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Before the

U.S. SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

Regarding

The Appliance Standards Improvement Act of 2009

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Good morning Chairman Bingaman, Ranking Member Murkowski and distinguished members of this Committee. I am Mark Connelly, Senior Director of Appliance & Home Improvement for Consumers Union, publisher of *Consumer Reports*. Thank you for providing me the opportunity to address this Committee regarding legislation to improve appliance standards (S. 598, the Appliance Standards Improvement Act), an issue that is not only critical for our energy security, but important to consumers' pocketbooks.

For the past 30 years I have focused my career on product performance testing for manufacturers as well as for consumers. I have worked in and managed testing laboratories that assessed a wide range of products. Consumers Union has been publishing our test results and informing consumers for more than 70 years, currently reaching approximately 8 million subscribers through our print and online products. I now run the appliance testing program for Consumer Reports, and have worked in appliance testing laboratories for more than 20 years. My background gives me a unique perspective for understanding product testing in a competitive marketplace and the critical importance of how best to inform consumers about those test results.

The Energy Star program has been successful in raising consumers' awareness of energy efficiency as an important consideration in purchasing decisions, but Energy Star needs to keep up with a changing marketplace in order to stay relevant. Today, more than 70% of U.S. consumers are aware of the Energy Star logo. For many, the presence of an Energy Star makes a very complicated decision a simple yes or no.

Consumer demand for Energy Star -labeled appliances and electronics has prompted manufacturers to improve the efficiency of their products. Energy Star has also helped to raise efficiency standards, making products such as washing machines much more efficient than those sold 10 years ago. As you know, the 17 year old program co-administered by the EPA and DOE covers more than 50 product categories. It is a voluntary standard that many manufacturers choose to pursue.

As successful as the Energy Star program has been, it is in need of some serious improvement. As we noted in the October 2008 issue of *Consumer Reports*, while the program saves energy, it has not kept up with the times.

We appreciate this Committee's leadership in introducing S. 598, the Appliance Standards Improvement Act, and would like to focus on three main areas where this legislation can improve the Energy Star program, and offer suggestions to help strengthen them: keep test procedures relevant to a changing marketplace, provide rigor and better enforcement than current self-certification procedures, and tighten up qualifying standards.

1. Test procedures are out of date.

Appliances are constantly changing. They aren't the simple white boxes that they used to be. But Federal test procedures haven't kept pace with new technology and new products in the marketplace. As an example, the test procedure that DOE and Energy Star use today to measure refrigerator electricity consumption and energy efficiency was developed 20 years ago. At that time, some refrigerators had to be manually defrosted, didn't have adjustable shelves, temperature-controlled drawers, water filters, or electronic controls of any kind. Refrigerators now have multiple compartments that thaw meat, convert from a refrigerator to a freezer, have computer monitors on their doors, and have sophisticated software programs to control temperature, humidity, defrost cycles, etc.

Refrigerator manufacturers recently introduced French-door, bottom-freezers with through the door ice-and-water dispensers. With that feature, bottom freezer sales took off and bottom freezer sales have gone from 10% of the refrigerator market to more than 30%. But, the procedure for testing bottom freezers with through-the-door ice and water dispensers allowed for the ice maker to be turned off. This is not the way consumers would use this product and artificially improves the apparent efficiency of this type of refrigerator. If consumers were to use these refrigerators as they were tested and rated, they would have a puddle of water on their kitchen floor from all the

melting ice. Although not the intent of this program, unfortunately, some manufacturers took advantage of this situation and sold products with an undeserved Energy Star.

A similar situation existed a number of years ago with dishwashers. These have dirt sensors that adjust water consumption based on soil load, yet the test procedure used clean dishes. The result was that the energy efficiency of dirt-sensing dishwashers was apparently much better than what a consumer, who washes only dirty dishes, would realize. It took us a number of years, but we finally convinced DOE to change its test procedures to use dirty dishes in their tests.

Other appliances are also changing. Washing machines have steam- and allergen-removal cycles that are ignored in current test procedures. Also ignored by current test procedures are cooking appliances, wine refrigerators, and compact refrigerators.

One of the reasons that the test standards tend to be outdated is that it usually takes the agencies at least three years to publish new rules --- a period that includes comments from manufacturers and consumer groups such as Consumers Union. It then can take another three years for the updated requirements to take effect. Meanwhile, new features and new technologies keep appearing in appliances and the only thing that remains constant is that the test procedures are out-of-date.

It is also important that the Energy Star program keep up with the changing marketplace; we are pleased that EPA extended Energy Star to certain TVs last Fall, though it is not clear to us that the TVs are being tested as they would normally be used. We look forward to working with the agency to keep the protocols as relevant as possible.

We applaud S. 598 for requiring EPA and DOE to review each product category at least once every 3 years or when market share for a product reaches 35%—though we would hope the language could be clarified to say “whichever is first,” so that each product category is reviewed at minimum every 3 years.

We are also encouraged that the bill will require the agencies to clearly define their roles and responsibilities within Energy Star so that there are not gaps and undue overlap; we believe this will ensure fewer products fall through the cracks.

2. Companies test their own products.

The DOE does not test products for compliance with its standards; sometimes manufacturers do; sometimes a consumer organization like Consumers Union will test claims and performance. But, in general, there is little independent verification of manufacturers' self-reported claims. In addition to refrigerators, when we tested some products like dehumidifiers and room air conditioners, we found electricity consumption results to be significantly higher than those self-reported by one manufacturer. While some may think that Energy Star products not meeting qualifications standards will be reported to the EPA by rivals, there is scant evidence that self-policing is occurring.

Mergers within the appliance industry, where one manufacturer can account for significant market share in a product category, further cut down on the number of "cops on the beat."

The Energy Star program rewards manufacturers, in the form of tax credits, for selling high efficiency appliances. This gives manufacturers an added incentive to engineer around the standard or to find and exploit loopholes if the standards are unclear or outdated.

We recommend that EPA and DOE establish a marketplace surveillance program to sample and independently verify the energy efficiency claims made by manufacturers. If this sampling finds widespread problems, we recommend more thorough, marketplace-wide testing to be conducted by EPA or DOE. Furthermore, if a particular manufacturer is found to be misrepresenting energy use, that manufacturer should be required to do audited compliance for products going forward. This spot-check program should apply to both minimum standards programs as well as Energy Star.

The proposed legislation represents substantial progress by requiring manufacturers to demonstrate compliance with the standard, rather than relying exclusively on manufacturer claims. As the bill moves forward, we would like to see the bill eliminate self-certification as an option for demonstrating compliance.

3. Qualifying standards are lax.

Consumers Union agrees with the EPA's own guidelines that about 25% of products in any one category should qualify for an Energy Star. But, with dishwashers, for example, Energy Star qualified products recently represented more than 90% of all dishwashers on the market. With a tighter standard, that share has dropped, but still about 50% of dishwashers now qualify for the Energy Star. Certainly, when that many products qualify for an Energy Star, the value of the Star decreases. Congress needs to raise the bar on Energy Star.

We agree with the approach in S. 598 which requires that once Energy Star designation exceeds 35% of a product category, there will be a rulemaking to raise the standard. While we might prefer to see a lower trigger (such as 10-20% so that consumers will know they are buying an exceptionally efficient product), reasonable minds can differ as to the right threshold.

We appreciate this opportunity to testify on this significant consumer issue, and look forward to any questions.

Thank you.

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