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By E-Mail

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1000 Independence Ave., SW
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Regulatory.Review@hq.doe.gov

Re: Regulatory Burden RFI

Dear Mr. Cohen:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Department of Energy (DOE) on its Regulatory Burden RFI, 77 Fed. Reg. 47328 (Aug. 8, 2012).

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its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed.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. Proposed Energy Conservation Standards for Battery Chargers

DOE's May 2012 update to its Regulatory Review Plan Report lists the proposed energy conservation standards for battery chargers and external power supplies among the regulations under review. In the column identifying anticipated savings in costs and/or information collection burdens, DOE states that "[t]hese nationwide standards would be expected to eliminate industry burden in complying with a patchwork of state standards" and references the standards development in California. California has adopted (though not yet officially) its standard and the effective date is February 1, 2013. Accordingly, AHAM, both separately and together with the Consumer Electronics Association (CEA) and the Power Tool Institute (PTI), commented that it is critical that DOE move swiftly to finalize the battery charger standards for product classes 2 through 4. The three associations jointly commented that so long as DOE does not promulgate standards more stringent than the levels proposed in the pending notice of proposed rulemaking, DOE should require compliance with its battery charger standards for product classes 2 through 4 as soon as possible—i.e., on or soon after February 1, 2013.

DOE's own analysis determined that the California standards would result in a negative net present value. Yet DOE has done nothing to ensure Federal preemption of the standard and avoid that result. In fact, DOE has ignored its statutory mandate under which it was to have published a final rule in the battery charger and external power supply rulemaking over a year ago—in July 2011. DOE only issued the notice of *proposed* rulemaking in March 2012. And then in June 2012, DOE extended the comment period on that proposed rule, thus further delaying the rulemaking process. If DOE does not act now and publish a final rule, it will impose increased regulatory burden on regulated parties by permitting a patchwork of state standards, which is counter to Executive Order 13563 and DOE's own acknowledgement that a state patchwork of standards, starting with California, will create industry regulatory burden. Accordingly, as we, CEA, and PTI previously commented, we strongly urge DOE to finalize the battery charger portion of rulemaking with regard to product classes 2 through 4, especially in light of the fact that the statutory deadline for a final rule has long since passed and, if DOE does not act quickly, it will create (instead of eliminate) a patchwork of standards across the United States that would allow state standards to become effective that DOE's own analysis demonstrates have a negative net present value.

II. Annual Certification Requirements

Consistent with the objectives outlined in Executive Order 13563, and as we commented in August of 2011 and again in June of 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. But the requirements of the annual report itself are quite different. Thus, manufacturers are currently submitting two different reports on the same date for the same product types to two different federal agencies. FTC has proposed revisions to its rules to allow manufacturers to meet the FTC reporting requirements by using DOE’s energy reporting tool (CCMS) and to require the same report content as DOE. Without these amendments, manufacturers would be required to continue the current dual reporting indefinitely. As the rules exist today, the requirement that the two reports are due on the same day has not succeeded in mitigating the burden of the duplicative reporting requirements. But, FTC’s proposal to harmonize its reporting requirements by requiring the same report content as DOE would go a long way to minimize the burdens associated with this dual reporting, and thus, AHAM supported FTC’s proposals to allow manufacturers to meet the FTC reporting requirements by using CCMS and by requiring the same report content as DOE.

The report content, however, is not the only difference between the current DOE and FTC reports—the models that must be included in each report also 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.

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—in fact, some companies have reported compliance time to be at least double the anticipated 20 hours per response. (See 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). 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 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.

III. Verification Programs

Similarly, AHAM encourages DOE to work to ensure that verification programs, both with regard to the energy conservation program and the ENERGY STAR program, are coordinated, integrated, transparent, and cooperative with industry sponsored and funded testing programs.

In particular, we note that currently there is duplicative verification testing occurring in support of the ENERGY STAR program—both EPA and DOE administer programs. Having two federal programs, while also encouraging other third party verification programs, such as AHAM’s, is an unnecessary redundancy of verification programs that adds cost with little to no increased value to consumers. DOE and EPA should leverage credible third party verification programs, such as AHAM’s to meet their market surveillance goals.

Furthermore, uncertainty as to whether DOE will impose verification requirements as part of the energy conservation program is causing uncertainty for already existing industry programs such as AHAM’s. For example, we have put in place requirements to comply with the EPA administered verification program for ENERGY STAR. And we anticipate that if DOE initiates a similar program for energy conservation standards, we will yet again need to revise our programs, which will interrupt their operation, thus increasing the time and money spent on these efforts. Accordingly, if DOE decides to move forward with a verification program for the energy conservation program, AHAM strongly urges DOE to leverage third party verification programs that utilize independent testing laboratories and are developed by industry trade associations, such as AHAM. These independent programs, some of which have been successfully operating for 25 years or more, often provide the most cost effective use of limited lab testing space and can provide a high level of competency, thus yielding more accurate compliance oversight.

AHAM’s verification programs would in no way interfere with any DOE targeted and specialized verification testing, but would avoid parallel test programs that result in duplicative efforts and excessive costs. An industry verification program can provide technical resources, efficiency, and expertise, allowing DOE to focus its own testing resources on less organized and more dispersed product categories and industries.

IV. Clothes Washer and Dishwasher Direct Final Rules

DOE's May 2012 update to its Regulatory Review Plan Report refers to the pending direct final rules for energy conservation standards for residential clothes washers and residential dishwashers. It notes that those standards were developed and submitted to DOE as a consensus agreement signed on behalf of all major manufacturers and energy advocates and consumer groups, and that "DOE believes that the consensus agreement process will lead to standards that minimize manufacturer burden while reducing energy consumption and maintaining product quality for consumers." AHAM agrees that it is efficient and prudent for DOE to rely on agreements reached through multi-stakeholder review.

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 that reads "Jennifer Cleary". The signature is written in a cursive style with a large, looping initial "J".

Jennifer Cleary
Director, Regulatory Affairs

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