January 25, 2016

The Honorable Lisa Murkowski 709 Heart Senate Building Washington, DC 20510

The Honorable Maria Cantwell 511 Hart Senate Building Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Cantwell,

On behalf of the undersigned businesses and organizations, we are writing to voice our strong opposition to Section 1104 Third-Party Certification Under ENERGY STAR Program within the Energy Policy Modernization Act of 2015 (S. 2012). This provision, which removes trusted and independent third party certification from the ENERGY STAR program, will have the effect of undermining our public health, safety and confidence in the products we use in our homes and businesses.

**Background**

As you know, the ENERGY STAR program is a longstanding initiative that is broadly supported by manufacturers, retailers, utilities, energy efficiency advocates, and consumers. Over the past two decades America’s families and small businesses have realized estimated savings of more than $239 billion on utility bills and prevented more than 1.9 billion metric tons of greenhouse gas emissions.¹

A broad range of 18,000 partners across every sector of the economy drive the ENERGY STAR program’s success—from manufacturers and trade associations, to retailers and efficiency program providers, to home builders and small businesses. The ENERGY STAR program has grown to represent products in more than 65 different categories, with more than 4.5 billion products sold over the past 20 years. More than 1.4 million new homes and more than 20,000 facilities proudly carry the ENERGY STAR label, use dramatically less energy, and are responsible for real savings in American pocket books.

**Role of Third Parties**

The US government relies on the resources of the private sector to provide third-party certification to ensure products entering the market are safe, reliable and efficient. To ensure safe products are used in the workplace, the Occupational Safety and Health Administration (OSHA) recognizes private sector organization through the “Nationally Recognized Testing Laboratory” program (NRTL’s) to perform certification for certain products to ensure they meet both construction requirements and industry standards. In order to earn the ENERGY STAR label, a similar approach is prescribed. ENERGY STAR products must be independently certified based on testing in recognized laboratories. In addition to up-front testing, a percentage of all ENERGY STAR products

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¹ [https://www.energystar.gov/about/energy-star-brand](https://www.energystar.gov/about/energy-star-brand)
are subject to "off-the-shelf" and post market verification testing each year. The goal of this testing is to ensure that changes or variations in the manufacturing process do not undermine a product's qualification with ENERGY STAR requirements.

These public-private partnerships have created a competitive market of testing, inspection, and certification (TIC) organizations that manufacturers can leverage for their compliance needs. By leveraging multiple private sector organizations, the programs allow manufacturers to shop for services based on price, turnaround time, or whatever other characteristic they value.

To effectively evaluate the differences in safety of consumer products between self-declaration systems and third party testing and certification, the International Federation of Inspection Agencies (IFIA) and the International Confederation of Inspection and Certification Organizations (CEOC) completed a study in 2015 evaluating the safety differences between the two schemes. In the European Union, most products fall under a Self-Declaration of Conformity (SDoC) system where manufacturers can state themselves that they meet standards and requirements for their products. The report looked at products on the market in Europe and North America and found that products that were certified by third parties were significantly safer than those that self-declared compliance. Of note, 77% of products pulled in the EU that were self-declared were not compliant with EU standards and regulations and a full 14% had safety-critical failures. This can be compared to the study's finding that only 0.7% of products in the EU that were third party certified had safety-critical failures and this number was only 1% in the US and Canada where third party certification is mandatory on these consumer products. This study adds real world examples of the dangers of not using third party certifications for consumer products. Section 1104 would put Americans at a similar risk of increased safety-critical failures by removing third parties from ENERGY STAR.

Concerns

The 3rd party system of certification and market surveillance was introduced in response to a 2010 Government Accountability Office report on the integrity of the ENERGY STAR program. That report concluded that the former system of manufacturer self-certification of products previously employed, opened the program up to fraud and abuse. Certification controls were deemed ineffective primarily because the program did not verify energy-savings data reported by manufacturers.

Section 1104 of S.2012 would undo the adopted recommendations of the GAO, bringing back the vulnerability of fraud and abuse that plagued the program prior to 2010. Furthermore, this section would eliminate the role of 3rd parties and shift the responsibility of deeming compliance back to the EPA, dramatically increasing the cost of the ENERGY STAR program as EPA will be put in the position of having to review information on thousands of product models to ensure they meet the performance standards set forth by the program. It would also place EPA in a position where they would be responsible for reviewing purported violations to safety and quality that arise from consumers if a product is found to have violated the parameters of the ENERGY STAR program.

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**Requested Action**

We urge you to remove Section 1104 from S.2012. Failing to do so would re-open the market for potential fraud and abuse, all for substandard and potentially unsafe products to bear the trusted ENERGY STAR mark, erode public confidence in the ENERGY STAR program, and place such a large burden on DOE and EPA that would make the continuation of the program as we currently know it untenable.

Should you have questions regarding the industry position on this amendment, please contact Rachel Urban, Government Affairs Specialist for Underwriters Laboratories (UL) at 202-215-0139 or at Rachel.Urban@ul.com.

Sincerely,

High Performance Building Congressional Caucus Coalition
Underwriters Laboratories
AEC Science & Technology, LLC
CSA Group
Green Building Initiative
International Association of Plumbing and Mechanical Officials (IAPMO)
NSF International
SUN DAY Campaign