that home is more expensive based upon efficiency standards.

Ms. CALLAHAN. Can I respond to that?

Mr. SHIMKUS. Yes, quickly. But I——

Ms. CALLAHAN. OK. Well, studies have shown that there is an incremental cost——

Mr. SHIMKUS. Correct.

Ms. CALLAHAN [continuing]. In terms of the mortgage, reduction in the payment of the energy costs applied to——

Mr. SHIMKUS. OK. That gets me to my other point.

Then I don't like the ROI—return on investment of 20 or 30 years from the supposed energy savings that really makes that initial purchase somewhat affordable.

What will be the debate. How much energy do you save—how much money do you save. So you're willing to take the initial upfront cost. And then my problem is what's government doing—why is government involved with this to begin with. Why isn't it buyers and manufacturers?

So has anyone heard of the National Institute for Automotive Service Excellence? Anyone know what that is?

All right. So ASE—when you see ads, when you go to get your car repaired, you want to go to an ASE-certified mechanic—or at least that's what this institute says—because what? They're trained.

Now, the ASE is short for the National Institute for Automotive Service Excellence. Since 1972, our independent nonprofit organization has worked to improve the quality of vehicle repair and service by testing and certifying automotive professionals.

Why does government have to do energy? Why can't we have a National Institute for Energy Efficiency, funded by you all, to certify and to advertise? We'll even give you the label if you want.

Why is it government's role to do this? Anyone want to answer that question? Mr. McGuire.

Mr. MCGUIRE. Well, our members probably agree with you philosophically but we have gone through decades of energy efficiency policy at the national level that has resulted in significant energy savings.

The dilemma is that if we were to wipe that federal program away, including Energy Star, you would have a patchwork of regulations throughout the country which we experienced in the 1980s. So——

Mr. SHIMKUS. So let me just—so, like, California may continue to go a certain route. Not picking on my Californians. They're very all into this, right?

And because there is such a huge market they may drive the rest of the country to move in that direction based upon the state standards, where if another state may not be.

The other issue I have is when the median income of your district is $47,000 and they want to buy a home appliance and that home appliance is now disproportionately increased for two things—one is the efficiency standards, the other one is what Mr. Johnson was talking about, I think, and this is that DOE/EPA debate is if you start putting other new concerns in the standardization and your testing, you're just going to increase the costs of the goods.

So a short story. Many people know I own a townhouse. I have renters, and I had to get a new washer. I bought the cheapest washer I could buy and that's what we are using because I wasn't willing to pay—and I paid probably $2,400 less than if I would have bought the top of the line energy super efficient save-the-world piece of equipment.

So I am worried about the people who can't afford these government standards, which I don't think are needed.

And I yield back.

Mr. OLSON. Gentleman's time is expired. The chair now calls upon a gentleman from California who is not happy again that my Astros won the World Series over his Dodgers, Mr. Peters, has 5 minutes.

Mr. PETERS. First of all, that is a total misread. You cannot call a San Diegan a Dodger fan without their permission. I think you've misread this one, Mr. Chairman, and this is something on which we should be able to agree on actually.

Mr. OLSON. I stand corrected.

Mr. PETERS. To respond to Mr. Shimkus, I actually think this is about the least intrusive way for government to promote energy efficiency by sort of setting the table for consumers to have the information that they need to make a decision about whether they want to invest in energy efficiency.

And Mr. Shimkus decided on his own—nobody required him to buy a fancy washer machine. But you had the information to make that choice yourself.

I think it's actually very valuable and nonintrusive. So my question goes to that, though, which is about the certification.

And Mr. Johnson, I got to read over your testimony and you said that in 2011 they switched to this self-certification. We don't have the agency here. Can you tell me if, if they were sitting here, why they would explain that they did that in 2011, to switch away from self-certification?

Mr. JOHNSON. Sure. As——

Mr. PETERS. Mandated a third party certification regime for products.

Mr. JOHNSON. Right. As Kateri Callahan referenced earlier, EPA around that time was dealing with a couple of challenges or issues with the program.

One had to do with the database that was used at the time to administer the list of Energy Star qualified products and that database essentially was fooled by a third party audit that uploaded the famous gas-powered alarm clocks, right. So it was an egregious and well-publicized situation with the database on the administrative side of the program.

The other challenge, as I understand, had to do with a product category outside of our industry in the refrigerator category. Perhaps Mr. McGuire can shed further light than I can.

But in any case, it was a discrete issue in a category of product outside of our industry. The response by EPA was very public and very broad and the blanket of third party certification went over everybody even though at the time in their press release EPA acknowledged that electronics had this 100 percent track record of compliance.

Mr. PETERS. Let me ask you, though, about—so what would you do in the case of fraud? So let's just say that there's no—that self-certification, someone pats themselves on the back for meeting a spec that they don't in fact meet.

Mr. JOHNSON. So I think the penalties should be there.

Mr. PETERS. What would be the penalty?

Mr. JOHNSON. In the language in the discussion draft or——

Mr. PETERS. In your mind, what would be the right thing?

Mr. JOHNSON. Well, I think we favor the approach that's in this discussion draft, which on one hand allows the good actors to earn their way out but if there's a screw up I think in at least two instances then they are back under third party certification for at least 3 years. So I think——

Mr. PETERS. So there's no penalty to them for all the products that they sold potentially fraudulently? In other words, just next time you have to have a certification, is that the way you'd advocate it?

Mr. JOHNSON. Well, in terms of allowing focus on the new market entrants or the bad actors, I think that's really important. But for the good actors who've had that demonstrated track record of compliance, allow them to earn their way out.

I think EPA will or DOE would maintain the oversight of the program and essentially kick the parties out that would violate. I

think there's also the consumer response as well and there are a lot of publications and other parties that watch this space and please note that the manufacturers have equity in this brand as well. It is a partnership, fundamentally.

Mr. PETERS. I am very sympathetic, actually, particularly in your industry where things turn over so fast. My concern is that without the certification, and I am not trying to answer the question—I am trying to ask it—without certification, as we go forward with this draft, how can we be confident that the standards will actually have been met? And I guess that's what I'd look at, too.

For myself, I also don't understand why this is not an Energy Department program. It does seem to me that is where the expertise relies. I don't have an objection to that part of the bill. I am not sure why EPA is the better one to set standards than the Department of Energy.

But I am—I just—with the limited amount of time I have I just express the concern I have about compliance and not that I am an advocate for litigation but if you left the third party certification out there why you wouldn't want to have some sort of hammer, I don't know. Do you want to respond to that?

Mr. JOHNSON. Yes, sir. The other note I wanted to make was with respect to marketplace verification postmark. When the products are on the store shelves, labelled as Energy Star, very important to keep that going and the solution to third party certification, which is a premarket exercise, is distinct and separate from postmarket verification. So that would be the random testing of products on store shelves.

Mr. PETERS. And I think there would have to be some sort of penalties in place for actual fraud.

Ms. CALLAHAN. There are penalties. The EPA——

Mr. PETERS. I am out of time, ma'am. So I am sure maybe someone else can ask you. Thank you. I yield back.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the author of the Energy Star Reform Act of 2017, Mr. Latta from Ohio, for 5 minutes.

Mr. LATTA. Thank you, Mr. Chairman, and again, thanks to our panelists. I think it's a really good discussion that we're having and that's why we are here today to talk about this discussion draft.

And Mr. Drew, if I could just start with you. I think that everyone here believes that the Energy Star program is something that needs to be preserved. But the question is how can we improve upon it. And so my question to you was what improvements would you see or want to do to Energy Star to make it a better program for the consumer across this country?

Mr. DREW. Thank you, sir.

In general, the products that are covered by AHRI are all highly regulated. They're certified to not only performance standards, they're also certified to numerous safety standards just due to the nature of the piece of equipment that we are manufacturing and then having installed in people's homes.

The Energy Star program as it stands we believe is a useful tool for educating consumers but products that they don't buy very often during their tenure as even homeowners or even if they're renters or building owners.

We find that the processes that we have in place to report the status of these products to Energy Star works extremely well at this point in time. Not burdening them further with any additional requirements for reporting, we believe, would be beneficial. The energy savings that we provide through our products from a high efficiency perspective, as stated earlier, is a consumer choice. We believe it provides real value to the consumer.

The fact that numerous third party organizations, not necessarily government-affiliated are providing incentives to purchase these products we also view as a significant benefit to our industry as well as the validation that moving towards higher efficiency equipment and achieving some reasonable return on that investment is a positive thing.

Regarding this discussion, again, we believe strongly that not moving it away from the EPA is the appropriate thing to do. It has been in EPA for a number of years—works very well.

We deal with other issues at DOE. We like the separation between EPA and DOE as it pertains to this particular program.

Mr. LATTA. Thank you.

Mr. Johnson, I saw in your testimony some of the manufacturers have said that EPA have made it more difficult for the larger versions of some of their products for qualifying for Energy Star. One of the examples that you cite in your testimony is wide screen televisions.

Can you explain how EPA is making it difficult for the larger versions to qualify for Energy Star and carry the Energy Star label?

Mr. JOHNSON. Sure. From the EPA's perspective, I think they were concerned about a program all about energy efficiency applying to large products that would use more energy than small products.

But our feeling was that if you're going to put a bogey out there—if you're going to put a specification out there for the market to shoot for, don't you want manufacturers up and down the product line, no matter the size of the product that consumers want, to strive for that specification?

So yes, this artificial cap or cut off for televisions in an earlier television spec came up. I forget the exact numbers but it was something like, say, a 50-inch TV. All TVs above that would have to still meet that 50-inch TV spec even if they were 70 inches.

So it was rather unachievable because, the bigger the product the more energy. But there should still have been a scalable specification for those larger TVs to shoot for.

And, again, consumers demand what they demand. We love Energy Star. We think it should provide a scalable spec up and down the product line.

Mr. LATTA. Thank you.

Mr. McGuire, I'd like to go back and revisit the warranty language and its importance. Can you expand on that warranty language and why it's so important?

Mr. MCGUIRE. Warranty language in the draft bill?

Mr. LATTA. Right.

Mr. MCGUIRE. Yes, sir.

Well, we think it's a great provision which would take manufacturers, Energy Star partners out of double jeopardy. As has been said already here today, when partners are disqualified for a particular product, have a rating that doesn't qualify, there are significant penalties that they pay in terms of being pulled out of the program for a period of time, restitution to consumers for utility costs that should have been avoided.

This is all made very, very public and that's why these partners take it very, very seriously. To be exposed to a class action litigation on top of that, just additional punitive damages to the company really doesn't do anything as far as the behavior of the company.

It is simply a double jeopardy and it can actually disincentive companies to want to participate in the Energy Star program. So we think the penalty portion of the program of enforcement makes sense. There's no need to lop on top of that.

Mr. LATTA. OK. Thank you very much and my time has expired and I yield back.

Mr. OLSON. Gentleman's time has expired.

The chair now calls upon the biggest fan of the Houston Astros—we are the world champions—except for me in Congress, Mr. Green from Houston, Texas, for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman—you and ranking member for having this hearing. For more than 20 years, Energy Star program has formed a foundation for energy savings and assistance for Americans of all economic statuses.

Energy Star program has resulted in millions of dollars of kilowatts saved through the highly efficient appliance manufacturing.

Unlike my good friend from Illinois, I think the Energy Star program is probably one of the best programs that we have.

Over the years, we have realized in this committee that energy efficiency is really an important issue and to have a regulation like we have that's a self-regulation we just want the manufacturers to be accurate in what they say the energy will be used.

And the consumers pick it up. I think it should be if not a goal of the national government to give that information to folks but also use that energy efficiency so we may not have to build another electricity-generating plant.

So because I know my colleague from Illinois—maybe it's because even in Texas our energy prices are fairly low right now. But I would probably not go by the lowest price because I look at that and see how much I can save over the life of this refrigerator, for this washer and drier or whatever. But it is a voluntary program. That's why I think this is a good example of it, and transferring it to the Department of Energy I think is reasonable because it fits in with what the Department of Energy ought to be doing. And EPA is a regulatory agency but they should be regulating my dishwater or whatever.

The third party certification for Energy Star programs is initiated after that GAO report and I think that's such a greater improvement in the program. I'd like to believe companies do the right thing but—in compliance in this space but it's not always been the case.

My first question to the entire panel, how did we strike a balance when it comes to self-certification in the consumer electronics space where we don't inhibit innovation under the Energy Star program but also make sure the benchmarks that are required are being met?

I know that's a tough one because how do you balance it? Does any of the panel have—let me start with you, Mr. McGuire.

Mr. MCGUIRE. Well, I won't speak for consumer electronics but I will simply say that to meet a DOE energy efficiency standard—the mandatory standard, which is the base and Energy Star is above that—manufacturers have to self-certify to DOE in a very prescribed testing method that they have to provide all the data to DOE to prove that there's a reasonable chance they will be in compliance and then DOE does verification surveillance testing on top of that. So self-certification, government verification testing after market.

For Energy Star, it's third party testing up front and verification. One way you can make the program more efficient would be to tie it more in with DOE for home appliances so that the certification to meet the standard and to meet Energy Star was the same process and then you'd have third party verification. That would be one way to do it.

Mr. GREEN. Any other suggestions?

Ms. CALLAHAN. I guess what I would say to that is that there has to be a balance. You mentioned yourself you need consumer protection. They need to have confidence in this. So third party certification was put in place by EPA in response to manufacturers not being in compliance.

I think what's really important here are the penalties that accrue that Joe McGuire indicated earlier. So EPA can delist products and they can require companies to make restitution to consumers who didn't realize the energy savings that were promised to then.

So I think as the committee looks at it, making sure that those protections remain while we lower cost of compliance for manufacturers is really the trick and the balance that needs to be made there. But we need that accurate certification because consumers need to be able to count on the energy savings that they assume come with that Energy Star label.

Mr. GREEN. Anyone else?

Mr. JOHNSON. Yes, sir.

We agree with the idea of balance but balance is actually reflected in this provision that's in this discussion draft concerning third party certification.

We think it's a great solution. Again, EPA retains the third party certification authority, or DOE, should it move. But the program administrators retain that authority. We are just talking about balancing a solution here, essentially, targeting resources where they should be targeted, to new market entrants or bad actors. But if a good actor has demonstrated compliance for a period of time, why not let that good actor earn its way out? And, again, penalize that good actor should that good actor screw up a couple of times—they're back in.

So I think that's the kind of balance we need here and especially in the era of limited resources or perhaps smaller budgets. Let's

hone in on what the problems are. Let's recognize where the problems are not.

Mr. GREEN. Thank you, Mr. Chairman. I know I am out of time.

Mr. OLSON. My friend's time has expired.

The chair now calls upon the gentleman from the Magnolia State, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you so much, Mr. Chairman, and thanks to each of you for being here and giving us your insight and assistance as we look at this discussion draft.

And Mr. Johnson, I have got a few questions and things I want to cover with you, if I can. The discussion draft contains provisions providing for an exemption from the third party certification requirements for electronic manufacturers in good standing with the Energy Star program.

I know we touched on it but give us a short background on why these third party certification requirements came into being and why you may think they have maybe gone too far.

Mr. JOHNSON. Sure. They came into being 6 or so years ago—6 or 7 years ago in response to discrete problems in the Energy Star program outside of our sector. One set of problems related to the way the program was being administered in the database.

There was an opportunity certainly at that time to have a targeted approach to dealing with those problems but the easiest approach, the quickest way out was to apply premarket third party certification to everybody in the program. So we've lived under that regime since that time. All we are talking about here is a balanced way to earn your way out of that burden and I think that's the right way to go.

It is also interesting to note that at the time EPA was proposing third party certification for Energy Star the European Commission, a major partner in the program over in Europe, was like-minded with industry in the United States in saying we don't think this third party certification is necessary for electronics, and the European commissioner were partners in a couple of the electronics categories. So it was a strange situation for European regulators and industry in the U.S. to be allied but we both recognized that maybe a more tailored approach would have been better at that time.

Mr. HARPER. And give me a little insight. Why is it or what is it about the electronics products and electronics industry that makes that third party certification troublesome or more difficult?

Mr. JOHNSON. So what members have told us that there are a couple of reasons why it's relative burden for them. First, it takes some time out of the product development cycle.

It takes a few days or maybe a couple of weeks for testing and paperwork to clear, and for an industry such as ours, again, with products that have relatively short product life cycles, maybe they're on the market for only a number of months. Two weeks is 2 weeks of sales, right? So we are an industry in the tech industry that's used to self- certification in various regulatory realms including electromagnetic compatibility, FCC requirements and so forth.

So that's what we were used to. That's what we had in Energy Star, and with self-certification we had an excellent track record.

So the time to market penalty that comes with taking something out of the product development cycle for a period is a concern. The

cost is there, too, and I suppose for big companies the cost isn't such a big deal unless you have a big product line under the Energy Star program. Then it really adds up. For a smaller company, a startup that wants to be Energy Star compliant, shouldn't we make it easier for that startup to be in the program?

Mr. HARPER. And sometimes critics of the provision say that sometimes could allow manufacturers to perhaps cheat and to produce products that had the Energy Star label on them that maybe don't meet the Energy Star requirements or standards. How do you respond to somebody making that assertion or allegation?

Mr. JOHNSON. Well, I think for problem actors there should be penalties, certainly removal from the program, removal from the database.

Penalization through this provision and this discussion draft that you would now then be back under third party certification for at least 3 years, that's actually weighted toward the more onerous side, I would say.

But there's another angle to this, too. If the burdens to participate in the Energy Star program are too great, you could actually have companies manufacturing products that meet the spec that don't carry the label—just they didn't want to trouble with it. They get it to the store shelf. That was a point I made earlier.

But essentially how are we supporting the Energy Star brand if the store shelf is full of products that meet the spec but some carry the label, some don't? I don't think that's good for the brand strength.

Mr. HARPER. Is it correct that the proposed exemption only applies to the initial certification testing and that the ongoing verification testing of compliance with the Energy Star is not effective?

Mr. JOHNSON. That's absolutely the case and a very good point as well. We are not changing post-market verification. That's really important. Get out there, test the products on the shelves.

Our members do that to each other. But there's also organized ways of doing that now today under DOE and EPA and that should continue. It is not touched by this proposal.

Mr. HARPER. Great. Thank you very much, Mr. Johnson.

With that, I yield back, Mr. Chairman.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the gentlelady from Florida, Ms. Castor.

Ms. CASTOR. You almost did it again.

Mr. OLSON. Almost caught myself.

Ms. CASTOR. There is one female here on the committee. It is not really a very good reflection of the country or even the Congress to have only one female and not many minorities. So I take this responsibility seriously to represent.

And what I want to say is the Energy Star program has been a real success story for Americans and American families and businesses. Since its inception in the 1990s, it has saved consumer substantial moneys. It has helped us conserve energy, which is important at a time where we want to control carbon pollution and other greenhouse gases.

I thought Mr. Peters was right on when he said this is probably one of the least intrusive ways we can help put money back into the pockets of consumers and businesses, because after all it's voluntary.

And to answer Mr. Shimkus' concern over the return on investment, the return on investment for Energy Star has been impressive. Since its inception, Energy Star has cumulatively saved $2.5 billion in energy costs. In 2015, homeowners saved $360 million in energy costs, approximately 30 percent of their energy bill.

Since 1995, 1.7 million Energy Star homes have been constructed and in 2016 approximately 92,000 Energy Star-certified homes were constructed in the U.S. America is a leader here, globally.

The Energy Star program is internationally recognized as a proven standard for energy efficiency. A lot of the other countries are catching up but America has been the leader and we need to continue to be the leader.

But my takeaway today from the expert testimony is just kind of what was stated at the beginning. If it's not broken, why fix it? With all of the other pressing issues here before the Congress this is one that I think, based upon the testimony when you look at the track record, the savings for consumers, why fix it?

But we do have to be on guard because the Trump administration did propose a total elimination of Energy Star in its last budget. I strongly oppose that. This has been a vital lifeline for cost savings for consumers and helping us conserve energy.

So I want to make sure all of the witnesses are on record on that today. I'd like all of you just to answer yes or no. Do you support or oppose the Trump administration's proposal to totally eliminate Energy Star?

Mr. MCGUIRE. Oppose.

Ms. CALLAHAN. Strongly oppose.

Mr. MERRITT. Oppose.

Mr. DREW. Oppose.

Ms. CASTOR. So you would oppose elimination as well? I hear what you all are saying about the shift to the DOE. Most here are opposed to that as well. I took Mr. Merritt's comments very seriously that they lack experience at the DOE to do this. I wonder, there also are going to be some significant costs if the Congress were to make this move.

Ms. Callahan, do you know what it would cost to shift the program entirely from EPA to DOE?

Ms. CALLAHAN. I do not know what that would cost. I know what the budget at EPA is now. It is $42 million. I know that the entire budget at the EERE office, which is probably where it would land, is about $2 billion.

The president proposed almost an 80 percent cut to that budget and the House has recommended about a 40 percent cut to energy efficiency programs over there.

So we don't see where the money comes from to support that cost and that change.

Ms. CASTOR. Mr. Merritt, do you have any information on what you think it would cost to shift DOE entirely?

Mr. MERRITT. I do not, but I would support Ms. Callahan's comments.

Ms. CASTOR. Does anyone else want to comment on the potential cost of shifting and the loss of professional expertise that's currently at EPA?

Mr. MCGUIRE. We don't think the cost to the federal government would be any more if the program for appliances were at DOE than EPA. I agree with the adage if it ain't broke don't fix it.

I think it is broke when the appliance portion went over to EPA and there have been inefficiencies there. So I would make the argument that if they were shifted back to DOE there would be more efficiencies and less cost for running the appliance portion of Energy Star program.

We want the program to be funded.

Ms. CASTOR. Do you have any hard data on that? Any studies?

Mr. MCGUIRE. I don't have hard data. I don't think——

Ms. CASTOR. I think it's an open question right now and, because you would clearly incur significant costs including hiring and training of new staffers, standing up new online data systems comparable to those at EPA to collect certification data, that allows building owners to track their energy waste and waste consumption. It is not as simple as just snapping your fingers, especially in this budget arena where—and I think Ms. Callahan's comments are very well taken. The proposed decimation of the EERE budget at DOE and then you're going to increase costs by the shift and then probably put all of Energy Star at risk when DOE subsumes it all. I would be very concerned for consumers and our ability to put money back into their pocket.

I yield back the balance of my time. Thank you.

Mr. OLSON. The gentlelady yields back and, ma'am, if you're the only member of this committee that's female we are proud of that because you are the MVP. I see you chase down a ball in center field like George Springer from Astros. He's an MVP. You're an MVP.

The chair now calls upon the member from West Virginia.

Mr. MCKINLEY. Thank you, Mr. Chairman.

Ms. Callahan, it's good to have you here. I have enjoyed working with you over the years I have been here in Congress. It is good to be able to continue a discussion on energy efficiency and I particularly appreciated the work over the last 7 years with you and also Peter Welch. What a great champion of that and I think it has been beneficial for us to be able to team up.

Ms. CALLAHAN. And we've appreciated your leadership tremendously.

Mr. MCKINLEY. Thank you.

So one of the questions—I guess I am having some concerns as well about creating an exception under the verification. I am a strong advocate of IV&V—independent verification and validation—that we've used in NASA and elsewhere where we have someone else looking at it.

I am also familiar, having come from the construction industry on efficiency, of dealing with UL, the Underwriters Laboratory, and Factor Mutual—FM.

Can any of you give me an indication, because they've been around for decades—is there an exception to UL ratings or FM? Can anyone share——

Mr. JOHNSON. I am being looked at so I will respond.

This is different than product safety. Energy efficiency is different than product safety and I would note that in product safety, of course, there is third party certification that's very important. But there's actually no post-market verification for product safety.

With Energy Star, we are talking today about an approach that includes premarket certification and post-market verification. It is relatively more burdensome than product safety.

Should that be the case in all cases? I think we need that balance.

Mr. MCKINLEY. Maybe we are just picking nuances of this. But I am just curious. I am not sure that I am going to embrace the idea of an exception on this.

I have come from an industry that we depend on it. When you see a UL rating you know it's good. You know it has been done independently, and the same thing with FM.

Maybe, Mr. McGuire, go back to you on some of your comments. What was broken that Ms. Castor made that remark? What was broken in 2009 that caused the administration back in 2009 to switch from DOE over to EPA? What was broken then that they were intending to fix?

Mr. MCGUIRE. Sir, I don't know the answer. I don't know what was broken. I would submit that nothing was broken and what happened was the program that oversees Energy Star for appliances at EPA today became diverted from the energy efficiency mission and got into things like warranties and procurement rules and performance.

So we'd like to fix it. We'd like to have it go back and be part of the whole appliance efficiency policy apparatus where you have the minimum standards and Energy Star above that and they can be coordinated as they used to be.

Mr. MCKINLEY. I just don't want anything to come in between the government or whatever and energy efficiency and Energy Star. We've made great strides with this and I am looking to see what's going to facilitate it the best and that's why I was trying to understand.

Can any of the rest of you share with me what was broken in 2009 that caused the administration to switch it or to flip it?

OK. Thank you and I yield back my balance of my time.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the gentleman from Vermont, Mr. Welch, for 5 minutes.

Mr. WELCH. Thank you very much and thank you for this hearing. The witnesses have been tremendous.

What I'd like to do is just lay out some of my concerns and then I have questions for each of you.

The question of moving the program from EPA to DOE, I am agnostic about things so—what department does it, but the concerns I have are, number one, it's very disruptive to make a move.

You've got established expertise in one place than the other. Second, there's a real funding question that is really active because of the policies of the Trump administration and that's without passing judgment on them.

And then third, the continuity of this system is really important. So that's a concern I have. Will this on a practical level work, even if you think on a theoretical level it might?

And I have got the APA standard issue is really about maintaining the flexibility and the agility of the current program. If you get into the APA, you get lawyers involved, and it becomes a contested hearing.

And what has been tremendous, I think, about Energy Star in general has been the voluntary nature of it and the cooperative nature of it.

And then third, the third party certification, we had that problem with LG when the voluntary part of it wasn't also consistent and honest, quite frankly. So how do you have confidence in the program if you're leaving it up to the applicants without review to make that decision?

So those are the concerns I have in addition to the funding issue that across the government with the new administration is all in doubt—25 percent cuts pretty much across the board.

So that's where I am coming from. I think maybe we can work these out. But let me ask Mr. Drew, first of all. You've focused on the impacts of moving Energy Star to DOE. I know in the commercial building side of the program a number of home and commercial building organizations are supportive of EPA running Energy Star and do prefer the status quo. Can you elaborate on your experience with EPA's operation of these building programs?

Mr. DREW. We are referring specifically to that portfolio manager program. For commercial buildings when you're buying large equipment that consumes a significant amount of energy, the ability to go in and model the Portfolio Manager program, how the purchase of higher efficiency equipment, potentially Energy Star, is going to impact the overall energy usage and the potential cost savings for that building owner is significant for our members.

Mr. WELCH. Thank you. I don't have a lot of time. Let me ask you, Ms. Callahan, about your thoughts on the APA process as opposed to the current process.

Ms. CALLAHAN. I agree with you completely that it could add significant time and cost and complication. You're putting a formal process design for regulatory programs that have the force in law in place on a voluntary program and we think that that's very troubling.

Mr. WELCH. Do you have any changes that you would support in the process?

Ms. CALLAHAN. Yes. We should support working with the committee, working with the agencies and the other stakeholders to look at ways that we could put in place more transparency and perhaps more discipline to the program. And so by dint of guidelines, best practices, policies to be—there's a lot that we can do that's short of what I think is a really over step.

Mr. WELCH. Thank you.

Mr. Merritt, let's go on this requiring APA procedures. Can you suggest some changes EPA has recently made to facilitate manufacturer input?

Mr. MERRITT. Yes, thank you.

We've seen recent changes in the process to include more reliance on industry standard test procedures and standards as opposed to creating their own, which may not be as generally accepted.

We've also seen some recent changes in terms of what I mentioned earlier, having multiple rounds of specification open for comment which allows manufacturers to be fully heard.

I would support Ms. Callahan's comments that perhaps making that more consistent across the board to allow more transparency would be a good thing. I think we should do that.

Mr. WELCH. All right. Thank you. I have got time for one more but that, I appreciate.

Mr. Johnson, the cost and the timeline of third party certification is a burden. You think it slows product development. But I have heard the third party certification body states it only takes about 2 weeks to certify new product and $3,500 to do the necessary work. Is that accurate, in your view?

Mr. JOHNSON. The cost and the time can certainly vary. But I think it sounds about right and I would stress that that 2 weeks is a big deal when your product is out on the market for only a few months.

Mr. WELCH. OK. I thank all the witnesses.

Mr. Chairman, I yield back and I think we've got a lot to work with here.

Mr. OLSON. You betcha. Gentleman yields back.

The chair now calls upon the member from the Commonwealth of Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. I thank my friend very much and appreciate it.

Mr. McGuire, I have heard you testify today that the Association of Home Appliance Manufacturers' position is to move Energy Star for home appliances from EPA to DOE.

I have a constituent glass company that has had a very positive experience with the windows program at EPA. Do you see any challenges in keeping certain programs like the windows program at EPA while moving the home appliances program to DOE?

Mr. MCGUIRE. Sir, my answers would be that for 13 of its 21 years of existence Energy Star program for home appliances—home appliances were at DOE and not EPA. So I don't see any issues with appliances being shifted back to where they started from. Other products are not.

EPA and DOE both have had responsibilities in the program and the important thing about appliances is that the efficiency levels and the testing is so integrally tied to the standards and test procedures. The expertise at DOE is there to deal with that. So we may be a unique case in terms of how our standards and Energy Star requirements are intertwined.

Mr. GRIFFITH. I am going to go a little off the subject matter but I am going to ask you some questions based on some communication I have gotten from a constituent who has spoken to me numerous times about this problem and it deals with our Energy Star program and that is that she's not completely convinced that what we are doing is actually beneficial in the long term and she brings up her washing machine.

That is her issue. Anita of Tazewell County has asked me to ask these questions over the course of the last year or so because she

believes that in order to get a higher efficiency rating that her top loader washing machine was designed so that it didn't put as much water into the machine and she didn't feel like her clothes were getting as clean.

And so what happens when somebody doesn't feel like their clothes are getting as clean you figure out some way. I have heard stories of other people who have done more loads of wash so they put less clothes into the machine.

In her case, she babysits the machine, as she told me, and she has a contraption hooked up with her garden hose and she adds additional water to the washing machine because the machine—apparently if you interrupt the cycle at a certain point doesn't realize that you're putting more water in and it'll heat all the water.

And it seems to me that maybe we ought to be looking at a total efficiency and not just the energy rating because if people are doing more loads of laundry or stopping the machine after it's gotten started and filled up to a certain point and adding additional water to the machine doesn't seem to be very efficient.

I should note that I do have a picture here—probably can't get picked up on the camera—of Anita with her device filling in the washing machine with additional water.

So what do you say to folks like Anita who say, wait a minute? In fact, the heading on her email was, get the EPA out of my laundry room—it's destroying our consumer washing machines.

Mr. MCGUIRE. Well, we take her concerns very seriously and, as I mentioned earlier, the law that governs how the standards are set says you have to balance energy efficiency with cost effectiveness and the performance of the product.

And so this problem can occur at both the standard level and Energy Star. At some point, there is a diminishing return on the energy savings and the performance of the product.

We saw that 3 years ago with dishwashers where the proposed standard level would not clean a load of dishes. And so to have Energy Star level above and beyond that made no sense.

That's why those decisions need to be made at DOE and be based on fact. So we want consumers to be happy with our products. We want our products to work, and that requires that people who set standards and develop test procedures understand how these products work and the laws of physics.

Mr. GRIFFITH. I appreciate it.

Mr. Johnson, I think you touched on this a little bit in some of your testimony earlier too, not directly but close to it. Do you have something to add to that?

Mr. JOHNSON. Only that our products are using zero amount of water today.

[Laughter.]

We are very efficient in the energy sense, of course, and take great pride in this program. I want to make sure it continues. Are open minded if Congress should decide to move this energy efficiency program to the Department of Energy. We will work hard to make sure it's successful.

We do have questions. We have relationships. We are used to doing business with the EPA. But, again, these relationships can

be redeveloped. There's a lot of passion behind the program. We want to carry that wherever it goes.

Mr. GRIFFITH. I appreciate it and yield back.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the gentleman from the home of the Hawkeyes, Mr. Loebsack, for 5 minutes.

Mr. LOEBSACK. Thank you, Mr. Chair, and they had a great victory over Ohio State last weekend, too.

I didn't realize when I got elected to Congress that there would be so much levity at these hearings sometimes. Thank you for your comment about water. I appreciate that.

I do want to follow up with one of my previous colleague's questions, if I may, Mr. Johnson. I am not sure that you completely addressed Mr. McNerney's question about what's a good track record. How do we define that, in your case?

Mr. JOHNSON. Sure. A good track record of compliance in my mind is certainly one where there's no egregious examples of failure—of producing Energy Star-qualified products but not quite meeting the requirements. And I am not talking about paperwork violations. I am talking about egregious acts.

So when I say 100 percent track record of compliance, I am taking that characterization directly from EPA at the time it instituted third party certification for everybody.

Mr. LOEBSACK. Right. Does anybody else want to comment on that particular issue? Your thought about that? Because that's part of what we are talking about here. Did you want to say something, Mr. Merritt?

Mr. MERRITT. I would just add that we have seen instances in the lighting industry, of vendors claiming Energy Star compliance that did not have Energy Star compliant bulbs or products. So we consider the cost and timing of third party certification to be worth it in order to protect the brand.

Mr. LOEBSACK. To avoid fraud and abuse in the first instance, right? I have to say, I think the Energy Star program has saved consumers money. It has lowered greenhouse gas emissions, as was mentioned by Ms. Castor. I think it's been a great program. I have a lot of appliances that are Energy Star and they save us a lot of money every month. Part of the issue, of course, is the up front costs for some of these.

But, I think it's a great idea. And one of my colleagues already mentioned UL—Underwriters Laboratories. It is a company that does third party certification. We can't forget that they're in some people's districts as well and UL is in my district.

They've got a lab in Newton, Iowa, and they employ over a hundred folks, and I think that's something that we do need to take into account when we are making policy. Obviously, we are talking about energy savings. We are talking about making sure we are doing the right thing from a regulatory standpoint.

But I think we do have to look at the bigger picture, too, when it comes to jobs. After all, that's a big part of what we are trying to do here in the Congress—make sure that we create jobs, save jobs and do the right thing as far as our constituents are concerned and the country is concerned on that front, too.

So I did want to bring that up as well. I also want to agree with some of my colleagues that, I guess to use the word agnostic that I think Mr. Welch used, that's how I am about sort of transferring this to the Department of Energy, so long as we can do the right thing, so long as we can make sure that we have compliance and that there isn't the fraud and abuse.

I think that's the most important thing and I do want to reiterate, you know, when we talk about the cost of regulations and the cost of government, moving from one agency to another there can be a lot of costs associated with that and I just want to make sure that we understand that before any decision gets made to move these obligations from one department to another. It is not simple. It may be theoretical but we have to thinking about it pragmatically as well.

Ms. Callahan, did you want to address also the issue of transparency and discipline? I know that Mr. Merritt did but would you like to add to that at all?

Ms. CALLAHAN. Sure. What I would like to say in front of that, though, is I was looking through my papers to see how many jobs are actually in your district that are related to energy efficiency. There are 2.2 million jobs in the U.S. that are within the energy efficiency arena. So I think you make a very good point there.

With respect to transparency and certification, we want to make sure that there's a balance and that consumers are protected and that they can continue to trust in the label. If we can find ways to make the program less costly for compliance and relying on third party certifications on industry standards versus having EPA or DOE create their own, we want that.

We want to take down the cost in the program. But it has to be balanced with making sure that we keep the integrity of that Energy Star label intact.

Mr. LOEBSACK. Ultimately for the sake of consumers.

Ms. CALLAHAN. Right.

Mr. LOEBSACK. That's the bottom line here.

Ms. CALLAHAN. Exactly.

Mr. LOEBSACK. Well, thank you so much. I really appreciate the panel and thank you, Mr. Chair, and I yield back the balance of my time. Thank you.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the gentleman from Missouri, Mr. Long, for 5 minutes.

Mr. LONG. Thank you, Mr. Chairman. And Mr. Chairman, how are you feeling today?

Mr. OLSON. Very good. Thank you.

Mr. LONG. How are your math skills today?

Mr. OLSON. They're what they were when I walked in here. So I thought they were pretty good but you've got something for me.

Mr. LONG. I have been working on a mathematical equation here. Eleven minus one would be how much?

Mr. OLSON. I believe that is 10. I am sure you're talking about the World Series.

Mr. LONG. Ten. That's what I have gotten to and I was just trying to figure out how many more World Series championships the St. Louis Cardinals have won than the Houston Astros.

[Laughter.]

You have now answered my question. Thank you.

[Laughter.]

I want to start down on the end with Mr. McGuire and I have a question for everyone. I just want to move down the row and get a quick response to my question.

One of the goals of the voluntary Energy Star program it set out an energy policy after 2005 is to reduce pollution, which we all want. Like Johnny Morris Bass Pro Shops in the Seventh District of Missouri says, we all live downstream—we all want to reduce pollution.

Mr. McGuire, start with you and coming down the line. Can any of you tell me what effect or how it would hurt if to move from EPA back to DOE where this program was originally? And there's been a lot of talk today about moving it and why they moved it in 2009 and how hard it would be to move it back when the ones that are arguing to not move it back are the ones that moved it in 2009.

But can you give me any reason why moving it to the Department of Energy for an Energy Star program would have any effect on pollution, good or bad, compared to EPA?

Mr. MCGUIRE. It would not impact it.

Mr. LONG. OK.

Ms. CALLAHAN. I want to make sure that we are clear. Joe and the appliance manufacturers are looking at moving back the appliance portion. Energy Star program is much bigger and broader than that.

We believe that it would do damage to move the entire program, which is what's in the discussions draft now, back over from EPA to the DOE program.

Mr. LONG. In what regard? What way?

Ms. CALLAHAN. Well, because there's 25 years of history, of databases, of partnership relation and management, brand management that are going on and people are relying on that program and on how it's being administered. And to pick that up and move it will have costs associated with it.

Mr. LONG. It was the 25 years administrated under—right?

Ms. CALLAHAN. Pardon?

Mr. LONG. It was the 25 years you're talking about?

Ms. CALLAHAN. With the EPA. This has been a shared program since it was created——

Mr. LONG. Right.

Ms. CALLAHAN [continuing]. In 1992 and that—a large portion of the program has been always over at the Environmental Protection Agency.

Mr. LONG. Right. Thank you.

Mr. MERRITT. So as I mentioned during my testimony, our primary concern is continuing the viability and smooth operation of this program. We would be concerned that any change that would disrupt that operation and the implementation of the specifications of the marketplace could actually reduce its effectiveness, which would increase electrical consumption, which would affect pollution, if you want to make that connection.

Mr. DREW. From AHRI's perspective, our comments would echo those of Mr. Merritt and Ms. Callahan. We've successfully operated

this program within the EPA's structure for numerous years and the idea that if it was disruptive moving it from DOE to EPA initially, why wouldn't it be just as disruptive moving it back if not more so at this point in time with a much larger program at stake?

Mr. JOHNSON. I don't have a view on the pollution impacts. I tend to doubt it would have an impact. We are not agnostic about moving it to DOE. We understand the reasons why.

If Congress decides to do so we'll work hard to make sure it's successful. We are used to doing business at EPA. That's where our relationships are. That's not to say we can't recreate success over at DOE.

Mr. LONG. Mr. Johnson, the discussion draft and change of provision that would make the requirements of the Administrative Procedure Act apply to actions taken under Energy Star. The critics of this provision say it could damage the program by slowing it down. As the maker of products that need to get to the market quickly do you see this as a problem?

Mr. JOHNSON. I see it as a potential problem. We certainly want to maintain program agility and flexibility. That's really important for the fast-moving consumer tech sector. But I think there are ways to do that while bringing on perhaps a few more checks and balances. Process aspects of the APA perhaps could be applied to the program. Third party oversight within the federal government such as a role for OMB is something to consider as well.

So on this provision we'd welcome working with the committee to maybe target this a little more appropriately for our sector.

Mr. LONG. OK. Thank you, and thank you all for being here, for your testimony today.

Mr. Chairman, I yield back.

Mr. OLSON. Gentleman yields back and I want to inform the gentleman that I just got a text from Mayor Allen Owen of Missouri City, Texas, the Show-Me City. He says, please come down to our victory parade this Saturday barbecue in Missouri City for our Houston Astros, the world champs. He said yes, it's our first but we have to start somewhere.

[Laughter.]

I now yield 5 minutes to the gentleman from Maryland, Mr. Sarbanes.

Mr. SARBANES. Thank you, Mr. Chairman. Thanks to the panel.

I was curious what happens other places. I am sure you're familiar with these kinds of incentive programs or Energy Star like initiatives in other countries or have some sense of that and I am interested how we compare to that, whether the analogous regime around labeling energy efficient products is mandatory in other places, voluntary. So I just want to get some context for that as we kind of figure out what the best way to do this is here.

And then I am also interested in any interplay that occurs in terms of manufacturing products that get an Energy Star rating here pursuant to this program as those products go into Canada or into Europe or other countries what's happening—is Energy Star being converted into some other rating that's given in those countries, et cetera.

So I am just trying to get a little bit of a peripheral vision on the issue and anybody who feels competent to answer the question I invite them to do that. Yes?

Ms. CALLAHAN. So the Energy Star program is really recognized globally as the gold standard for public-private partnerships in this area and in fact it is licensed and used in the European Union, Canada, Japan, Ireland, Liechtenstein, Norway, Switzerland, and Thailand, and the government of Canada has weighed in to encourage the Congress to continue the program and continue funding to the program. They're in opposition to the administration's request to eliminate the program. It really is the gold standard around the world.

Mr. SARBANES. Any other comments? Yes.

Mr. MCGUIRE. The Energy Star program in Canada is licensed to the NRCAN, Natural Resources Canada, by the Energy Star program. So they will adhere to the specifications for the most part that happen in the U.S.

Our members are very familiar with it. I would note that in Canada the Energy Star program is housed within the appliance standards program of Natural Resources Canada, similar to what we are suggesting be again the case for DOE.

Mr. SARBANES. Go ahead.

Mr. JOHNSON. Sure. It is very important to us, the consumer technology industry, to have policies and programs for energy efficiency that are generally aligned and harmonized around the world. Energy Star is an example of something like that. We also have these industry-led voluntary agreements that have been picked up in three regions of the world as well. So we appreciate when there is that globalization of an approach that, again, for us is innovation friendly.

Mr. SARBANES. Sounds like the U.S. and the Energy Star program is a global leader in setting standards like this and driving that kind of label other places. Is there any competing? I mean, you mentioned some countries and some parts of the world.

Are there some competing energy efficiency labelling programs out there? Or would you say that Energy Star is up here and everybody else is down here?

Mr. JOHNSON. I can respond to that. There are a large number of standards in labelling programs around the world and that is actually part of the challenge that we have.

Look in the back of a product, you see examples of many different kinds of labels, maybe not for energy but that's what I am talking about is a proliferation of labels.

It is so much easier for either a small or a large company that wants to sell around the world to have one test, one designation, one label, an aligned program. That's what we strive for in the tech industry.

Mr. SARBANES. Has Canada, for example, or other countries that use the Energy Star rating, have they offered up any testimony that you're aware of or perspective? Have they weighed in at all about the discussion that we are having here in terms of the—any changes to the program? Do they have anxieties about it or are they just kind of sitting back and watching?

Mr. MCGUIRE. We've discussed it with NRCAN and they don't have any anxieties that I know of. They were more of in a listening mode. But they certainly are aware of what we're suggesting.

Ms. CALLAHAN. We've had no discussion with them on the discussion draft. Where I know their concerns lie is in keeping the program funded and not eliminating the program.

Mr. SARBANES. Great. Thanks very much. I yield back.

Mr. OLSON. Gentleman yields back.

The chair now calls upon the gentleman with the home of the Hidden Lake Gardens, Mr. Walberg, for 5 minutes.

Mr. WALBERG. You've done your homework on the victorious Michigan State Spartans as well.

I appreciate the hearing today. Mr. McGuire and Mr. Johnson, I'd like your comments on what has been the experience of your member companies when it comes to having opportunities to comment on actions taken under Energy Star and access to the data used by the government on which to base its decisions and is there room for improvement?

Mr. McGuire.

Mr. MCGUIRE. Thank you, sir.

It has been our experience that at EPA they are very inconsistent with demonstrating the data that they have used to make their decisions and responding to suggestions and data that we have submitted and providing a consistent amount of time for us to comment.

So there are question marks left at the end of the day and that is why we feel that applying some Administrative Procedure Act process improvements would make it more repeatable and understandable for the people that have to make the investments in their products for the consumers to benefit from the energy efficiency gains.

Mr. WALBERG. Be a little more specific. Under the Administrative Procedures Act, where would you go with that?

Mr. MCGUIRE. A specified period for comments—that you have this many days to comment and that if a decision is reached that it might result in you—a specification you feel unwarranted or not justified by the facts that you would have the ability to appeal that to someone else in the agency other than the person that made the decision.

We are not talking about loading up litigation. We are talking about due process so that we can understand how the decision was made.

Mr. WALBERG. OK. Mr. Johnson.

Mr. JOHNSON. I have similar comments. Our members' experience in some Energy Star product categories has been good and not so good in others. I think there definitely is room for improvement.

We want data-driven outcomes. We have experienced outcomes with Energy Star specifications that don't seem linked so much to the data as to maybe a feeling or a passion in a different direction. So some amount of the rigor of the APA may be appropriate to guarantee certain checks and balances and time lines. However, as I mentioned earlier, we don't encumber the program. So we have to be, I think, selective at least for our sector in determining what

of the APA makes the most sense and then what else might be a good check or a balance against outcomes here.

Mr. WALBERG. But you believe that we could improve upon the opportunities for the manufacturer input without slowing the program down?

Mr. JOHNSON. I think we can. Yes.

Mr. WALBERG. OK. Mr. McGuire?

Mr. MCGUIRE. I think with certain processes added that are included in the Administrative Procedure Act it can be improved.

Mr. WALBERG. OK. What's your reaction to the administration's FY 2018 budget request which zeroed out the Energy Star program? If you answered that earlier before I got here, forgive me.

Mr. MCGUIRE. I did. We oppose zeroing out the program. We want it to be maintained and appropriately funded.

Mr. WALBERG. Mr. Johnson?

Mr. JOHNSON. CTA doesn't have a position on budgetary matters but in the situation where on one hand you have elimination of the program, on the other hand you have status quo, don't touch a thing, we are kind of in the middle.

There's room for improvement. Let's work on that.

Mr. WALBERG. Thank you. I yield back.

Mr. OLSON. Gentleman yields back.

We've saved the best for last. The chair calls upon Mr. Tonko of New York for 5 minutes.

Mr. TONKO. Mr. Chair, I appreciate that assessment.

Welcome to our witnesses. Energy Star is a program that benefits consumers, manufacturers, and the environment. We've heard all the statistics about the program's success so I won't belabor the point.

But it is clear that the Energy Star label, which is recognized by 90 percent of consumers, is trusted. Supporters of the discussion draft have discussed how increasing transparency and accountability are important to the future of the program. But I believe the most important issue to maintain the integrity of the program is without a doubt upholding its well-respected brand with consumers.

We should not take consumer support for the brand as a given. Ms. Callahan, a question for you—and before I do that, let me state what an honor it is to serve on the board of Alliance to Save Energy in my pre-congressional days and now in my congressional tenure. So I thank you for that.

Ms. CALLAHAN. Thank you. We really appreciate your leadership up on Capitol Hill but we miss you a lot. When you were a fiduciary board member we saw a lot more of you.

Mr. TONKO. There you go.

So the question, and I will ask this of all, if we could kind of stick to a yes or no—do you agree that upholding the integrity of the Energy Star label is essential to the success of the program?

Ms. CALLAHAN. Yes.

Mr. TONKO. Mr. McGuire?

Mr. MCGUIRE. Yes.

Mr. DREW. Yes.

Mr. JOHNSON. Yes.

Mr. TONKO. Thank you. And in March 2010, GAO found the Energy Star program in a report that was shared to be vulnerable to fraud and abuse. In this report, there were many concerns expressed and at that point many products were able to be self-certified.

So in 2011, EPA responded to GAO's report and required third party certification. Ms. Callahan, if we go back to self-certification and these issues reemerge, do you think a future report like this one I am holding would hurt the Energy Star brand?

Ms. CALLAHAN. I absolutely believe it would hurt the Energy Star brand to have a report like that. It hurt it the last time. It would hurt it again.

Mr. TONKO. Mr. Merritt, do you agree?

Mr. MERRITT. I do.

Mr. TONKO. Mr. Drew, the Air Conditioning, Heating and Refrigeration Institute is a certification body for testing products. Are certification bodies also responsible for conducting after-market verification testing?

Mr. DREW. We do not only certification testing for all new products entering the market. We also do annual verification testing done on a random basis selected from that manufacturer every year.

Mr. TONKO. Thank you.

And there's been a lot of discussion at this hearing about third party certification and the removal of third party certification. If that were done, who would be responsible for market surveillance? Anyone.

Ms. CALLAHAN. I guess I will answer. The market surveillance and after-market verification is currently the responsibility of the EPA and I would presume that that would continue.

Mr. TONKO. OK. So if we didn't have that third party certification falling to the EPA, that would require additional spending for the EPA, which has already been threatened with some budgetary cuts. So I think we need to see that one or what it is.

Mr. McGuire, were you going to——

Mr. MCGUIRE. I was just going to say EPA's third party verification requirement is a responsibility they put on their partners. So that AHRI and AHAM do the verification—third party verification testing with independent laboratories each year. So those costs are being borne by the manufacturers, the partners, not the public, not by EPA.

Ms. CALLAHAN. Can I clarify that?

Mr. TONKO. Sure.

Ms. CALLAHAN. There are significant costs, though, that EPA does bear to certify these third party accreditors and also the verification of the project in the marketplace. So there are very significant costs and EPA has that up on its website.

Mr. TONKO. Thank you.

And in the 2010 GAO report, EPA officials stated that limited resources made it difficult to do after-market product verification, not to mention at that point consumers may have already bought a fraudulent product.

Mr. Merritt, is that why you do not support removing third party certification in conjunction with the warranty provision?

Mr. MERRITT. That's very much part of it. Essentially, third party certification prior to listing ensures the integrity of the results. Relying on post-market certification, then there's a lottery that many bad actors are willing to enter. Their odds of getting caught are very low.

Mr. TONKO. Thank you. I will just add that according to one certification body some types of products failed about 15 percent on first time model submissions. So Energy Star succeeds because it is truly a partnership between industry and our government.

Removing third party certification would place all the burden on the government review submitted information, potentially conduct after-market verification, and could result in eroding trust in the program. Decades have been spent building consumer recognition and confidence in the Energy Star label. I would encourage us not to put that at risk.

And with that, Mr. Chair, I yield back.

Mr. OLSON. The gentleman yields back.

Seeing that there are no further members wishing to ask questions, I'd like to thank all of our witnesses again for being here today and thank you for your patience. Lots of comments about my love for my Houston Astros and also an impromptu math lesson from Mr. Long.

[Laughter.]

I have 18 documents I would like to submit for the record and very briefly, statements in support of H.R. 3777 from Congressman Buddy Carter, EPA testimony of the Energy Star Reform Act discussion draft, DOE's statement on ESTAR of Acting Secretary Daniel Simmons, a letter from the American Council of Independent Laboratories, a letter from the U.S. Green Building Council, a letter from the American Public Gas Association, a letter from the U.S. real estate industry, a letter from the Underwriters' Association, American Council for an Energy-Efficient Economy, comments on the Energy Reform Act discussion, a letter from Spire, e4TheFuture comments on the Energy Reform Act Discussion Draft, the National Electrical Manufacturers Association—NEMA's—comments on the Energy Star Reform Act, NEMA's comments on proposed language changes, a letter from the High Performance Building Coalition, a letter from Lowe's, a letter from the Air Conditioning Contractors of America, a letter from the ranking members to the chairman, and the Geostudy on the Energy Star Program.

Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. OLSON. Pursuant to committee rules, I remind members that they have 10 business days to submit additional questions for the record. As for the witnesses, have the responses to us within 10 days as well upon receipt of the questions.

Without objection, the subcommittee is adjourned.

[Whereupon, at 12:28 p.m., the committee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Statement of Support by Congressman Buddy Carter**

**"Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act"**

Mr. Chairman, we're here today to review legislation that will undertake common sense reforms to ensure businesses are not unnecessarily subjected to onerous and burdensome regulations that will impact their ability to comply with federal law. One example of legislation tackling these concerns is H.R. 3477, the Ceiling Fan Energy Conservation Harmonization Act. This bill would do something very simple; it would align the dates of compliance for two separate efficiency regulations covering the same products.

Those two regulations, one impacting ceiling fan light kits with a compliance date of January 2019, and one for ceiling fan motors with a compliance date of January 2020, only create confusion. This difference in dates will only result in an additional burden on businesses to comply, leading to countless hours of work in order to avoid being fined for noncompliance. All of this works will lead to less focus on the customers while providing no additional benefits.

The changes proposed under this legislation are good governance, allowing businesses to comply in a manner that limits unnecessary actions. Additionally, low-income households will be impacted by these regulations as providers move to meet disjointed deadlines. My good friend, Rep. Hudson, introduced this bill to provide certainty, to ensure businesses aren't unnecessarily penalized, and to give consumers continued options that they deem are best for their families.

I want to thank my colleagues for their introduction of this legislation and I want to thank this subcommittee for their efforts to bring this up. This legislation is a step in the right direction in correcting guidance that would only seek to negatively impact our communities without a benefit in sight. I ask that you join me in supporting this legislation.

Earl L. "Buddy" Carter

# Statement for the Record
# Administrator Scott Pruitt
# U.S. Environmental Protection Agency

## Hearing: Discussion Draft, ENERGY STAR Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act

## Energy and Commerce, Energy Subcommittee
## United States House of Representatives
## November 7, 2017

Chairman Upton, Ranking Member Rush, members of the subcommittee, I appreciate the opportunity to provide written testimony on the ENERGY STAR Reform Act of 2017 Discussion Draft. Although the Administration does not have an official position on the specifics of this bill, I am appreciative of the committee's interest in improving the ENERGY STAR program.

ENERGY STAR is a voluntary program, implemented by the Environmental Protection Agency (EPA) and the Department of Energy (DOE), that provides consumers and businesses with information identifying the most energy efficient choices in products, homes and buildings. The ENERGY STAR program was established by EPA in 1992, under the authority of Section103(g) of the Clean Air Act. In 2005, Congress enacted the Energy Policy Act. Section 131 of the Act amended Section 324 of the Energy Policy and Conservation Act and directed EPA and DOE to implement "a voluntary program to identify and promote energy–efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of or other forms of communication about products and buildings that meet the highest energy efficiency standards."

In September 2009, EPA and DOE signed a Memorandum of Understanding (MOU) that redefined roles and responsibilities for EPA and DOE in response to industry

concerns and to enhance and expand the various aspects of ENERGY STAR. The division of responsibilities established by the MOU resulted in significant improvements to the program including standardized program approaches, reduced duplication of effort and it helped resolve market confusion. Under the MOU, EPA and DOE work together to implement the ENERGY STAR program, leveraging the strengths of each agency. EPA manages the ENERGY STAR Products, New Homes, Commercial, and Industrial programs. DOE provides technical support, including test procedure development for products and some verification testing of products. DOE's role leverages DOE's complementary regulatory work on minimum efficiency standards. Due to DOE's Recovery through Retrofits program, DOE also manages Home Performance with ENERGY STAR for upgrades to existing homes.

Over the last 25 years, EPA has developed and fostered relationships with thousands of market actors across the residential, commercial, and industrial sectors of the American economy. EPA developed and manages ENERGY STAR Portfolio Manager, an online energy tracking and benchmarking tool, which has become an industry accepted tool that has benchmarked close to 50% of U.S. commercial floor space. EPA built and manages IT systems that share product data in real time to thousands of retailers, manufacturers, and utilities; an average of over 800,000 ENERGY STAR certified products were sold each day in 2015. Nearly 700 utilities (serving roughly 85% of American households) partner with EPA to leverage ENERGY STAR as a common national platform, investing billions in energy efficiency programs each year.

EPA and DOE remain committed to improving the ENERGY STAR program in response to stakeholder feedback as well as improving coordination between the two agencies.

- For example, EPA has aligned ENERGY STAR testing requirements with DOE standards to allow testing for ENERGY STAR to also be used for purposes of federal efficiency standards.
- In addition, when standards are updated on a different timeline than ENERGY STAR specification revisions, EPA updates existing specifications and data requirements to align with DOE definitions, metrics and test procedures.

- To further improve the efficiency and effectiveness of our collaboration, EPA and DOE are initiating an effort to reduce manufacturer reporting burden by avoiding duplicative submittal of product information. EPA and DOE will convene stakeholders to explore this proposal as well as other ways ENERGY STAR can leverage current IT functionality to increase program efficiency.
- In response to recent stakeholder discussions and to address any potential confusion about the transparency and inclusiveness of EPA's processes, EPA is creating a Standard Operating Procedure (SOP) for setting ENERGY STAR product specifications. The new SOP will include specifics on minimum public comment periods, procedures for sharing proposals with stakeholders, and a detailed, step-by-step description of the entire process. EPA will continue to explore with stakeholders areas where EPA can improve transparency.

To improve the oversight of ENERGY STAR certified products, homes, and commercial facilities, EPA has implemented independent certification requirements. In response to a finding by the U.S. Government Accountability Office that the program was vulnerable to fraud, EPA implemented third-party certification of ENERGY STAR products starting in 2011. Prior to 2011, ENERGY STAR products were self-certified by partners.

In conclusion, EPA stands ready to work with Congress and our industry partners to ensure the Energy Star program continues to work well for those partners and American consumers. I appreciate the opportunity to provide written testimony as I support the committee's interest in improving the ENERGY STAR program. The Agency stands ready to provide technical assistance to the Committee should the Committee have any further questions.

Thank you.

**Statement of Acting Assistant Secretary Daniel R Simmons**

**Office of Energy Efficiency and Renewable Energy**

**U.S. Department of Energy**

**Submitted to**

**House Committee on Energy and Commerce**

**Subcommittee on Energy**

**United States House of Representatives**

**November 7, 2017**

## ENERGY STAR

In 1992, the U.S. Environmental Protection Agency (EPA) introduced ENERGY STAR, under the authority of the Clean Air Act Section 103(g), as a voluntary labeling program designed to identify and promote energy-efficient products. Computers and monitors were the first labeled products. Throughout 1995, EPA expanded the program to additional office equipment products and residential heating and cooling equipment. In 1996, EPA joined with the Department of Energy (DOE) to expand the labeling program to additional product categories.

Today, ENERGY STAR remains a joint EPA-DOE program that encompasses more than 75 product types (e.g., clothes washers, refrigerators) grouped into 10 product categories (e.g., home appliances, lighting). There are numerous synergies between ENERGY STAR and DOE's Appliance Standards Program for setting minimum energy efficiency standards. For example, 30 of the more than 75 product types covered under ENERGY STAR are also covered under DOE's Appliance Standards Program. ENERGY STAR also includes efforts to improve the efficiency of new and existing homes, commercial buildings, and industrial facilities.

In 2005, Congress enacted the Energy Policy Act (EPAct). Section 131 of the Act amends Section 324 of the Energy Policy and Conservation Act, and directs EPA and DOE to implement "a voluntary program to identify and promote energy–efficient products and buildings in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of other forms of communication about products and buildings that meet the highest energy efficiency standards." The Act further directs EPA and DOE to work jointly on the program and states that the responsibilities under the program "shall be divided between the Department of Energy and the Environmental Protection Agency in accordance with the terms of applicable agreements between those agencies." (42 USC Section 6294a)

On September 30, 2009, DOE and EPA signed a Memorandum of Understanding (MOU), designating EPA as the lead agency and brand manager for the ENERGY STAR program. EPA is also tasked to work with program partners to increase public awareness of and access to ENERGY STAR labeled products. Under this MOU, DOE's primary role is to work with the EPA, develop Federal test procedures, and administer a product verifying testing program.

DOE and EPA coordinate regularly on these elements through weekly calls as well as periodic meetings. In addition, DOE and EPA jointly develop an annual work plan for upcoming test procedure and specification revisions. DOE reviews all updates to ENERGY STAR specifications prior to release by EPA, ensuring that the specification aligns with DOE energy conservation standards, where applicable. DOE also shares test data and technical information with EPA to ensure that both agencies have the best set of data to use in the ENERGY STAR product development process. Finally, DOE and EPA coordinate on verification testing to ensure there is not a duplication of government resources.

We look forward to working with Congress to ensure our efforts provide value to American families and businesses.

*Enhancing Public Health and Safety*
*Through Quality Testing and Engineering*

ACIL

November 7, 2017

The Honorable Greg Walden
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Walden and Ranking Member Pallone:

On behalf of the American Council of Independent Laboratories (ACIL), we write in strong support of independent third party certification within the ENERGY STAR program; thereby we strongly oppose the Energy Star Reform Act of 2017 Discussion Draft, which allows self-certification for electronics manufacturers in good standing within ENERGY STAR. This language eliminates the requirement of third party certification to certain electronic products.

The ACIL is an association representing independent commercial scientific and engineering firms with over 1,000 facilities across the U.S. engaged in testing, product certification, consulting, and research and development to enhance public health and safety.

As you know, the ENERGY STAR program is a voluntary initiative that is broadly supported by manufacturers, retailers, utilities, energy efficiency advocates, and consumers. Over the past two decades America's families and small businesses have realized estimated savings of more than $239 billion on utility bills and prevented more than 1.9 billion metric tons of greenhouse gas emissions as a result of the program. The ENERGY STAR program has grown to represent products in more than 65 different categories, with more than 4.5 billion products sold over the past 20 years. More than 1.4 million new homes and more than 20,000 facilities proudly carry the ENERGY STAR label, all of which allow Americans to make smarter choices on how to use less energy and realize greater savings.

The U.S. government relies on private sector resources and third-party certification to ensure products entering the market are safe, reliable and efficient. To ensure safe products are used in the workplace, the Occupational Safety and Health Administration (OSHA) recognizes private sector testing, inspection, and certification organizations through the "Nationally Recognized Testing Laboratory" program (NRTL). NRTL-recognized laboratories perform certification for certain products to ensure that they meet both construction requirements and industry standards.

The current ENERGY STAR program was modeled on a similar approach after a 2010 Government Accountability Office investigation called into question the integrity of the program. Under the current rules, ENERGY STAR products must be independently certified based on testing from recognized laboratories. In addition to up-front testing, a percentage of all ENERGY STAR products are subject to "off–the–shelf" and post market verification testing each year. The goal of this testing is to ensure that changes or variations in the manufacturing process do not undermine a product's qualification for ENERGY STAR.

**AMERICAN COUNCIL OF INDEPENDENT LABORATORIES**
1875 I Street NW • Suite 500 • Washington, DC 20006 • TEL 202.887.5872 • FAX 202.887.0021 • www.acil.org • info@acil.org

This public-private partnership has created a competitive marketplace for testing, inspection, and certification (TIC) organizations that manufacturers leverage to meet ENERGY STAR compliance needs. The program's flexibility allows for manufacturers to shop for services based on price, speed, or location, and not be restricted to a single organization to review products.

We respectfully request that you and your committee continue to support the independent third party certification within the ENERGY STAR program and we remain in strong opposition to the Energy Star Reform Act of 2017 Discussion Draft.

Thank you for your time and attention regarding this important issue and please do not hesitate to call upon me.

Sincerely,

Richard Bright
Chief Operating Officer

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FOUNDERS
David Gottfried
Michael Italiano
S. Richard Fedrizzi

November 6, 2017

Chairman Greg Walden
House Energy and Commerce Committee
2185 Rayburn House Office Building
Washington, D.C. 20515

Ranking Member Frank Pallone
House Energy and Commerce Committee
237 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Walden and Ranking Member Pallone,

On behalf of the U.S. Green Building Council (USGBC), a national nonprofit representing more than 12,000 member companies and organizations committed to cost effective and energy-efficient buildings, I write to provide comments on the Energy Star Reform Act. Sound policy solutions can be achieved when interested parties have the ability to work with the committee and stakeholders in a collaborative fashion. USGBC appreciates the ability to comment on this draft proposal.

We want to commend the committee for its work this Congress in advancing important environmental and energy legislation including H.R. 3017, "The Brownfields Enhancement Economic Redevelopment and Reauthorization Act of 2017", H.R.627 – "The Streamlining Energy Efficiency for Schools Act of 2017" and H.R.306 "The Energy Efficient Government Technology Act."

USGBC would like to provide the following comments to the ENERGY STAR discussion draft.

**USGBC does not support a move of responsibilities or duties from the U.S. Environmental Protection Agency (EPA) to the U.S. Department of Energy (DOE).**

USGBC has a long working relationship with the ENERGY STAR program. Through our interaction and collaborations with the program we have found ENERGY STAR to be a vital public-private partnership that helps businesses, consumers, as well as state and local governments save money by investing in efficiency and reducing negative environmental impacts. Indeed, with a long track record of cost effective success, ENERGY STAR is the most widely recognized symbol for energy efficiency, with a brand awareness of about 90%. In 2015 alone, American consumers and businesses saved over $34 billion with the help of ENERGY STAR. Since 1992, ENERGY STAR has assisted companies and consumers save $430 billion on utility bills.

ENERGY STAR serves a critical role in real estate across the country. About 45% of the commercial building floor space in the U.S. has been benchmarked for tracking and

analyzing utility consumption using ENERGY STAR's Portfolio Manager. Since 1999, ENERGY STAR has certified more than 28,000 buildings and more than 5 billion square feet of space. ENERGY STAR also counts more than 3,100 home builder partners who have constructed almost 1.8 million certified new homes since 1995. Many of these properties also pursue additional third-party certifications like the LEED rating system which USGBC administers.

EPA's program activities, in particular, have stood out for their transparency and their commitment to proactively seeking and considering stakeholder input, as outlined below.

*Given the track record of results and the economic impact of the program USGBC would encourage that further study be untaken, perhaps by the Government Accountability Office (GAO), on the potential advantages and disadvantages of relocating a program of this importance before such an action is taken.*

**New funding would be needed for DOE to adequately support the existing ENERGY STAR program.**

While, at this time, we do not support moving the core operations of ENERGY STAR, we would note that relocating the ENERGY STAR program would require additional resources at DOE to address existing market engagement and program activity. This is especially true when the Administration and the House of Representatives are in support of funding reductions[1][2] and realigning the programmatic activity of the Office of Energy Efficiency and Renewable Energy (EERE) at DOE[3]. *To that end we support an annual authorization to support the important work of the program.*

**USGBC does not support adding bureaucracy and cost to the ENERGY STAR development process.**

USGBC has a long working relationship with the ENERGY STAR program. Our experience has been open and inclusive as technical content has been refined and new ratings have been offered. We do not support the application of Administrative Procedures Act (APA) requirements to the ENERGY STAR program, which is a voluntary public-private partnership in nature, rather than a regulatory program for which the APA is intended. USGBC works with a number of other voluntary rating systems administered by the federal government and is unaware of other voluntary programs having APA requirements in place.

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[1] EERE's FY 2018 Congressional Budget Request available at: https://www5.eere.energy.gov/office_eere/program_budget_formulation.php

[2] H.R. 3354 "Make America Secure and Prosperous Appropriations Act, 2018." Page 1612, available at: https://www.congress.gov/115/bills/hr3354/BILLS-115hr3354pcs.pdf

[3] The Energy and Water Development Appropriations Report for fiscal year 2018 Page 80 available at: https://appropriations.house.gov/uploadedfiles/hrpt-115-hr-p2.pdf

Over the years it has implemented key elements of the ENERGY STAR program, EPA's management of the program has matured and the agency has become a valuable partner to market stakeholders. Notably, in 2012, EPA adopted the ENERGY STAR Strategic Vision and Guiding Principles, in which the agency sets forth "a systematic framework built on a foundation of transparency and collaboration with a range of stakeholders."[4] The agency also provides public information on potential standards in development or revision,[5] and does not limit stakeholder engagement to formal comment processes. In our view, these principles and the agency's demonstrated commitment to following them, adequately address stakeholder protections.

Moreover, the APA requirements would certainly have the consequence of adding time and money to the development process,[6] and are unnecessary in light of stakeholder involvement processes that EPA has set for the ENERGY STAR program. For example, as part of "The Energy Efficiency Improvement Act of 2015[7]" EPA was authorized to develop a voluntary program to recognize commercial building owners and tenants that use high-performance energy efficiency measures in the design and construction of separate spaces. In late 2016 EPA solicited stakeholders' input on the development of this program using a notice and comment process (not the full APA process) and by summer of 2017 had already begun piloting the program with private sector partners. APA requirements would likely not have allowed the process to move as quickly in response to congressional direction and interest from private industry.

**Clarify application of no warranty provisions.**

We would note that the language of the discussion draft appears to have ambiguity as to what types of ENERGY STAR "products" would apply. *We would suggest the section be clarified so that ENERGY STAR certified devices and buildings would be covered.*

Thank you again for the ability to provide input on the draft proposal. Please contact me if I can be of assistance as you the committee looks to update the draft proposal.

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[4] Available at; https://www.energystar.gov/ia/partners/prod_development/downloads/ENERGY_STAR_Strategic_Vision_and_Guiding_Principles.pdf?6e8a-91f4.

[5] https://www.energystar.gov/index.cfm?c=prod_development.prod_development_index

[6] For example, one study found formal rulemakings to take from 1 to 14 years, depending on complexity. See GAO, *Federal Rulemaking: Improvements Needed to Monitoring and Evaluation of Rules Development as Well as to the Transparency of OMB Regulatory Reviews* (2009), available at http://www.gao.gov/assets/290/288538.pdf. Additionally, we note that APA processes do not in themselves ensure adequate or meaningful consultation. GAO, *Federal Rulemaking: Agencies Could Take Additional Steps to Respond to Public Comments* (2012) available at http://www.gao.gov/assets/660/651052.pdf.

[7] The Energy Efficiency Improvement Act of 2015 available at: https://www.gpo.gov/fdsys/pkg/PLAW-114publ11/pdf/PLAW-114publ11.pdf

Sincerely,

Bryan Howard
Legislative Director
U.S. Green Building Council

Cc: Energy Subcommittee, House Energy and Commerce Committee

**AMERICAN PUBLIC GAS ASSOCIATION**

November 7th, 2017

The Honorable Greg Walden and Fred Upton
House Committee on Energy and Commerce
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, D.C. 20515

**Subject: Comments for Hearing on the Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act**

Dear Chairman Upton, Representative Walden and Members of the Subcommittee on Energy and Power:

On behalf of our 730 members, the American Public Gas Association (APGA) appreciates this opportunity to submit comments for the record on the Energy Star Reform Act of 2017 Discussion Draft.

APGA is the national association for publicly owned natural gas distribution systems. There are approximately 1,000 public gas systems in 37 states, and over 730 of these systems are APGA members. Publicly owned gas systems are not-for-profit, retail distribution entities owned by, and accountable to, the citizens they serve. They include municipal gas distribution systems, public utility districts, county districts, and other public agencies that own and operate natural gas distribution facilities in their communities.

The primary focus of public gas systems is to provide safe, reliable, and affordable service to their customers and communities. Our members serve homeowners and small businesses that rely on affordable natural gas to heat their homes, cook their meals, and power their restaurants, schools, hospitals and businesses.

Because public gas systems are so tightly ingrained in the community, it is our responsibility to ensure we offer our communities the highest level of service at the lowest possible price. A key path to successfully lowering our constituents' energy bill is by promoting the most efficient equipment through programs like Energy Star. Energy Star enjoys significant market recognition and is considered the benchmark for energy efficiency. Because of the expertise and acceptance of the program, APGA believes that the Committee should consider requiring the establishment of an Energy Star Standard for all equipment before the Department of Energy considers mandating or revising minimum efficiency standards.

Clearly, the Energy Star Program is one of the most successful energy efficiency programs to date and it is our opinion that this success is based on the fact that it is a voluntary program focused on saving consumers money on their energy bill. This program, as well as other energy efficiency programs, becomes less effective when the focus is diverted away from achieving energy savings for consumers and replaced with the pursuit of broader environmental aspirations. It is critical that any agency involved in developing and promoting the Energy Star Program focus on furthering energy efficiency and the economic benefits that provides to consumers.

Because the Energy Star Program is based on partnerships between the federal government, manufacturers and utilities, it is imperative that the program's standards be developed through an open and transparent process. It is in the best interest of all to ensure that the public and interested stakeholders are given the necessary protections to allow for full participation in the process.

We would also recommend expanding the use of the primary energy matrix. Currently, the primary energy matrix is being used in the Energy Star Commercial Buildings Program and the Portfolio Manager tool. The inclusion of this form of energy accounting methodology gives both the consumer and policy makers a more accurate analysis of the overall energy savings. For example, by including the use of primary energy numbers in the appliance program, the consumer would be able to fully compare equipment, understand the appliance's true energy use and its cost to operate. The inclusion of an appliance's actual "energy footprint" will give the consumer another vital piece of data to help make a smart purchasing decision.

Finally, we commend the authors of the Energy Star Reform Act of 2017 for recommending that the Energy Star Program be inclusive of all equipment. We believe it is critical that all types and sizes of equipment are eligible for an Energy Star standard. Given that the Energy Star Program enjoys a high level of recognition by consumers APGA sees this as an important opportunity to ensure that manufactures are able to offer the consumer a wide range Energy Star products.

APGA appreciates the Committee's attention, interest and commitment to ensuring and improving the Energy Star Program. If any members of the Committee or their staff have any follow up or questions, please don't hesitate to contact me.

Respectfully submitted,

Bert Kalisch
President

**U.S. Real Estate Industry's Perspectives on**
**EPA's ENERGY STAR Program for Buildings**

November 6, 2017

The Honorable Fred Upton
Chairman
Energy Subcommittee of the
Energy and Commerce Committee
U.S. House of Representatives

The Honorable Bobby Rush
Ranking Member
Energy Subcommittee of the
Energy and Commerce Committee
U.S. House of Representatives

Re: **November 7, 2017 Hearing,**
**"Discussion Draft – Energy Star Reform Act of 2017"**

Dear Chairman Upton and Ranking Member Rush:

Our undersigned organizations represent the U.S. real estate industry. We represent members involved in almost every aspect of commercial and residential real estate development, design, construction, ownership, management, finance, brokerage, contracting, renovation, and building product supply. Our members provide the homes, apartments, offices, health care facilities, hotels, shopping malls, data centers, and industrial sites where the American people live, work, heal and play.

We appreciate this opportunity to provide our perspectives for the hearing scheduled for November 7, 2017, "Discussion Draft, Energy Star Reform Act of 2017." As there are no witnesses from the real estate community to offer our experiences over nearly 20 years regarding the building aspects of EPA's ENERGY STAR program, we ask that you include this letter in the hearing record – to emphasize the importance of this platform to our industry, and to consider our comments on the discussion language as presently drafted.

## *I. Background on EPA's ENERGY STAR Buildings Program*

Since EPA certified the first ENERGY STAR building in 1999,[1] our organizations have enjoyed a cooperative relationship with the agency. We have collaborated with EPA to increase our industry's participation in this voluntary, non-regulatory program. Our members have provided "real world" technical input to improve EPA's free, on-line tool – known as Portfolio Manager – that has become the standard in the United States for buildings to measure and

[1] See EPA, *Celebrating a Decade of ENERGY STAR Buildings 1999-2009,* available at https://www.energystar.gov/buildings/tools-and-resources/celebrating-decade-energy-star-buildings.

manage energy, water and waste consumption. We have encouraged ENERGY STAR's broader market penetration so more real estate categories have opportunities to obtain voluntary labels that recognize optimal energy design, construction and performance. And, to implement a law passed by Congress in 2015, our groups have closely coordinated with EPA to improve ENERGY STAR in a manner that uses market signals to incentivize commercial landlord-tenant collaborations on strategies to reduce energy waste in leased office spaces within buildings.

- ENERGY STAR certified buildings are located in all 50 states, D.C., Puerto Rico, and other territories. Members of Congress can find where these buildings are located in their states or districts with EPA's easy-to-use on-line locator tool.[2]

- The real estate sector has continually assisted EPA in growing and evolving the ENERGY STAR platform for commercial and residential buildings. Our industry has helped the agency reach the following milestones:[3]

| Year | Milestone |
|---|---|
| 1999 | ENERGY STAR label extends from appliances to office buildings. |
| 2000 | Portfolio Manager tracking tool released; ENERGY STAR label extended to schools. |
| 2001 | ENERGY STAR label extended to acute care hospitals, supermarkets and grocery stores. |
| 2002 | More than 100,000 new homes awarded the ENERGY STAR label for above-code construction, while the commercial label is extended to hotels. |
| 2003 | 50% of top U.S. homebuilders participate in ENERGY STAR for New Homes. |
| 2004 | Nearly 1 in 10 new homes built certified as ENERGY STAR, while the commercial label is extended to warehouses, financial centers, and bank branches. |
| 2006 | 12% of new single-family home starts earn the ENERGY STAR. |
| 2007 | ENERGY STAR label extended to retail buildings. |
| 2008 | ENERGY STAR label extended to distribution centers. |
| 2009 | ENERGY STAR homes achieve a market penetration of 17%, as the number of certified homes surpasses 1 million. Commercial label extended to certain manufacturing plants. |
| 2010 | ENERGY STAR label extended to data centers and senior care communities. |
| 2011 | Market share for ENERGY STAR homes reaches 25%. |
| 2013 | Upgraded Portfolio Manager tool debuts to the real estate marketplace. |
| 2014 | ENERGY STAR label expands to multifamily buildings using Portfolio Manager. |
| 2017 | ENERGY STAR implements design and construction (D&C) pilot program to implement 2015 "Tenant Star" law. |
| 2018 | (anticipated) ENERGY STAR to award Charter Tenant labels for high performance tenant spaces leased within office buildings, completing "Tenant Star" D&C pilot. |

- Today, an estimated 40% of the U.S. commercial real estate market is involved with the ENERGY STAR buildings program in some manner. This is primarily through EPA's

[2] http://www.energystar.gov/index.cfm?fuseaction=labeled_buildings.locator.

[3] Compiled from "ENERGY STAR Major Milestones," available at https://www.energystar.gov/about/history/major-milestones.

Portfolio Manager platform,[4] which has become the real estate sector's standard to measure, benchmark, and manage energy consumption in buildings (as well as water use and waste generation). Based on the thousands of Portfolio Manager accounts administered by the ENERGY STAR program, as of December 31, 2015: ***More than 450,000 commercial buildings covering 40 billion square feet of space actively use EPA's on-line tool to measure and track energy use.***[5]

- Measuring and tracking energy consumption using EPA's Portfolio Manager – as the foundational strategy to improve a building's energy efficiency and lower its utility costs – have significant consequences for real estate's profitability, the economy at large, and the nation's energy security.

  - The U.S. Energy Information Administration's 2012 Commercial Building Energy Consumption Survey (CBECS)[6] shows that commercial buildings used 6,963 trillion Btu of total site energy (from electricity, natural gas, fuel oil, and district heat steam combined). While there was a 22% increase in total commercial floorspace between 2003 (the year of the last CBECS data set) to 2012, building energy use went up just 7% during that nine-year span. In other words, how buildings are constructed and managed, and the systems and equipment installed in them, have become considerably more energy efficient. This data would not be available without EPA's Portfolio Manager tool – which allows individual buildings to provide a snapshot of their energy use, which is then aggregated to provide critical information that guides national energy policy, planning, and private sector investments in energy efficiency innovations.

  - For building owners and managers, the best practice of using Portfolio Manager to track energy usage results in significant dollar savings for businesses. Benchmarking resulted in a 7% energy savings across 35,000 buildings that consistently used EPA's tool over a three-year period.[7] ***As utility costs are frequently the highest expense for building operations – about 20% of total operating costs[8] – energy savings identified through***

[4] EPA's Portfolio Manager landing page: https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager.

[5] See https://www.energystar.gov/buildings/about-us/facts-and-stats.

[6] CBCES is "the only comprehensive source of detailed information on energy use in the wide variety of commercial buildings across the United States." See https://www.eia.gov/consumption/commercial/reports/2012/energyusage/.

[7] See EPA, "Benchmarking and Energy Savings – Data Trends," available at https://www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Savings_20121002.pdf.

[8] Total operating expenses for private sector U.S office buildings are reported at $8.07 per square foot. Of that amount, utilities are the highest cost, reported at $2.16 per square foot. See Building Owners and Managers Association (BOMA) International, *2016 Office Experience Exchange Report*" available at http://www.boma.org/research/newsroom/press-room/PR16/Pages/BOMA-Internationals-Office-and-Industrial-Benchmarking-Reports-Released-.aspx.

***Portfolio Manager analyses can have a significant impact on a real estate asset's profitability.***

- One industry study showed that a one dollar per square foot savings in office building energy costs increased the building's cash flow by $0.95 and asset value by $14 per square foot.[9]

➢ Portfolio Manager is also the key compliance tool for building owners and managers to meet the requirements of numerous state and local energy disclosure laws. A growing number of states, cities, and municipalities across the U.S. require building owners to use EPA's platform to meet such disclosure regulations. Without Portfolio Manager, there is no readily available, feasible means for our members to comply with these laws.[10]

- In addition to using Portfolio Manager as an energy management tool, many buildings owned, managed and financed by our members opt to go further to earn EPA's ENERGY STAR label and distinguish their assets as "top performers" in real estate markets across the country.

  ➢ An ENERGY STAR certified building must meet strict energy performance standards and use less energy and operate less expensively than its peers.

  ➢ To qualify for an annual ENERGY STAR award, a building must be verified to earn a score of 75 or higher on EPA's 1-100 energy performance scale, indicating that the building performs better than at least 75% of similar buildings nationwide.

  ➢ In this regard, ***EPA has awarded the ENERGY STAR label to more than 25,000 commercial buildings in a range of asset classes, covering 3.7 billion square feet.*** These high performance, energy efficient buildings have been estimated to save building owners and tenants $3.4 billion on utility costs.[11]

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[9] See EPA, "ENERGY STAR Certification – Data Trends," available at https://www.energystar.gov/sites/default/files/buildings/tools/DataTrends_Certification.pdf.

[10] State and local jurisdictions that require some private sector commercial buildings to use Portfolio Manager to measure, report and/or disclose energy use include Atlanta, GA; Austin, TX; Berkeley, CA; Boston, MA; Boulder, CO; Cambridge, MA; Chicago, IL; Denver, CO; Evanston, IL; Kansas City, MO; Los Angeles, CA; Minneapolis, MN; Montgomery County, MD; New York, NY; Orlando, FL; Philadelphia, PA; Pittsburgh, PA; Portland, ME; Portland, OR; Salt Lake City, Utah; San Francisco, CA; Seattle, WA; South Portland, ME; St. Louis, MO; and Washington, D.C.; and the States of California and Washington. Even more states and jurisdictions compel public buildings to measure, report and disclose energy use using Portfolio Manager. See EPA, "Benchmarking Programs and Policies Leveraging ENERGY STAR" (Sept. 2017), available at https://www.energystar.gov/sites/default/files/tools/ES_Government-Factsheet_09292017.pdf.

[11] https://www.energystar.gov/buildings/about-us/facts-and-stats (through December 31, 2015).

- A number of studies have evaluated the added market value of ENERGY STAR certified buildings. These real estate assets boast higher tenant rents, better leasing occupancy rates, and higher sales prices compared to non-EPA labeled buildings.[12]

- ENERGY STAR is the basis for bipartisan legislation that Congress passed last session. The signature energy policy of the 114th Congress is the "Energy Efficiency Improvement Act" (H.R. 2126/S. 535), which passed the House in 2014 by an overwhelming bipartisan margin (375-36), and then the House again and the Senate by simple voice votes in each chamber in 2015.[13] The bill creates a program called "Tenant Star" intended by Congress to amplify ENERGY STAR's impressive successes at the "whole building" level and translate the platform to leased spaces within commercial buildings. This tenant-based evolution of ENERGY STAR responds directly to our industry's requests for policies to help overcome the so-called "split incentive" problem, where building owners may lack the incentive to invest in energy efficiency innovations if the cost savings primarily accrue to tenants paying lower utility bills. EPA's "ENERGY STAR for Tenants" is a critical step to commend commercial tenants with their own label for energy efficiency investments within spaces they lease, and thereby align with technology retrofits and whole-building innovations implemented (and paid for) by owners.

## *II. Comments on "Energy Star Reform Act of 2017" Discussion Language*

Considering the real estate industry's longstanding participation in and support of ENERGY STAR, we are concerned that legislative efforts to reform the *appliance* side of the program may have unintended, negative consequences for EPA-certified *buildings*. In this regard, we are pleased to offer these comments on the discussion draft language for a potential "Energy Star Reform Act of 2017."

- ***The discussion draft, consistent with the underlying law that it would amend, should use text that carefully distinguishes ENERGY STAR appliance reforms from the buildings platform.*** The draft language would amend section 324A of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. § 6294a). This section of EPCA, which authorizes ENERGY STAR, establishes a "voluntary program" within DOE and EPA "to identify and promote energy-efficient products ***and buildings*** ...." (Emphasis supplied). Thus, the very underlying statute that the draft language would amend makes clear that the program covers *both* buildings *and* appliances. While the discussion draft is apparently directed toward reforms for ENERGY STAR appliances, real estate stakeholders do not believe the potential bill sufficiently considers the impact of such reforms on our industry's *buildings*. Respectfully, we strongly believe that greater pains must be taken during further drafting to ensure that any new statutory language intended to improve EPA's appliances program does not cause collateral damage to the buildings aspects of ENERGY STAR.

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[12] See "The Value of ENERGY STAR Certification," at: https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/learn-benefits/value-energy-star-certification.

[13] See https://www.congress.gov/bill/114th-congress/senate-bill/535/text.

- ***We prefer that ENERGY STAR for buildings continue to operate with EPA in the leading role, with support from DOE.*** The discussion language would have the opposite result, and shift ENERGY STAR's programmatic implementation and management to DOE. Our members report excellent customer service with regard to EPA's operation of the ENERGY STAR buildings program. Of course, we recognize that appliance stakeholders have a different experience with the products-side of ENERGY STAR. DOE's assumption of a lead role may indeed make ENERGY STAR ***for appliances*** run more effectively. However, we believe that confusion and inefficiency would likely result if that same outcome were pursued for ENERGY STAR ***commercial buildings***, where we prefer the status quo be maintained. That is – insofar as commercial buildings are concerned – we request that EPA continue to take the lead with DOE in a supporting role.

  We have asked our members, and have not identified any harms or problems to be addressed or fixed by moving ENERGY STAR for buildings over to DOE as the lead agency. Rather, over almost two decades, EPA has built its own infrastructure to efficiently maintain thousands of Portfolio Manager accounts; issue certifications and quality reviews for its ENERGY STAR building labels; and conduct regular trainings and webinars for transparent outreach to real estate stakeholders so our input is gathered and our requests considered as consumers of their program. Relationships have been built between our rank-and-file members, and our associations' leaders, to coordinate with EPA staff running the ENERGY STAR buildings program. We are concerned that these efficiencies will be lost if ENERGY STAR for buildings shifts to DOE, which does not have the same history, culture and resources to run the buildings program. (Rather, DOE serves an important role to research, develop and innovate new and emerging energy deployment and generation technologies, which helps advance the building efficiency sciences as a key but relatively secondary role within DOE's larger portfolio.)

  Accordingly, we recommend that the shift in roles and responsibilities set forth in Section 2 of the draft be expressly limited to "products" – and expressly not pertain to "buildings." Alternatively, language could reflect that the "Administrator, in consultation with the Secretary" continues in the lead for ENERGY STAR buildings.

- ***Delegation of EPA and DOE responsibilities, as set forth in the 2015 Tenant Star law, should be expressly preserved.*** We noted above Congress's passage in 2015 of the "Energy Efficiency Improvement Act," also known as "Tenant Star"[14] (since re-branded by EPA as "ENERGY STAR for Tenants").[15] The bipartisan bill overwhelmingly passed the House twice last Congress on suspension votes. We continue to thank the Energy and Commerce Committee staff for their excellent work in building support for the bill and ultimately getting it to the President's desk for signature.

  "Tenant Star" set forth a detailed timeline to implement this law over several years – with EPA's and DOE's respective roles carefully and specifically balanced and delineated in the

[14] See *supra* note 13.

[15] See https://www.energystar.gov/buildings/tenants/about_tenant_space.

statutory text. As major aspects of the "Tenant Star" program fall within EPA's ENERGY STAR responsibilities, we are concerned that the discussion draft could upset the deliberate allocation of spheres to EPA and DOE, as they are in the midst of successfully and cooperatively implementing the 2015 law.

Accordingly, we recommend that any possible re-allocation of ENERGY STAR roles through the discussion draft makes clear that it does not alter the balance of EPA and DOE responsibilities set forth in "Tenant Star." In fact, insofar as the Subcommittee is considering greater clarity and specific delineation of the agencies' respective roles regarding ENERGY STAR generally, we recommend using "Tenant Star" as a successful guide to allocate responsibilities in a manner that garnered widespread bipartisan, industry, and NGO support.

- ***The "No Warranty" section should cover buildings and products.*** Page 3, line 20 of the discussion language states: "Any disclosure relating to participation of a ***product*** in the Energy Star program shall not create an express or implied warranty, or give rise to any private claims or rights of action under State or Federal law ..." Because this text is expressly limited to *products,* we are concerned that an implication could be created that Congress left open warranties/private rights of action with regard to *buildings* that may lose their ENERGY STAR ratings from one year to the next (or see their scores drop). Indeed, in August 2018, scores for ENERGY STAR buildings are expected to change in response to the latest building-related energy consumption data obtained by the U.S. Energy Information Administration through the most recent CBECS data set. Current ENERGY STAR scores are based on 2003 CBECS data, and to remain current, EPA is updating ENERGY STAR building scores with the most recent 2012 CBECS data set. Plainly, buildings became more energy efficient in the nine years that lapsed between these data sets; what was "energy efficient" in 2003 may not be "energy efficient" when compared against 2012 data. EPA is already forecasting: "[T]he ENERGY STAR scores for every property in Portfolio Manager may change when EPA releases the updates" next August.[16] These anticipated changes in building scores should not create even the spectre of inadvisable, frivolous suits. We thus request that, if any bill precludes warranties and private lawsuits for ENERGY STAR certified appliances, certified buildings should receive those same legislative protections.

* * *

[16] See EPA, "Updates to ENERGY STAR Scores with CBECS Data," available at https://www.energystar.gov/buildings/facility-owners-managers/existing-buildings/use-portfolio-manager/update-energy-star-scores-cbecs.

Thank you for the opportunity to provide these comments for the record of the November 7, 2017 hearing, regarding the "Energy Star Reform Act of 2017." We look forward to continuing our collaboration with the Subcommittee to provide input on the discussion language.

**American Hotel & Lodging Association**

**Building Owners and Managers Association (BOMA) International**

**CCIM Institute**

**Institute of Real Estate Management**

**International Council of Shopping Centers**

**NAIOP, Commercial Real Estate Development Association**

**Nareit®**

**National Apartment Association**

**National Association of Home Builders**

**National Association of REALTORS®**

**National Multifamily Housing Council**

**The Real Estate Roundtable**

Cc:
The Honorable Greg Walden, Chair, U.S. House Energy & Commerce Committee
The Honorable Frank Pallone, Jr., Ranking Member, U.S. House Energy & Commerce Comm.
Members of the Energy Subcommittee of the U.S. House Energy and Commerce Committee

November 7, 2017

House Energy & Commerce Committee
Subcommittee on Energy
2125 Rayburn House Office Building
Washington, D.C. 20515

Chairman Upton and Ranking Member Rush:

On behalf of Underwriters' Laboratories (UL) we appreciate the House Energy & Commerce Committee's continued interest in the ENERGY STAR program and ensuring it continues to function in a way that serves the intentions of the program and offers benefits to consumers, without being overly burdensome to manufacturers.

UL is an independent, product certification organization that has been writing product standards, testing products, and certifying product performance for over a century. This unique experience in providing a range of compliance solutions for manufacturers, consumers and government regulators globally for over 120 years has provided our organization unique insights into how laboratory accreditation, testing and certification, and ongoing surveillance can be structured to promote conformity. Some of the services offered by UL include: inspection, advisory services, education and training, testing, auditing and analytics, certification software solutions, and marketing claim verification.

While we appreciate the Committee's interest in the ENERGY STAR program, we have concerns over one of the provisions being contemplated in the *ENERGY STAR Reform Act* discussion draft that would remove the third-party certification requirement for a specific segment of the ENERGY STAR program. This move appears to be a solution in search of a problem and threatens to return ENERGY STAR to a time when concerns over the validity of the efficiency claims of its products called the entire program into question. This provision will undermine the ENERGY STAR program.

**Program Integrity**
ENERGY STAR is a longstanding initiative that is broadly supported by manufacturers, retailers, utilities, energy efficiency advocates and consumers. While the program is very popular with both manufacturers and consumers, it was only a few short years ago when the ENERGY STAR program was subject to a GAO investigation that found significant issues with the program's oversight. That 2010 report led EPA to work with industry and companies like UL, to establish third-party certification as a way to provide program oversight and integrity without creating additional bureaucracies.

The U.S. government relies on the resources of the private sector to provide third-party certification to ensure products entering the market are safe, reliable, and efficient. To ensure safe products are used in the workplace, the Occupational Safety and Health Administration (OSHA) recognizes private sector organizations through the "Nationally Recognized Testing Laboratory" program (NRTL's) to perform certification for certain products to ensure they meet both construction requirements and industry standards. In order to earn the ENERGY STAR label, a similar approach is prescribed. UL, and companies like it, had their labs accredited by EPA and began to fulfill this obligation and quickly re-established trust in the program.

Since then, the program has been operating smoothly, and without any additional cost to the federal government. In fact, the House Appropriations Subcommittee on Interior, Environment & Related Agencies noted in the report language that accompanied its FY2018 Appropriations bill:

"In addition, the Committee continues to support the ENERGY STAR program and does not terminate the program as proposed... In addition, EPA appropriately took action to restructure the program in 2011 following questions about program integrity. The Agency established third party certification requirements that directed many product review responsibilities to outside vendors...Further, the Committee does not support the termination of voluntary programs such as Natural GasSTAR, AgSTAR, and other partnership programs where EPA works collaboratively with non-governmental entities to identify beneficial methods to reduce emissions, pollution, and increase efficiency."[1]

It is worth noting that in addition to providing up-front certification of products to the ENERGY STAR criteria, accredited Certification Bodies also provide after-market surveillance on products to ensure continued compliance. In doing so, we ensure that products that earned the ENERGY STAR mark continue to perform at or beyond the levels specified in the criteria.

The proposed provision would also only impact one segment of the ENERGY STAR program, consumer electronics. The other product categories – from lighting to home appliances – would still be required to utilize the third-party certification structure set up by EPA to demonstrate compliance. Manufacturers selling products in multiple categories would have different processes for having their products listed on ENERGY STAR, creating additional confusion and an uneven playing field in managing the program.

**Time and Cost**

We have heard concerns that the third-party certification process is too time-consuming and costly. We believe these concerns to be unsubstantiated. The provision in question would remove third-party certification for the consumer electronics category of products within the program. From a manufacturer's perspective, the most expensive product category for testing and certification within this category of products is televisions which average approximately $3,200 to run a full certification testing program. When considered in-line with the volume of television sets sold this is a small amount of the total cost of production. Per the ENERGY STAR program rules, that cost can be spread across multiple product variations. For instance, manufacturers can select one sample to represent an entire family of products of multiple sizes. Basically, a manufacturer would pay UL the $3,200 for the testing of a 40" LED television and if it me the criteria, the manufacturer would be able to list it's 45", 50", 55", 60" versions of that LED television based on that one test report. Furthermore, if a manufacturer has their own accredited laboratory, they can conduct their own efficiency testing. In those instances, the manufacturer would only need to share their test results with a third-party certification body and their product would be listed on the ENERGY STAR website. The cost of simply certifying accredited test results falls to approximately $500.

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[1] House Appropriations Committee, Subcommittee on Interior, Environment & Related Agencies. Full Committee Report. https://appropriations.house.gov/uploadedfiles/23918.pdf P. 56

We have also heard that the process is too time-consuming and that products need to be taken to market faster. For UL, our expected turnaround time is approximately two weeks to test and certify products, provided that they do in fact meet the efficiency standard on the first try. If the product fails the standard, which occurs about 15% of the time in the case of televisions, then that timeframe is certainly extended as the manufacturer makes improvements to meet the criteria.

For both issues, it should be noted that there are currently 24 EPA-Recognized Certification Bodies from which manufacturers can shop for services based on their needs (price, turnaround time, ease of working with). This competition helps to keep prices low and turnaround time quick allowing manufacturers to switch to providers that best meet their needs. Removing 3rd party certification would remove the private sector from this role and result in either the program going unchecked or a government agency (whether it is EPA or DOE) to fund staff to review submissions.

Finally, let's remember that the program is voluntary. No manufacturer has to participate in the program. Manufacturers do participate because they know that consumers recognize and seek out the ENERGY STAR label. Those consumers seek out ENERGY STAR qualified products because they believe that those products are held to a higher efficiency standard. If confidence in that mark wanes, the program will begin to lose its value to both consumers and manufacturers.

**Conclusion**

UL opposes efforts to remove third-party certification from the ENERGY STAR program. The program has enjoyed broad, bi-partisan support over its existence because of its ability to reduce electricity costs for consumers while providing manufacturers with additional brand recognition that they leverage in the development and sales of their products. Changes to this conformity assessment approach threatens to undermine the long-term viability of the program.

Given the recent history of the ENERGY STAR program and the improvements made to ensure the program is not subject to fraud and abuse, it is concerning that an effort would be made to undermine the integrity of the program.

Sincerely,

Derek Greenauer
Director, Global Government Affairs
UL, LLC

**Dr. Lowell Ungar**

**American Council for an Energy-Efficient Economy (ACEEE)**

**U.S. House Committee on Energy and Commerce Subcommittee on Energy**

**Regarding the Energy Star Reform Act Discussion Draft**

**November 7, 2017**

ENERGY STAR is a vital voluntary program that is recognized and used by nearly all consumers to reduce waste and save money. It also is a key building block for local, state, and utility energy efficiency programs around the country and thus for meeting local energy needs. Its success has been remarkable: over 4.5 billion ENERGY STAR products purchased, 1.8 million ENERGY STAR new homes, 450,000 commercial buildings benchmarked, and 16,000 partners. The program estimates $430 billion in net savings for consumers and businesses through 2015.

The success relies on the government as an independent administrator and on a history of successful marketing and partnerships. Continued savings rely on essential elements:

- Consumer trust in the label as ensuring energy bill savings and a "green" product
- Skill in marketing and partnerships as well as expertise in product and building efficiency
- A multi-faceted program ranging from consumer electronics labels to commercial building energy use benchmarking to industrial plant efficiency programs
- Responsiveness to changing technologies and market conditions

Nonetheless, this successful program is under threat as the administration has proposed to eliminate it, and the House has proposed to slash its funding. Changes to the program must recognize and address this threat, or they risk helping to eviscerate or end the program.

It also is important to recognize that ENERGY STAR is a voluntary program, not a government mandate (except for federal purchasing). Market penetration rates for ENERGY STAR products range from 1% to 100%, but for most product categories are under 50%. To the extent retailers favor ENERGY STAR products, it is a reflection of the program's success.

Thus, we are concerned that major changes to the program authorization are another threat to a successful program. We do not see the need to change the authorizing language at this time (except the narrow change in 5. below), but we always stand ready to work with other stakeholders and the program to address any real concerns.

We offer the following specific comments:

**I. Shift from EPA to DOE is likely damaging and should not be legislated (paragraph 2)**

1. We are concerned that shifts in administration of the program would disrupt its success. A shift would need to have a strong justification, which we have not seen. The agencies would need to transfer funding and staff, or at least ensure adequate funding and staffing levels and maintain staff expertise.

2. Current EPA staff has expertise in marketing and brand management that is essential to the program. In addition, it could be difficult to mesh the more flexible process for setting ENERGY STAR specifications with the formal and more rigid process of the DOE standards program (see below). It also is important to consider not just labels for products for which DOE also sets standards, but all the other ENERGY STAR components including new homes, home retrofits, commercial building benchmarking, industry programs and more.

3. Given the complexities, and the need for flexibility if shifts create problems, any shifts are better worked out jointly by DOE and EPA with substantial stakeholder input, and should not be legislated. In addition, an authorizing bill cannot provide the needed funding at DOE. Given funding cuts, this would be a severe threat to the program.

**II. Requiring a full rulemaking process would severely harm the program (4:e)**

1. ENERGY STAR is a voluntary program that does not impose mandates but does rely on consumer trust and nimble response to technological and market changes. The current process allows for minor revisions and updates to be made quickly; it also allows the flexibility for the specification development schedule to be tailored to fit specific product categories and circumstances. The program already seeks input from partners and the public on specification updates and other program changes. Furthermore, in response to prior complaints, EPA is doing a much better job recently seeking input and documenting how it is responding to comments.

2. However, requiring formal rulemaking procedures would severely slow program operations and increase costs, threatening the integrity of the brand if the program is unable to keep up with market changes, and preventing timely response to manufacturer concerns (such as tweaks to definitions or test procedures to account for new technologies). It could subject the program to endless lawsuits that further impede the program and add costs.

3. If there are still problems with the process, we would be happy to work with the agencies and other stakeholders to address those specifically, rather than applying a blanket regulatory mandate.

**III. 270 days lead time (3.D)**

Although significant lead time is generally appropriate for revisions to product specifications, shorter lead times may be necessary in some cases, such as closing loopholes, or appropriate to clarify confusion or account for new products. We think the balance in current law is appropriate. We should not tie the program's hands with an inflexible mandate.

**IV. Requiring coverage of all sizes, capacities, and features (3.B)**

This restriction could make it difficult to set specifications for some products, could require labeling inappropriate or inefficient products (e.g. when there is not an appropriate test procedure for large commercial products), or could require spending funds the program does not have to label niche products. We also are not aware of any need for this provision; although efficiency criteria frequently vary with size, we are only aware of size cutoffs based on different product categories (e.g. commercial vs residential products).

More broadly, we are opposed to detailed legislative prescriptions for ENERGY STAR. It is important that the program be designed to meet consumer needs, not to respond to political influence or narrow stakeholder agendas, and that it be flexible to address different markets and technological developments.

**V. No warranty language (4:f)**

ACEEE and some (not all) other efficiency groups support the language in HR 1682 in order to prevent class action lawsuits from reducing manufacturer interest in the ENERGY STAR program while maintaining consumer protections. However, the discussion draft would change the agreed language, extending the shield from lawsuits to some products that do not receive third-party testing. This eliminates an important consumer protection, and we oppose the change. Even if there is reason not to require third-party testing for some products, that does not mean program oversight for those products is sufficient to limit access to the courts.

**VI. Exceptions to third party certification requirements for electronics (4:g)**

ACEEE and other stakeholders worked on this language (HR 1443 Sec. 401) to reduce the risk that an earlier proposal posed to program compliance, while still meeting the concerns of manufacturers. It is important to recognize the threat to consumer trust in the program from compliance problems and enforcement weaknesses. We have nonetheless accepted this language when included as part of a broader efficiency bill (McKinley-Welch), but ACEEE has not taken a position on this provision in this bill.

**Additional Provisions**

**Authorization of funds**

Although we do not see the need to amend the ENERGY STAR authorization at this time, if there is to be authorizing legislation, we would urge the inclusion of a specific authorization of funds. Given proposed funding cuts, it would be important to support robust funding for the program. We recommend authorizing $75 million a year at EPA and DOE (combined) for five years, roughly the funding level of 15 years ago (when the program was much smaller) in real terms, followed in subsequent years by an authorization of such sums as may be necessary.

In summary, we recommend the following:

- We strongly oppose the current draft language on shifting agency lead and on APA rulemaking as threats to the viability of the ENERGY STAR program. We do not mean to preclude targeted changes by the agencies in the administration or process of the program with full stakeholder input.
- We oppose inflexible mandates on lead time and on product coverage that could prevent the program from responding to market changes and meeting consumer needs.
- We support the original agreed language on warranty from HR 1682, but not the change, which weakens consumer protection.
- We support authorizing funds for the program to help ensure adequate resources.

*The American Council for an Energy-Efficient Economy (ACEEE), a nonprofit, 501(c)(3) organization, acts as a catalyst to advance energy efficiency policies, programs, technologies, investments, and behaviors.*

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formerly The Laclede Group

Spire Inc.
700 Market Street
St. Louis, MO 63101

November 7th, 2017

The Honorable Greg Walden and Fred Upton
House Committee on Energy and Commerce
Subcommittee on Energy and Power
2125 Rayburn House Office Building
Washington, D.C. 20515

**Subject:** Comment for Hearing on Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act.

**Introduction**

Spire Inc. ("Spire") is a holding company with 3,300 employees providing natural gas to 1.7 million customers across Missouri, Alabama and Mississippi. Spire has previously submitted comments to this Committee for the following hearings

- June 10th, 2016: "Home Appliance Energy Efficiency Standards Under the Department of Energy– Stakeholder Perspectives."
- September 14th, 2017: "Powering America: Defining Reliability in a Transforming Electricity Industry."

**Comments**

Spire's comments herein only address ENERGY STAR. Spire agrees that ENERGY STAR could be moved out of EPA. However, Spire is very concerned that moving ENERGY STAR to DOE's Office of Energy Efficiency & Renewable Energy (EERE) may work against the best interests of American energy consumers and President Trump's An America First Energy Plan.[1] A more appropriate home for ENERGY STAR would be in a less biased and more objective agency. EERE, through its self-stated "global clean energy" mission[2] is prejudiced against the direct use of natural gas. This prejudice against traditional natural gas-fueled appliances would likely be extended to ENERGY STAR if EERE was given control of it. A more consumer oriented agency, such as Federal Trade Commission (FTC), would be a better choice. However, before ENERGY STAR is transferred anywhere, its impediments described herein should be assessed and corrected.

EERE has further demonstrated its bias towards electricity, via "renewable" (wind and solar) energy, through its report titled "Accounting Conventions for Non-Combustible Renewable Energy Use."[3]. This report, published in October of last year is intended for use across EERE programs and was developed

[1] https://www.whitehouse.gov/america-first-energy
[2] https://energy.gov/eere/about-office-energy-efficiency-and-renewable-energy
[3] https://www.energy.gov/eere/analysis/downloads/accounting-methodology-source-energy-non-combustible-renewable-electricity

outside of normal administrative procedures. This report bypassed public notification and comment processes; especially when considering ramifications have a potential economic impact of over $100 million. Consequently, these proceedings should have been treated as a "major rule" and subject to the due process that all "major rules" require.

The core of the issue is summarized by the following conflicting positions:

**Renewable position:**

a. The engineering conversion factor from 1 kWh to Btu is 3,412 Btu per kWh (assuming 100% conversion efficiency)
b. Fossil-fueled electrical power generation is about 34% efficient; for a "heat rate" of roughly 10,000 Btu per kWh. (3,412/34%).
c. Those supporting EERE's new "accounting convention" argue that not enough credit is given for the increased role of "zero emissions" renewable energy entering the grid and that the number should be lower than 3,412 Btu per kWh. Per the report, NRDC, NRECA, EEI and APPA believe that renewable should be considered as 0 BTU perkWh.

**Non-renewable position:**

a. "Zero emissions" renewable electricity generation requires backup and "spinning reserves" which is (generally) not renewable.
b. The grid average heat rate is steadily improving and that trend is likely to continue; if coal plant closures continue and natural gas combined-cycle turbines take up the demand. However, the role of renewables in that improvement is (and should be) debatable and requires independent research; which means not by one of DOE's National Labs.
c. When all electrons are color coded and passed through an electron filter that only allows the "green" ones to get through, then and only then should there be a departure from source-based grid average "heat rates."

For further information see:

Federal Energy Efficiency Mandates: DOE's End Run vs. the Public Interest: Part I [4]& Part II. [5]

The upshot of the EERE report is that they adopted the positions of the renewable/electric energy advocates by settling on metrics that ostensibly accounts for "captured energy." The premise is "*that* [captured energy] *would decrease current estimates of source energy saved by 7.7% and would continue to decrease as RE* [renewable energy] *penetration increases in the future*." The concept further establishes that energy efficiency metrics for electricity would decrease in predetermined values extending to at least 2040 based upon an assumption of rapidly increasing RE market share.

Whether the House Energy & Commerce Committee moves ENERGY STAR out of EPA, Spire urges the energy efficiency metric be standardized to that of "full fuel-cycle" energy. This metric is well-defined by the ENERGY STAR for Commercial Buildings Program [6]and Portfolio Manager[7] tool.

The diametrically opposing energy efficiency metrics of "site" versus "source" has been debated continuously ever since the 1975 passage of EPCA. A site-based energy efficiency won that struggle and

[4] https://www.masterresource.org/conservationism/eere-end-run-i/
[5] https://www.masterresource.org/department-of-energymoniz/eere-end-run-ii/
[6] https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager/understand-metrics/difference
[7] https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager

remains in EPCA to this day. What this metric provides is a "head start" for electricity by limiting the scope to on-site (metered) energy in which electric resistance is considered 100% efficient (i.e., 3,412 Btu/kWh). For example, many energy efficiency programs call for reducing metered energy consumption by some percentage goal based on Btu per square foot. Such is the case for Section 433 of the Energy Independence and Security Act of 2007[8] titled "Federal building energy efficiency performance standards." Within such programs, replacing gas hot water heaters with electric resistance can provide a 30% improvement of site-based energy efficiency. Conversely, on a source basis, switching from electric resistance to natural gas water heaters can result in nearly a 50% reduction in energy consumption.

This debate was eventually addressed by the National Academy of Sciences (NAS) per Section 1802 of the Energy Policy Act of 2005. This legislation required the DOE to commission NAS to study whether site-based or source-based energy measurements are more appropriate. On May 27, 2009, the NAS published its study titled Review of Site (Point-of-Use) and Full-Fuel-Cycle Measurement Approaches to DOE/EERE Building Appliance Energy-Efficiency Standards.[9] The NAS recommended that DOE's measurement of energy use should be based on full-fuel cycles, which takes into account the amount of energy losses from the fuel's initial extraction, all the way through to the final point of use. By accounting for the full fuel-cycle, consumers are provided with more complete information on energy use and environmental impacts.

On July 22, 2009, the National Association of Regulatory Utility Commissioners (NARUC) Board of Directors adopted a resolution in support of the NAS recommendations.[10] 'Full-fuel-cycle' represents source energy (as currently defined in the ENERGY STAR for Commercial Buildings technical materials) plus losses during energy extraction. While energy extraction losses are less significant than losses attributable to power plant fuel-to-electricity conversion losses as well as downstream energy transportation & distribution losses, extraction losses are still significant and need to be accounted for.

Thus, continued and broadened use of source energy as defined by ENERGY STAR for Commercial Buildings (which is essentially equivalent to full fuel-cycle efficiency) would represent a significant improvement in Federal government energy policy and public understanding of overall efficiency than continued use of site energy (which is tantamount to professing beliefs that energy is somehow created inside of utility meters).

In the August 18th, 2011 Federal Register (Volume 76 Issue 160), the DOE announced a "Statement of Policy" (SOP) for implementing the NAS's full fuel-cycle conclusions.[11] In this SOP, the DOE stated it "*intends to modify the methods it uses to estimate the likely impacts of energy conservation standards and will work to expand the energy use and emissions information made available to consumers.*" DOE further discussed how it intends use full-fuel-cycle energy and emissions impacts to refine its existing source energy-calculated impacts within its present framework of minimum efficiency standards for appliances.

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[8] https://www.gpo.gov/fdsys/pkg/PLAW-110publ140/pdf/PLAW-110publ140.pdf
[9] http://books.nap.edu/openbook.php?record_id=12670&page=1
[10] http://www.naruc.org/Resolutions/Resolution%20on%20NRC%20Energy%20Efficiency%20Standards.pdf
[11] http://www.gpo.gov/fdsys/pkg/FR-2011-08-18/pdf/2011-21078.pdf

**DOE should not be allowed to renege on its previous commitments to use full-fuel-cycle metrics in order to advance back-door policies to implement "deep decarbonization" objectives of the "Paris Accords" (a.k.a., COP-21).**

Any action taken by Congress to update and reform ENERGY STAR should make clear that full fuel-cycle energy is the best metric to use. If renewable forms of electric generation do eventually come dominate, their impact will be objectively reflected in declining grid-averaged heat rates.

2. **Insure that previously identified problems within ENERGY STAR have been corrected**

Whether ENERGY STAR is moved out of EPA, to DOE or elsewhere, certain reforms should be prioritized in early rulemaking, to ensure the public's concerns and technical issues are resolved in public forums and under APA procedures. Numerous reports and articles have been published by various entities regarding ENERGY STAR performance issues. These problems should be independently investigated to determine the extent that they are still problems. The following is a synopsis for your reference:

a. Get Ready For Stricter Energy Star Enforcement[12]
A key response to deficiencies in ENERGY STAR performance verification was requirements for third party testing. A companion recommendation for legislative reform might be adoption of requirements of third party analysis of energy savings and competitive impacts.

b. Covert Testing Shows the Energy Star Program Certification Process Is Vulnerable to Fraud and Abuse[13]
The above GAO report raises the issue of potential violations of the federal "False Statements Act" (Title 18, USC Section 1001), which may raise an issue of needed reform to avoid false claims associated with inaccurate energy cost savings, missing installation costs additions, and even incomplete energy savings estimates when associated only with site-based energy savings accounting.

c. No star for Energy Star[14]
Subtitled: "**Appliance makers that place this label on their products have very little oversight**"
Essentially, the above is media coverage of the previously cited GAO investigation.

d. Energy Star Climate Change Claims Misleading, Audit Finds[15]
The above article raises issues of how ENERGY STAR accounts for greenhouse gas reductions and calls for consistency of calculation methods. This, plus the need for transparency and linking energy savings to greenhouse gases through source energy savings calculations, supports our proposal for a change in energy metrics to source energy.

e. Report: Improvements Needed to Validate Reported ENERGY STAR Benefits[16]
The above report from EPA's Office of Inspector General (OIG) "found the ENERGY STAR

[12] https://www.law360.com/articles/459869/get-ready-for-stricter-energy-star-enforcement
[13] http://www.gao.gov/new.items/d10470.pdf
[14] https://lasvegassun.com/news/2009/oct/21/no-star-energy-star/
[15] http://www.nbcwashington.com/news/green/Energy_Star_Climate_Change_Claims_Misleading__Audit_Finds.html
[16] https://www.epa.gov/office-inspector-general/report-improvements-needed-validate-reported-energy-star-benefits

program's reported savings claims were inaccurate.

f. ENERGY STAR Label Needs to Assure Superior Energy Conservation Performance[17] Finally attached is the EPA's "Corrective Actions Plan" for ENERGY STAR in response to the just cited OIG report.

Spire is concerned that the problems identified in the above references may still linger. For example, EPA's response in February 2011 to the EPA Office of the Inspector General (OIG) for EPA's "Corrective Action Plan" was to address two recommendations:

- **"Recommendation 1:** Develop a strategic vision and program design that assures that the ENERGY STAR label represents superior energy conservation performance."

- **"Recommendation 2:** Develop a set of goals and valid and reliable measures that can accurately inform shareholders and the public benefits of the program."

In neither case, did EPA provide adequate replies to these recommendations, instead focusing on EPA/DOE continuing coordination of ongoing program efforts, status of those efforts, and by other *non sequitur* statements. These recommendations should be revisited if a comprehensive reform of the ENERGY STAR program is to be implemented. Spire's recommendations under "Process and procedural improvements," shown below, represents a first attempt of the gas utility industry to address the OIG recommendations in a more direct manner. Spire hopes that these recommendations can initiate further discussions to support legislative and program reforms.

Accordingly, Spire suggests that legislative efforts focused on ENERGY STAR and/or DOE "restructuring" should independently address the extent that these issues have or have not been effectively corrected; noting the EERE and DOE labs should not be considered as independent.

**3. Process and Procedural improvements to ENERGY STAR**

Many of the shortcomings of the ENERGY STAR program are the result of process and procedural deficiencies of the program as (mis)implemented by DOE and/or EPA. These issues have been raised by various stakeholders over the years in public comments on ENERGY STAR proposed criteria. Some of these deficiencies may be addressed by logical and straight-forward modifications to current activities as suggested below:

a. ENERGY STAR can be improved by providing to the public quarterly reporting of product sales and market share penetration by product and end use fuel type. To date, ENERGY STAR has not been sufficiently documented in detailed data on appliances, equipment, and buildings holding the ENERGY STAR mark. From an energy supplier perspective, lack of data on product end use fuel type represents a critical shortcoming in understanding the impacts of ENERGY STAR. For example, a prior year FOIA request for ENERGY STAR Homes market penetration by fuel type showed that the program did not maintain details sufficient to provide this information. This situation can be easily remedied by

[17] ENERGY STAR Label Needs to Assure Superior Energy Conservation Performance

implementation of more detailed reporting requirements for ENERGY STAR-certified manufacturers and builders and compilation of quarterly reports.

b. The value to consumers of the ENERGY STAR label can be further enhanced by providing estimates of product costs, as delivered for retail sale, and energy cost savings over baseline model or building costs. For products, Federal minimum efficiency or other baseline performance, such as FTC label ranges of operating cost performance, can be quoted to illustrate to consumers the potential savings that might accrue from purchase of ENERGY STAR appliances, equipment, and homes. For building energy efficiency and cost, rated performance compared to baseline model energy code performance can be used for operating cost. However, missing from FTC labels and other sources of consumer cost performance are estimates of installed product costs. These costs are needed by consumers to evaluate the value proposition of ENERGY STAR rated products relative to other products providing the same utility (when compared to operation cost savings) and pricing of ENERGY STAR products.

c. In following with the recommendations above, consumers should have product cost information (i.e., beyond pricing) to make purchase decisions on ENERGY STAR rated products. Operating cost savings and product costs can be delivered through data linked to UPC barcode or QR matrix bar code, alleviating the need to develop complex documentation or physical labels. Of course, developing these estimates imposes additional burdens upon the ENERGY STAR program to conduct additional cost analysis to generate this consumer information. However, it is incumbent upon ENERGY STAR, as a program intended to serve the interests of consumers, to disseminate reliable cost information. In the case of products covered by Federal minimum efficiency standards, delivered product cost information is regularly calculated during rulemaking on revisions of minimum efficiency standards.

d. To help ensure a level playing field for ENERGY STAR products, clear quantitative criteria for energy and market performance should be codified. Among the criteria requiring firmer definition include:
    i. A threshold energy performance improvement over baseline models (calculated on a source energy basis),
    ii. An energy performance improvement threshold over products using comparisons across competing end use fuels.
    iii. A threshold range (maximum and minimum) for current market penetration, a product availability test (and avoidance of ENERGY STAR labels for unavailable products or R&D concepts).

e. To maintain transparency in implementing consistent energy and cost performance criteria for ENERGY STAR products and homes, DOE and EPA should implement public workshops and a rulemaking solely addressing proposed criteria covering these products and buildings. Consistency of criteria will provide consumers with greater confidence in the ENERGY STAR label. To date, the experience with the use and public review of ENERGY STAR criteria across products has demonstrated an *ad hoc* and inconsistent approach to setting or

revising criteria. The approach ENERGY STAR uses is invariably influenced by objectives other than consistency or saving energy and potentially. These distortions include the unwritten objective of maximizing the market penetration of the ENERGY STAR label. These distortions can be substantially reduced by promulgating consistent energy and cost performance criteria.

f. In the setting of ENERGY STAR criteria, analysis of installation costs and the need to minimize ancillary installation cost should be performed. Additionally, and where criteria might incentivize a switch in end use fuel in providing the same consumer utility, a test of energy supplier neutrality of the criteria ought to be performed. Specific mechanisms for evaluating installation cost "adders" and energy supply neutrality tests should be developed through formal rulemaking involving workshops prior to proposal of formal procedures. Consumers need protection from the setting of ENERGY STAR criteria that might penalize the use of end use fuels already employed in installed products and when consumers are incentivized to install ENERGY STAR products providing the same consumer utility. Penalties of this type may arise from installation costs beyond the product costs themselves and include costs such as electrical system modifications, combustion appliance venting system changes, and other installation costs.

To put it forthrightly, the economic value proposition from ENERGY STAR rated products depends upon the objectives of a given stakeholder. There is employment value to bureaucrats who manage ENERGY STAR. There is marketing value to manufacturers of ENERGY STAR rated products, who can charge a premium for such products. And there is promotional value for "energy efficiency" advocates. But what's in it for consumers is debatable. In many cases, cost premiums charged for ENERGY STAR rated products results in unattractive consume paybacks. This is problem is even more evident if "consumer marginal energy rates"[18] are employed correctly. Again, an independent evaluation of these issues would be appropriate to insure the best interests of consumers are served under the ENERGY STAR brand.

This concludes Spires comments for today's hearing. In case there are any questions regarding these comments, please direct such inquiries to me.

Sincerely,

Mark Krebs

Mark Krebs (Mark.Krebs@spireenergy.com)
Energy Policy & Standards Specialist

Copy: Rep, William Long, Ben Lieberman, Peter Spencer,

[18] https://energy.gov/sites/prod/files/2013/12/f5/marg_eprice_0799.pdf

**Stephen Cowell, President, E4TheFuture**
**and**
**Keith Aldridge, President & CEO, Home Performance Coalition**

**House Energy and Commerce Committee, Subcommittee on Energy**

**Comments on the Energy Star Reform Act of 2017 Discussion Draft**

**November 6, 2017**

In light of current interest to reform the Energy Star program, we respectfully urge you to consider the following comments, which we have made on 3 of the 5 main proposals encompassed in the recently circulated discussion draft.

On a broader level, we ask that you recognize how successful Energy Star has been in empowering consumers to make educated decisions and save money. It has also been vital for states and utility programs as they work to meet energy waste reduction goals and deliver better services. The success of this *voluntary* program has been its flexibility, which has allowed it to respond to technological innovation and develop strong partnerships with the private sector. As such, we strongly discourage detailed legislative prescriptions.

Our comments on the specific legislative proposals included in the discussion draft are as follows:

**1. We oppose shifting the lead for the program to DOE.**

Moving programs between agencies is complicated and involved. As such, any proposed shift should be accompanied by strong justification. At present, we do not believe such justification exists, as it is our understanding that a large majority of Energy Star partners are satisfied with EPA's administration of the program, and the program has achieved great success under EPA's roof. While we have heard that a very small segment of Energy Star partners would prefer the program to be run through DOE (to assist with speedier certification for their products), we do not believe that warrants moving the whole program.

Furthermore, we are very concerned that shifting Energy Star from EPA to DOE will not be accompanied by adequate funding and staff. Given current proposed budget cuts to EPA and DOE, we believe moving the program could essentially kill the program if the legislation does not authorize appropriations of at least $75 million per year for Energy Star. Staff expertise is also a concern, as EPA staff have developed and demonstrated invaluable marketing expertise vital to the success of the program. This level of expertise in Energy Star program activities does not currently exist at DOE, and we anticipate major disruptions to the program during any transition.

2. **We oppose applying the Administrative Procedure Act to actions taken under Energy Star.**

The Energy Star certification has always been, and continues to be, entirely *voluntary.* As such, it is inappropriate to apply the APA, as the APA is meant for standards. It is important to recognize that standards represent the *minimum*, while Energy Star represents a stretch goal – something to strive for. The Energy Star label should not be given out like a participation trophy; it should be awarded only to those products that really reduce energy use, save consumers money, and embody the highest level of technological innovation.

Aside from the inherent difference in the voluntary Energy Star label and minimum product standards, applying the APA would fundamentally hinder the program's ability to remain flexible in the face of market changes and technological innovation. Requiring formal rulemaking procedures under the APA would be overly burdensome, increase costs, and significantly slow the program's revision and update process, which is currently nimble and has been increasingly successful at responding to market/technological changes as well as manufacturer and other stakeholder input.

Again, a vital part of Energy Star's success has been its ability to keep up with the rapid changes and innovation across market sectors. That ability would be significantly reduced - if not all together eliminated - if the APA was applied to the program, and would severely harm the integrity of the Energy Star brand.

**3. We oppose requiring that Energy Star specifications be set for all sizes and capacities of products under the program.**

We believe this proposal is overly prescriptive for a voluntary program. Furthermore, placing this requirement on the program would impose additional costs, which we are not confident could be covered given the current political environment. This requirement could also result in the labeling of inefficient products due to the lack of appropriate testing procedures for larger products.

*E4TheFuture is non-profit 501c3 organization which collaborates with industry stakeholders to provide expert policy solutions, education, and advocacy to advance residential clean energy and energy efficiency solutions on the federal, state and local level.*

*The Home Performance Coalition (HPC) is a national non-profit 501c3 organization that works with industry leaders in the home performance and weatherization industries to advance energy-efficient, healthy and safe homes retrofit policies, programs and standards through research, education, training and outreach.*

**Contact Information**
Kara Saul Rinaldi
President and CEO, AnnDyl Policy Group
On behalf of HPC and E4TheFuture
717 Kennebec Ave, Takoma Park MD 20912
Phone: (202) 276.1773, Fax: (202) 747-7725
kara@anndyl.com

National Electrical Manufacturers Association

The Association of Electrical Equipment
and Medical Imaging Manufacturers
www.nema.org

Comments of the National Electrical Manufacturers Association (NEMA)

On the Discussion Draft Regarding "The Energy Star Reform Act of 2017"

Before the Committee of Energy and Commerce

U.S. House of Representatives

November 7, 2017

The National Electrical Manufacturers Association (NEMA) represents nearly 350 manufacturers of electrical equipment and medical imaging technologies. Our combined industries account for more than 360,000 American jobs and more than 7,000 facilities across the United States. Domestic production exceeds $106 billion per year and exports top $36 billion.

NEMA appreciates the opportunity to offer these comments on the discussion draft regarding the ENERGY STAR[1] program. NEMA Members have an extensive history with the ENERGY STAR program dating back to 1992 and with the operation of the program by the Environmental Protection Agency (EPA) and the Department of Energy (DOE).

Our Members believe that the ENERGY STAR label has a beneficial effect in assisting consumers comparing various products and their respective energy efficiency and energy cost saving benefits, particularly at point-of-sale retail shopping situations. In this setting, the ENERGY STAR label can be a valuable tool for energy-conscious consumers to identify and select from a wide range of products, whose performance in backed not only by the respective manufacturers' representations, but also in part by the ENERGY STAR brand.

NEMA Members have participated actively in the establishment and updating of various ENERGY STAR product specifications and guidance documents for this voluntary program. We look forward to working with the Committee and all stakeholders in improvements to the ENERGY STAR voluntary program as one tool to promote energy savings and energy efficiency.

**ENERGY STAR Program Operations:**

Section 2 of the discussion draft proposes changes to the roles of EPA and DOE regarding the program. In Section 131 of the Energy Policy Act of 2005, Congress codified the ENERGY STAR program, and EPA and DOE entered into an updated memorandum on their respective program responsibilities in 2009. Our NEMA members' experience with the current ENERGY STAR program is collaborative and positive, and we support the current arrangement of responsibilities between the two agencies and do not support the proposed language.

One of the main reasons the program has been generally successful for our industry segment is because EPA has solicited and been open to industry input in specification development resulting in inclusion of industry consensus test procedures, standards, and best practices. By adopting or referencing industry methods and

[1] ENERGY STAR is the registered mark of the U.S. Environmental Protection Agency.

standards, the resulting specification has support and buy-in from the impacted stakeholders and which aides in the adoption of the specification.

Understanding that collaboration with the program varies product-to-product, **NEMA offers language for the development of best practices** in the attached document as a way to provide a more consistent approach to collaboration by the program office, manufacturers, and other stakeholders. This is important for not only industry, but for the credibility of the program and the ENERGY STAR brand.

We believe that the use of "best practices" by the program office precludes any perceived need for the program to follow the strict notice-and-comment process of the Administrative Procedure Act (APA). The APA should be reserved for federal regulatory programs, instead of a voluntary program such as ENERGY STAR. Therefore, we recommend the Committee remove the APA language and instead give consideration to inserting the NEMA "best practices" language in its place.

NEMA Members' experience with the ENERGY STAR program office has demonstrated flexibility regarding establishing the effective date for a new or significant revision to a product category specification or criteria. We believe that it is important for the program office to have such flexibility so that they can be responsive to stakeholder needs and market conditions, and therefore we do not agree with the draft bill text that would require at least 270 days for changes to come into effect. **NEMA proposes new language in our support document that would amend the current text to keep the flexibility in the program.**

**Reducing Costs:**

As NEMA has done so in the past, we support the "no-warranty" clause for the delisted products. Having this language helps reduce risks and costs to manufacturers.

When it comes to third party certification proposal in the draft, we appreciate the effort to reduce costs for manufactures who have complied with the program requirements and are "in good standing" with the program. Third-party testing costs can be significant, and the provision could provide industry the opportunity to focus more resources on product development and promotion. Our reading of the text in the draft bill suggests that the provision would only apply this "special treatment" to a subset of the products in the ENERGY STAR program. **We recommend that the draft language be removed and we look forward to working with the Committee and stakeholders to address this topic.**

**Additional Issues to Consider:**

NEMA suggests that the Committee consider several additional areas for consideration in the draft bill.

First, the ENERGY STAR program provides value to building and facility owners and managers with certification and benchmarking tools with which to measure and reduce their facility's energy and water consumption. Used in more than 40 percent of all commercial building space, ENERGY STAR Portfolio Manager not only allows building operators to measure, track, and reduce energy and water use across an entire portfolio of buildings, it is also referenced in many state and local policies as an industry-approved approach to benchmarking building performance. NEMA would like to work with the Committee to better understand how the bill would affect the ENERGY STAR Building program.

The second area of the program that is not mentioned in the current draft concerns the scope of products addressed by the program. Over the past several years EPA program office has proposed developing ENERGY STAR product specifications for non-consumer products, such as medical imaging (like MRI machines) and utility-grade distribution transformers. These are highly engineered products built in many cases to specific

customer requirements. The "customers" of these products are sophisticated purchasers. An ENERGY STAR label on such products provides questionable value and NEMA posits is a waste of both government and private sector resources. In the attached document, **NEMA has proposed language that would ensure the focus of the program remains focused** on consumers who benefit the most from an ENERGY STAR label at the point of sale.

Finally, NEMA believes the program could do a better job of defining success and what it means to "transform" the market. In our supporting document, **NEMA offers new language** that would require the program administrator to define success and what the program should do when a metric of success is reached.

On behalf of NEMA Members who are involved in the ENERGY STAR product and building programs, we appreciate the opportunity to offer these comments and we look forward to working with the Committee as it considers legislation regarding the ENERGY STAR program.

If you have any questions or comments, please contact Joseph Eaves at joseph.eaves@nema or 703-841-3221.

**National Electrical Manufacturers Association**
1300 North 17th Street, Suite 900 - Rosslyn, VA 22209

National Electrical Manufacturers Association

The Association of Electrical Equipment
and Medical Imaging Manufacturers
www.nema.org

# NEMA Proposed Language Changes to the Energy Star Reform Act of 2017

Amendments to statute under Subsection C Duties:

> "(X) to ensure proper management and administration of the ENERGY STAR program and its product programs, the Administrator or Secretary shall establish a uniform set of "managerial best practices" for its managers at every level, to be developed with public input in an open and transparent process."
>
> "(X) when possible the program should use industry consensus test procedures, standards, and "best practices."
>
> "(X) product specifications shall focus on energy-efficiency attributes, and shall not include non-energy attributes which otherwise do not impact energy-efficiency, unless the inclusion of specific non-energy attributes are broadly supported by industry to promote improved market adoption."

Amendment to Page 3, Line 3-7 of Draft Bill:

> (D) in paragraph (6) (as so redesignated), by striking "(which shall be 270 days, unless the Agency or Department specifies otherwise)" and inserting "(which shall not be less than 270 days in the case of specifications or other requirements, unless the Agency or Department specifies otherwise following consultation with impacted manufacturers)"; and"

Amendment to current statue:

> 'SEC.324A. (a) IN GENERAL —There is established within the Department of Energy and the Environmental Protection Agency a voluntary program to identify and promote
>
> (1) energy-efficient products that are predominantly designed and sold at retail for the household consumer market; and,
>
> (2) energy efficient buildings
>
> in order to reduce energy consumption, improve energy security, and reduce pollution through voluntary labeling of, or other forms of communication about, products and buildings that meet the highest energy conservation standards.

Amendment to the current statue:

New Subsection "(E) Success Metrics" – For each product category the Administrator shall develop and establish in consultation with industry partners market penetration targets in terms of the share of ENERGY STAR labeled products within an overall product category for the purpose of defining a successful program outcome.

(a) The Administrator shall review annually and report on progress made in achieving market penetration targets for each product category. The Administrator may consider in consultation with industry partners adjusting the market penetration target or sunsetting the program for the product category after achieving a successful program outcome.

(b) An ENERGY STAR program shall not be sunset without the consent of the majority of its industry partners. Until such time, the Administrator should include partners' inputs on methods to continue the program without undue burden."


# Support the ENERGY STAR Program

November 7, 2017

The Honorable Greg Walden, Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Fred Upton, Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515

The Honorable Bobby Rush, Ranking Member
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515

Dear Chairmen Walden and Upton, and Ranking Members Pallone and Rush:

As your committee considers legislation at today's hearing to amend the popular Energy Star program, we ask for your attention to our urgent concerns.

As organizations involved in a wide array of activities across the building industry, including manufacturing, design, technology and standards development, we write to express our strong support for the Energy Star program and its current management. The partnership between the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy (DOE) has enabled each organization to bring its strengths to successful administration of the program. Further, with EPA as lead agency, the Energy Star program has achieved a number of winning outcomes:

- Over 30,000 commercial buildings are Energy Star certified, using 35 percent less energy than standard commercial buildings and commanding higher prices and rental rates, reflecting the lower operating costs of these buildings.
- Since 2016, 1.7 million homes carry the Energy Star label, meaning they are 15% to 30% more efficient than typical new homes, saving costs for homeowners year after year.
- For existing homes, 79,000 homeowners invested in technologies and materials to improve energy performance.
- For commercial and residential buildings combined, the Energy Star program has helped businesses and homeowners save over $146 billion in energy costs.

Clearly, this voluntary program is a success. The Energy Star label has become the symbol for energy efficient products and buildings across the United States. The government-backed Energy Star program, now in its 25th year, has helped drive investments in high-performing building technologies and materials, which is the focus of our organizations.

Many of the building industry organizations that have worked with Energy Star are concerned that the proposed changes could result in an unnecessary reorganization of the program that would disrupt its operation and stifle its positive impacts. Few if any programs, government or private sector, have been as successful as EPA Energy Star in educating consumers about the value of energy efficient buildings, and therefore we do not support the language as currently drafted. Given the program's track record of successful results and positive economic impacts, we would encourage that further study be undertaken, perhaps by the Government Accountability Office, on the potential advantages and disadvantages of relocating a program of this importance before such a decision is made.

Further, we are concerned that applying a formal rulemaking process through the Administrative Procedure Act (APA), could hinder progress. Technologies are advancing rapidly and EPA needs to be nimble in requiring higher-performing standards for Energy Star products and buildings. We suggest that the committee remove the APA language and instead develop language that would encourage the program to adopt best practices that could solve many of the issues some industry partners have had with the program.

Finally, we are concerned about the changes to third-party certification in the bill, even though they are currently aimed only at electronic products. The current ENERGY STAR third-party system of certification and market surveillance was adopted after a 2010 Government Accountability Office investigation called into question the integrity of the program.[1] That report concluded that the former system of manufacturer self-declaration of products opened the program up to fraud and abuse. Certification controls were deemed ineffective primarily because the program did not verify energy-savings data reported by manufacturers.

Under the current rules, implemented after the 2010 GAO investigation, ENERGY STAR products must be independently certified based on testing from recognized laboratories. Removing the requirement for third-party certification would re-expose the program to fraud and abuse at worst, and at best, would take a program function that the private sector is currently fulfilling and shift to EPA, at a time when the Agency is expected to narrow its scope. We want to ensure continued public confidence in the Energy Star program, and ask for removal of the third-party certification language from the bill.

As your committee tackles a number of pressing issues for our nation, we ask that you support and strengthen the Energy Star program. We would be happy to work with you to advance changes that would improve the program, but unfortunately some of the current proposals under consideration would weaken the program instead. Please let us know how we can provide any assistance as you consider important energy legislation, in particular that which would impact the built environment of our nation.

[1] http://www.gao.gov/products/GAO-10-470

Thank you for your consideration.

Sincerely,

The High Performance Building Coalition
ACPA – College Student Educators International
AGC Glass Company North America
Alliance for Water Efficiency
American Institute of Architects
APPA: Leadership in Educational Facilities
Armstrong Filtration
ASHRAE
Associated General Contractors of America
Association of Energy Engineers
Association for the Advancement of Sustainability in Higher Education
E4TheFuture
Energy Management Association
Environmental and Energy Study Institute
Green Business Certification Inc.
Home Performance Coalition
Higher Education Associations Sustainability Consortium
International Association of Plumbing and Mechanical Officials
Illuminating Engineering Society
Institute for Market Transformation
International Code Council
National Association of College and University Business Officers
National Assessment of Educational Progress
National Electrical Manufacturers Association
National Insulation Association
NIRSA
NSF International
Passive House Institute US
Pilkington North America, Inc.
Plumbing-Heating-Cooling Contractors - National Association
Polyisocyanurate Insulation Manufacturers Association (PIMA)
The Stella Group, Ltd.
SUN DAY Campaign
UL LLC
U.S. Green Building Council
US Partnership for Education for Sustainable Development


1000 Lowe's Blvd, Mooresville, NC 28117

November 6, 2017

U.S House of Representatives
Energy & Commerce Committee
Subcommittee on Energy
2123 Rayburn House Office Building
Washington, DC 20515

Dear Chairmen Walden and Upton and Ranking Members Pallone and Rush,

I am writing on behalf of Lowe's Companies in support of H.R. 3477, the Ceiling Fan Energy Conservation Harmonization Act.

Lowe's is a Fortune 40 home improvement retailer with 290,000 employees in stores and facilities in every state, serving more than 17 million customers a week.

This bipartisan bill would align the compliance dates for two efficiency regulations on the same product. Ceiling fans will be subject to two DOE efficiency requirements with compliance dates one year apart: ceiling fan light kits (bulbs) in January 2019, and ceiling fan motors in January 2020.

These misaligned dates will create a series of duplicative burdens — such as doubling thousands of display changeouts, unproductive employee busywork, supply chain and inventory model changes, and compliance testing and labeling — that creates a burden for low income families who want a proven way to save money on their utility bills, while also lowering emissions of greenhouse gases and other pollutants.

This legislation makes one simple change to upcoming regulations that will help save millions of American consumers from an unnecessary cost increase on a product they need and depend on.

Because of the widespread demand for residential ceiling fans and the lead times required for the supply chain, this change needs to happen by the end of this year to prevent the cost increase to these households.

Please support H.R. 3477, the Ceiling Fan Energy Conservation Harmonization Act. Thank you for your consideration of our views.

With warm regards,

Lou Hayden
Director of Government Affairs
Lowe's Companies, Inc.

Air Conditioning Contractors of America

2800 Shirlington Road, Suite 300, Arlington, VA 22206 • 703.575.4477 • 703.575.4449 (F) • www.acca.org

November 5, 2017

The Honorable Greg Walden, Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515

The Honorable Fred Upton, Chairman
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515

The Honorable Bobby Rush, Ranking Member
U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy
Washington, DC 20515

Dear Chairmen Walden and Upton, and Ranking Members Pallone and Rush:

Thank you for your leadership on energy efficiency programs. As your committee considers legislation to amend the ENERGY STAR program, we wanted to share with you our support for the current management of the program as well as our perspective on the program, as the national trade association representing more than 600,000 heating, ventilation, air conditioning, and refrigeration (HVACR) professionals in every state.

For more than fifty years the Air Conditioning Contractors of America (ACCA) has played a leadership role in energy efficiency issues, and has worked side-by-side with the Environmental Protection Agency (EPA) and the Department of Energy (DOE). We have developed numerous HVACR industry standards – recognized by the American National Standards Institute (ANSI) – that are widely accepted industry practices. Many ACCA standards are included in national, state, and local building codes.

ACCA strongly supports investing in energy efficiency. However, unlike other groups who champion energy efficiency by simply work to create a new standard or believing that exchanging older HVACR systems for the newest ENERGY STAR efficient units, ACCA has long recognized that increased energy efficiency in HVAC equipment is not so simple. HVACR systems are not "plug-and-play" appliances like a refrigerator, dishwasher or even a ceiling fan, and the singular focus on lab-tested efficiencies has gone on far too long for non-plug-in-play equipment like HVAC systems and must be addressed.

For energy efficiency investments to work, the focus and mindset must change from the misguided lab-tested efficiency to realized, or installed efficiency of HVACR equipment. These mechanical systems are very complex and require skilled technicians to properly size equipment, ensure the ducts are designed to deliver precise airflow, and to provide adequate refrigerant charges. If these basic elements are not followed, then indoor air quality is jeopardized, the

intended performance gains are not realized, and a significant amount of energy is wasted – even by highly efficient ENERGY STAR products.

The EPA believes that half of U.S. homes suffer from HVAC systems not being installed to the equipment manufactures minimum installation requirements. This lack of consumer focus on HVAC installation has resulted in the average home and light commercial HVAC system being 2x the size it needs, and ducts ½ the required size, which has resulted in the average 14 SEER system operating at just 8-10 SEER.

Despite our best efforts DOE continues to not recognize this problem, and help consumers understand the importance of proper installation when it comes to equipment which is the largest consumer of energy in our country. HVAC manufacturers are producing highly efficient products, meeting and exceeding DOE's regulatory demands. However, DOE does not require minimum installation and design standards that manufacturers recommend. Despite DOE knowing that not properly installing, a new air conditioning unit or heat pump, it will consume 30 percent more energy than it should, and its lifespan will decrease significantly, they have done nothing to address the problem for consumers.

The problem of poor HVAC installations is rampant in part due to many public officials at DOE believing that industry-recommended installation standards and training programs are aspirational and do not require trained technicians. If DOE would educate and incentivize homeowners to demand that HVAC systems are installed according to the industry's recommended minimum standards, including proper equipment sizing, ducts re-design and sealing, and appropriate refrigerant charges then our industry would immediately be able provide a 30 percent improvement in efficiency for the equipment that is the largest consumer of energy in our country.

Thankfully EPA, has taken a proactive approach to addressing the installation issue. EPA established the ENERGY STAR Verified Installation (ESVI) Program highlighting the importance of quality HVAC installation practices. This understanding that EPA has that even cutting-edge ENERGY STAR heating, ventilation, and air conditioning technologies, if improperly installed, may fail to realize important benefits for homeowners has been critical. EPA's program follows the ANSI / ACCA 5 QI Standard *(HVAC Quality Installation Specification)* – the minimum design and installation requirements for residential and commercial HVAC applications – to address the efficiency problems caused by improper installations of HVAC systems.

Perhaps efforts to move the ENERGY STAR program might be better served helping ensure EPA has the resources to better promote quality installation practices, and getting to the bottom of why DOE has not been working to address this. These quality installation practices are supported by the 11-member HVACR Industry Alliance, made up of engineers, manufacturers, contractors, and distributors, all who support properly installing HVACR equipment – which will provide lasting benefits to consumers and tax payers.

ACCA's members are serious about promoting energy efficiency and helping consumers realize the benefits of their investments in highly efficient ENERGY STAR HVACR products. In fact,

this has become the top priority for our members, and our association. Just last month, we held a *HVAC 101 For Congress* breakfast briefing here in this very Committee, in an attempt to shine a spotlight on the need to focus on realized efficiency, and installation when it comes to HVAC equipment.

As your committee tackles a number of pressing issues for our nation, we ask that you and all the members of this committee become advocates for quality installation practices of HVACR systems, and help ensure consumers get what they are paying for when investing in ENERGY STAR HVAC equipment. Despite all the work that needs to be done to address the installation issue, we are confident any change to DOE for management of the ENERGY STAR program would further weaken or completely dismantle the progress EPA has made to help consumers address HVAC installation.

Please let us know how we can provide any assistance as you consider important energy legislation, in particular that which would impact the indoor energy efficiency environment, and the HVAC industry. It would be an honor to work with you to advance changes that would improve and expand EPA's ESVI Program.

Thank you for your consideration.

Sincerely,

Barton C. James
Senior Vice President of Government Relations
Air Conditioning Contractors of America

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225–2927
Minority (202) 225–3641

December 20, 2017

Ms. Kateri Callahan
President
Alliance to Save Energy
1850 M Street, N.W.; Suite 610
Washington DC, 20036

Dear Ms. Callahan:

Thank you for appearing before the Subcommittee on Energy on November 7, 2017, to testify at the hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, January 10, 2017. Your responses should be mailed to Allie Bury, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Allie.Bury@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Pete Olson
Vice Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

Questions for the Record - November 7, 2017, Hearing on ENERGY STAR
Kateri Callahan, President, Alliance to Save Energy

**Rep. Pallone:**

American consumers have come to value and trust the ENERGY STAR brand. Having EPA as one of the entities responsible for managing the program is valuable in ensuring the program has credibility for protecting the environment and the public's health.

Question: *Do you think shifting all of the programmatic responsibilities to DOE would undermine this credibility?*

> Answer: EPA has successfully managed ENERGY STAR since its establishment in 1992. My testimony recounted the significant benefits—including $430 billion in utility bill savings alone—realized by American consumers as a result of the work of EPA, DOE, and the network of ENERGY STAR partners. As I discussed in my written statement and testimony, a shift of programmatic responsibilities from EPA and DOE would be tremendously disruptive to the program, and could undermine its credibility and reputation in the eyes of consumers.

Industry partners have voluntarily complied with the requirements for the ENERGY STAR program, and provided EPA with product information, because they acknowledge the benefits of participating.

Question: *Is there a concern regarding the unwillingness of industry partners to share product information with DOE, who is also tasked with setting efficiency standards?*

> Answer: No, none that I can cite specifically. The Alliance is committed to working with our industry partners to ensure a close working relationship between EPA and DOE so as not to overburden manufacturers with duplicative or competing paperwork, information requests, or other requirements.

Question: *Are industry partners more willing to share ENERGY STAR-related product information with EPA because of the current division of responsibility between DOE and EPA?*

> Answer: For many manufacturers and trade associations, the current division of responsibility for ENERGY STAR between DOE and EPA is optimal in part because it is familiar and comfortable. EPA manages ENERGY STAR, the voluntary program. And DOE sets mandatory minimum efficiency standards for residential and commercial appliances and equipment and lighting products. That split seems reasonable, and it tracks with two approaches—one voluntary, another mandatory—to advance efficiency. There could, however, be areas of improvement in how the two agencies share information for products covered or regulated by the two programs to reduce reporting burdens on manufacturers. The issue of information sharing could be addressed by an update of the memorandum of understanding between EPA and DOE.

Question: *Do you believe the program will continue to thrive if the entity responsible for regulating industry partners, DOE, has full control of the program?*

Answer: No, not in the current political environment when the program is targeted by the administration for elimination and by Congress for severe funding cuts. The potential for disruption is simply too great to justify a shift of program responsibilities from EPA to DOE. The administrative challenges—including reporting and data collection—would likely be too much for the program to overcome without adequate resources, which are scarce. As I testified, "if it ain't broke, don't fix it" applies in the case of ENERGY STAR.

**Rep. Welch:**

During the hearing, there was a debate as to whether it would be beneficial to have the Department of Energy, rather than EPA, run ENERGY STAR. Some members also suggested that it might make sense to privatize ENERGY STAR.

Question: *Do you believe EPA is the right "home" for ENERGY STAR? Why is running this program an appropriate role for the federal government?*

Answer: The long list of achievements realized by ENERGY STAR over the past 25 years should be proof enough that EPA, in its current arrangement with DOE, and with the support of its 16,000 partners, is a good "home" for the program. Consumers have come to expect a lot from ENERGY STAR, and according to recent surveys 90% of consumers recognize the brand and most consider it when making purchases. This suggests a high level of confidence in the program. It is appropriate for an agency to manage ENERGY STAR, and for a relatively small outlay of public funds most consumers and businesses realize direct and indirect benefits. EPA takes its responsibilities to ensure the integrity of ENERGY STAR very seriously and I think consumers appreciate the independence and impartiality that governmental program management offers.

When a consumer or business chooses to purchase an ENERGY STAR-certified product, there might be an upfront incremental cost.

Question: *In your opinion, what factors influence these purchase decisions? What role does the expectation of cost-effectiveness play? For different purchases, what does it mean for something to be cost-effective?*

Answer: As a consumer, I consider the cost of products I purchase along with many other factors, including energy efficiency and an expectation of lower utility bills. I also know that energy efficient appliances, equipment, and lighting provide other benefits, too, whether indirect such as greater overall reliability of the electric grid, or whether non-energy such as materials sourcing or recyclability. ENERGY STAR is a useful reference point for consumers and helps them differentiate top performers in energy efficiency from standard models. With respect to energy efficiency, when a product is considered "cost-effective" it can be expected to deliver savings over its useful life that are greater than an incremental upfront cost.

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Kateri Callahan, President, Alliance to Save Energy

During the hearing, many members and witnesses used the terms "codes", "standards", "specifications", and "certifications" many times, and often interchangeably.

Question: *What do these terms mean? When we talk about ENERGY STAR, which of these terms apply? What are the relationships between these terms? When taken together, do "codes", "standards", "specifications", and "certifications" generate a cumulative energy efficiency benefit to homeowners, consumers, and businesses?*

Answer: "Codes" is most often is shorthand for "building energy codes" and refers to the energy efficiency requirements for residential and commercial building construction and renovation that are adopted by states and local governments. "Standards" refers most frequently to the minimum energy efficiency requirements established by DOE, based on statutory authority provided by Congress, for a wide range of residential and commercial appliances, equipment, and lighting products. "Standards" may also refer to a series of commercial building sector performance criteria developed and published by ASHRAE, but this was probably not intended during the November 7 hearing. "Specifications" refers to the voluntary energy efficiency requirements for products to earn the ENERGY STAR label. "Certifications" refers to the demonstration of compliance with an ENERGY STAR specification or other program requirement (e.g., performance criteria for ENERGY STAR buildings and plants). Many times codes reference standards, and vice-versa, in order to achieve building-level or building systems efficiency. ENERGY STAR specifications for a given product are often set at a certain level above the minimum energy efficiency standard in effect at the time. These terms, and the underlying policies and programs, combine to form a more holistic approach to energy efficiency and deliver compounded savings that far exceed what can be achieved on an individual basis.

Question: *What is the extent of utility company and state and local government involvement in ENERGY STAR? How do utilities, states, and local governments leverage this program? If ENERGY STAR were eliminated, what would the likely effect be on utility companies, states, local governments, homeowners, consumers, and businesses?*

Answer: ENERGY STAR is widely referenced and leveraged by utility companies, states, and local governments. As a national program, ENERGY STAR specifications and requirements transcend state boundaries and provide a uniform, nation-wide approach to energy efficiency that is valued by consumers and businesses. This is particularly important to utility companies as they often have vast and diverse service territories within and among many different states. About 700 utility companies—serving about 85% of U.S. households—use ENERGY STAR to some degree to implement energy efficiency programs. For example, ENERGY STAR might be the basis for a rebate, incentive, or financing program aimed at encouraging investments in energy efficiency. Residential programs frequently leverage Home Performance with ENERGY STAR when carrying out whole-house retrofits and ENERGY STAR certifications for new construction. And two states and 23 local governments rely on Portfolio Management for commercial benchmarking programs that have become increasingly prevalent as information technology has advanced. In total, about 500,000

properties—about half of U.S. commercial building floor space—have used Portfolio Manager to manage energy and water consumption and assess new opportunities for investments in even greater energy efficiency. If ENERGY STAR were eliminated, or severely disrupted, it would be a huge loss to utility companies, states, and local governments that would be forced to do without—to the detriment of their customers and constituents—or spend resources "reinventing the wheel" again and again. And homeowners, consumers, and businesses would lose an important source of trusted information when making purchases, considering retrofits and renovations, and buying homes and leasing office space.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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Minority (202) 225–3641

December 20, 2017

Mr. Greg Merritt
Vice President, Marketing and Public Affairs
Cree
4600 Silicon Drive
Durham, NC 27703

Dear Mr. Merritt:

Thank you for appearing before the Subcommittee on Energy on November 7, 2017, to testify at the hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, January 10, 2017. Your responses should be mailed to Allie Bury, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Allie.Bury@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Pete Olson
Vice Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

CREE

4600 Silicon Drive
Durham, NC 27703 USA
Main: (919) 407-5300

January 8, 2018

Mr. Pete Olson
Vice Chairman
Subcommittee on Energy
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Mr. Olson,

Thank you for sending the additional questions for the record resulting from my November 7, 2017 testimony before the Committee at the hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act." Attached is my response.

Regards,

[redacted]

Greg Merritt
Vice President, Marketing and Public Affairs

**Additional Questions for the Record**

**The Honorable Frank Pallone, Jr.**

1. **Mr. Merritt, I have concerns about the warranty relief language included in the draft language of the Energy Star Reform Act of 2017. This provision exists because a number of customers purchased mislabeled Energy Star products that failed to provide the energy savings required. Manufacturers should be held accountable for their products, and this provision would limit consumers' ability for redress when products are improperly labeled.**

    a. **In your testimony, you mentioned that you also have concerns with the warranty provision. Could you please elaborate?**

1. Yes, and thank you for the opportunity to expound upon my prepared statement and testimony. As I stated, Cree does not have a firm or final position on the warranty provision on a stand-alone basis. We appreciate that there are valid arguments in support and in opposition to this provision. However, Cree strongly opposes a pairing of the warranty provision with an exemption from third-party certification. In the LED lighting industry, third-party certification is critical to help prevent bad actors from abusing ENERGY STAR and selling deficient light bulbs, which hurts consumers and damages the overall reputation of the program. Removing liability for products that fail to live up to expectations along with an exemption from third-party certification goes too far and would make it harder for Cree to do business.

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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December 20, 2017

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Pruitt:

Thank you for submitting testimony to the Subcommittee on Energy on November 7, 2017, for the hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Pete Olson
Vice Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

January 16, 2018

The Honorable Pete Olson
Vice Chairman
Subcommittee on Energy
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Vice Chairman Olson:

Enclosed please find the U.S. Environmental Protection Agency's responses to the Subcommittee's questions for the record following the November 7, 2017, hearing titled "Discussion Draft, ENERGY STAR Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

I hope this information is helpful to you and the members of the Subcommittee. If you have further questions, please contact me or your staff may contact Patricia Haman in the EPA's Office of Congressional and Intergovernmental Relations at haman.patricia@epa.gov or at (202) 564-2806.

Sincerely,

[redacted]

Aaron E. Ringel
Deputy Associate Administrator

Enclosure

cc: The Honorable Bobby Rush
Ranking Member, Subcommittee on Energy

**Attachment—Additional Questions for the Record**

**The Honorable Pete Olson**

1. The 2011 GAO study led to the requirement of near-universal third party testing. Based on what we now know, is it possible that there may be circumstances where requiring third-party testing in all cases not optimal, such as testing of products that need to get to market quickly?

   **A: To improve the oversight of ENERGY STAR certified products, homes, and commercial facilities, EPA has implemented independent certification requirements. In response to a finding by the U.S. Government Accountability Office that the program was vulnerable to fraud, EPA implemented third-party certification of ENERGY STAR products starting in 2011. Prior to 2011, ENERGY STAR products were self-certified by partners. Manufacturers continue to have the option to use their own labs for testing. We would be willing to consider alternative approaches that provide a comparable level of verification.**

2. The 2009 Memorandum of Understanding made EPA the lead agency for Energy Star. Were there any serious disruptions, in adopting this policy change? If not, do you think the policy could be adjusted again, either legislatively or through another Memorandum of Understanding, without serious difficulties?

   **A: In September 2009, EPA and DOE signed a Memorandum of Understanding (MOU) that redefined roles and responsibilities for EPA and DOE in response to industry concerns and to enhance and expand the various aspects of ENERGY STAR. The division of responsibilities established by the MOU resulted in significant improvements to the program including standardized program approaches and reduced duplication of effort. It also helped resolve market confusion. Under the MOU, EPA and DOE work together to implement the ENERGY STAR program. Further adjustments to achieve additional improvements might be possible.**

3. Under the Obama administration, EPA made explicit its desire to reshape Energy Star into a global warming policy tool. For example, it began to take into account the carbon emissions attributed to the manufacture of products, even though this metric has no bearing on the core purpose of Energy Star which is to save consumers money on their energy bills. Do you agree that global warming considerations that have no direct benefit to consumers should not be a part of Energy Star?

**A. ENERGY STAR is a voluntary program that helps businesses and individuals save money and protect our environment through superior energy efficiency. The program reduces energy use through voluntary action, thus helping to decrease emissions associated with energy production including greenhouse gases. But, we do not consider ENERGY STAR to be a "global warming policy tool."**

4. EPA has stated that it is creating a Standard Operating Procedure (SOP) for Energy Star. Why has the agency waited so long to do so? Would EPA be legally bound to adhere to the SOP, and if not wouldn't it make more sense to legislatively mandate the Administrative Procedure Act for at least some steps of Energy Star specification setting and enforcement?

   **A. In response to recent stakeholder discussions and to address any potential confusion about the transparency and inclusiveness of EPA's processes, EPA created a Standard Operating Procedure (SOP) for setting ENERGY STAR product specifications. The new SOP includes specifics on minimum public comment periods, procedures for sharing proposals with stakeholders, and a detailed, step-by-step description of the entire process. EPA will continue to explore with stakeholders areas where EPA can improve transparency.**

5. As the law now stands, each administration can divide responsibilities under Energy Star between DOE and EPA. In 2009, the Obama administration chose to shift many responsibilities to EPA. The current or a future administration may choose to again restructure the program. Would it make sense to give Energy Star a permanent structure?

   **A. EPA remains committed to improving the ENERGY STAR program in response to stakeholder feedback as well as improving coordination between the two agencies. EPA stands ready to work with Congress and our industry partners to ensure the ENERGY STAR program continues to work well for those partners and American consumers.**

6. EPA has stated that it will refrain from developing Energy Star Standards for larger versions of some products – in other words, creating arbitrary caps on energy use. Is it appropriate for the agency to influence consumer choice in this manner?

   **A. The ENERGY STAR Program is generally inclusive of all product sizes and capacities unless constrained by practical considerations such as the lack of a relevant test procedure, insufficient available performance data, or associated performance trade-offs.**

7. In EPA's Statement for the Record, Administrator Pruitt characterized Energy Star as a voluntary program, but given the fact that there are federal purchase requirements for Energy Star products, that many rebate programs only apply to Energy Star products, and

that retailers have been pressured to only carry Energy Star, isn't it true that Energy Star is a de facto mandatory program in many instances and thus should be treated as one?

**A. ENERGY STAR has been a voluntary program since its inception.**

8. Is EPA working with DOE on a new Memorandum of Understanding to revise or replace the 2009 Memorandum of Understanding?

**A. No such work is underway.**

**The Honorable Frank Pallone, Jr.**

1. I am aware that DOE and EPA have worked together in recent years to ensure parts of the Energy Star program are mirrored in both agencies to minimize programmatic and reporting duplication. However, I am worried that there will still be significant costs associated with shifting the program to DOE.

    a. Please provide an estimate of how much it will cost EPA to shut down the Energy Star program, and transfer the agency's current responsibilities to DOE.

**A: We do not have an estimate of the costs that might be associated with transferring the entire program to DOE.**

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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December 20, 2017

Daniel R. Simmons
Acting Assistant Secretary
Office of Efficiency and Renewable Energy
U.S. Department of Energy
1000 Independence Ave, S.W.
Washington, DC 20585

Dear Acting Secretary Simmons:

Thank you for submitting testimony to the Subcommittee on Energy on November 7, 2017, for the hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Pete Olson
Vice Chairman
Subcommittee on Energy

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

Attachment

**Department of Energy**
Washington, DC 20585

March 1, 2018

The Honorable Pete Olson
Vice Chairman
Subcommittee on Energy
Committee on Energy and Commerce
U. S. House of Representatives
Washington, DC 20515

Dear Mr. Vice Chairman Olson:

On November 7, 2017, Acting Secretary Daniel Simmons testified regarding a hearing entitled "Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act."

Enclosed are answers to questions submitted by Ranking Member Pallone and you.

If you need any additional information or further assistance, please contact me or Fahiye Yusuf, Office of Congressional and Intergovernmental Affairs at (202) 586-5450.

Sincerely,

[redacted]

Marty Dannenfelser
Deputy Assistant Secretary for House Affairs
Congressional and Intergovernmental Affairs

Enclosures

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy

QUESTIONS FROM VICE CHAIRMAN OLSON

Q1. The Department of Energy (DOE) sets the mandatory minimum standards for appliances, while Energy Star identifies those models that go above and beyond the minimums and save consumers additional money. Aren't there synergies between the two programs that make DOE a better fit than the Environmental Protection Agency (EPA) to be the lead agency for Energy Star for appliances?

A1. There are synergies between the standard setting of the appliance and equipment standards program and setting levels for appliance models to earn the Energy Star designation. DOE and EPA have an interagency agreement - a Memorandum of Understanding (MOU) - assigning roles and responsibilities under the program. The current MOU went into effect on September 20, 2009. DOE and EPA have the ability to revisit that agreement to determine if a different assignment of roles and responsibilities might be preferable.

Q2. At our October 12, 2017 hearing with Secretary Perry, the Secretary stated repeatedly that it makes sense for Energy Star to be run by DOE. Is the agency taking any concrete steps to strengthen its role in Energy Star?

A2. Within DOE we've had some discussions about Energy Star, but to date, DOE and EPA have not begun to revise or replace the existing MOU.

Q3. As the law now stands, each administration can divide responsibilities under Energy Star between DOE and EPA. In 2009, the Obama administration chose to shift many responsibilities to EPA via a MOU. The current administration may choose to again restructure the program. Would it make sense to give Energy Star a permanent organizational structure?

A3. The 2009 MOU realigned roles and responsibilities at EPA and DOE for the Energy Star program in a budget neutral manner, focusing DOE more on the underlying technical work and consolidating the consumer outreach, retail industry partnerships, utility partnerships, and related efforts at EPA. The Administration has not determined whether Congress should legislate a permanent organizational structure for Energy Star.

Q4. In DOE's Statement for the Record, Acting Assistance [sic] Secretary Daniel Simmons referenced the voluntary nature of the Energy Star Program, but given the fact that there are federal purchase requirements for Energy Star products, that many rebate programs only apply to Energy Star products, and that retailers have been pressured to only carry Energy

Star products, isn't it the case the Energy Star is a de facto mandatory program in many instances and thus should be treated as one?

A4. There is currently no statutory or regulatory requirement for any party to participate in the Energy Star program. We believe that is appropriate. Participation in ENERGY STAR reflects a business decision based on anticipated return on investment in technology progression. Significant market demand continues to be fulfilled by products that do not earn the ENERGY STAR.

Q5. Is DOE working with EPA on a new MOU to revise or replace the 2009 MOU?

A5. DOE and EPA have not initiated any actions to revise or replace the 2009 MOU.

QUESTIONS FROM RANKING MEMBER PALLONE

Q1. The Energy Star program has been a tremendous success since its inception in the 1990s, saving consumers money and reducing energy usage, which leads to less greenhouse gases being emitted into the air. Given the success of the program, I look with great skepticism at any plan to uproot how, and where, the program currently functions.

Q1a. Please provide an estimate of how much it would cost DOE to transfer, assume, and fully operate the Energy Star program responsibilities currently delegated to EPA.

A1. DOE does not have an estimate of these costs. Over the past several years, the combined cost between DOE and EPA of the EnergyStar program was approximately $45 million annually.

Q2. The Administration's Fiscal Year 2018 budget request moved to terminate the Energy Star program all together. I worry not only about the costs to make the shift from EPA to DOE, but also whether the program would get the yearly funding it needs to be successful at DOE.

Q2a. What do you consider an appropriate funding level for the Energy Star program to be successful if all programmatic functions are shifted to DOE?

A2. An estimate of required funding would need further study.



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