Before the Committee on Energy and Commerce
Subcommittee on Energy
United States House of Representatives

Written Statement of Douglas K. Johnson
Vice President, Technology Policy
Consumer Technology Association

November 7, 2017

INTRODUCTION

Chairman Upton, Ranking Member Rush and members of the subcommittee:

On behalf of the Consumer Technology Association (CTA), thank you very much for the opportunity to provide feedback from our membership on how best to improve the Energy Star program, and we applaud the committee for its work on this discussion draft.

This voluntary energy efficiency program began a quarter century ago with a specification for computers, a product of our industry. Over the years, Energy Star grew to become the preeminent public policy for advancing energy efficiency in the consumer technology sector, not only in the U.S. but also in several other countries and regions. As of 2015, more than half of the electricity savings in the Energy Star products program came from electronics. Based on our history of involvement and contribution, we would like to explain what we value in the Energy Star program, what works well for our sector, what should be improved through legislation, and our specific feedback on the discussion draft.

CTA's membership – 2,200 companies, 80 percent of which are small business and startups – spans the breadth of the consumer tech industry and includes component suppliers, device manufacturers, software companies, retailers, distributors, installers and service providers. All of these players have a role regarding energy efficiency, and a large number of our members in these various segments of our industry are partners in the Energy Star program, and some of them award-winning partners. CTA also owns and produces CES® – the world's gathering place for all who thrive on the business of consumer technologies. Profits from CES are reinvested into CTA's industry services.

CTA has been at the vanguard of energy efficiency for many years. Innovation is producing lighter, thinner, more energy-efficient products – even as the number of tech products we own has increased, their share of U.S. household electricity has declined. Regarding policy, we advocate for approaches that are: national, voluntary, market-oriented, globally harmonized and flexible to keep pace with technology; involve close collaboration between the public and private sectors; and friendly to innovation and economic growth. Most recently, this has included groundbreaking voluntary agreements for energy efficiency in set-top boxes and small network equipment. Our association also produces peer-reviewed studies of energy use of consumer tech products, and we use our standards development capability to create needed standards for measuring power consumption. We have also invested in consumer education initiatives, including promotion of Energy Star to consumers.

COMMENTS ON THE DISCUSSION DRAFT

Regarding public policy, this is a great time to identify and pursue regulatory reform opportunities related to energy efficiency programs. Based on our members' experience with the Energy Star program, we have identified significant opportunities which incorporate principles of modern regulatory reform while supporting energy efficiency, reducing regulatory burdens and disincentives, saving consumers money, and facilitating innovation and economic growth. Following are CTA's comments on several topics addressed in the discussion draft legislation:

Third-party certification

In 2011, EPA mandated a third-party certification regime for products in order to participate in the Energy Star program. Although this benefits for-profit laboratory companies around the world, for consumer tech products this was neither necessary nor justified based on the industry's uniformly successful track record of Energy Star compliance.

As a result of the EPA's decision, the Energy Star product qualification process is significantly more expensive and time-consuming to manufacturers than the successful self-certification system which existed previously, particularly for smaller companies. Many consumer electronics carry very low margins of profit and face significant time-to-market requirements to maintain competitiveness. Third-party certification increases costs for manufacturers, slows the introduction of new models in the marketplace, and thereby creates a disincentive to participate

in the program. Third-party certification also disrupted harmonized adoption of the Energy Star program internationally, which both EPA and industry have worked many years to achieve.

We are very concerned about EPA's current approach to third-party certification as it applies to our products, and we support the balanced and bipartisan solution for our sector that is part of the discussion draft bill. This solution maintains Energy Star third-party certification authority, but allows electronics manufacturers with a demonstrated track record of compliance to earn their way out of the burdensome requirement. If there is noncompliance, then the more draconian, costly third-party certification requirements reapply. It is a mechanism of appropriate regulation and should be a model for future regulatory efforts. Companies that act in good faith and with demonstrated track records avoid excess regulation. Companies that fail to meet their obligations require greater regulation.

Please keep in mind that the rigorous post-market verification system that exists today would stay in place.

Moving program leadership from EPA to DOE

We recognize the tremendous success of voluntary programs such Energy Star for the electronics industry during the past 25 years, and we do not want to disrupt continued success. Our members' experience with EPA on Energy Star has been collaborative in some categories, but less so in others. If program leadership were to move to the Department of Energy (DOE), which is used to traditional regulatory rulemakings, we would need assurances that DOE would work collaboratively in partnership with industry in the voluntary Energy Star program. Under the discussion draft bill, it is feasible DOE takes the lead but delegates to EPA certain sectors within the program, which of course could include electronics, but what gets delegated is not proscribed in the discussion draft.

Applying the APA to Energy Star

Participation in the Energy Star program is practically mandatory given its incorporation in federal and state government procurement requirements, in addition to private sector initiatives. Yet, EPA is under only the barest of procedural requirements. Changes are needed to ensure Energy Star program transparency and accountability. Something selective and less restrictive than full-blown application of the Administrative Procedure Act (APA) to Energy Star may be

best, as we want to avoid encumbering the program and undermining its ability to keep pace with the tech industry. 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 review of program decisions by the Office of Management and Budget.

Ensuring the scalability of Energy Star specifications

In 2009, EPA stated that "for product categories with large variations in product size (with impacts on energy use), overall limits for energy use may be incorporated into Energy Star specifications." In other words, EPA arbitrarily decided to impose a cut-off based on product size for participation in the Energy Star program. This amounts to a social judgement on appropriate product size, rather than a move to support energy efficiency.

The Energy Star program, following DOE's approach in regulatory standards, has set specifications focused on efficiency that are 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, no matter product size and performance. For example, while larger televisions should be encouraged to be more efficient, these larger TVs, often with the latest additions and features, will use more energy than smaller TVs with fewer features. For such TVs, government should accommodate consumer choice, rather than attempt to dictate it.

With EPA's decision to impose a cap or cut-off, Energy Star seemed to abandon its focus on energy efficiency at a time when it was more important than ever. Having the program become a subjective judgment on power consumption, product size and features (in other words, program administrators deciding what uses "too much" energy) means Energy Star would become focused on the smaller, less-featured, less-capable products over time. Under this approach, if less energy consumption regardless of efficiency is better, no energy use or de-featured products must be best, which is an absurd goal for the program.

Other issues

We offer the following additional comments on topics not addressed in the discussion draft, but relevant to the Energy Star program and its administration:

Energy Star "mission creep"

At times over the years, EPA has attempted to broaden the scope of the Energy Star program to cover non-energy factors, such as greenhouse gas emissions of manufacturing processes and supply chains, not related to the energy efficiency of the product itself. This Energy Star "mission creep" has appeared in past EPA proposals for new Energy Star specifications for computers, displays and televisions. EPA's action could be based on recognition that in some product categories, the straightforward energy paybacks for higher efficiency levels are questionable. It also could be based on the agency's desire to move beyond its limited congressional mandate toward a more comprehensive sustainability or climate program.

The EPA's efforts to go beyond energy use by including multi-attribute criteria in Energy Star specifications is not what Congress had in mind, and it effectively duplicates the private sector's existing EPEAT eco-labeling program, which EPA actually helped to fund several years ago. Another concern about EPA's effort to include non-energy criteria in the Energy Star program is that measurement methodologies for some criteria of previous interest to EPA, such as "embedded" carbon in products, are not well developed and suffer from the same problems as the use of "social cost of carbon" in regulatory programs.

Reliance on international and domestic consensus standards, and the overuse of consultants

Energy Star program administrators should defer to private-sector voluntary consensus standards, as opposed to hiring consultants to develop test procedures, which represents wasteful government spending.

Under the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. Section 3701) and OMB Circular A-119, U.S. law and policy evidence clear preference for voluntary and market solutions for standardization. Under the NTTAA, DOE and EPA are required to use technical standards that are developed or adopted by voluntary consensus standards bodies unless these standards are inconsistent with applicable law or otherwise impractical. The law codifies OMB Circular A-119, which also explains that the term "use" means incorporation of the standard in whole, in part or by reference for procurement and in regulations. Congressional findings in NTTAA state that the legislation is intended to enhance technological innovation for commercial public purposes and to promote the adoption of technological innovations.

Similarly, OMB Circular A-119 notes the use of voluntary consensus standards is aimed at encouraging long-term growth for U.S. enterprises and promoting efficiency and economic competition through harmonization of standards.

DOE and EPA appear to spend significant sums hiring unnecessary consultants to develop test procedures for measuring the power consumption of products being considered for Energy Star program specifications and, if applicable, DOE standards. This use of consultants is not only costly, but also less transparent and open than the consensus standards development process. Importantly, standards development organizations are accredited by national bodies and are open to all interested parties, including government, NGOs, manufacturers, retailers and others –as well as government consultants. Energy Star program administrators should rely on these existing and less costly opportunities with private sector standards development organizations for the development and maintenance of test procedures for measuring power consumption of consumer tech products.

CONCLUSION

The committee's focus on Energy Star reform and improvement opportunities is important and necessary. As policymakers consider ways to encourage the efficient use of energy, we urge Congress to support innovation and promote voluntary, market-oriented programs including Energy Star. Policies such as these are what work best to advance energy efficiency in our highly innovative and fast-moving sector. Traditional regulation that depends on government-mandated limits just does not work for consumer tech. Thank you for the opportunity to contribute our industry's views and ideas, and we look forward to further engagement with the committee.