

ONE HUNDRED SIXTEENTH 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
Minority (202) 225-3641

January 17, 2019

The Honorable Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Acting Administrator Wheeler:

Pursuant to Rules X and XI of the U.S. House of Representatives, we write to request information about the removal of key information and resources regarding the Energy Star Program.

Congress established the Energy Star Program within the Environmental Protection Agency (EPA) and the Department of Energy to identify and promote energy efficient products and buildings to reduce energy consumption, improve energy security, and reduce pollution.¹ Since its inception, the Energy Star program has saved consumers an estimated \$430 billion on utility bills and avoided 2.7 billion metric tons of greenhouse gas emissions.² Despite these significant consumer savings, the Trump Administration has continually sought to defund and otherwise undermine the program.³ In 2017, the Administration proposed eliminating the program entirely, and in 2018 the Administration proposed funding the program by imposing a user fee on manufacturers and sellers of household appliances and other electrical components.⁴

¹ 42 U.S.C. 6294a.

² *The Energy Star Program is Good for the Climate and the Economy. Trump Wants to Kill it Anyway*, Washington Post (Mar. 7, 2017).

³ *The Energy Star Program is Good for the Climate and the Economy. Trump Wants to Kill it Anyway*, Washington Post (Mar. 7, 2017); see also *EPA Budget Would be Slashed by a Fourth in President Trump's Budget and Democrats are Upset*, USA Today (Feb. 13, 2018).

⁴ *Id.*

The Energy Star program website is currently deactivated, disabling links to all program resources, preventing consumers from accessing key resources, finding Energy Star products, building energy efficient homes, and realizing energy savings.⁵ The website attributes the removal of these resources to the current federal government shutdown,⁶ but the EPA website appears to remain active.⁷ We are concerned the Administration is inappropriately using the federal government shutdown to undermine this critical consumer savings program.

In order to more fully understand why access to this specific page and information has been eliminated, please provide the following information:

1. Why did EPA disable and replace the Energy Star website with the current “Important Notice” notification stating “all Energy Star tools, resources, and data sources will not be available” due to the government shutdown, and when, specifically, did EPA make this change? In your response, please explain why this website was disabled, in lieu of remaining active, but not updated.
2. Which EPA personnel requested and authorized the disabling of the Energy Star website? When did EPA authorize the request to shut down the website? Please provide all documents and communications referring or relating to EPA’s disabling of the Energy Star website from December 2018 to present.
3. Has EPA disabled (including, but not limited to, deactivating previously active hyperlinks to program information) any other program websites due to the government shutdown? Please provide a list of these websites.
4. How much total staff time (by either EPA employees or contractors) did EPA spend on deactivating each hyperlink on the Energy Star webpage? Please provide the number of full time employee or contractor hours required for this purpose and the estimated costs incurred. Please also provide a comparative figure of staff time and expense that would have resulted had the website remained active with a notification to users that updates would not occur during the shutdown as included on other websites.

⁵ Energy Star, Home Page (www.energystar.gov) (accessed Jan. 15, 2019).

⁶ The program website is currently disabled and states “[f]or the duration of the U.S. government shutdown, all ENERGY STAR tools, resources, and data services will not be available.” Energy Star, Home Page (www.energystar.gov) (accessed Jan. 15, 2019).

⁷ The Environmental Protection Agency (EPA) website currently includes a notification that Agency websites will not be regularly updated due to the lapse in appropriations. Environmental Protection Agency, Home Page (www.epa.gov) (accessed Jan. 15, 2019).

5. Federal agencies⁸ and many states⁹ are required by law to purchase Energy Star-qualified products in certain instances. Is EPA aware of any instances in which agencies or states have suspended procurements until access to Energy Star product information on the website is restored?

Please provide all requested answers and documents no later than January 31, 2019. We appreciate your immediate attention to this matter, and if you have any questions, please contact Jon Monger with the Committee staff at (202) 225-3641.

Sincerely,



Frank Pallone, Jr.
Chairman



Diana DeGette
Chair
Subcommittee on Oversight
and Investigations



Paul D. Tonko
Chairman
Subcommittee on Environment

Cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Brett Guthrie, Ranking Member, Subcommittee on Oversight and
Investigations
The Honorable John Shimkus, Ranking Member, Subcommittee on Environment

⁸ Department of Energy Office of Energy Efficiency and Renewable Energy, Purchasing Energy-Efficient Televisions (www.energy.gov/eere/femp/purchasing-energy-efficient-televisions) (accessed Jan. 6, 2019).

⁹ National Conference of State Legislatures, Energy Efficiency Requirements for Public Buildings (www.ncsl.org/research/energy/energy-efficiency-requirements-for-public-buildings.aspx) (accessed Jan. 6, 2019).

Responding to Document Requests from the Committee on Energy and Commerce

In responding to the document request from the Committee on Energy and Commerce, please apply the instructions and definitions set forth below.

Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
5. Documents produced in electronic format should also be organized, identified, and indexed electronically. Documents produced in an electronic format should also be produced in a searchable format.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
8. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
9. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
10. It is not a proper basis to refuse to produce a document because another person or entity possesses a nonidentical or identical copy of the same document.
11. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (8) and (9) above.

12. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2017 to the present.
16. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
17. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
18. All documents should be bates-stamped sequentially and produced sequentially.
19. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 316 of the Ford House Office Building, and the minority set should be delivered to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, email (desktop or mobile device), text message, instant message, MMS or SMS message, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
8. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.