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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. [SEP]
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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