ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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By E-Mail

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Re: Regulatory Burden RFI

Dear Mr. Stevenson:

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its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. 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.

I. Order of Rulemakings

In the recent past, and particularly in the past year, 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.

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, and, again in July 2014, 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.

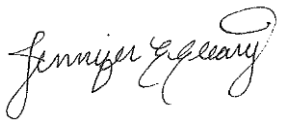
III. Battery Charger Standards

In 2012, DOE recognized that "nationwide standards [for battery chargers] would be expected to eliminate industry burden in complying with a patchwork of state standards." Yet, three years later, DOE has yet to promulgate a Federal standard for battery chargers. In the mean time, California and other states have adopted standards effective as early as February 1, 2013. Accordingly, AHAM, both separately and together with other trade associations, commented that DOE should move swiftly to finalize the battery charger standards for product classes 2 through 4.

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 four years 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. After so delaying the rulemaking, DOE then declined to adopt standards for battery chargers, instead further delaying standards for those products. To date, DOE has yet to issue a proposed rule. DOE's failure to publish a final rule has resulted in a state standard, adopted in other states as well, that DOE itself determined has a negative net present value. DOE has, thus imposed 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. DOE should act to eliminate this patchwork of state standards and should address the increased regulatory burden it has already caused in its analysis of any proposed standards.

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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