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July 18, 2014

By E-Mail

Jengeih Tamba
U.S. Department of Energy
Office of the General Counsel
1000 Independence Ave., SW
Washington, D.C. 20585

Regulatory.Review@hq.doe.gov

Re: Regulatory Burden RFI

Dear Ms. Tamba:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Department of Energy (DOE) on its Regulatory Burden RFI, 79 Fed. Reg. 37963 (July 3, 2014).

AHAM represents manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's more than 150 members employ tens of thousands of people in the U.S. and produce more than 95% of the household appliances shipped for sale within the U.S. The factory shipment value of these products is more than \$30 billion annually. The home appliance industry, through its products and innovation, is essential to U.S. consumer lifestyle, health, safety and convenience. Through its technology, employees and productivity, the industry contributes significantly to U.S. jobs and economic security. Home appliances also are a success story in terms of energy efficiency and environmental protection. New appliances often represent the most effective choice a consumer can make to reduce home energy use and costs.

As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued on January 18, 2011 (Executive Order), DOE is seeking comments and information from interested parties to assist it in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. According to DOE, the purpose of this review is "to make the agency's regulatory program more effective and less burdensome in achieving its regulatory objectives." One of the mandates in Executive Order 13563 was for agencies to weigh the benefits and costs of their regulations. In addition, agencies are to tailor regulations to impose the least burden on society, consistent with achieving regulatory objectives.

I. Annual Certification Requirements

Consistent with the objectives outlined in Executive Order 13563, and as we commented in August of 2011, June of 2012, and September 2012, AHAM believes DOE should reevaluate its annual certification statement requirement which requires manufacturers of products regulated under DOE's energy conservation program to submit annual certification reports. (*See* 10 C.F.R. 429.12). DOE requires that "each manufacturer, before distributing into commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard . . . , and annually thereafter . . . , shall submit a certification report to DOE certifying that each basic model meets the applicable energy conservation standard(s)." (10 C.F.R. 429.12(a)). The annual report must contain all basic models that have not been discontinued. Discontinued models are those that are "no longer being sold or offered for sale by the manufacturer or private labeler." (*See* 10 C.F.R. 429.12(f)). In addition, the Federal Trade Commission (FTC) has long required that manufacturers of covered products "submit annually to the Commission a report listing the estimated annual energy consumption . . . or the energy efficiency rating . . . for each basic model in current production." (*See* 16 C.F.R. 305.8(a)(1)).

DOE harmonized its annual reporting deadlines with FTC's deadlines. And FTC now permits manufacturers to comply with its annual certification requirements by submitting the required DOE annual report on CCMS. But the models that must be included in each report continue to differ under each agency's reporting scheme. FTC's report requires a listing of "each basic model in current production," whereas DOE's report requires a listing of all basic models that are "being sold or offered for sale by the manufacturer or private labeler." DOE's report is thus, much broader—it potentially requires reporting of basic models that have been out of production for a year or more. In fact, some manufacturers have informed AHAM that they have had to include basic models that have been out of production for five years or more. This is much more burdensome than reporting basic models in current production, and, thus AHAM continues to object to DOE's broad-brush approach.

Many manufacturers keep records grouped by models that are in production versus those that are no longer produced. They do not necessarily keep track of those models that are out of production, but may exist in a back corner of the warehouse. Thus, to find and record those additional models takes an extraordinary amount of coordination and research. Accordingly, AHAM supported FTC's proposal to continue to require a listing of "each basic model in current production" and not to change its requirements to match DOE's requirement to list all basic models that are "being sold or offered for sale by the manufacturer or private labeler." AHAM argued that FTC should not revise its rules to match DOE's overly burdensome scope. And, consistent with AHAM's comments, FTC did not change the scope of its requirements to match DOE's overly broad requirements.

AHAM does believe that, ultimately, harmonization between the two agencies' reports is critical, and thus, with these comments, we continue to advocate for DOE to reevaluate the scope of products required to be included in its annual certification statement requirement and adopt the FTC approach. Although DOE estimated that the time to comply with the annual certification requirement would be about 20 hours per response, in practice it is turning out to be substantially more than that. *See, e.g.,* Energy Conservation Program: Certification, Compliance, and

Enforcement for Consumer Products and Commercial and Industrial Equipment, Final Rule, 76 Fed. Reg. 12422, 12450, March 7, 2011). AHAM has commented to this effect on several occasions, but DOE seems to have ignored our comments to date. In fact, on June 25, 2014, AHAM sent a letter to DOE regarding Docket No. EERE-2012-BT-TP-0016 in which we indicated that “AHAM commented in August 2011, June 2012, September 2012, and again in September 2013 in direct response to DOE’s most recent proposed rule to amend the refrigerator/freezer test procedure that the 20 hour estimate is an extreme underestimation of the certification burden. . . . Although the burden varies based on each manufacturer’s model mix, manufacturers have indicated that, for refrigerator/freezers, they spend the better part of the month of July filling out the annual certification form. Some manufacturers have indicated that they have dedicated staff for that function and that the certification process takes a total of 100 to 200 hours.” And, on July 9, 2014, AHAM submitted comments on Docket No. EERE-2013-BT-TP-0009 stating that “[a]s we commented on June 19, 2012, September 7, 2012, and September 18, 2012, 20 hours is a gross underestimation of the certification reporting burden. In the face of several comments from AHAM to this effect, we cannot understand why DOE continues to include 20 hours as its estimate. For residential clothes washers, some manufacturers have recently indicated that certification burden is as many as 100 hours. None reported a burden under 50 hours.” We incorporate by reference both our June 25, 2014 letter and July 9, 2014 comments here. This burden is largely based on the broad scope of models DOE requires to be included in its annual report. Were DOE to follow FTC’s approach, the annual certification burden would dramatically decrease.

The additional models DOE seeks in the annual report are unnecessary and serve only to add significant burden and time to manufacturer compliance efforts. We thus urged FTC not to change its reporting requirements to require reporting of all basic models “being sold or offered for sale by the manufacturer or private labeler” because of the increased time and cost to comply with such a requirement in hopes that DOE will change its requirements. We thus also request that DOE soon review its certification requirements and revise them to match the current scope of the FTC annual report (“each basic model in current production”), which we hope, per FTC’s proposed amendments to the Appliance Labeling Rule which maintain that scope, will remain in place. Federal agencies should have harmonized requirements and those requirements should not add unnecessary burden.

II. Test Procedure Changes That Impact Measured Energy/Efficiency

When DOE amends a test procedure, it must determine “to what extent, if any, the proposed test procedure would alter the measured energy efficiency, measured energy use, or measured water use of any covered product as determined under the existing test procedure.” 42 U.S.C. § 6293(e)(1). And, if DOE determines that the amended test procedure will alter measured energy or water use, DOE “shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure.” 42 U.S.C. § 6293(e)(2). There is a specific procedure, involving evaluating minimally compliant products, set forth in the law for making that adjustment. *See id.*

There are several open questions regarding the application of 42 U.S.C. § 6293 that could be resolved with proper DOE guidance and transparency, after public consultation, on how this

mechanism works, including the undefined, non-statutory application of *de minimus* principles. Without guidance, regulated parties are left with uncertainty. Accordingly, AHAM, together with other industry groups, has been working to develop recommendations on these issues and hopes to present them to DOE soon. We urge DOE to consider the ambiguous nature of its application of these statutory provisions as it reviews its regulations.

AHAM appreciates the opportunity to submit these comments and would be glad to discuss this matter further should you so request.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jennifer Cleary". The signature is written in a cursive, flowing style.

Jennifer Cleary
Director, Regulatory Affairs

cc: Ashley Armstrong, DOE
Laura Barhydt, DOE
Daniel Cohen, DOE
John Cymbalsky, DOE
Hampton Newsome, FTC