



## **Testimony**

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

**Discussion Draft, Energy Star Reform Act of 2017**

**November 7, 2017**

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

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

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

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

Energy efficiency gains across core major appliance categories have been dramatic, and the creation of the ENERGY STAR program in the 1990s has played a critical role in educating consumers on the benefits of energy efficiency. The success of this program is evident in that this once truly voluntary program is now referenced in building codes, rebate requirements, federal procurement, and retailer buying specifications. For example, many retailers require in some categories that all or nearly all models be ENERGY STAR in order to obtain floor space for models. And because the Federal Acquisition Regulations mandate ENERGY STAR products, government purchasers can only consider ENERGY STAR products—companies have been excluded from government bids because of the mandate to procure ENERGY STAR products. Thus, the program has effectively become mandatory in the marketplace.

Manufacturers must make significant investment decisions to qualify products for the program just as they must invest for products to comply with mandatory appliance efficiency standards authorized by the Energy Policy and Conservation Act (EPCA) and administered and enforced by the U.S. Department of Energy (DOE).

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

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

The transfer from DOE to EPA was done administratively and administrative action could, likewise, reverse the transfer. AHAM supports the transfer back to DOE, but we also support legislation that would permanently house the program for appliances at DOE where it belongs. We support the DRAFT bill's provisions that would improve transparency of and establish consistent procedures for the ENERGY STAR program. The DRAFT bill also addresses the parasitical class action lawsuits regarding disqualified products that are a disincentive to and punishment for participation in the program.

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

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

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

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

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

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

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

## **ENERGY STAR Reform Solutions**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

AHAM is aware that concerns exist regarding application of APA to ENERGY STAR.

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

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

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

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

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

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

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

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

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

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

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

Congress should make clear it does not intend this program to be used for that purpose.

Accordingly, we thank the Committee for including in the DRAFT bill section 2(4)(f), and

AHAM strongly supports inclusion of that section in the bill.

## **Background**

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

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

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

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

Due to manufacturer innovation, rebates, ENERGY STAR and appliance standards, energy efficiency gains across all of the core major appliance categories have been dramatic.

Refrigerator/freezers are being produced at larger capacities, and yet are 50 percent more efficient than they were 20 years ago. Refrigerators, refrigerator-freezers, and freezers with an added ENERGY STAR designation are at least 10 percent more efficient than the federal



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

ENERGY STAR models enjoy additional energy and water savings. Dishwashers, room air conditioners, freezers and other major appliances offer similar energy efficiency gains.

However, in an almost mechanistic fashion, all this accomplishment is only used by EPA as a predicate for ever-stricter qualification levels with the assumption that these product categories will always be ripe for more. But that is wrong.

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

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

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

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

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

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<sup>3</sup> Although there is no EnergyGuide label, energy use is reported on DOE’s database which consumers can search and some manufacturers may choose to make energy related claims.

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

Other examples include:

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

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

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

## **Conclusion**

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

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

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

## **APPENDIX A**

### **House Appropriations Committee**

#### **Fiscal Year 2018 Interior and Environment Appropriations bill**

##### **Committee Report**

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

### **Senate Appropriations Committee**

#### **Fiscal Year 2018 Energy and Water Development Appropriations bill**

##### **Committee Report**

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

# APPENDIX B

