

ONE HUNDRED FIFTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
2125 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-6115

Majority (202) 225-2927  
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**MEMORANDUM**

**November 5, 2017**

**To: Subcommittee on Energy Democratic Members and Staff**

**Fr: Committee on Energy and Commerce Democratic Staff**

**Re: Discussion Draft, Energy Star Reform Act of 2017 and H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act**

On Tuesday, November 7, 2017, at 10:00 a.m. in room 2123 of the Rayburn House Office Building, the Subcommittee on Energy will hold a hearing on a discussion draft titled the “Energy Star Reform Act of 2017” and H.R. 3477, the “Ceiling Fan Energy Conservation Harmonization Act.”

**I. ENERGY STAR REFORM ACT OF 2017 DISCUSSION DRAFT**

**A. ENERGY STAR Background**

The ENERGY STAR program was established by the U.S. Environmental Protection Agency (EPA) in 1992, as a voluntary program for the purpose of labeling and promoting energy efficient products to reduce greenhouse gas emissions.<sup>1</sup> ENERGY STAR certification requirements cover over 70 product categories, homes, buildings and industrial facilities.<sup>2</sup>

In 1996, the U.S. Department of Energy (DOE), through a Memorandum of Cooperation (MOC), joined EPA in the management of ENERGY STAR. Congress codified this agreement through section 131 of the Energy Policy Act of 2005.<sup>3</sup> In 2009, EPA and DOE entered into a Memorandum of Understanding (MOU) in an effort to minimize duplicative activities and ensure

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<sup>1</sup> ENERGY STAR, *About ENERGY STAR*. ([www.energystar.gov/about/history-0](http://www.energystar.gov/about/history-0)) (accessed Nov. 2, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> Congressional Research Service, *ENERGY STAR Program* (Oct. 12, 2017) (IF10753).

the program was implemented consistently. This MOU deemed DOE as the agency responsible for testing procedures and verification of product efficiency.<sup>4</sup> The ENERGY STAR program establishes voluntary product certifications that reward the most efficient products and buildings with the ENERGY STAR label.<sup>5</sup> This approach differs from the Appliance and Equipment Standards program at DOE, which sets minimum energy conservation standards through regulation for more than 60 categories of appliances and equipment.<sup>6</sup>

The President's Budget for FY2018 proposed that the ENERGY STAR program be eliminated and managed by a non-governmental entity. ENERGY STAR remains at EPA with \$42 million in appropriations for FY2017 (for FY2018, the program is currently operating at FY2017 levels pursuant to a continuing resolution (P.L. 115-56)).<sup>7</sup>

Since its inception, ENERGY STAR has cumulatively saved \$2.5 billion in energy costs. In 2015, homeowners saved \$360 million in energy costs, approximately 30 percent of their energy bills. Since 1995, 1.7 million ENERGY STAR homes have been built, and in 2016, approximately 92,000 ENERGY STAR certified homes were constructed in the U.S.<sup>8</sup> The ENERGY STAR program is also internationally recognized as a proven standard for energy efficiency. EPA has established partnerships with Canada, the European Union, the European Free Trade Association, Japan, Switzerland, and Taiwan for ENERGY STAR products to promote consistent targets for energy efficiency.<sup>9</sup>

## **B. Analysis**

The discussion draft would make significant changes to the ENERGY STAR program by altering its operation and administration, which could undermine the program's environmental benefits and energy savings for consumers.

The discussion draft strikes language from existing law that divides authorities for the ENERGY STAR program between DOE and EPA, and inserts new language that places authority for the program entirely within DOE. The Secretary of Energy would retain discretionary authority to delegate certain program authorities to EPA. This subsection upends the 2009 MOU between DOE and EPA, described earlier in this document.

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<sup>4</sup> ENERGY STAR, *About ENERGY STAR, EPA's Role in Energy Star* (www.energystar.gov/about/origins\_mission/epas\_role\_energy\_star) (accessed Nov. 2, 2017).

<sup>5</sup> See note 2.

<sup>6</sup> Department of Energy, *Appliance and Equipment Standards Program* (energy.gov/eere/buildings/appliance-and-equipment-standards-program) (accessed Nov. 3, 2017).

<sup>7</sup> See note 2.

<sup>8</sup> ENERGY STAR, *About ENERGY STAR, ENERGY STAR by the Numbers*. (www.energystar.gov/about/origins\_mission/energy\_star\_numbers) (accessed Nov 2, 2017).

<sup>9</sup> See note 2.

Another provision of the discussion draft requires actions taken under the ENERGY STAR program to be in accordance with section 553 of Title 5, United States Code, commonly referred to as the Administrative Procedure Act (APA). Among other things, the APA requires that an agency publish a notice of proposed rulemaking in the Federal Register, allow interested persons an opportunity to comment on the proposed rule, review the public comments, and possibly make changes to the proposed rule based on those comments.<sup>10</sup> Additionally, the draft would amend the authorizing statute to require that the Energy Star program set specifications, to the extent practicable, for all sizes and capacities of products.

The discussion draft contains the provisions of the Energy Star Program Integrity Act, which the Committee considered as part of H.R. 8 in the 114th Congress.<sup>11</sup> The language amends the ENERGY STAR program codified in the Energy Policy Act of 2005 to limit liability arising from the disqualification of a product from ENERGY STAR under certain circumstances. The provision also gives the Secretary, in consultation with the EPA Administrator, authority to approve corrective measures and decide whether or not consumer compensation is appropriate when making a determination as to whether a product qualifies for the liability shield. This liability shield could undermine the integrity of the ENERGY STAR program by limiting accountability for manufacturers.

Finally, the discussion draft would revise the third-party certification requirements for program partners that have complied with requirements for at least 18 months, providing this exemption for consumer, home and office electronics. Responding to fraud vulnerabilities identified by the Government Accountability Office (GAO),<sup>12</sup> in 2011 EPA replaced ENERGY STAR's self-certification requirements with third-party certification requirements.<sup>13</sup> Products must be tested at EPA certified laboratories, which are required to conduct random verification testing annually. This verification testing is funded by the product manufacturers.<sup>14</sup> Third-party verification is designed to ensure that ENERGY STAR products are safe and efficient, and eliminate cheating to gain a competitive advantage. Exempting a subset of products from third-party verification requirements, could open the program to fraud and abuse.

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<sup>10</sup> Congressional Research Service, *Federal Regulations and the Rulemaking Process* (Nov. 26, 2014) (IF10003).

<sup>11</sup> Dissenting Views on H.R. 8, the “North American Energy Security and Infrastructure Act of 2015” at 19, 114th Cong. (democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Dissenting%20Views%20on%20HR%208%20-%20FINAL.pdf).

<sup>12</sup> Government Accountability Office, *ENERGY STAR PROGRAM Covert Testing Shows the Energy Star Program Certification Process is Vulnerable to Fraud and Abuse* (Mar. 2010) (GAO-10-470).

<sup>13</sup> ENERGY STAR, *About ENERGY STAR, EPA Ensures ENERGY STAR Program Integrity* (www.energystar.gov/about/origins\_mission/epas\_role\_energy\_star/program\_integrity) (accessed Nov. 4, 2017).

<sup>14</sup> See note 2.

## **II. H.R. 3477, CEILING FAN ENERGY CONSERVATION HARMONIZATION ACT**

H.R. 3477, the “Ceiling Fan Energy Conservation Harmonization Act,” was introduced by Rep. Hudson (R-NC) on July 27, 2017. The bill extends the compliance deadline for the rule amending the standards for ceiling fan light kits (CFLKs) to January 21, 2020.<sup>15</sup> The current compliance date established by the rule is January 7, 2019. The stated purpose of the legislation is to align the compliance deadline for the CFLKs standard with a separate standard for ceiling fans, which has a compliance date of January 21, 2020.<sup>16</sup> DOE has determined that more stringent standards for CFLKs would conserve more energy, while also being more economically feasible.<sup>17</sup>

## **III. WITNESSES**

The following witnesses have been invited to testify:

**Kateri Callahan**

President  
Alliance to Save Energy

**Christopher Drew**

Chairman  
Air-Conditioning, Heating and Refrigeration Institute

**Douglas Johnson**

Vice President, Technology Policy  
Consumer Technology Association

**Joseph McGuire**

President and Chief Executive Officer  
Association of Home Appliance Manufacturers

**Greg Merritt**

Vice President, Marketing and Public Affairs  
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<sup>15</sup> H.R. 3477, Ceiling Fan Energy Conservation Harmonization Act. All Democratic Committee materials are available [here](#).

<sup>16</sup> Department of Energy, *Energy Conservation Program: Energy Conservation Standards for Ceiling Fans*, 82 Fed. Reg. 6826 (Jan. 19, 2017) (final rule).

<sup>17</sup> 81 C.F.R. § 579 (2016).