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By E-Mail

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Re: Regulatory Burden RFI

Dear Mr. Zogby:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Department of Energy (DOE) on its Regulatory Burden RFI, 81 Fed. Reg. 28736 (May 10, 2016).

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its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. 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. DOE seeks comment from interested parties to identify rules that are most in need of review and to assist DOE in prioritizing and properly tailoring its retrospective review process. AHAM provides several suggestions in the comments that follow, all of which are applicable to the energy conservation program.

I. Order of Rulemakings

In the recent past, and particularly in the past two years, DOE has regularly been developing standards in the absence of a final test procedure. Not only is DOE developing test procedures at the same time it is evaluating potential standards, but in many cases, DOE has failed to finalize test procedures prior to proposing new or amended standards or has issued the final test procedure together with the proposed standards rule.

Minimally acceptable engineering analysis and sound policy conclusions can only be based on a known and final test procedure which government, manufacturers, and other stakeholders have had the opportunity to use in evaluating design options and proposed standard levels. 42 U.S.C. § 6295(r) requires that a new standard must include test procedures prescribed in accordance with 42 U.S.C. § 6293. This requirement is meaningless if a test procedure is not finalized in a sufficient period of time before a proposed rule is issued, much less finalized, so that the government and its contractors, manufacturers, and other stakeholders can evaluate the significance and the meaning of the possible standards. Otherwise, the resulting analysis is chaotic and based too much on speculation to be acceptable.

Surely no standard can pass the substantial evidence test if it is not based on a final test procedure, if one is required. And that test procedure must have been based on a full and useful opportunity for the public to comment on the procedure and its impact on proposed standard levels. Section 7 of the Process Improvement Rule states that DOE will attempt to identify any necessary modifications to establish test procedures when “initiating the standards development process.” Further, section 7(b) states that “needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process.” And section 7(c) states that “final, modified test procedures will be issued prior to the ANPR and proposed standards.” The same principles apply to new test procedures and the Process Improvement Rule indicates that it also applies to development of new standards.

Not only does the practice of proceeding with standards development without a final test procedure raise concerns about the quality of DOE’s analysis and make it difficult for stakeholders to meaningfully engage in the rulemaking process, but it also increases regulatory burden. In several recent rulemakings, such as those for portable air conditioner standards and conventional cooking product standards, AHAM and its members sought to provide data on the efficiency of products in the market. But without a final test procedure, it was difficult (if not impossible) to do so. Lab time is limited and best spent on activities not related to rulemaking, such as product development. Companies are not inclined to continually test their products under various versions of DOE’s proposed test procedures or under existing test procedures not necessary for any current compliance or marketing need. To do so is expensive and time consuming. In some cases, AHAM has been able to obtain some test data, but not enough to be useful in a standards analysis because it would provide an incomplete and potentially inaccurate picture of the market. And, in some cases where amendments are significant or a test procedure is new, it would not match DOE’s test data under the proposed test procedure, thus causing the type of confusion and chaos discussed above.

DOE can easily reduce the burden on regulated entities by following the Process Improvement Rule and finalizing test procedures far enough in advance of proposed standards such that stakeholders have sufficient time to test according to the new or revised procedure and can fully understand the impacts of any future proposed standards. Despite AHAM's repeated comments in this vein, DOE recently issued the final portable air conditioner test procedure only hours before issuing a rule on proposed standards. This means that manufacturers do not have nearly enough time to test products in order to understand and assess the significance of the proposed rule. At a minimum, DOE should provide six months between finalizing a test procedure and closing the comment period on proposed standards that use that test procedure.

Similarly, DOE, in several recent instances, has proceeded to develop amended standards immediately before or after the compliance date of an amended standard. Specific examples of which AHAM is aware and on which we have commented include proposed standards for commercial clothes washers, residential dehumidifiers, and residential dishwashers. The result is that DOE is forced to rely on data from the most recent rulemaking and can evaluate only the few products on the market meeting the amended standard. DOE cannot properly evaluate the full range of products that will be available on the market to meet the amended standard in order to inform its analysis on the next amended standard. And industry cannot catch its breath—just as companies finish the development and implementation of a standard, they must engage in the rulemaking process for the next standard. This leaves little time to assess the success of the most recent standards and the products developed to meet them. And it diverts significant resources away from innovation. In evaluating ways to reduce regulatory burden, DOE should consider the timing of its analyses on amended standards and should ensure that enough time is provided after the compliance date of a standard to allow DOE to analyze new products on the market and to allow companies to innovate.

II. Annual Certification Requirements

Consistent with the objectives outlined in Executive Order 13563, and as we commented in August of 2011, June of 2012, September 2012, July 2014, and again in July 2015, 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. The FTC's final rule maintained the scope of its report and, thus, it continues to be restricted to "each basic model in current production." Federal agencies should have harmonized requirements and those requirements should not add unnecessary burden. Accordingly, DOE should harmonize its requirements. This is a change that can be made without impairing DOE's regulatory programs and will ensure that the Department is not collecting information it does not need. It will also streamline DOE's reporting requirements and achieve DOE's regulatory objectives more efficiently.

III. Future Amended Energy Conservation Standards

AHAM supports federal efficiency standards in lieu of state standards and has been involved with and supported appliance related energy legislation for 30 years. A single, uniform standard throughout the U.S., and even throughout North America and beyond, is vastly preferable to a patchwork of 50 disconnected state-by-state standards. Federal appliance standards based on industry input and, often, stakeholder agreement is a path to more reasonable regulation and protection of consumer interest in a full diversity of products by manufacturer, brand, features and price points. Rational, definite standards with sufficient lead time, when coupled with incentive programs, can also minimize the damage to U.S. employment.

By participating in consensus negotiations leading to legislated standards or those that are the subject of multi-party petitions to DOE, AHAM has helped DOE to first catch up to and then meet the rulemaking schedules in the Energy Policy and Conservation Act of 1975, as amended (EPCA). Due to the successful partnership between DOE, efficiency advocates, and manufacturers, the Energy Conservation Standards Program has been a huge success. The program has expanded from 13 to more than 60 products. It has established robust efficiency standards for numerous covered products, some of which have been regulated repeatedly because of mandatory, serial rulemaking requirements under EPCA's six year lookback provision.

Home appliances are an energy efficiency success story. Accordingly, energy consumption of home appliances has steadily decreased according to AHAM's 2014 Energy Efficiency and Consumption Trends data.

The energy efficiency gains across all of the core major appliance categories are dramatic and undeniable. Refrigerators are being produced at larger capacities, and yet are 50 percent more efficient than they were 20 years ago. Refrigerators, refrigerator-freezers, and freezers with an added ENERGY STAR designation are at least 10 percent more efficient than the federal standard. The most commonly purchased modern refrigerator uses only the same amount of electricity as a 50 Watt light bulb. Clothes washers are another example of the energy efficiency

success, with tub capacities growing larger and energy consumption declining. A new clothes washer uses 73 percent less energy than it did in 1990. In fact, replacing an 8-year old washer with one of average efficiency will save the American consumer \$130 per year in utility bills, and more than 5,000 gallons of water per year.

For products that have already been subject to two or three rounds of standards regulation, as many of the products under AHAM’s scope have, EPCA’s required serial rulemaking process, driven by the mandatory six year lookback, is beginning to result not only in significant cumulative regulatory burden on manufacturers, but also in diminishing returns for consumers and the environment. Most regulated home appliances have been through at least three rounds of standards revisions.

For many home appliances, the opportunities for additional savings beyond the significant savings already achieved are severely diminished as they are nearing maximum efficiency under available technology. For those products, further amended standards will likely result in insignificant energy savings and increased cost to consumers and manufacturers beyond an acceptable level. Moreover, for some products more stringent energy conservation standards will likely result in degraded performance and functionality.

Demonstrating diminishing returns, recent standards have resulted in minimal energy savings and it is reasonable to think that trend will continue. The 2013 dishwasher standard, per DOE’s analysis, saved only 0.07 quad and the 2014 room air conditioner standard and 2019 dehumidifier standards each saved under a quad—about 0.3 quad each. And, as shown in the table below, the percentage of consumers experiencing a net cost (i.e., those for whom the lifecycle cost of the product will be greater than the savings at the new efficiency level) per DOE’s own analysis (which AHAM has consistently shown is overly optimistic), is high.

Appliance Standard	Percent of Consumers Experiencing Net Cost Per DOE’s Analysis
2015 Clothes Dryer	Up to 32
2019 Dehumidifier	Up to 28.7
2013 Dishwasher	19 for standard size
Proposed Dishwasher	53 for standard size
Proposed Portable Air Conditioner	13 for residential consumers
2014 Room Air Conditioner	Up to 33.6
2014 Refrigerator/Freezer	Up to 45.7

Not only are consumers experiencing a net cost to achieve minimal savings, but the payback periods for those who will experience a benefit are long. The payback period—the time it takes consumers to recover the increased purchase cost of a more-efficient product through lower operating costs—for the current dishwasher standard (effective May 30, 2013), per DOE’s analysis is 11.8 years for a standard size product. And, per AHAM’s analysis the proposed dishwasher standard would have a 20 year payback period for a standard size product (DOE’s analysis indicates a 9 year payback period). These payback periods are compared to the 13 year lifetime of the product. Similarly, the last refrigerator/freezer standards (effective September 15, 2014) had a median payback period, per DOE’s analysis, of 9.5 years for top mount

refrigerators. And the last room air conditioner standard (effective June 1, 2014) had payback periods of up to 10 years for one product class according to DOE’s analysis. Per DOE, the clothes dryer standard (effective January 1, 2015) had consumer a payback period of 11.7 years for gas clothes dryers.

To achieve these minimal energy savings, impacts on manufacturers have also been significant. The table below shows the loss in the industry’s value that the DOE’s own analysis predicted for several recent home appliance rulemakings.

Appliance Standard	Loss in Industry Net Present Value (%)
2015 Clothes Washer	33
2013 Dishwasher	13.3
Proposed Dishwasher	17.7-34.7
2019 Dehumidifier	20.9
Proposed Portable Air Conditioner	30.6
2014 Room Air Conditioner	18.6
2014 Refrigerator/Freezer	21.7 for standard size refrigerator-freezers

These negative impacts are unsustainable. With each amended standard EPCA requires, the energy savings potential will decrease while costs to consumers and manufacturers will increase and product performance will be increasingly at risk.

To address EPCA’s mandatory six year lookback provision, AHAM recently advocated for legislative changes to end mandatory serial rulemakings. Until such changes can be made to EPCA, and in cases where the data support it, AHAM urges DOE to exercise its authority to determine that no amended standards are justified. Moreover, we urge DOE to adhere strictly to the processes that have been put in place to ensure that, for those standards that continue, standards are technologically feasible and economically justified.

IV. Cumulative Regulatory Burden

President Obama has followed other presidents in requiring agencies to consider cumulative regulatory burden. DOE guidance and analysis that was required after the standards program was subject to a congressional appropriations moratorium in the 1990s purports to quantify cumulative regulatory burden—multiple related standards for the same product or manufacturer—in its analysis. AHAM believes, however, that this analysis does not sufficiently consider the extent of the many burdens associated with regulation.

Home appliance manufacturers are subject to many, often simultaneous, regulatory requirements from not only DOE, but also EPA, the Federal Trade Commission, the Consumer Product Safety Commission, and the Federal Communications Commission among others. For example, the table below lists the proposed, final, and upcoming regulations for refrigerator/freezers from just these agencies:

Agency	Regulation	Expected Compliance Date
EPA	SNAP,* Foam Blowing Agent	2020
EPA	SNAP,* Refrigerant	2021
EPA	ENERGY STAR (voluntary)	2014, 2017 update
DOE	Test Procedure Revision	2022
DOE	4 th Standards Update	2022
FTC	Revised EnergyGuide Label	2016, and again TBD**

*Significant New Alternatives Policy Regulation to ban certain hydrofluorocarbons as acceptable alternatives.

**Could be as early as a second change required in 2016 depending on the date FTC publishes a Final Rule

To meet the Appliance and Equipment Standards Program’s goal to realize energy savings from appliance standards avoiding at least 3 billion metric tons of carbon emissions, by 2030, DOE plans to complete 26 standards rulemakings covering 30 products between 2014 and 2016. It also intends to complete ten standards rulemakings covering 12 products between 2017 and 2020. Although DOE often lists rules impacting manufacturers in its analysis, it does not appear to take the close look at the cumulative impact that we believe is warranted.

A true cumulative regulatory burden analysis should not only consider the sheer number of rulemakings to which appliance manufacturers are subject, but should also account for the timing and technical and economic relationship of those rulemakings. For example, DOE’s recent practice of amending the test procedure while at the same time proposing amended standards increases the burden on manufacturers in responding to DOE’s proposed rules. When the rulemakings parallel each other, it is difficult, if not impossible, to comment on the proposed energy conservation standard because the test procedure is not yet settled and manufacturers cannot determine how their products perform in relation to the proposed standards.

For manufacturers, there is always a flurry of activity leading up to the compliance date of a new or amended standard. This includes adding new capital equipment, sourcing new and sometimes more costly materials, redesigning products, retooling factories, etc. Home appliances are now in an endless cycle of regulation, where as soon as one compliance effort ends or is near completion, another round of regulation to change the standard again begins. For example, DOE issued a request for information on amended energy conservation standards for residential clothes dryers only a few months after compliance with the most recent standard for clothes dryers was required. There is no time for manufacturers to catch their breath.

Just as importantly, there is no time for DOE, manufacturers or efficiency advocates to assess the success of standards or review their impacts on consumers and manufacturers. It would seem that, as part of its retrospective review, DOE should not be so driven to issue standards that it does not take into account whether an amended standard is justified. Without DOE fully reviewing the success/impact of past rules, consumers are at risk of increased product cost and the simultaneous loss of functionality, features and choice. Among other effects, certain product models could be at risk, with disparate impact on low and fixed income consumers.

Finally, a complete analysis of cumulative regulatory burden must consider the sheer number of products the regulated manufacturers make, in addition to the one being regulated in a particular rule, that are subject to proposals to amend standards or to promulgate standards for the first

time. The time and resources needed to evaluate and respond to DOE's proposed test procedures and energy conservation standards for all of these products should not be discounted. When these rulemakings occur simultaneously, the cumulative burden increases dramatically.

The same is true when compliance dates are clumped together for all of these products, as it was with the last major round of standards for products in AHAM's scope, as shown in the table below. The ENERGY STAR specification also changed effective on these dates and new EnergyGuide labels were required. For many AHAM members, this meant a revamp of product lineups for several of the major product categories in less than a year, bookended by changes to commercial clothes washers in January 2013, residential dishwashers in May 2013, and microwave ovens in June 2016.

June 2014	September 2014	January 2015	March 2015
Room Air Conditioners	Refrigerator/Freezers	Clothes Dryers	Clothes Washers

DOE should take this into account in its analysis as well as in its planning.

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

Respectfully Submitted,



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