



1111 19th Street NW > Suite 402 > Washington, DC 20036
t 202.872.5955 f 202.872.9354 www.aham.org

September 29, 2015

The Honorable Fred Upton, Chairman
The Honorable Frank Pallone, Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Re: Support for Section 4125 of the manager's amendment to HR 8 to protect the integrity of the ENERGY STAR program

Dear Chairman Upton and Ranking Member Pallone:

The Association of Home Appliance Manufacturers (AHAM) would like to voice our strong support for the bipartisan amendment offered by Reps. Latta and Welch (H.R. 504 - the ENERGY STAR Program Integrity Act) for consideration at the Energy & Commerce markup on September 17. We also would like to address the misconceptions and factual errors floating around regarding the intent of the bill. We are strong believers in the value of the ENERGY STAR brand and the integrity of the program, and we believe that the Environmental Protection Agency has the authority and has demonstrated the capability to monitor and enforce compliance with the program. That said, we believe the Latta/Welch bill would remove existing incentives for frivolous litigation that punishes companies that participate in the ENERGY STAR program in good faith.

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

AHAM and several other diverse organizations with interest in the ENERGY STAR program have supported this language since its inception, and the bill has achieved bipartisan support in Congress. Specifically, the bill has received public support from the American Council for an Energy Efficient Economy, the Alliance to Save Energy, the Leading Builders of America, the

National Association of Manufacturers, the U.S. Chamber of Commerce and the Retail Industry Leaders Association.

This letter specifically responds to recent criticisms of the bill. We believe these criticisms are misleading and ignore certain critical developments in the enforcement of the ENERGY STAR program that have occurred in recent years.

For most of the program's history, ENERGY STAR products were self-certified by manufacturers, and compliance with ENERGY STAR standards was largely a matter of industry self-policing. Tellingly, during that more than 20-year period, there was no history of private enforcement of ENERGY STAR standards. In other words, the class action plaintiffs' bar showed no interest in and played no role at all in "private enforcement" of the ENERGY STAR program. Suggesting otherwise now does not change that.

The informal enforcement scheme was abandoned in 2010 when EPA announced new third-party certification and verification requirements. Now, before a product can be associated with the ENERGY STAR logo, its performance with ENERGY STAR standards must be third-party certified based on testing conducted in EPA-recognized laboratories. This change addressed any concerns about potentially misleading consumers or EPA. Further, since 2011, ENERGY STAR products have been subject to "off-the-shelf" verification testing by independent EPA-approved laboratories, which helps ensure that manufacturers will remain vigilant against post-launch design or manufacturing changes that could impact a product's energy efficiency. A small percentage of products have failed this verification process, and as a result they have been disqualified from the ENERGY STAR program by EPA. It is only with respect to a subset of these recently disqualified products that private class action lawsuits have been filed. Those lawsuits have thus added nothing to the EPA's existing enforcement mechanisms; they merely add unnecessary and redundant litigation expenses that inure only to the benefit of the lawyers who bring them. None of these lawsuits are based on private plaintiff testing of products. All simply piggyback on the work the government and certification laboratories already have done.

EPA has provided a description of its enforcement guidelines and processes in a document titled "ENERGY STAR Program Integrity Update: Verification Testing & Product Disqualifications." In that document, EPA describes the steps it requires manufacturers to take in the event a product is disqualified, including removing all associations with ENERGY STAR from the product, providing notice of disqualification and "where market feasible, [requiring] that manufacturing partners remain available to compensate consumers in a commensurate and appropriate manner." Although EPA's ability to require consumer compensation is not codified by statute, EPA retains and has used the power as the brand owner to remove ENERGY STAR partners from the program entirely. Participation in the program is of great value to our members, so EPA wields more than sufficient authority as a practical matter to order consumer compensation in its discretion, and in fact it has done so in the past. Further, Energy Star disqualification may result in manufacturer liability under Department of Energy certification and Federal Trade Commission labeling laws that contain a panoply of remedies and penalties

The purpose of the amendment is to close a loophole in the existing law. As written, the law now allows private lawsuits against products that fail to meet ENERGY STAR standards, but it preempts such lawsuits with respect to the far more specific information contained on the Energy

Guide Label. Allowing these follow-on class action suits whenever a product is disqualified by EPA adds nothing to the existing enforcement scheme, but it does impose significant cost and uncertainty on ENERGY STAR participants. This additional cost will likely discourage robust participation in the voluntary program going forward, thereby placing at risk the significant energy efficiency gains that the ENERGY STAR program has and will continue to achieve.

Sincerely,



Joseph M. McGuire
President