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President, Alliance to Save Energy
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Committee on Energy and Commerce
Subcommittee on Energy
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Introduction

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

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

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

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

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

Why ENERGY STAR® Matters

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

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

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

Existential Threats to the ENERGY STAR Program

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

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

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

ENERGY STAR Discussion Draft — Comments and Suggestions

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion

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

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

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

Ms. Kateri Callahan, President

Alliance to Save Energy

Summary of Major Points

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