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1 NEAL R. GROSS & CO., INC.

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6 DISCUSSION DRAFT, ENERGY STAR REFORM ACT OF

7 2017 AND H.R. 3477, CEILING FAN ENERGY

8 CONSERVATION HARMONIZATION ACT

9 TUESDAY, NOVEMBER 7, 2017

10 House of Representatives

11 Subcommittee on Energy

12 Committee on Energy and Commerce

13 Washington, D.C.

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16
17 The subcommittee met, pursuant to call, at 10:00 a.m., in
18 Room 2123 Rayburn House Office Building, Hon. Pete Olson [vice
19 chairman of the subcommittee] presiding.

20 Members present: Representatives Olson, Barton, Shimkus,
21 Murphy, Latta, Harper, McKinley, Griffith, Johnson, Long,
22 Bucshon, Flores, Mullin, Cramer, Walberg, Walden (ex officio),
23 Rush, McNerney, Peters, Green, Castor, Sarbanes, Welch, Tonko,

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24 Loeb sack, Schrader, Kennedy, Butterfield, and Pallone (ex
25 officio).

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

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46 Mr. Olson. Good morning.

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

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

53 This is a discussion draft. I repeat, discussion draft,
54 and offers possible solutions -- -and I repeat, possible --
55 possible solutions and reforms.

56 It would make the DOE the lead agency for Energy Star while
57 requiring them to consult with the EPA.

58 Today, each administration can choose whether EPA or DOE
59 runs the show. This is an energy program, which is why some want
60 the Department of Energy in the driver's seat.

61 This draft also has liability protections like what's in
62 a bill by my friends Bob Latta from Ohio and Peter Welch from
63 Vermont.

64 Energy Star has its own penalties for those who break the
65 rules. We don't need more lawyers involved on top of that. And
66 I say that as a member of the Texas Bar and active with a UT law
67 degree on my wall.

68 This draft also creates more chances for industry input in

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69 the program. I look forward to hearing your thoughts about any
70 and all sections.

71 One other point -- last Friday, our Democratic colleagues
72 sent a letter asking to delay this hearing because they wanted
73 a government panel.

74 You should know that staff tried but couldn't get the
75 appropriate witnesses. We need to have a high level panel with
76 live bodies confirmed by the Senate. Our friends there have to
77 move forward.

78 But both EPA and DOE have submitted statements and comments
79 and will respond to any questions for the record that they get.

80 And we will remind them that they need to be prompt with their
81 answers.

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

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

89 Energy Star program has been a win-win for consumers and
90 manufacturers over the past 25 years. This program has proven
91 to be a successful tool in advancing the development and use of

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92 efficient energy technologies.

93 It has also promoted economic expansion and job growth for
94 participating manufacturers across the nation including many
95 across my home state of Ohio.

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

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

103 I am looking forward to the testimony. I hope that the
104 engagement of these issues will not stop after today's hearing.

105 We need to hear from all the stakeholders about reform ideas
106 so that we can move this package forward.

107 I have an open-door policy and I hope that anyone who is
108 interested will share their thoughts, concerns, and suggestions
109 with me.

110 One provision in the draft directly addresses a recent trend
111 that has led to a chilled participation in the program. This
112 language protects manufacturers that have fallen out of
113 compliance if they have complied with all corrective measures
114 and penalties from litigation relative -- related to

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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 five minutes for an opening statement.

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,

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138 we sent a letter to you and Chairman Walden on Friday asking that
139 this hearing be postponed until representatives from the EPA and
140 from the DOE were made available to testify before this
141 subcommittee.

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

147 Mr. Chairman, I am deeply -- very deeply concerned and
148 disturbed that this subcommittee seems to be completely feckless
149 in persuading the administrative officials to provide testimony
150 on pending legislation and to engage members in person as has
151 been the tradition of this subcommittee for as long as I can
152 remember and for as long as I have been on this subcommittee.

153 At some point very soon, Mr. Chairman, I would hope that we would
154 use all the power available to us to convince representatives
155 of this administration to answer our call when they receive an
156 invitation from this subcommittee to come before us.

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

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

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

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

176
177 Mr. Chairman, for these two bills before us, I support H.R.
178 3477, the Ceiling Fan Energy and Conservation Harmonization Act,
179 and I strongly oppose the Energy Star Reform Act of 2017.

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

182 Mr. Welch. Thank you very much, Mr. Rush.

183 This Energy Star draft is a step, and I appreciate the intent

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184 of the -- of the drafters. Energy Star has had 25 years of a
185 fantastic success.

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

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

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

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

206 Thank you. I yield back.

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207 Mr. Olson. Gentleman yields back.

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

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

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

219 The Chairman. I thank the gentleman and appreciate his
220 comments. That is what we face. We share the frustration the
221 minority has expressed today about the inability to have the
222 administration's witnesses -- or administration's people
223 confirmed by Senate and in place so we would have somebody that
224 could give us the administration's perspective on these matters
225 of legislation.

226 Our committee's energy focus is not limited to energy
227 production and delivery. As you all know, we are also interested
228 in policies that promote energy efficiency.

229 Doing more with less is always a win for consumers, for

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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 is a -- 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.

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253 I certainly disagreed with this approach but I do believe
254 the program could be improved upon and now is a great time to
255 kick off that dialogue.

256 Today's hearing will focus on our discussion draft of Energy
257 Star reforms. Keep in mind this is just a draft. We welcome
258 constructive criticisms of what it contains as well as suggestions
259 for things that we should add onto it.

260 One of the quirks of the Energy Star program is that it has
261 no permanent lead agency. Each new administration can decide
262 how to divide responsibilities between the Department of Energy
263 and the Environment Protection Administration, or agency.

264 And in 2009, the Obama administration shifted the lead to
265 EPA. In my mind, Energy Star is fundamentally an energy program
266 and belongs at the Department of Energy.

267 I understand that many participants in the program are happy
268 with it being at EPA now. The discussion draft proposes to make
269 DOE the lead agency while still giving EPA an important role.

270 And, again, I stress that this is just a discussion draft
271 and we welcome all comments on how the program should be
272 structured.

273 As I mentioned, Energy Star is a well-functioning program
274 overall but there are areas for improvement. The discussion
275 draft addresses some of these such as protections against

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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:]

*****INSERT 1*****

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299

[The Bill H.R. 3477 follows:]

300

301

*****INSERT 2*****

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302

[The Energy Star Reform Act of 2017 follows:]

303

304

*****INSERT 3*****

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Mr. Olson. The chairman yields back.

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

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 three months of taking office.

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328 It has been almost 10 months now and this committee has yet
329 to have a single EPA witness before us and that is simply
330 unacceptable.

331 If the administration's absence is due to a scheduling
332 conflict then today's hearing should have been postponed. But
333 if they're just refusing to appear before our committee to discuss
334 any legislative proposal then we should not accept that.

335 On Friday, Ranking Member Rush and I asked that this hearing
336 be postponed until we could have both EPA and DOE before us.
337 Clearly, that did not happen.

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

343 Now let me move to one of the bills before us. I have serious
344 concerns with the Energy Star Reform Act of 2017 discussion draft,
345 which makes several significant changes to the Energy Star
346 program, and I have one question.

347 What problem are we trying to solve with this proposal?
348 The Energy Star program is extremely successful, reducing energy
349 consumption and saving consumers money.

350 According to EPA, in 2014 alone this completely voluntary

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351 program saved consumers \$34 billion on their utility bills while
352 stopping the release of 300 million metric tons of greenhouse
353 gasses into the atmosphere.

354 This program is a win-win for consumers and the environment
355 and yet this bill is proposing major changes including taking
356 the program out of EPA and moving it to DOE.

357 Energy Star was originally established at EPA and the program
358 was codified into law with EPA as the co-lead agency in the Energy
359 Policy Act of 2005, which was produced by a Republican Congress
360 and president. It remains an extremely effective and popular
361 volunteer program so, again, why the need for change.

362 I have yet to hear a credible argument from anyone as to
363 why this is necessary. The discussion draft also requires that
364 product certifications and other program specifications be done
365 using the administrative procedure act process which would
366 require every product certification be published in the Federal
367 Register and be subject to public notice and comment.

368 And I worry that this will make the program less nimble and
369 harm both consumers and companies by opening the process to new
370 needless litigation from companies who otherwise couldn't meet
371 Energy Star standards.

372 Two other provisions in the draft would harm consumers who
373 purchase products under this popular program. The no warranty

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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

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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 five minutes.

You will have a green light. At one minute left you'll have a yellow light and at five 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 five minutes, Mr. McGuire. Hit the bottom of the

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420

microphone there.

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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 MR. 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.

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444 This program should not be privatized or eliminated. The
445 program should be adequately funded. But we strongly believe
446 the program should be improved in recognition of its significant
447 role in the marketplace.

448 Energy efficiency gains across core major appliance
449 categories have been dramatic over the past decades. A new
450 clothes washer today uses 70 percent less energy than it did in
451 1990 and less than half the water.

452 Energy Star has played a critical role in educating consumers
453 on the benefits of energy efficiency and it had become so
454 ubiquitous that it is now referenced in building codes. It is
455 part of utility rebates, federal procurement, and retail buyer
456 specifications.

457 Thus, the voluntary program has effectively become mandatory
458 in the marketplace. As such, manufacturers must make significant
459 investment decisions to qualify products for the program just
460 as they must invest products to comply with mandatory appliance
461 efficiency standards.

462 The Energy Star program for home appliances originally was
463 administered by DOE so that critical coordination with appliance
464 standards and test procedures could occur.

465 However, in 2009, the program was transferred from DOE to
466 EPA. The lack of expertise within EPA has led to complications

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467 with verification testing requirements and EPA officials began
468 to broaden the scope of the program into non-energy related
469 product requirements such as product performance and warranty
470 terms.

471 This expansion has added consideration confusion for
472 manufacturers and diminishes the brand. Energy Star has drifted
473 from its original mission and operates at many levels as it if
474 were still an experimental program.

475 Within 25 years from its creation, the Energy Star program
476 is a full matured de facto mandatory federal program that needs
477 additional statutory authorization to keep it focused and to
478 create long-term stability and certainty.

479 It must maintain its focus on its intended and sole purpose
480 -- energy efficiency. To address these concerns, AHAM proposes
481 the following.

482 First, move the Energy Star for home appliances from EPA
483 back to DOE and provide funding for a reform program. I believe
484 Secretary Perry was receptive to this suggestion when he appeared
485 before this committee recently.

486 While Energy Star can be transferred back to DOE
487 administratively, and we support that, statutory requirement to
488 house the program at DOE will keep it from becoming a ping pong
489 ball.

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490 We respectfully suggest that the bill -- the draft bill
491 indicate that authority over the Energy Star program be held by
492 DOE and except for home appliances covered under EPCA may be
493 delegated to EPA as determined by the secretary.

494 Secondly, we support the bill's revision to increase
495 transparency and long-term certainty of the program by
496 establishing administrative procedure process requirements.
497 There should be a formal and transparent process for changing
498 and developing Energy Star specifications for all stakeholders.

499 The APA will not slow down the Energy Star processes.
500 Finally, we support the draft bill's provision to stop Energy
501 Star class action lawsuits that undercut fair enforcement by the
502 federal government.

503 Because Energy Star has its own remedies, allowing class
504 actions undermines the program and fosters a system of double
505 jeopardy for Energy Star partners.

506 Congress should make clear it does not intend this program
507 to be used for that purpose. Our members must earn the trust
508 of consumers each and every day, as our products are so vital
509 to their well-being.

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

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513 appliances.

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

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

519 [The prepared statement of Mr. McGuire follows:]

520

521 *****INSERT 4*****

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522 Mr. Olson. Without objection, so ordered. And thank you,

523 Mr. McGuire.

524 The chair now calls upon Kateri Callahan, the president of

525 the Alliance to Save Energy. I am sorry if I butchered that first

526 name with that thick Texas drawl but --

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527 STATEMENT OF MS. CALLAHAN

528

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

531 Good morning, Mr. Chairman, and members of the subcommittee.

532 I have the pleasure of serving as the president of the Alliance
533 to Save Energy, which is a nonprofit coalition comprised of over
534 130 different businesses and organizations and I would note that
535 all the witnesses before you today are members of the Alliance
536 to Save Energy's associate's program and our businesses represent
537 about \$870 billion in market cap.

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

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

547 The Alliance's history with the Energy Star program is long.

548 We supported the creation of the program and we worked then with
549 the Congress, with EPA, DOE, and all the Energy Star partners

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550 to keep the voluntary program both robust and impactful. For
551 this reason, we very much appreciate and applaud the subcommittee
552 members and staff for fully engaging all the key stakeholder
553 groups as you seek to craft legislation that will impact this
554 program.

555 While we are open to continuing to improve the program, we
556 have to caution the subcommittee to be very careful to assure
557 that there are no unintended negative consequences as you consider
558 changes.

559 As many have already mentioned and as detailed in my
560 testimony and those of other businesses and organizations that
561 are offering comment on the discussion draft, Energy Star today
562 is a venerable program.

563 It is widely recognized as the world's gold standard for
564 public-private partnerships. More than 90 percent of Americans
565 recognize and trust that familiar blue label.

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

570 Ten percent of the homes built today are built and proudly
571 display the Energy Star label and over 50 percent of the commercial
572 building floor space -- 50 percent -- has been -- is using the

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573 Energy Star portfolio manager to monitor and control energy
574 consumption.

575 I think it was Mr. Pallone who mentioned this, but it's the
576 old adage ever stood true -- if it ain't broke, don't fix it.

577 That is the case with today's Energy Star program and it should
578 be the test against which the subcommittee determines the content
579 of any bill that will impact its future.

580 Our greatest concerns with the discussion draft are twofold
581 -- the proposed wholesale move of the program from EPA to DOE,
582 and the application of the Administrative Procedures Act, or APA.

583 We oppose a wholesale move of the Energy Star program from
584 EPA to DOE. As Joe said, such a shift in responsibility for parts
585 of the programs can be done and the flexibility is there under
586 current law for EPA and DOE to assign or reassign responsibilities
587 to assure the most effective and streamlined management of the
588 program.

589 So we encourage the stakeholders and the committee to look
590 to the administration to move any parts that may make the most
591 sense over and back and forth between the two agencies.

592 We also oppose the broad application of the APA, which was
593 designed and intended for regulatory programs that carry the force
594 of law, not voluntary programs like the Energy Star.

595 We do believe, however, that there should be adequate

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596 transparency and predictability to the specification-setting
597 process for Energy Star products and we'd very much like to work
598 with the agencies and the subcommittee to consider provisions
599 that can accomplish this goal.

600 The Alliance appreciates the efforts made by the
601 subcommittee to reduce costs for manufacturers that are in good
602 standing to the program. But we do not support an exemption of
603 third party certification for only certain manufacturers of
604 consumer electronic devices.

605 We stand ready to work with the subcommittee, EPA, and its
606 partners to consider options that could lower certification costs
607 for all manufacturers who are in good standing.

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

613 In conclusion, I would note, as other members of the
614 committee have, that the subcommittee's deliberations are coming
615 at a time when the Energy Star program is under threat of
616 elimination by the administration and significant budget cuts
617 by the Congress.

618 We urge this subcommittee, therefore, to continue to work

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619 closely with all of us who support this gold standard
620 public-private partnership and make sure that the program has
621 the congressional support, it has the guidance, and, very
622 importantly, it has the funding it needs to continue to deliver
623 the enormous energy and dollar savings that American consumers
624 and businesses have come to expect from the Energy Star label.

625 Thank you, and I look forward to your questions.

626 [The prepared statement of Ms. Callahan follows:]

627

628 *****INSERT 5*****

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629 Mr. Olson. And as the people of Kentucky and Texas say,
630 much obliged.

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

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STATEMENT OF MR. 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.

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656 Energy Star continues to be a trusted brand to consumers
657 and a valued partner to suppliers like CREE. The program's
658 remarkable success is undeniable, as you've heard earlier, and
659 as a marketing executive I will tell you that there are many
660 companies around the world that would envy the 90 percent brand
661 recognition that Energy Star enjoys today.

662 This brand is an incredibly valued asset and we should
663 fiercely protect it. As a participating Energy Star company with
664 over 400 Energy Star-rated products, CREE is very supportive of
665 changes that will improve the program and help secure its future
666 but is also wary of those that may do otherwise.

667 Our foremost interest, and I think you've heard this earlier,
668 is to ensure that Energy Star is fully funded, retains its
669 experience and capable staff and management, and continues to
670 deliver multiple valued programs including product
671 certification, commercial buildings, and homes.

672 Furthermore, we would advocate specific authorization of
673 funding to ensure that the appropriated levels going forward are
674 adequate to keep the program strong and viable and at least match
675 historical levels of funding.

676 Among the proposals included in the discussion draft we are
677 addressing today we are particularly concerned by the proposed
678 transfer of the program to DOE and the proposal to apply the

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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.

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702 We believe imposing APA will eliminate the ability of program
703 staff to make quick adjustments to the specification that be
704 necessary in response to technology evolution and the program
705 will forever be chasing technology and market evolution,
706 rendering it ineffective.

707 I would also note that recent experience with Energy Star,
708 at least by my company, have reflected improved engagement of
709 product manufacturing and specification process, multiple rounds
710 of comment and drafts, and many of these have been in response
711 to our earlier requests to EPA.

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

717 We believe allowing exemptions would create the opportunity
718 for this bad behavior to happen. While external testing does
719 create a longer process and adds some costs, we believe it is
720 a necessary and worthwhile trade-off.

721 The trustworthiness of the Energy Star certification and
722 label is the most valuable attribute of the program and it should
723 not be risked for convenience.

724 Finally, while we don't have a firm position on the warranty

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725 provision, we would oppose it if it is paired with exemptions
726 from third party certification for the reasons I delineated above.

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

730 [The prepared statement of Mr. Merritt follows:]

731

732 *****INSERT 6*****

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733 Mr. Olson. Thank you, Mr. Merritt.

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

737 You have five minutes, sir.

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738 STATEMENT OF MR. DREW

739
740 Mr. Drew. Mr. Chairman, Ranking Member Rush, and members
741 of the subcommittee, good morning, and thank you for the
742 opportunity to testify here today on possible reforms to the
743 Environmental Protection Agency's Energy Star program.

744 My name is Christopher Drew and I am the executive vice
745 president for Burnham Holdings. I am also chairman of the Air
746 Conditioning, Heating, and Refrigeration Institute, an
747 organization representing more than 320 manufacturers.

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

752 Today, 160 AHRI members participate in the AHRI program --
753 in the Energy Star program. I am pleased to say Burnham Holdings
754 participates in the Energy Star program and has about a hundred
755 products listed.

756 From our experience, we have enjoyed a positive working
757 relationship with the EPA and we would like the program to continue
758 as a resource consumers can rely on and trust for information
759 on the efficiency of the products they are considering for
760 purchase.

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

768 AHRI and its members have concerns about the draft's
769 suggestion to move the program from the EPA where it is currently
770 housed to the Department of Energy. The industry would prefer
771 to maintain the program as it currently stands at the EPA where
772 it has been able to operate successfully for our products since
773 1992.

774 Though no doubt well intentioned, the draft does not provide
775 details as to how moving the program could be accomplished without
776 disruption.

777 It is currently operated by a knowledgeable and dedicated
778 staff in a way that generally ensures stakeholder input and
779 successful outcomes.

780 Furthermore, if moved, the draft language leaves much of
781 the administration of the program to the discretion of the
782 secretary of energy.

783 Energy Star's credibility and success over the last 25 years

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784 has been partially driven by its stability within the EPA's
785 portfolio and the certainty it provides to consumers that what
786 they are purchasing is government certified. There is no false
787 advertising.

788 Therefore, if the program is to be moved, which is not what
789 our industry would prefer, we would like the committee to provide
790 more details on how it will be managed.

791 Reduced compliance burdens, the AHRI has also urged the
792 federal government to recognize voluntary certification programs
793 as a way to comply with federal energy efficiency standards and
794 the Energy Star program.

795 Relying on industry consensus certification programs
796 reduces duplicative efforts between the federal government and
797 industry, encourages compliance with energy efficiency
798 regulations, reduces regulatory burdens, and saves taxpayer
799 dollars, all while enhancing market surveillance.

800 AHRI is currently an EPA-designated certification body.
801 This allows AHRI program participants to realize significant
802 savings as they are able to meet Energy Star requirements without
803 any additional testing on the products they wish to have labelled.

804 The draft does include a promising improvement to allow for
805 good actors -- those participants have met all requirements of
806 the program for a period of at least 18 months to be eligible

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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

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830 Manager and it is also used by the commercial real estate industry
831 to comply with the numerous state and local laws.

832 In addition, under Energy Star's New Homes program, houses
833 are designed and built with a system-wide approach in mind so
834 that all energy efficiency systems and features work together
835 to deliver better performance.

836 Quality installation of these products is essential for
837 consumers to gain the full benefits of their highly efficient
838 equipment.

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

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

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

848 Thank you.

849 [The prepared statement of Mr. Drew follows:]

850
851 *****INSERT 7*****

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852 Mr. Olson. Thank you, Mr. Drew.

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

855 Mr. Johnson, you have five minutes for an opening statement.

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STATEMENT OF MR. 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.

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

884 First, we support the balanced and bipartisan solution to
885 third party certification that is part of the discussion draft
886 bill. This solution maintains Energy Star third party
887 certification authority but allows electronics manufacturers
888 with a demonstrated track record of compliance to earn their way
889 out of the burdensome requirement. If there is noncompliance,
890 then the more draconian costly third party certification
891 requirements reapply.

892 It is important to keep in mind that the rigorous post-market
893 verification system that exists today would stay in place.

894 Second, regarding moving program leadership to DOE, we know
895 our members' experience with EPA and Energy Star has been
896 collaborative in some categories and less so in others.

897 If program leadership were to move to DOE, which is used
898 to traditional regulatory rulemakings, we would need assurances
899 that DOE would work collaboratively in partnership with industry
900 in the voluntary Energy Star program.

901 Third, regarding application of the APA to Energy Star, our

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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 -- 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 program 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

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925 to broaden the scope of Energy Star to cover non-energy factors
926 such as greenhouse gas emissions of manufacturing processes and
927 supply chains not related to the energy efficiency of the product
928 itself. This Energy Star mission creep has appeared in past EPA
929 proposals for new Energy Star specifications for computers,
930 displays, and televisions.

931 We think Energy Star should stay focused on energy
932 efficiency. Our final point concerns standard test procedures
933 on which Energy Star and other programs depend.

934 DOE and EPA have hired consultants to develop test procedures
935 for measuring the power consumption of products being considered
936 for Energy Star specifications and, if applicable, DOE standards.

937 This use of consultants is not only costly but also less
938 transparent than the open private sector's consensus standards
939 development process. We think Energy Star program
940 administrators should rely on these existing and less costly
941 opportunities already developed by the private sector.

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

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

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948 [The prepared statement of Mr. Johnson follows:]

949

950 *****INSERT 8*****

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

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

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

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

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

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

971 The second point I'd like to make is the track record of
972 industry performance under Energy Star. Our industry has an
973 excellent track record of compliance in the program.

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974 EPA acknowledged that several years ago when they imposed
975 third party certification on everybody in order to tackle discrete
976 problems that could have been tackled in a discrete way. But
977 the blanket went over everybody and we were covered as well and
978 have been ever since.

979 I think a tailored approach would have been better, but what
980 we are talking about here is a balanced approach to let the good
981 actors earn their way out of the burden and if they mess up then
982 they're back in for, as the language says, at least three years.

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

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

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

996 Can you give an example of how one of your members was

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997 impacted by a class action lawsuit and whether you think that
998 lawsuit was appropriate? No names. Just one member.

999 Mr. Johnson. Sure. Actually, this question may be best
1000 directed to another witness. This is a provision that we are
1001 not agnostic about in the sense of understanding what it's trying
1002 to accomplish and that it would cover actually all sectors in
1003 the program. But this is not part of the draft -- discussion
1004 draft that we are particularly advocating.

1005 Other witnesses may have a different view.

1006 Mr. Olson. I was going to say, that witness is Mr. Drew.
1007 Any comments, sir, about how was one of your members impacted
1008 by a class action lawsuit and whether you think that was
1009 appropriate. And no names. But just has this happened. I
1010 suspect it has but an example of how this has gotten out of whack
1011 with class action lawsuits.

1012 Mr. Drew. I admit, I am not familiar that any of our members
1013 have been caught up in a class action lawsuit specific to Energy
1014 Star at this point in time.

1015 Mr. Olson. Okay. Another question for -- well, the first
1016 one for Mr. McGuire.

1017 In your testimony about EPA and Energy Star, you mentioned
1018 the problem of mission creep and Mr. Johnson mentioned mission
1019 creep and some examples are climate change and other sorts of

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1020 focuses.

1021 Energy Star's primary purpose is to help consumers save money
1022 on energy bills by identifying those products that go above and
1023 beyond mandatory efficiency standards. Give some examples like
1024 Mr. Johnson did about climate change about mission creep happening
1025 under Energy Star.

1026 Any example of mission creep?

1027 Mr. McGuire. There have been instances where the EPA has
1028 added performance requirements to the Energy Star specifications.

1029 In the case of dishwashers, they wanted to not only control the
1030 energy and the energy used to heat water but how the product would
1031 perform, and they have done that in the case of clothes driers
1032 too and have attempted to do that in other products. They also,
1033 in the case of clothes driers, wanted to include requirements
1034 for warranty terms.

1035 So our view is that the law that underpins the appliance
1036 standards program itself requires that maximum energy is saved,
1037 its cost effect to the consumer, and the requirement does not
1038 jeopardize the product's functionality and performance. That's
1039 what is left up to the manufacturer dealing with the customers.
1040 They want to compete on performance and quality.

1041 This is not an area for the government to be laying on top
1042 of the energy efficiency requirements. So we've experienced it

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1043 firsthand since the program was moved to EPA.

1044 Mr. Olson. Sorry, sir. I missed you at first. Any example
1045 of class action lawsuit for your members that's happened because
1046 of overreach of the Energy Star program?

1047 Mr. McGuire. The Energy Star program has a very robust
1048 penalty system to it where partners can be eliminated from the
1049 program. They can be required to pay compensation to consumers
1050 if the energy efficiency requirement was incorrect, and this is
1051 all put on the Energy Star website.

1052 It is very visible to consumers, to retailers. The penalty
1053 is fit to the -- to the infraction. Having a class action lawsuit
1054 on top of that is another layer of penalty that is totally
1055 unnecessary and is not going to make the company -- the partner,
1056 if you will -- change its behavior because it's already doing
1057 that with regard to the penalty requirements of the program.
1058 It is double jeopardy.

1059 Mr. Olson. Thank you, sir. I am 50 seconds over so I
1060 recognize the ranking member of the subcommittee for five minutes
1061 and 50 seconds. Mr. Rush.

1062 Mr. Rush. I want to thank you, Mr. Chairman.

1063 Ms. Callahan, as stated previously the Energy Star program
1064 is one of the more popular and trusted programs that's out there
1065 and also is a voluntary program.

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1066 So this bill that we are considering is not only unnecessary
1067 but it would also turn a good program into a bad program and I
1068 oppose disrupting this program by moving it from EPA to DOE.

1069 I am opposed to making this voluntary program to APA. I
1070 oppose undermining the integrity of the program by limiting
1071 accountability for manufacturers and I oppose revising the third
1072 party certification requirements that lead to fraud and abuse.

1073 That said, Ms. Callahan, in your opinion, if this bill were
1074 to become law and these changes to Energy Star were to go into
1075 effect, how would this impact the integrity of the overall Energy
1076 Star program and how would it impact consumers' confidence in
1077 the program?

1078 Ms. Callahan. Thank you for question, Mr. Rush.

1079 I think our concern as an energy efficiency organization
1080 is if this discussion draft as it's currently crafted were written
1081 into law, that it would have very, very significant damaging
1082 consequences on the program and on consumers' ability to have
1083 confidence in that program.

1084 You mentioned several things that we are very concerned with.
1085 One is a wholesale movement of the program for EPA over to DOE.

1086
1087 Some of my fellow witnesses have talked about this as well
1088 as members that there's 25 years of history of brand management,

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1089 of partnership relations, of IT and databases that have been built
1090 that won't be easily moved. And there is not appropriations at
1091 DOE to support that size of program. It is about \$42 million
1092 at EPA currently.

1093 There is not the expertise and the staff that is there to
1094 do the brand management and the marketing and we are very concerned
1095 that the program, even for the period of time to dismantle an
1096 infrastructure and rebuild it over in another agency will take
1097 away from the focus on the program.

1098 So we are very, very concerned. With respect to
1099 certification, third party certification resulted from a GAO
1100 study that found that there were, you know, folks that were not
1101 self-certifying appropriately and were basically cheating the
1102 system.

1103 So there are very good reasons for putting in that third
1104 party certification. We are open to looking at ways to minimize
1105 burdens and costs on manufacturers but we have to protect the
1106 integrity of the program. If consumers cannot rely on that blue
1107 label to indicate that there are energy savings in that product
1108 as top of the market then we really lose what we have and what
1109 we've built -- have built over 25 years.

1110 Mr. Rush. Thank you.

1111 I want to move to Mr. Merritt. Mr. Merritt, Energy Star

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1112 is a completely voluntary program but yet the legislation full
1113 force will apply the APA specification to the program. What
1114 impact would that have on the Energy Star program overall and
1115 on your industry specifically?

1116 Mr. Merritt. Thank you for the question, Mr. Rush.

1117 So as I mentioned in my testimony, the application of APA,
1118 we believe, would limit the ability of the program to be nimble
1119 and responsive to changes in technology and the market.

1120 Currently, the Energy Star program is able to make what we
1121 will refer to as tweaks and specification based on developments
1122 in the market without going through a long process of formal
1123 notification, comment period, posting, et cetera.

1124 We believe the current structure of the program allows the
1125 program to work effectively with partners and participating
1126 vendors to revise these specifications.

1127 We are -- we are concerned about making the process so long
1128 and burdensome that we are unable to keep up with the changes
1129 in the market and the technology.

1130 Mr. Rush. Ms. Callahan, as you know, the president's FY
1131 2018 budget zeroes out the Energy Star program. But a proposal
1132 put forward by the majority would enact major cuts to it.

1133 Currently, the program is operating at \$42 million pursuant
1134 to the most recent continuing resolution. What level of funding

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1135 do you think is appropriate for the Energy Star program to
1136 effectively operate at and what type of return will we see if
1137 Congress funded the program at its optimal level?

1138 Ms. Callahan. Thank you again for the question, Mr. Rush.

1139 As you mentioned, the current appropriations are about \$42
1140 million over at EPA and DOE also contributes funding for some
1141 of specification and the technical work that they do to support
1142 EPA.

1143 We believe that that funding is insufficient to continue
1144 the program and to look at including more products, more different
1145 ranges and sizes of products.

1146 We've suggested in our testimony an authorization level and
1147 appropriation levels of up to \$75 million. Historic levels for
1148 the program have been \$50 million but that's historic, and there
1149 has been increase in funding for the 14 years that I have been
1150 at the Alliance to Save Energy.

1151 It has been, roughly, stable to falling and we believe that
1152 there have been increases, of course, in cost of living and
1153 programs going forward.

1154 So we believe that this program should grow and should have
1155 more funding than it does and current -- and have direction from
1156 the Congress for what those levels should be, which is not
1157 currently there.

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1158 The other thing that I would -- I would add to that is on
1159 the return. I think the EPA studies show that for every dollar
1160 invested there are about \$4.50 in energy savings that are
1161 realized, and as I mentioned in my oral statement, this little
1162 program that could at \$42 million a year has driven \$165 billion
1163 in private sector investment in new technology and innovation.

1164 So I think dollars here are very well spent and it's penny
1165 wise and pound foolish to continue to decline the funding when
1166 really it should go the other way.

1167 Mr. Rush. I yield back, Mr. Chairman.

1168 Mr. Olson. Gentleman yields back.

1169 The chair now calls upon the pride of Ennis, Texas, the vice
1170 chairman of the full committee, Mr. Barton, for five minutes of
1171 questions.

1172 Mr. Barton. Thank you, Mr. Chairman. You're in fine form
1173 today.

1174 I appreciate this hearing and the witnesses being here.
1175 I want to make sure I am clear on this.

1176 Mr. McGuire, this is a voluntary program, right?
1177 Manufacturers don't have to participate if they don't want to.
1178 Isn't that correct?

1179 Mr. McGuire. It is a voluntary program. However, over its
1180 21 years in existence for home appliances it has become in effect

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1181 mandatory in the marketplace. Utility rebate programs
1182 specified, building code specified, federal procurement
1183 specifies it, and many retailers will not carry your products
1184 if you don't have Energy Star.

1185 So while it is voluntary, manufacturers have to have Energy
1186 Star products and what we are saying may be different from the
1187 rest is appliances began their Energy Star career at DOE. The
1188 very reason that the test procedures that allow manufacturers
1189 to test a product to see how much energy it uses are changing
1190 all the time because of technology.

1191 And so those test procedures are needed to determine if you
1192 meet Energy Star requirements. When it went to EPA and they began
1193 experimenting with performance and warranty terms and other
1194 non-energy features, that's where disruption and confusion
1195 occurred.

1196 So Energy Star has been great for consumers. We just want
1197 it to be stable and provide certainty so that our companies can
1198 comply with it.

1199 Mr. Barton. All I really needed was a yes.

1200 [Laughter.]

1201 I got a lot more than I bargained for. Let me go to part
1202 two of the question. The reason I wanted to get on the record
1203 explicitly that it was voluntary is because I don't think you

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1204 have to -- you need to have a voluntary program subject to class
1205 action lawsuits. Do you agree with that?

1206 Mr. McGuire. I do.

1207 Mr. Barton. Okay. That's a --

1208 Mr. McGuire. That would be yes.

1209 Mr. Barton. That's a good answer. All right. And I will
1210 come back to you one more time. The draft discussion draft makes
1211 the Department of Energy the primary agency and it, to some extent,
1212 redefines the responsibilities of the Department of Energy and
1213 the Environmental Protection Agency.

1214 I happen to believe, and this will surprise my friends on
1215 the Democratic side, that we need a strong enforcement capability
1216 at EPA.

1217 But I think EPA should focus on enforcement and not on setting
1218 policy, and as you pointed out, EPA more and more has used the
1219 role under the current system to move into policy areas that they
1220 really don't have a, in my opinion, a legitimate reason to move
1221 into. Would you agree with that?

1222 Mr. McGuire. I would, Mr. Chairman.

1223 Mr. Barton. Good. So you're getting better at it.

1224 Mr. McGuire. I am coachable.

1225 Mr. Barton. Does anybody -- you know, if we -- if we were
1226 starting over and we had never had an Energy Star program and

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1227 we created an Energy Star program, why would you not make the
1228 Department of Energy the standard setter and EPA the enforcement
1229 oversight? Why wouldn't you do that? What's wrong with that?

1230 Mr. McGuire. Well, that's the way it did begin, and that
1231 made total sense because of the technical nature of the standards
1232 and the test procedures. And all the -- all the verification
1233 testing that's done for Energy Star today is overseen by DOE
1234 because of the complicated nature.

1235 We test -- we do the verification testing. So it made total
1236 sense to have it there at the beginning. It makes total sense
1237 to have it there now, for consumers and for manufacturers.

1238 Mr. Barton. I will go to Mr. Johnson for my last question.
1239 How long does it take to go through the system and get a product
1240 certified for Energy Star right now under the current system?

1241 Mr. Johnson. Thank you for the question.

1242 Our members report that it can take a few days or a couple
1243 of weeks. But, again, for an industry whose product life cycles
1244 are relatively short and measured in months, that's a significant
1245 amount of time to be off the store shelf.

1246 Mr. Barton. Is there anybody that would state under the
1247 current system it takes an excessive amount of time to get
1248 certified? Anybody?

1249 So in terms -- in terms of actual submitting your product

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1250 for review, once you do it, the Department of Energy and the EPA
1251 act expeditiously. Is that a fair statement? Not a fair
1252 statement?

1253 Mr. Johnson. I think once -- if I may, I think once you
1254 are certified there are, you know, steps after that take less
1255 time.

1256 But it is the time out of the product development cycle to
1257 send your product to a third party to have it tested, information
1258 to be sent to another and back to EPA.

1259 It takes a while and, certainly, in contrast to
1260 self-certification, which, again, worked for us quite well for
1261 many years under Energy Star and in other regulatory arenas.
1262 It is a relative burden.

1263 Mr. Barton. Thank you, Mr. Chairman.

1264 Mr. Olson. Gentleman yields back.

1265 The chair now calls upon a gentleman who doesn't share Mr.
1266 Rush -- my admiration for the Houston Astros' victory, the man
1267 from California, home of the Los Angeles Dodgers, Mr. McNerney,
1268 for five minutes.

1269 Mr. McNerney. Okay. You're right, I don't. But we can
1270 move on from that, Mr. Chairman.

1271 I thank the witnesses and I thank the chairman this morning.
1272 Mr. Johnson, what determines an adequate track record for

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1273 companies on the Energy Star program and who should determine
1274 this?

1275 Mr. Johnson. When we talk about third party certification
1276 improvement, I would stress that we are not talking about
1277 eviscerating the EPA's capability to have this.

1278 I think it was important for EPA to recognize, and they did,
1279 when they instituted third party certification that we had an
1280 excellent track record and we've maintained that after third party
1281 certification as well.

1282 The problem we are trying to avoid is the burden that is
1283 too much for a company that wants to maybe put a product on the
1284 market that qualifies for Energy Star but doesn't want to take
1285 the time and cost involved with testing.

1286 So we've heard feedback from our manufacturer members who
1287 tell us that they may not want to pay the bill or take the time.
1288 They'll just meet the spec and get the product to market.

1289 So we end up with the store shelf where you have Energy Star
1290 labelled products and products that meet the Energy Star spec
1291 but don't have a label because they didn't want to take the time
1292 and I don't think that's very good for the program.

1293 And we would, you know, still support EPA oversight,
1294 obviously, and in the case of companies that, you know, violate
1295 and they would, of course, be subject to the requirements of third

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1296 party certification once again.

1297 So I think, if anything, we have weighted this in this
1298 language toward penalty. But I think the track record speaks
1299 for itself in this industry.

1300 We were not the problems that they were trying to address
1301 when they instituted this and we would sure welcome a good actor's
1302 opportunity to earn our way out.

1303 Mr. McNerney. Thank you.

1304 Ms. Callahan, the 2008 memorandum of understanding between
1305 the DOE and the EPA helped the program. Is there any room for
1306 improvement on that MOU?

1307 Ms. Callahan. I think that it's a good thing to go back
1308 and review the memorandum of understanding regularly and it's
1309 my understanding that EPA and DOE are in discussions now about
1310 that MOU and changes that may be made. There's the law -- current
1311 law gives them the ability, just as it did to put in force that
1312 MOU in 2008 -- I think it was 2009, actually.

1313 They can rewrite that and change and move around elements
1314 of the program to make it most streamlined and most cost effective.

1315 So we are encouraging stakeholders, and this is in my testimony,
1316 to work with the agencies to seek improvements to the program.

1317

1318 We are not convinced as the Alliance to Save Energy that

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1319 it takes a statutory change. We believe that the program can
1320 be improved and that the agencies are motivated to improve the
1321 program. So we would like to see it happen there first.

1322 Mr. McNerney. Well, we don't have the agencies in front
1323 of us today. But you're saying that there may be a new MOU in
1324 the works?

1325 Ms. Callahan. I didn't -- I said they are in discussions
1326 about ways to improve the program, sir. I wouldn't want to
1327 overstate. I have had no conversation to indicate that they are
1328 looking at and rewriting the MOU.

1329 Mr. McNerney. So how would you go about increasing the
1330 predictability in Energy Star specification settings, as you've
1331 suggested?

1332 Ms. Callahan. I think working with the stakeholders and
1333 with EPA and DOE to look at best practices and maybe regularizing
1334 time frames between product specifications in a way that makes
1335 sense.

1336 I think it's a bit tricky. As Doug Johnson has indicated,
1337 some of these products are changing so dramatically the technology
1338 in the marketplace.

1339 So I think we have to preserve the flexibility and that's
1340 working with the agencies and with the program administrators
1341 and putting in place some best practices and guidelines, to me,

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1342 makes a lot more sense to keep that program flexible and nimble
1343 rather than trying to codify something into law.

1344 Mr. McNerney. Thank you.

1345 Mr. McGuire, you seem to be the only one that is favorable
1346 toward moving this back to the DOE. How would you address the
1347 concerns of the other panelists that that would be disruptive
1348 of a very successful program?

1349 Mr. McGuire. Well, I am also the only one representing an
1350 industry sector whose life at Energy Star began at DOE. All the
1351 other products started at EPA.

1352 So what I am saying is that there was disruption when our
1353 appliances were moved to EPA in 2009 -- and some of the examples
1354 I cited with that -- created diversions and inefficiencies. I
1355 think they should be back at DOE where they can be tied more to
1356 the standards and test procedures work and make it more
1357 predictable for our members and for the customers.

1358 And so this can be done administratively, as Kateri
1359 indicated, through a change to the memorandum of understanding.

1360 We would support the memorandum being changed to bring home
1361 appliances back to DOE. We would all support --

1362 Mr. McNerney. You're just saying bring the home appliances,
1363 not the whole program, back to the DOE?

1364 Mr. McGuire. We support -- I am speaking only for home

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1365 appliances. We believe they should be back at DOE. I am not
1366 speaking for the other products of the other industries.

1367 Mr. McNerney. Right. Mr. Chairman, I yield back.

1368 Mr. Olson. Gentleman's time has expired.

1369 The chair now calls upon the gentleman from the land of
1370 Lincoln, Mr. Shimkus, for five minutes.

1371 Mr. Shimkus. Thank you, Mr. Chairman. It is great to be
1372 with you all. I may be the fly in the ointment.

1373 I have always struggled with the Energy Star issue. First
1374 of all, I think the budget is, I was told, \$50 million. It has
1375 been cut to \$41 million, and the president proposes zero.

1376 And Ms. Callahan, you think it should be \$75 million.

1377 Ms. Callahan. Up to.

1378 Mr. Shimkus. So then it's really -- really a fundamental
1379 debate about government and kind of government's role and
1380 manufacturing and consumer choices and education.

1381 So that's why I always struggle with it. Yeah, I understand
1382 that eventually consumers will get a lower cost but there's a
1383 lot of -- there's a lot of gaming of the system that I don't like.

1384 I don't like the fact -- and you can disagree -- a new
1385 building, homes -- building new homes today costs more because
1386 of these standards. Would anyone disagree with that?

1387 If you're going to purchase a new home, that cost of that

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1388 home is more expensive based upon efficiency standards.

1389 Ms. Callahan. Can I respond to that?

1390 Mr. Shimkus. Yes, quickly. But I --

1391 Ms. Callahan. Okay. Well, studies have shown that there
1392 is an incremental cost --

1393 Mr. Shimkus. Correct.

1394 Ms. Callahan. -- that -- in terms of the mortgage,
1395 reduction in the payment of the energy costs applied to --

1396 Mr. Shimkus. Okay. That gets me to my other point.

1397 Then I don't like the ROI -- return on investment of 20 or
1398 30 years from the supposed energy savings that really makes that
1399 initial purchase somewhat affordable.

1400 That's -- what will be the debate. How much energy do you
1401 save -- how much money do you save. So you're willing to take
1402 the initial upfront cost. And then my problem is what's
1403 government doing -- why is government involved with this to begin
1404 with. Why isn't it buyers and manufacturers?

1405 So has anyone heard of the -- anyone heard of the National
1406 Institute for Automotive Service Excellence? Anyone know what
1407 that is?

1408 All right. So ASE -- when you see ads, when you go to get
1409 your car repaired, you want to go to an ASE-certified mechanic
1410 -- or at least that's what this institute says -- because what?

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1411 They're trained.

1412 Now, the ASE is short for the National Institute for
1413 Automotive Service Excellence. Since 1972, our independent
1414 nonprofit organization has worked to improve the quality of
1415 vehicle repair and service by testing and certifying automotive
1416 professionals.

1417 Why does government have to do energy? Why can't we have
1418 a National Institute for Energy Efficiency, funded by you all,
1419 to certify and to advertise? We'll even give you the label if
1420 you want.

1421 Why -- why is it government's role to do this? Anyone want
1422 to answer that question? Mr. McGuire.

1423 Mr. McGuire. Well, our members probably agree with you
1424 philosophically but we have gone through decades of energy
1425 efficiency policy at the national level that has resulted in
1426 significant energy savings.

1427 The dilemma is that if we were to wipe that federal program
1428 away, including Energy Star, you would have a patchwork of
1429 regulations throughout the country which we experienced in the
1430 1980s. So --

1431 Mr. Shimkus. So let me just -- - getting into my -- -
1432 so, like, California may continue to go a certain route. Not
1433 picking on my Californians. They're -- I mean, they're very all

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1434 into this, right?

1435 And because there is such a huge market they may drive the
1436 rest of the country to move in that direction based upon the state
1437 standards, where if another state may not be.

1438 The other -- the other issue I have is when the median income
1439 of your district is \$47,000 and they want to buy a home appliance
1440 and that home appliance is now disproportionately increased for
1441 two things -- one is the efficiency standards, the other one is
1442 what Mr. Johnson was talking about, I think, and this is that
1443 DOE/EPA debate is if you start putting other new concerns in the
1444 standardization and your testing, you're just going to increase
1445 the costs of the goods.

1446 So a short story. Many people know I own a townhouse. I
1447 have renters, and I had to get a new washer. I bought the cheapest
1448 washer I could buy and that's what we are using because I wasn't
1449 willing to pay -- and I paid probably \$2,400 less than if I would
1450 have bought the top of the line energy super efficient
1451 save-the-world piece of equipment.

1452 So I am worried about the people who can't afford these
1453 government standards, which I don't think are needed.

1454 And I yield back.

1455 Mr. Olson. Gentleman's time is expired. The chair now
1456 calls upon a gentleman from California who is not happy again

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1457 that my Astros won the World Series over his Dodgers, Mr. Peters,
1458 has five minutes.

1459 Mr. Peters. First of all, that is a total misread. You
1460 cannot call a San Diegan a Dodger fan without their permission.
1461 We are -- I think you've -- I think you've misread this one,
1462 Mr. Chairman, and this is -- this is something on which we should
1463 be able to agree on actually.

1464 Mr. Olson. I stand corrected.

1465 Mr. Peters. I actually -- to respond to Mr. Shimkus, I
1466 actually think this is about the least intrusive way for
1467 government to promote energy efficiency by sort of setting the
1468 table for consumers to have the information that they need to
1469 make a decision about whether they want to invest in energy
1470 efficiency.

1471 And Mr. Shimkus decided in his own -- nobody required him
1472 to buy a fancy washer machine. But you had the information to
1473 make that choice yourself.

1474 I think it's very -- actually very valuable and nonintrusive.
1475 So my question goes to that, though, which is about the
1476 certification.

1477 And Mr. Johnson, I am -- I got to read over your testimony
1478 and you said that in 2011 they switched from this -- to this
1479 self-certification. We don't have the agency here.

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1480 Can you tell me if, if they were sitting here, why they would
1481 explain that they did that in 2011, to switch away from -- switch
1482 toward -- away from self-certification?

1483 Mr. Johnson. Sure. As --

1484 Mr. Peters. Mandated a third party certification regime
1485 for products.

1486 Mr. Johnson. Right. As Kateri Callahan referenced
1487 earlier, EPA around that time was dealing with a couple of
1488 challenges or issues with the program.

1489 One had to do with the database that was used at the time
1490 to administer the list of Energy Star qualified products and that
1491 database essentially was fooled by a third party audit that
1492 uploaded the famous gas-powered alarm clocks, right. So it was
1493 an egregious and well-publicized situation with the database on
1494 the administrative side of the program.

1495 The other challenge, as I understand, had to do with a product
1496 -- had to do with a product category outside of our industry in
1497 the refrigerator category. Perhaps Mr. McGuire can shed further
1498 light than I can.

1499 But in any case, it was a discrete issue in a category of
1500 product outside of our industry. The response by EPA was very
1501 public and very broad and the blanket of third party certification
1502 went over everybody even though at the time in their press release

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1503 EPA acknowledged that electronics had this 100 percent track
1504 record of compliance.

1505 Mr. Peters. Let me ask you, though, about -- so what would
1506 you do in the -- in the case of fraud? So let's just say that
1507 there's no -- that self-certification, someone pats themselves
1508 on the back for meeting a spec that they don't in fact meet.

1509 Mr. Johnson. So I think the penalties should be there.

1510 Mr. Peters. What would be -- what would be the penalty?

1511 Mr. Johnson. In the language in the discussion draft or
1512 --

1513 Mr. Peters. In your -- in your mind, what would be the right
1514 thing?

1515 Mr. Johnson. Well, I think we favor the approach that's
1516 in this discussion draft, which on one hand allows the good actors
1517 to earn their way out but if there's a screw up I think in at
1518 least two instances then they are back under third party
1519 certification for at least three years. So I think --

1520 Mr. Peters. So there's no penalty to them for all the
1521 products that they sold potentially fraudulently? In other
1522 words, just next time you have to have a certification -- is that
1523 the way you'd advocate it?

1524 Mr. Johnson. Well, in terms of allowing focus on the --
1525 on the new market entrants or the bad actors, I think that's really

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1526 important. But for the good actors who've had that demonstrated
1527 track record of compliance, allow them to earn their way out.

1528

1529 I think EPA will or DOE would maintain the oversight of the
1530 program and essentially kick the parties out that would violate.

1531 I think there's also the consumer response as well and there
1532 are a lot of publications and other parties that watch this space
1533 and please note that the manufacturers have equity in this brand
1534 as well. It is a partnership, fundamentally.

1535 Mr. Peters. I am very sympathetic, actually, particularly
1536 in your industry where things turn over so fast. My concern is
1537 that without the certification, and I am not trying to answer
1538 the question -- I am trying to ask it -- without certification,
1539 as we go forward with this draft, how can we be confident that
1540 the standards will actually have been met? And I guess that's
1541 what I'd look at, too.

1542 For myself, I also don't understand why this is not an Energy
1543 Department program. It does seem to me where that -- that is
1544 where the expertise relies.

1545 I don't have an objection to that part of the bill. I am
1546 not sure why EPA is the better one to set standards than the
1547 Department of Energy.

1548 But I am -- I just -- with the limited amount of time I have

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1549 I just express the concern I have about compliance and not that
1550 I am an advocate for litigation but if you left -- you left the
1551 third party certification out there why you wouldn't want to have
1552 some sort of hammer, I don't know. Do you want to respond to
1553 that?

1554 Mr. Johnson. Yes, sir. The other note I wanted to make
1555 was with respect to marketplace verification postmark. When the
1556 products are on the store shelves, labelled as Energy Star, very
1557 important to keep that going and this -- the solution to third
1558 party certification, which is a premarket exercise, is distinct
1559 and separate from post-market verification. So that would be
1560 the check -- the random testing of products on store shelves.

1561 Mr. Peters. And I think there would have to be some sort
1562 of penalty -- penalties in place for actual fraud.

1563 Ms. Callahan. There are penalties. I mean, the EPA --

1564 Mr. Peters. I am -- I am out of my time, ma'am. So but
1565 I am sure maybe the -- someone else can ask you. Thank you.
1566 I yield back.

1567 Mr. Olson. Gentleman yields back.

1568 The chair now calls upon the author of the Energy Star Reform
1569 Act of 2017, Mr. Latta from Ohio, for five minutes.

1570 Mr. Latta. Thank you, Mr. Chairman, and again, thanks to
1571 our panelists. I think it's really good discussion that we're

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1572 having and that's why we are here today to talk about this
1573 discussion draft.

1574 And Mr. Drew, if I could just start with you. You know,
1575 I think that everyone here believes that the Energy Star program
1576 is something that needs to be preserved.

1577 But the question is is how can we improve upon it. And so
1578 my question to you was what improvements would you see or want
1579 to do to Energy Star to make it a better program for the consumer
1580 across this country?

1581 Mr. Drew. Thank you, sir.

1582 In general, the products that are covered by AHRI are all
1583 highly regulated. They're certified to not only performance
1584 standards. They're also certified to numerous safety standards
1585 just due to the nature of the piece of equipment that we are
1586 manufacturing and then having installed in people's homes.

1587 The Energy Star program as it stands we believe is a useful
1588 tool for educating consumers ago but products that they don't
1589 buy very often during their tenure as even homeowners or even
1590 if they're renters or building owners.

1591 We find that the processes that we have in place to report
1592 the status of these products to Energy Star works extremely well
1593 at this point in time. Not burdening them further with any
1594 additional requirements for reporting, we believe, would be

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1595 beneficial.

1596 The energy savings that we provide through our products from
1597 a high efficiency perspective, as stated earlier, is a consumer
1598 choice. We believe it provides real value to the consumer.

1599 The fact that numerous third party organizations, not
1600 necessarily government-affiliated are providing incentives to
1601 purchase these products we also view as a significant benefit
1602 to our industry as well as the validation that moving towards
1603 higher efficiency equipment and achieving some reasonable return
1604 on that investment is a positive things.

1605 Regarding this discussion, again, we believe strongly that
1606 not moving it away from the EPA is the appropriate thing to do.

1607 It has been in EPA for a number of years -- works very well.

1608

1609 We deal with other issues at DOE. We like the separation
1610 between EPA and DOE as it pertains to this particular program.

1611 Mr. Latta. Thank you.

1612 Mr. Johnson, I saw in your testimony some of the
1613 manufacturers have said that EPA have made it more difficult for
1614 the larger versions of some of their products for qualifying for
1615 Energy Star. One of the examples that you cite in your testimony
1616 is wide screen televisions.

1617 Can you explain how EPA is making it, pardon me, difficult

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1618 for the larger versions to qualify for Energy Star and carry the
1619 Energy Star label?

1620 Mr. Johnson. Sure. From the EPA's perspective, I think
1621 they were concerned about a program all about energy efficiency
1622 applying to large products that would use more energy than small
1623 products.

1624 But our feeling was that if you're going to put a bogey out
1625 there -- if you're going to put a specification out there for
1626 the market to shoot for, don't you want manufacturers up and down
1627 the product line, no matter the size of the product that consumers
1628 want, to strive for that specification?

1629 So yes, this artificial cap or cut off for televisions in
1630 an earlier television spec came up. Essentially -- I forget the
1631 exact numbers but it was something like, say, a 50-inch TV. All
1632 TVs above that would have to still meet that 50-inch TV spec even
1633 if they were 70 inches.

1634 So it was rather unachievable because, you know, the bigger
1635 the product the more energy. But there should still have been
1636 a scalable specification for those larger TVs to shoot for.

1637 And, again, consumers demand what they demand. We love
1638 Energy Star. We think it should provide a scalable spec up and
1639 down the product line.

1640 Mr. Latta. Thank you.

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1641 Mr. McGuire, I'd like to go back and revisit the warranty
1642 language and its importance. Can you expand on that, on that
1643 warranty language and why it's so important?

1644 Mr. McGuire. Warranty language in the draft bill?

1645 Mr. Latta. Right.

1646 Mr. McGuire. Yes, sir.

1647 Well, we think it's a great provision which would take
1648 manufacturers, Energy Star partners out of double jeopardy. As
1649 has been said already here today, when partners are disqualified
1650 for a particular product, have a rating that doesn't qualify,
1651 there are significant penalties that they pay in terms of being
1652 pulled out of the program for a period of time, restitution to
1653 consumers for utility costs that should have been avoided.

1654 This is all made very, very public and that's why these
1655 partners take it very, very seriously. To be exposed to a class
1656 action litigation on top of that, just additional punitive damages
1657 to the company really doesn't do anything as far as the behavior
1658 of the company.

1659 It is simply a double jeopardy and it can actually
1660 disincentive companies to want to participate in the Energy Star
1661 program. So we think -- we think the penalty portion of the
1662 program of enforcement makes sense. There's no need to lop on
1663 top of that.

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1664 Mr. Latta. Okay. Thank you very much and my time has
1665 expired and I yield back.

1666 Mr. Olson. Gentleman's time has expired.

1667 The chair now calls upon the biggest fan of the Houston Astros
1668 -- we are the world champions -- except for me in Congress, Mr.
1669 Green from Houston, Texas, for five minutes.

1670 Mr. Green. Thank you, Mr. Chairman -- you and ranking member
1671 for having this hearing. For more than 20 years, Energy Star
1672 program has formed a foundation for energy savings and assistance
1673 for Americans of all economic statuses.

1674 Energy Star program has resulted in millions of dollars of
1675 kilowatts saved through the highly efficient appliance
1676 manufacturing.

1677 Unlike my good friend from Illinois, I think the Energy
1678 Star program is probably one of the best programs that we have.

1679 Over the years, we have realized in this committee that
1680 energy efficiency is really an important issue and to have a
1681 regulation like we have that's a self-regulation we just want
1682 the manufacturers to be accurate in what they say the energy will
1683 be used.

1684 And the consumers pick it -- pick it up. I think it should
1685 be if not a goal of our -- the national government to give that
1686 information to folks but also use that energy efficiency so we

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1687 may not have to build another electricity-generating plant.

1688 So because I know my colleague from Illinois -- maybe it's
1689 because even in Texas our energy prices are fairly low right now.

1690 But I would probably not go by the lowest price because I look
1691 at that and see how much I can save over the life of this
1692 refrigerator, for this washer and drier or whatever.

1693 But it is a voluntary program. That's why I think this is
1694 a good example of it, and transferring it to the Department of
1695 Energy I think is reasonable because it fits in with what the
1696 Department of Energy ought to be doing. And EPA is a regulatory
1697 agency but they should be regulating my dishwasher or whatever.

1698 The third party certification for Energy Star programs is
1699 initiated after that GAO report and I think that's such a greater
1700 improvement in the program. I'd like to believe companies do
1701 the right thing but -- in compliance in this space but it's always
1702 been -- not always been the case.

1703 My first question to the entire panel, how did we strike
1704 a balance when it comes to self-certification in the consumer
1705 electronics space where we don't inhibit innovation under the
1706 Energy Star program but also make sure the benchmarks that are
1707 required are being met?

1708 I know that's a tough one because how do you balance it?
1709 Does any of the panel have -- let me start with you, Mr. McGuire.

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1710 Mr. McGuire. Well, I won't speak for consumer electronics
1711 but I will -- I will simply say that for -- to meet a DOE energy
1712 efficiency standard -- the mandatory standard, which is the base
1713 and Energy Star is above that -- manufacturers have to
1714 self-certify to DOE in a very prescribed testing method that they
1715 have to provide all the data to DOE to prove that they're going
1716 to -- there's a reasonable chance they will be in compliance and
1717 then DOE does verification surveillance testing on top of that.

1718 So self-certification, government verification testing after
1719 market.

1720 For Energy Star, it's third party testing up front and
1721 verification. So if -- one way you can make the program more
1722 efficient would be to tie it more in with DOE for home appliances
1723 so that the certification to meet the standard and to meet Energy
1724 Star was the same process and then you'd have third party
1725 verification. That would be one way to do it.

1726 Mr. Green. Any other suggestions?

1727 Ms. Callahan. I guess what I would say to that is that there
1728 has to be a balance. You mentioned yourself you need consumer
1729 protection. They need to have confidence in this. So third
1730 party certification was put in place by EPA in response to
1731 manufacturers not being in compliance.

1732 I think what's really important here are the penalties that

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1733 accrue that Joe McGuire indicated earlier. So EPA can delist
1734 products and they can require companies to make restitution to
1735 consumers who didn't realize the energy savings that were promised
1736 to then.

1737 So I think as the committee looks at it, making sure that
1738 those protections remain while we lower cost of compliance for
1739 manufacturers is really the trick and the balance that needs to
1740 be made there. But we need that accurate certification because
1741 consumers need to be able to count on the energy savings that
1742 they assume come with that Energy Star label.

1743 Mr. Green. Anyone else?

1744 Mr. Johnson. Yes, sir.

1745 We agree with the idea of balance but balance is actually
1746 reflected in this provision that's in this -- this discussion
1747 draft concerning third party certification.

1748 We think it's a great solution. Again, EPA retains the third
1749 party certification authority, or DOE, should it move. But the
1750 program administrators retain that authority. We are just
1751 talking about balancing a solution here, essentially, targeting
1752 resources where there -- they should be targeted, to new market
1753 entrants or bad actors.

1754 But if a good actor has demonstrated compliance for a period
1755 of time, why not let that good actor earn its way out? And, again,

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1756 penalize that good actor should that good actor screw up a couple
1757 of times -- they're back in.

1758 So I think that's the kind of balance we need here and
1759 especially in the era of limited resources or perhaps smaller
1760 budgets. Let's hone in on what the problems are. Let's
1761 recognize where the problems are not.

1762 Mr. Green. Thank you, Mr. Chairman. I know I am out of
1763 time.

1764 Mr. Olson. My friend's time has expired.

1765 The chair now calls upon the gentleman from the Magnolia
1766 State, Mr. Harper, for five minutes.

1767 Mr. Harper. Thank you so much, Mr. Chairman, and thanks
1768 to each of you for being here and giving us your insight and
1769 assistance as we look at this discussion draft.

1770 And Mr. Johnson, I have got a few questions and things I
1771 want to cover with you, if I can. The discussion draft contains
1772 provisions providing for an exemption from the third party
1773 certification requirements for electronic manufacturers in good
1774 standing with the Energy Star program.

1775 Can you give us just a -- I know we touched on it but give
1776 us a short background on why these third party certification
1777 requirements came into being and why you may think they have maybe
1778 gone too far.

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1779 Mr. Johnson. Sure. They came into being six or so years
1780 ago -- six or seven years ago in response to discrete problems
1781 in the Energy Star program outside of our sector. One set of
1782 problems related to the way the program was being administered
1783 in the database.

1784 There was an opportunity certainly at that time to have a
1785 targeted approach to dealing with those problems but the easiest
1786 approach, the quickest way out was to apply third party
1787 certification -- premarket third party certification to everybody
1788 in the program. So we've lived under that regime since that time.

1789 All we are talking about here is a balanced way to earn your
1790 way out of that burden and I think that's the right way to go.

1791 It is also interesting to note that at the time EPA was
1792 proposing third party certification for Energy Star the European
1793 Commission, a major partner in the program over in Europe, was
1794 like minded with industry in the United States in saying we don't
1795 think this third party certification is necessary for
1796 electronics, and the European commissioner were partners in a
1797 couple of the electronics categories. So it was a strange
1798 situation for European regulators and industry in the U.S. to
1799 be allied but we both recognized that maybe a more tailored
1800 approach would have been better at that time.

1801 Mr. Harper. And give me a little insight. Why is it or

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1802 what is it about the electronics products and electronics industry
1803 that makes that third party certification troublesome or more
1804 difficult?

1805 Mr. Johnson. So what members have told us that there are
1806 a couple of reasons why it's relative burden for them. First,
1807 it takes some time out of the product development cycle.

1808 It takes a few days or maybe a couple of weeks for testing
1809 and paperwork to clear, and for an industry such as ours, again,
1810 with products that have relatively short product life cycles,
1811 maybe they're on the market for only a number of months. Two
1812 weeks is two weeks of sales, right? So we are an industry in
1813 the tech industry that's used to third -- used to
1814 self-certification in various regulatory realms including
1815 electromagnetic compatibility, FCC requirements and so forth.

1816 So that's what we were used to. That's what we had in Energy
1817 Star, and with self-certification we had an excellent track
1818 record.

1819 So the time to market penalty that comes with taking
1820 something out of the product development cycle for a period is
1821 a concern. The cost is there, too, and I suppose for big companies
1822 the cost isn't such a big deal unless you have a big product line
1823 under the Energy Star program. Then it really adds up. For a
1824 smaller company, a startup that want to be Energy Star compliant,

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1825 shouldn't we make it easier for that startup to be in the program?

1826 Mr. Harper. And, you know, sometimes critics of the
1827 provision say that sometimes could allow manufacturers to perhaps
1828 cheat and to produce products that had the Energy Star label on
1829 them that maybe don't meet the Energy Star requirements or
1830 standards. How do you respond to somebody making that assertion
1831 or allegation?

1832 Mr. Johnson. Well, I think for problem actors there should
1833 be penalties, certainly removal from the program, removal from
1834 the database.

1835 Penalization through this provision and this discussion
1836 draft that you would now then be back under third party
1837 certification for at least three years, that's actually weighted
1838 toward the more onerous side, I would say.

1839 But there's another angle to this, too. If the burdens to
1840 participate in the Energy Star program are too great, you could
1841 actually have companies manufacturing products that meet the spec
1842 that don't carry the label -- just they didn't want to trouble
1843 with it. They get it to the store shelf. That was a point I
1844 made earlier.

1845 But essentially how are we supporting the Energy Star brand
1846 if the store shelf is full of products that meet the spec but
1847 some carry the label, some don't? I don't think that's good for

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1848 the brand strength.

1849 Mr. Harper. Is it correct that the proposed exemption only
1850 applies to the initial certification testing and that the ongoing
1851 verification testing of compliance with the Energy Star is not
1852 effective?

1853 Mr. Johnson. That's absolutely the case and a very good
1854 point as well. We are not changing post-market verification.
1855 That's really important. Get out there, test the products on
1856 the shelves.

1857 Our members do that to each other. But there's also
1858 organized ways of doing that now today under DOE and EPA and that
1859 should continue. It is not touched by this proposal.

1860 Mr. Harper. Great. Thank you very much, Mr. Johnson.

1861 With that, I yield back, Mr. Chairman.

1862 Mr. Olson. Gentleman yields back.

1863 The chair now calls upon the gentlelady from Florida, Ms.
1864 Castor.

1865 Ms. Castor. You almost did it again.

1866 Mr. Olson. Almost caught it -- caught myself.

1867 Ms. Castor. There is one female here on the committee.
1868 It is not really a very good reflection of the country or even
1869 the Congress to have only one female and not many minorities.

1870 So I take this responsibility seriously to represent.

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1871 And what I want to say is the Energy Star program has been
1872 a real success story for Americans and American families and
1873 businesses. Since its inception in the 1990s, it has saved
1874 consumer substantial moneys. It has helped us conserve energy,
1875 which is important at a time where we want to control carbon
1876 pollution and other greenhouse gases.

1877 I thought Mr. Peters was right on when he said this is
1878 probably one of the least intrusive ways we can help put money
1879 back into the pockets of consumers and businesses, because after
1880 all it's voluntary.

1881 And to answer Mr. Shimkus' concern over the return on
1882 investment, it -- the return on investment for Energy Star has
1883 been impressive. Since its inception, Energy Star has
1884 cumulatively saved \$2.5 billion in energy costs. In 2015,
1885 homeowners saved \$360 million in energy costs, approximately 30
1886 percent of their energy bill.

1887 Since 1995, 1.7 Energy Star homes have been constructed and
1888 in 2016 approximately 92,000 Energy Star-certified homes were
1889 constructed in the U.S. America is a leader here, globally.

1890 The Energy Star program is internationally recognized as
1891 a proven standard for energy efficiency. A lot of the other
1892 countries are catching up but America has been the leader and
1893 we need to continue to be the leader.

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1894 But my takeaway today from the expert testimony is just kind
1895 of what was stated at the beginning. If it's not broken, why
1896 fix it? With all of the other pressing issues here before the
1897 Congress this is one that I think, based upon the testimony when
1898 you look at the track record, the savings for consumers, why fix
1899 it?

1900 But we do have to be on guard because the Trump administration
1901 did propose a total elimination of Energy Star in its last budget.

1902 I strongly oppose that. This has been a vital lifeline for cost
1903 savings for consumers and helping us conserve energy.

1904 So I want to make sure all of the witnesses are on record
1905 on that today. I'd like all of you just to answer yes or no.

1906 Do you oppose the -- support or oppose -- you can say, I support
1907 or oppose -- the Trump administration's proposal to totally
1908 eliminate Energy Star.

1909 Mr. McGuire. Oppose.

1910 Ms. Callahan. Strongly oppose.

1911 Mr. Merritt. Oppose.

1912 Mr. Drew. Oppose.

1913 Ms. Castor. So you would oppose elimination as well? See,
1914 I think -- and I hear what you all are saying about the shift
1915 to the DOE. Most here are opposed to that as well. I took Mr.
1916 Merritt's comments very seriously that they lack experience at

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1917 the DOE to do this. I wonder, there also are going to be some
1918 significant costs if the Congress were to make this move.

1919 Ms. Callahan, do you know what it would cost to shift the
1920 program entirely from EPA to DOE?

1921 Ms. Callahan. I do not know what that would cost. I know
1922 what the budget at EPA is now. It is \$42 million. I know that
1923 the entire budget at the EERE office, which is probably where
1924 it would land, is about \$2 billion.

1925 There has been -- the president proposed almost an 80 percent
1926 cut to that budget and the House has recommended about a 40 percent
1927 cut to energy efficiency programs over there.

1928 So we don't see where the money comes from to support that
1929 cost and that change.

1930 Ms. Castor. Mr. Merritt, do you have any information on
1931 what you think it would cost to shift DOE entirely?

1932 Mr. Merritt. I do not, but I would support Ms. Callahan's
1933 comments.

1934 Ms. Castor. Does anyone else want to comment on the
1935 potential cost of shifting and the loss of professional expertise
1936 that's currently at EPA?

1937 Mr. McGuire. We don't think the cost to the federal
1938 government would be any more if the program for appliances were
1939 at DOE than EPA. I agree with the adage if it ain't broke don't

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1940 fix it.

1941 I think it is broke when the appliance portion went over
1942 to EPA and there have been inefficiencies there. So I would make
1943 the argument that if they were shifted back to DOE there would
1944 be more efficiencies and less cost for running the appliance
1945 portion of Energy Star program.

1946 We want the program to be funded.

1947 Ms. Castor. Do you have any hard data on that? Any studies?

1948 Mr. McGuire. I don't have hard data. I don't think --

1949 Ms. Castor. I think it's an open question right now and
1950 -- because you would -- you would clearly incur significant costs
1951 including hiring and training of new staffers, standing up new
1952 online data systems comparable to those at EPA to collect
1953 certification data, allow building owners -- that allows building
1954 owners to track their energy waste and waste consumption. It
1955 is not as simple as just snapping your fingers, especially in
1956 this budget arena where -- and I think Ms. Callahan's comments
1957 are very well taken. The proposed decimation of the EERE budget
1958 at DOE and then you're going to increase costs by the shift and
1959 then probably put all of Energy Star at risk when DOE subsumes
1960 it all. I would be very concerned for consumers and our ability
1961 to put money back into their pocket.

1962 I yield back the balance of my time. Thank you.

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1963 Mr. Olson. The gentlelady yields back and, ma'am, if you're
1964 the only member of this committee that's female we are proud of
1965 that because you are the MVP. I see you chase down a ball in
1966 center field like George Springer from Astros. He's an MVP.
1967 You're an MVP.

1968 The chair now calls upon the member from West Virginia.

1969 Mr. McKinley. Thank you, Mr. Chairman.

1970 Ms. Callahan, it's good to have you here. I have enjoyed
1971 working with you over the years I have been here in Congress.

1972 It is good to be able to continue a discussion on energy
1973 efficiency and I particularly appreciated the work over the last
1974 seven years with you and also Peter Welch. What a great champion
1975 of that and it's been good -- I think has been beneficial for
1976 us to be able to team up.

1977 Ms. Callahan. And we've appreciated your leadership
1978 tremendously.

1979 Mr. McKinley. Thank you.

1980 So one of -- one of the questions -- I guess I am having
1981 some concerns as well about the -- creating an exception under
1982 the verification. I am a strong advocate of IV&V -- independent
1983 verification and validation -- that we've used in NASA and
1984 elsewhere where we have someone else looking at it.

1985 I am also familiar, having come from the construction

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1986 industry on efficiency, of dealing with UL, the Underwriters
1987 Laboratory, and Factor Mutual -- FM.

1988 Can any of you give me an indication, because they've been
1989 around for decades -- is there an exception to UL ratings or FM?

1990 Can anyone share --

1991 Mr. Johnson. I am being looked at so I will respond.

1992 This is different than product safety. Energy efficiency
1993 is different than product safety and I would note that in product
1994 safety, of course, there is third party certification that's very
1995 important. But there's actually no post-market verification for
1996 product safety.

1997 With Energy Star, we are talking today about an approach
1998 that includes premarket certification and post-market
1999 verification. It is relatively more burdensome than product
2000 safety.

2001 Should that be the case in all cases? I think we need that
2002 balance.

2003 Mr. McKinley. Maybe we are just picking nuances of this.
2004 But I am just curious. I am not sure that I am going to embrace
2005 the idea of an exception on this.

2006 I have come from an industry that we depend on it. When
2007 you see a UL rating you know it's good. You know it has been
2008 done independently, and the same thing with FM.

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2009 So I -- maybe, McGuire, go back to you on some of your
2010 comments. I don't -- what was broken that Ms. Castor made that
2011 remark? What was broken in 2009 that caused the administration
2012 back in 2009 to switch from DOE over to EPA? What was broken
2013 then that they were intending to fix?

2014 Mr. McGuire. Sir, I don't know the answer. I don't know
2015 what was broken. I would submit that nothing was broken and what
2016 happened was the program that oversaw -- oversees Energy Star
2017 for appliances at EPA today became diverted from the Energy
2018 efficiency mission and got into things like warranties and
2019 procurement rules and things -- and performance.

2020 So we'd like to fix it. We'd like to have it go back and
2021 be part of the whole appliance efficiency policy apparatus where
2022 you have the minimum standards and Energy Star above that and
2023 they can be coordinated as they used to be.

2024 Mr. McKinley. I just don't want anything to come in between
2025 the government or whatever and energy efficiency and Energy Star.
2026 We've made great strides with this and I am looking to see what's
2027 going to facilitate it the best and that's why I was trying to
2028 understand.

2029 Can any of the rest of you share with me what was broken
2030 in 2009 that caused us, caused the administration to switch it
2031 or to flip it?

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2032 Okay. Thank you and I yield back my balance of my time.

2033 Mr. Olson. Gentleman yields back.

2034 The chair now calls upon the gentleman from Vermont, Mr.
2035 Welch, for five minutes.

2036 Mr. Welch. Thank you very much and thank you for this
2037 hearing. The witnesses have been tremendous.

2038 What I'd like to do is just lay out some of my concerns and
2039 then I have got questions for each of you.

2040 The question of moving the program from EPA to DOE, I am
2041 agnostic about things so -- what department does it, but I have
2042 -- the concerns I have are, number one, it's very disruptive to
2043 make a move.

2044 You've got established expertise in one place than the other.
2045 Second, there's a real funding question that is really active
2046 because of the policies of the Trump administration and that's
2047 without passing judgment on them.

2048 And then third, the continuity of this system is really
2049 important. So that's a concern I have. Will this on a practical
2050 level work, even if you think on a theoretical level it might?

2051 And I have got the APA standard issue is really about
2052 maintaining the flexibility and the agility of the current
2053 program. If you get into the APA, you get lawyers involved, and
2054 it becomes a contested hearing.

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2055 And what has been tremendous, I think, about Energy Star
2056 in general has been the voluntary nature of it and the cooperative
2057 nature of it.

2058 And then third, the third party certification, we had that
2059 problem with LG when the voluntary part of it wasn't also
2060 consistent and honest, quite frankly. So how do you have
2061 confidence in the program if you're leaving it up to the applicants
2062 without review to make that decision?

2063 So those are the concerns I have in addition to the funding
2064 issue that across the government with the new administration is
2065 all in doubt -- 25 percent cuts pretty much across the board.

2066 So those are -- that's where I am coming from. I think maybe
2067 we can work these out. But let me ask Mr. Drew, first of all.

2068 You've focused on the impacts of moving Energy Star to DOE.
2069 I know in the commercial building side of the program a number
2070 of home and commercial building organizations are supportive of
2071 EPA running Energy Star and do prefer the status quo. Can you
2072 elaborate on your experience with EPA's -- EPA's operation of
2073 these building programs?

2074 Mr. Drew. We are referring specifically to that portfolio
2075 manager program. For commercial buildings when you're buying
2076 large equipment that consumes a significant amount of energy,
2077 the ability to go in and model the Portfolio Manager program,

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2078 how the purchase of higher efficiency equipment, potentially
2079 Energy Star, is going to impact the overall energy usage and the
2080 potential cost savings for that building owner is significant
2081 for our members.

2082 Mr. Welch. Thank you. I don't have a lot of time. Let
2083 me ask you, Ms. Callahan, about your thoughts on the APA process
2084 as opposed to the current process.

2085 Ms. Callahan. I agree with you completely that it could
2086 add significant time and cost and complication. You're putting
2087 a formal process design for regulatory programs that have the
2088 force in law in place on a voluntary program and we think that
2089 that's very troubling.

2090 Mr. Welch. Do you have any changes that you would support
2091 in the process?

2092 Ms. Callahan. Yes. We should support working with the
2093 committee, working with the agencies and the other stakeholders
2094 to look at ways that we could put in place more transparency and
2095 perhaps more discipline to the program.

2096 And so by dint of guidelines, best practices, policies to
2097 be -- there's a lot that we can do that's short of what I think
2098 is a really over step.

2099 Mr. Welch. Thank you.

2100 Mr. Merritt, let's go on this requiring APA procedures.

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2101 Can you suggest some changes EPA has recently made to facilitate
2102 manufacturer input?

2103 Mr. Merritt. Yes, thank you.

2104 We've seen recent changes in the process to include more
2105 reliance on industry standard test procedures and standards as
2106 opposed to creating their own, which may not be as generally
2107 accepted.

2108 We've also seen some recent changes in terms of what I
2109 mentioned earlier, having multiple rounds of specification open
2110 for comment which allows manufacturers to be fully heard.

2111 I would support Ms. Callahan's comments that perhaps making
2112 that more consistent across the board to allow more transparency
2113 would be a good thing. I think we should do that.

2114 Mr. Welch. All right. Thank you. I have only -- I have
2115 got time for one more but that, I appreciate.

2116 Mr. Johnson, the cost and the time line of third party
2117 certification is a burden. You think it slows product
2118 development.

2119 But I have heard the third party certification body states
2120 it only takes about two weeks to certify new product and \$3,500
2121 to do the necessary work. Is that accurate, in your view?

2122 Mr. Johnson. The cost and the time can certainly vary.
2123 But I think it sounds about right and I would stress that that

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2124 two weeks is a big deal when your product is out on the market
2125 for only a few months.

2126 Mr. Welch. Okay. I thank all the witnesses.

2127 Mr. Chairman, I yield back and I think we've got a lot to
2128 work with here.

2129 Mr. Olson. You betcha. Gentleman yields back.

2130 The chair now calls upon the member from the Commonwealth
2131 of Virginia, Mr. Griffith, for five minutes.

2132 Mr. Griffith. I thank my friend very much and appreciate
2133 it.

2134 Mr. McGuire, I have heard you testify today that the
2135 Association of Home Appliance Manufacturers' position is to move
2136 Energy Star for home appliances from EPA to DOE.

2137 I have a constituent glass company that has had a very
2138 positive experience with the windows program at EPA. Do you see
2139 any challenges in keeping certain programs like the windows
2140 program at EPA while moving the home appliances program to DOE?

2141 Mr. McGuire. Sir, my answers would be that for 13 of its
2142 21 years of existence Energy Star program for home appliances
2143 -- home appliances were at DOE and not EPA. So I don't see any
2144 issues with appliances being shifted back to where they started
2145 from. Other product are not.

2146 EPA and DOE both have had responsibilities in the program

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2147 and the important thing about appliances is that the efficiency
2148 levels and the testing is so integrally tied to the standards
2149 and test procedures.

2150 The expertise at DOE is there to deal with that. So we may
2151 be a unique case in terms of how our standards and Energy Star
2152 requirements are intertwined.

2153 Mr. Griffith. I am going to go a little off -- off the
2154 subject matter but I am going to ask you some questions based
2155 on some communication I have gotten from a constituent who has
2156 spoken to me numerous times about this problem and it deals with
2157 our Energy Star program and that is is that she's not completely
2158 convinced that what we are doing is actually beneficial in the
2159 long term and she brings up her washing machine.

2160 That is her issue. Anita of Tazewell County has asked me
2161 to ask these questions over the course of the last year or so
2162 because she believes that in order to get a higher efficiency
2163 rating that her washing machine -- her top loader machine was
2164 designed so that it didn't put as much water into the machine
2165 and she didn't feel like her clothes were getting as clean.

2166 And so what happens when somebody doesn't feel like their
2167 clothes is getting as clean you figure out some way. I have heard
2168 stories of others who -- other people who have done more loads
2169 of wash in order to -- so they put less clothes into the machine.

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2170

2171 In her case, she babysits the machine, as she told me, and
2172 she has a contraption hooked up with her garden hose and she adds
2173 additional water to the washing machine because the machine --
2174 apparently if you interrupt the cycle at a certain point doesn't
2175 realize that you're putting more water in and it'll heat all the
2176 water.

2177 And it seems to me that maybe we ought to be looking at a
2178 total efficiency and not just the energy rating because if people
2179 are doing more loads of laundry or stopping the machine after
2180 it's gotten started and filled up to a certain point and adding
2181 additional water to the machine doesn't seem to be very efficient.

2182 I should note that I do have a picture here -- probably can't
2183 get picked up on the camera -- of Anita with her device filling
2184 in the washing machine with additional water.

2185 So what do you say to folks like Anita who say, wait a minute?

2186 In fact, the heading on her email was, get the EPA out of my
2187 laundry room -- it's destroying our consumer washing machines.

2188 Mr. McGuire. Well, we take her concerns very seriously and,
2189 as I mentioned earlier, the law that governs how the standards
2190 are set says you have to balance energy efficiency with cost
2191 effectiveness and the performance of the product.

2192 And so this problem can occur at both the standard level

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2193 and Energy Star. At some point, there is a diminishing return
2194 on the energy savings and the performance of the product.

2195 We saw that three years ago with dishwashers where the
2196 proposed standard level would not clean a load of dishes. And
2197 so to have Energy Star level above and beyond that made no sense.

2198

2199 That's why those decisions need to be made at DOE and be
2200 based on fact. So we want consumers to be happy with our products.

2201 We want our products to work, and that requires that people who
2202 set standards and develop test procedures understand how these
2203 products work and the laws of physics.

2204 Mr. Griffith. I appreciate it.

2205 Mr. Johnson, I think you touched on this a little bit in
2206 your -- in some of your testimony earlier too, not directly but
2207 close to it. Do you have something to add to that?

2208 Mr. Johnson. Only that our products are using zero amount
2209 of water today.

2210 [Laughter.]

2211 We are very efficient in the energy sense, of course, and
2212 take great pride in this program. I want to make sure it
2213 continues. Are open minded if Congress should decide to move
2214 this energy efficiency program to the Department of Energy. We
2215 will work hard to make sure it's successful.

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2216 We do have questions. We have relationships. We are used
2217 to doing business with the EPA. But, again, these relationships
2218 can be redeveloped. There's a lot of passion behind the program.
2219 We want to carry that wherever it goes.

2220 Mr. Griffith. I appreciate it and yield back.

2221 Mr. Olson. Gentleman yields back.

2222 The chair now calls upon the gentleman from the home of the
2223 Hawkeyes, Mr. Loeb sack, for five minutes.

2224 Mr. Loeb sack. Thank you, Mr. Chair, and they had a great
2225 victory over Ohio State last weekend, too.

2226 I didn't realize when I got elected to Congress that there
2227 would be some much levity at these hearings sometimes. Thank
2228 you for your comment about water. I appreciate that.

2229 I do want to follow up with one of my previous colleague's
2230 questions, if I may, Mr. Johnson. I am not sure that you
2231 completely addressed Mr. McNerney's question about sort of track
2232 record -- what's a good track record. How do we define that,
2233 in your instance -- your case?

2234 Mr. Johnson. Sure. A good track record of compliance in
2235 my mind is certainly one where there's no egregious examples of
2236 failure -- of producing Energy Star-qualified products but not
2237 quite meeting the requirements.

2238 And I am not talking about paperwork violations. I am

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2239 talking about egregious acts.

2240 So when I say 100 percent track record of compliance, I am
2241 taking those -- that characterization directly from EPA at the
2242 time it instituted third party certification for everybody.

2243 Mr. Loeb sack. Right. Does anybody else want to comment
2244 on that particular issue? Your thought about that? Because
2245 that's -- that's part of what we are talking about here. Did
2246 you want to say something, Mr. Merritt?

2247 Mr. Merritt. I would -- I would just add that we have seen
2248 instances in our industry, in the lighting industry, of vendors
2249 claiming Energy Star compliance that did not have Energy Star
2250 compliant bulbs or products.

2251 So we consider the cost and timing of third party
2252 certification to be worth it in order to protect the brand.

2253 Mr. Loeb sack. To avoid fraud and abuse in the first
2254 instance, right? I have to say, I mean, I think the Energy Star
2255 program has saved consumers money. It has lowered greenhouse
2256 gas emissions, as was mentioned by Ms. Castor. I think it's been
2257 a great program. I have a lot of -- I have a lot of appliances
2258 that are Energy Star and they save us a lot of money every month.
2259 Part of the issue, of course, is the up front costs for some
2260 of these.

2261 But, you know, I think it's -- I think it's a great idea.

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2262 And one of my colleagues already mentioned UL -- Underwriters
2263 Laboratories. It is a company that does third party
2264 certification. We can't forget that they're in some people's
2265 districts as well and UL is in my district.

2266 They've got a lab in Newton, Iowa, and they employ over a
2267 hundred folks, and I think that's something that we do need to
2268 take into account, you know, when we are making policy.
2269 Obviously, we are talking about energy savings. We are talking
2270 about making sure we are doing the right thing from a regulatory
2271 standpoint.

2272 But I think we do have to look at the bigger picture, too,
2273 when it comes to jobs. After all, that's a big part of what we
2274 are trying to do here in the Congress -- make sure that we create
2275 jobs, save jobs and do the right thing on -- as far as our
2276 constituents are concerned and the country is concerned on that
2277 front, too.

2278 So I did want to bring that up as well. I also want to agree
2279 with some of my colleagues that, you know, I guess to use the
2280 word agnostic that I think Mr. Welch used, that's how I am about
2281 sort of transferring this to the Department of Energy, so long
2282 as we can do the right thing, so long as we can make sure that
2283 we have compliance and that there isn't the fraud and abuse.

2284 I think that's the most important thing and I do want to

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2285 reiterate, you know, when we talk about the cost of regulations
2286 and the cost of government, moving from one agency to another
2287 there can be a lot of costs associated with that and I just want
2288 to make sure that we understand that before any decision gets
2289 made to move these obligations from one department to another.

2290 It is not simple. It may be theoretical but we have to thinking
2291 about it pragmatically as well.

2292 Ms. Callahan, did you want to address also the issue of
2293 transparency and discipline? I know that Mr. Merritt did but
2294 would you like to add to that at all?

2295 Ms. Callahan. Sure. Let me -- what I -- what I would like
2296 to say in front of that, though, is I was looking through my papers
2297 to see how many jobs are actually in your district that are related
2298 to energy efficiency. There are 2.2 million jobs in the U.S.
2299 that are within the energy efficiency arena. So I think you make
2300 a very good point there.

2301 With respect to transparency and certification, we want to
2302 make sure that there's a balance and that consumers are protected
2303 and that they can continue to trust in the label. If we can find
2304 ways to make the program less costly for compliance and relying
2305 on third party certifications on industry standards versus having
2306 EPA or DOE create their own, we want that.

2307 We want to take down the cost in the program. But it has

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2308 to be balanced with making sure that we keep the integrity of
2309 that Energy Star label intact.

2310 Mr. Loeb sack. Ultimately for the sake of consumers.

2311 Ms. Callahan. Right.

2312 Mr. Loeb sack. That's the bottom line here.

2313 Ms. Callahan. Exactly.

2314 Mr. Loeb sack. Well, thank you so much. I really appreciate
2315 the panel and thank you, Mr. Chair, and I yield back the balance
2316 of my time. Thank you.

2317 Mr. Olson. Gentleman yields back.

2318 The chair now calls upon the gentleman from Missouri, Mr.
2319 Long, for five minutes.

2320 Mr. Long. Thank you, Mr. Chairman. And Mr. Chairman, how
2321 are you feeling today?

2322 Mr. Olson. Very good. Thank you.

2323 Mr. Long. How are your math skills today?

2324 Mr. Olson. They're what they were when I walked in here.
2325 So I thought they were pretty good but you've got something for
2326 me.

2327 Mr. Long. I have been working on a mathematical equation
2328 here. Eleven minus one would be how much?

2329 Mr. Olson. I believe that is 10. I am sure you're talking
2330 about the World Series.

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2331 Mr. Long. Ten. That's what I -- that's what I have gotten
2332 to and I was just trying to figure out how many more World Series
2333 championships the St. Louis Cardinals have won than the Houston
2334 Astros.

2335 [Laughter.]

2336 You have now answered my question. Thank you.

2337 [Laughter.]

2338 I want to start down on the end with Mr. McGuire and I have
2339 a question for everyone. I just want to move down the row and
2340 get a quick response to my question.

2341 One of the goals of the voluntary Energy Star program it
2342 set out an energy policy after 2005 is to reduce pollution, which
2343 we all want. Like Johnny Morris Bass Pro Shops in the Seventh
2344 District of Missouri says, we all live downstream -- we all want
2345 to reduce pollution.

2346 Mr. McGuire, start with you and coming down the line. Can
2347 any of you tell me what effect or how it would hurt if to move
2348 from EPA back to DOE where this program was originally? And
2349 there's been a lot of talk today about moving it and why they
2350 moved it in 2009 and how hard it would be to move it back when
2351 the ones that are arguing to not move it back are the ones that
2352 moved it in 2009.

2353 But can you give me any reason why moving it to the Department

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2354 of Energy for an Energy Star program would have any effect on
2355 pollution, good or bad, compared to EPA?

2356 Mr. McGuire. It would not impact it.

2357 Mr. Long. Okay.

2358 Ms. Callahan. I want to make sure that we are clear. Joe
2359 and the appliance manufacturers are looking at moving back the
2360 appliance portion. Energy Star program is much bigger and
2361 broader than that.

2362 We believe that it would do damage to move the entire program,
2363 which is what's in the discussions draft now, back over from EPA
2364 to the DOE program.

2365 Mr. Long. In what regard? What way?

2366 Ms. Callahan. Well, because there's 25 years of history,
2367 of databases, of partnership relation and management, brand
2368 management that are going on and people are relying on that program
2369 and on how it's being administered. And to pick that up and move
2370 it will have costs associated with it.

2371 Mr. Long. It was the 25 years administrated under -- right?

2372

2373 Ms. Callahan. Pardon?

2374 Mr. Long. It was the 25 years you're talking about?

2375 Ms. Callahan. With the EPA. This has been a shared program
2376 since it was created --

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2377 Mr. Long. Right.

2378 Ms. Callahan. -- in 1992 and that -- a large portion of
2379 the program has been always over at the Energy -- at the
2380 Environmental Protection Agency.

2381 Mr. Long. Right. Thank you.

2382 Mr. Merritt. So as I mentioned during my testimony, our
2383 primary concern is continuing the viability and smooth operation
2384 of this program.

2385 We would be concerned that any change that would disrupt
2386 that operation and the implementation of the specifications of
2387 the marketplace could actually reduce its effectiveness, which
2388 would increase electrical consumption, which would affect
2389 pollution, if you want to make that connection.

2390 Mr. Drew. From AHRI's perspective, our comments would echo
2391 those of Mr. Merritt's and Ms. Callahan. We've successfully
2392 operated this program with in the EPA's structure for numerous
2393 years and the idea that if it was disruptive moving it from DOE
2394 to EPA initially, why wouldn't it be disruptive moving it -- just
2395 as disruptive moving it back if not more so at this point in time
2396 with much -- with a much larger program at stake?

2397 Mr. Johnson. I don't have a view on the pollution impacts.

2398 I tend to doubt it would have an impact. We are not agnostic
2399 about moving it to DOE. We understand the reasons why.

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2400 If Congress decides to do so we'll work hard to make sure
2401 it's successful. We are used to doing business at EPA. That's
2402 where our relationships are. That's not to say we can't recreate
2403 success over at DOE.

2404 Mr. Long. Mr. -- excuse me, Mr. Johnson, the discussion
2405 draft and change of provision that would make the requirements
2406 of the Administrative Procedure Act apply to actions taken under
2407 Energy Star.

2408 The critics of this provision say it could damage the program
2409 by slowing it down. As the maker of products that need to get
2410 to the market quickly do you see this as a problem?

2411 Mr. Johnson. I see it as a potential problem. We certainly
2412 want to maintain program agility and flexibility. That's really
2413 important for the fast-moving consumer tech sector.

2414 But I think there are ways to do that while bringing on
2415 perhaps a few more checks and balances. Process aspects of the
2416 APA perhaps could be applied to the program. Third party
2417 oversight within the federal government such as a role for OMB
2418 is something to consider as well.

2419 So on this provision we'd welcome working with the committee
2420 to maybe target this a little more appropriately for our sector.

2421 Mr. Long. Okay. Thank you, and thank you all for being
2422 here, for your testimony today.

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2423 Mr. Chairman, I yield back.

2424 Mr. Olson. Gentleman yields back and I want to inform the
2425 gentleman that I just got a text from Mayor Allen Owen of Missouri
2426 City, Texas, the Show-Me City. He says, please come down to our
2427 victory parade this Saturday barbecue in Missouri City for our
2428 Houston Astros, the world champs. He said yes, it's our first
2429 but we have to start somewhere.

2430 [Laughter.]

2431 I now yield five minutes to the gentleman from Maryland,
2432 Mr. Sarbanes.

2433 Mr. Sarbanes. Thank you, Mr. Chairman. Thanks to the
2434 panel.

2435 I was curious happens other places. I am sure you're
2436 familiar with these kinds of incentive programs or Energy Star
2437 like initiatives in other countries or have some sense of that
2438 and I am interested how we compare to that, whether they're --
2439 whether the analogous regime around labelling energy efficient
2440 products is mandatory in other places, voluntary. So I just want
2441 to get some context for that as we kind of figure out what the
2442 best way to do this is here.

2443 And then I am also interested in any interplay that occurs,
2444 I mean, in terms of manufacturing products that get an Energy
2445 Star rating here pursuant to this program as those products go

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2446 into a Canada or into Europe or other countries what's happening
2447 -- is Energy Star being converted into some other rating that's
2448 given in those countries, et cetera.

2449 So I am just trying to get a little bit of a peripheral vision
2450 on the issue and anybody who feels competent to answer the question
2451 I invite them to do that. Yes?

2452 Ms. Callahan. So the Energy Star program is really
2453 recognized globally as the gold standard for public-private
2454 partnerships in this area and in fact it is licensed and used
2455 in the European Union, Canada, Japan, Ireland, Liechtenstein,
2456 Norway, Switzerland, and Thailand, and the government of Canada
2457 has weighed in to encourage the Congress to continue the program
2458 and continue funding to the program. They're in opposition to
2459 the administration's request to eliminate the program. It really
2460 is the gold standard around the world.

2461 Mr. Sarbanes. Any other comments? Yes.

2462 Mr. McGuire. The Energy Star program in Canada is licensed
2463 to the NRCAN -- Natural Resources Canada -- -by the Energy Star
2464 program. So they will adhere to the specifications for the most
2465 part that happen in the U.S.

2466 Our members are very familiar with it. I would note that
2467 in Canada the Energy Star program is housed within the appliance
2468 standards program of Natural Resources Canada, similar to what

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2469 we are suggesting be again the case for DOE.

2470 Mr. Sarbanes. Go ahead.

2471 Mr. Johnson. Sure. It is very important to us, the
2472 consumer technology industry, to have policies and programs for
2473 energy efficiency that are generally aligned and harmonized
2474 around the world.

2475 Energy Star is an example of something like that. We also
2476 have these industry-led voluntary agreements that have been
2477 picked up in three regions of the world as well. So we appreciate
2478 when there is that globalization of an approach that, again, for
2479 us is innovation friendly.

2480 Mr. Sarbanes. So do you -- I mean, sounds like the U.S.
2481 and the Energy Star program is a leader -- a global leader in
2482 setting standards like this and driving that kind of label other
2483 places. Has -- is there any competing? I mean, you mentioned
2484 some countries and some parts of the world.

2485 Are there some competing energy efficiency labelling
2486 programs out there? Or would you say that Energy Star is up here
2487 and everybody else is down here?

2488 Mr. Johnson. I can respond to that. There are a large
2489 number of standards in labelling programs around the world and
2490 that is actually part of the challenge that we have.

2491 Look in the back of a product, you see examples of many

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2492 different kinds of labels, maybe not for energy but that's what
2493 I am talking about is a proliferation of labels.

2494 It is so much easier for either a small or a large company
2495 that wants to sell around the world to have one test, one
2496 designation, one label, an aligned program. That's what we
2497 strive for in the tech industry.

2498 Mr. Sarbanes. Do -- has Canada, for example, or other
2499 countries that use the Energy Star rating, have they offered up
2500 any testimony that you're aware of or perspective? Have they
2501 weighed in at all about the discussion that we are having here
2502 in terms of the -- any changes to the program? Do they have
2503 anxieties about it or are they just kind of sitting back and
2504 watching -- what you know?

2505 Mr. McGuire. We've discussed it with NRCAN and they don't
2506 have any anxieties that I know of. They were more of in a
2507 listening mode. But they certainly are aware of what we're
2508 suggesting.

2509 Ms. Callahan. We've had no discussion with them on the
2510 discussion draft. Where I know their concerns lie is in keeping
2511 the program going -- keeping it funded and not eliminating the
2512 program.

2513 Mr. Sarbanes. Great. Thanks very much. I yield back.

2514 Mr. Olson. Gentleman yields back.

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2515 The chair now calls upon the gentleman with the home of the
2516 Hidden Lake Gardens, Mr. Walberg, for five minutes.

2517 Mr. Walberg. You've done your homework on the victorious
2518 Michigan State Spartans as well.

2519 I appreciate the hearing today. Mr. McGuire and Mr.
2520 Johnson, I'd like your comments on what has been the experience
2521 of your member companies when it comes to having opportunities
2522 to comment on actions taken under Energy Star and access to the
2523 data used by the government on which to base its decisions and
2524 is there room for improvement?

2525 Mr. McGuire.

2526 Mr. McGuire. Thank you, sir.

2527 It has been our experience that at EPA they are very
2528 inconsistent with demonstrating the data that they have used to
2529 make their decisions and responding to suggestions and data that
2530 we have submitted and providing a consistent amount of time for
2531 us to comment.

2532 So there is question marks left at the end of the day and
2533 that is why we feel that applying some Administrative Procedure
2534 Act process improvements would make it more repeatable and
2535 understandable for the people that have to make the investments
2536 in their products for the consumers to benefit from the energy
2537 efficiency gains.

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2538 Mr. Walberg. Be a little more specific. Under the
2539 Administrative Procedures Act, where would you go with that?

2540 Mr. McGuire. A specified period for comments -- that you
2541 have this many days to comment and that if a decision is reached
2542 that it might result in you -- a specification you feel unwarranted
2543 or not justified by the facts that you would have the ability
2544 to appeal that to someone else in the agency other than the person
2545 that made the decision.

2546 We are not talking about loading up litigation. We are
2547 talking about due process so that we can understand how the
2548 decision was made.

2549 Mr. Walberg. Okay. Mr. Johnson.

2550 Mr. Johnson. I have similar comments. Our experience has
2551 been-our members' experience in some Energy Star product
2552 categories has been good and not so good in others. I think there
2553 definitely is room for improvement.

2554 We want data-driven outcomes. We have experienced outcomes
2555 with Energy Star specifications that don't seem linked so much
2556 to the data as to maybe a feeling or a passion in a different
2557 direction.

2558 So some amount of the rigor of the APA may be appropriate
2559 to guarantee certain checks and balances and time lines.
2560 However, as I mentioned earlier, we don't encumber the program.

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2561

2562 So we have to be, I think, selective at least for our sector
2563 in determining what of the APA makes the most sense and then what
2564 else might be a good check or a balance against outcomes here.

2565 Mr. Walberg. But you believe that we could improve upon
2566 the opportunities for the manufacturer input without slowing the
2567 program down?

2568 Mr. Johnson. I think we can. Yes.

2569 Mr. Walberg. Okay. Mr. McGuire?

2570 Mr. McGuire. I think with certain processes added that are
2571 included in the Administrative Procedure Act it can be improved.

2572 Mr. Walberg. Okay. What's your reaction to the
2573 administration's FY 2018 budget request which zeroed out the
2574 Energy Star program? If you answered that earlier before I got
2575 here, forgive me.

2576 Mr. McGuire. I did. We oppose zeroing out the program.
2577 We want it to be maintained and appropriately funded.

2578 Mr. Walberg. Mr. Johnson?

2579 Mr. Johnson. CTA doesn't have a position on budgetary
2580 matters but in the situation where on one hand you have elimination
2581 of the program, on the other hand you have status quo, don't touch
2582 a thing, we are kind of in the middle.

2583 There's room for improvement. Let's work on that.

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2584 Mr. Walberg. Thank you. I yield back.

2585 Mr. Olson. Gentleman yields back.

2586 We've saved the best for last. The chair calls upon Mr.
2587 Tonko of New York for five minutes.

2588 Mr. Tonko. Mr. Chair, I appreciate that assessment.

2589 Welcome to our witnesses. Energy Star is a program that
2590 benefits consumers, manufacturers and the environment. We've
2591 heard all the statistics about the program's success so I won't
2592 belabor the point.

2593 But it is clear that the Energy Star label, which is
2594 recognized by 90 percent of consumers, is trusted. Supporters
2595 of the discussion draft have discussed how increasing
2596 transparency and accountability are important to the future of
2597 the program.

2598 But I believe the most important issue to maintain the
2599 integrity of the program is without a doubt upholding its
2600 well-respected brand with consumers.

2601 We should not take consumer support for the brand as a given.

2602 Ms. Callahan, a question for you -- and before I do that, let
2603 me state what an honor it is to serve on the board of Alliance
2604 to Save Energy in my pre-congressional days and now in my
2605 congressional tenure. So I thank you for that.

2606 Ms. Callahan. Thank you. We really appreciate your

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2607 leadership up on Capitol Hill but we miss you a lot. When you
2608 were a fiduciary board member we saw a lot more of you.

2609 Mr. Tonko. There you go.

2610 So the question, and I will ask this of all, if we could
2611 kind of stick to a yes or no -- do you agree that upholding the
2612 integrity of the Energy Star label is essential to the success
2613 of the program?

2614 Ms. Callahan. Yes.

2615 Mr. Tonko. Mr. McGuire?

2616 Mr. McGuire. Yes.

2617 Mr. Drew. Yes.

2618 Mr. Johnson. Yes.

2619 Mr. Tonko. Thank you. And in March 2010, GAO found the
2620 Energy Star program in a report that was shared to be vulnerable
2621 to fraud and abuse. In this report, there were many concerns
2622 expressed and at that point many products were able to be
2623 self-certified.

2624 So in 2011, EPA responded to GAO's report and required third
2625 party certification. Ms. Callahan, if we go back to
2626 self-certification and these issues reemerge, do you think a
2627 future report like this one I am holding would hurt the Energy
2628 Star brand?

2629 Ms. Callahan. I absolutely believe it would hurt the Energy

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2630 Star brand to have a report like that. It hurt it the last time.

2631 It would hurt it again.

2632 Mr. Tonko. Mr. Merritt, do you agree?

2633 Mr. Merritt. I do.

2634 Mr. Tonko. Mr. Drew, the Air Conditioning, Heating and
2635 Refrigeration Institute is a certification body for testing
2636 products. Are certification bodies also responsible for
2637 conducting after-market verification testing?

2638 Mr. Drew. We do not only certification testing for all new
2639 products entering the market. We also do annual verification
2640 testing done on a random basis selected from that manufacturer
2641 every year.

2642 Mr. Tonko. Thank you.

2643 And there's been a lot of discussion at this hearing about
2644 third party certification and the removal of third party
2645 certification.

2646 If that were done, who would be responsible for market
2647 surveillance? Anyone.

2648 Ms. Callahan. I guess I will answer. The market
2649 surveillance and after-market verification is currently the
2650 responsibility of the EPA and I would presume that that would
2651 continue.

2652 Mr. Tonko. Okay. So if we didn't have that third party

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2653 certification falling to the EPA, that would require additional
2654 spending for the EPA, which has already been threatened with some
2655 budgetary cuts. So I think we need to see that one or what it
2656 is.

2657 Mr. McGuire, were you going to --

2658 Mr. McGuire. I was just going to say EPA's third party
2659 verification requirement is a responsibility they put on their
2660 partners. So that AHRI and AHAM do the verification -- third
2661 party verification testing with independent laboratories each
2662 year. So those costs are being borne by the manufacturers, the
2663 partners, not the public, not by EPA.

2664 Ms. Callahan. Can I clarify that?

2665 Mr. Tonko. Sure.

2666 Ms. Callahan. There are significant costs, though, that
2667 EPA does bear to certify these third party accreditors and also
2668 the verification of the project in the marketplace. So there
2669 are very significant costs and EPA has that up on its website.

2670 Mr. Tonko. Thank you.

2671 And in the 2010 GAO report, EPA officials stated that limited
2672 resources made it difficult to do after-market product
2673 verification, not to mention at that point consumers may have
2674 already bought a fraudulent product.

2675 Mr. Merritt, is that why you do not support removing third

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2676 party certification in conjunction with the warranty provision?

2677 Mr. Merritt. That's very much part of it. Essentially,
2678 third party certification prior to listing ensures the integrity
2679 of the results. Relying on post-market certification, then
2680 there's a lottery that many bad actors are willing to enter.
2681 Their odds of getting caught are very low.

2682 Mr. Tonko. Thank you. I will just add that according to
2683 one certification body some types of products failed about 15
2684 percent on first time model submissions. So Energy Star succeeds
2685 because it is truly a partnership between industry and our
2686 government.

2687 Removing third party certification would place all the
2688 burden on the government review submitted information,
2689 potentially conduct after-market verification, and could result
2690 in eroding trust in the program.

2691 Decades have been spent building consumer recognition and
2692 confidence in the Energy Star label. I would encourage us not
2693 to put that at risk.

2694 And with that, Mr. Chair, I yield back.

2695 Mr. Olson. The gentleman yields back.

2696 Seeing that there are no further members wishing to ask
2697 questions, I'd like to thank all of our witnesses again for being
2698 here today and thank you for your patience. Lots of comments

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2699 about my love for my Houston Astros and also an impromptu math
2700 lesson from Mr. Long.

2701 [Laughter.]

2702 I have 18 documents I would like to submit for the record
2703 and very briefly, statements in support of H.R. 3777 from
2704 Congressman Buddy Carter, EPA testimony of the Energy Star Reform
2705 Act discussion draft, DOE's statement on ESTAR of Acting Secretary
2706 Daniel Simmons, a letter from the American Council of Independent
2707 Laboratories, a letter from the U.S. Building -- Green Building
2708 Council, a letter from the American Public Gas Association, a
2709 letter from the U.S. real estate industry, a letter from the
2710 Underwriters' Association, American Council for an
2711 Energy-Efficient Economy, comments on the Energy Reform Act
2712 discussion, a letter from Spire, e4TheFuture comments on the
2713 Energy Reform Act Discussion Draft, the National Electrical
2714 Manufacturers Association -- NEMA's -- comments on the Energy
2715 Star Reform Act, NEMA's comments on proposed language changes,
2716 a letter from the High Performance Building Coalition, a letter
2717 from Lowe's, a letter from the Air Conditioning Contractors of
2718 America, a letter from the ranking members to the chairman, and
2719 the Geostudy on the Energy Star Program.

2720 Without objection, so ordered.

2721 [The information follows:]

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*****INSERT 9*****

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2723 Mr. Olson. Pursuant to committee rules, I remind members
2724 that they have 10 business days to submit additional questions
2725 for the record. As for the witnesses, have the responses to us
2726 within 10 days as well upon receipt of the questions.

2727 Without objection, the subcommittee is adjourned.

2728 [Whereupon, at 12:28 p.m., the committee was adjourned.]