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By E-Mail

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Re: EO 13563 Preliminary Plan

Dear Mr. Cohen:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Department of Energy (DOE) on preliminary plan for retrospective analysis of existing rules, 76 Fed. Reg. 40646 (July 11, 2011).

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 published its preliminary plan for retrospective analysis of existing rules. DOE seeks comment on its preliminary plan so that it can consider and incorporate further public input in its final plan. 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 those objectives, 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). 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). That means that the time to comply with DOE's regulations has significantly increased due to the addition of an annual, versus one time, certification report.

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)).

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. Although DOE and FTC have both stated intent to harmonize requirements, currently such harmonization has not occurred. The result is needless burden and paperwork for manufacturers to report information on products covered by energy conservation standards. Furthermore, rather than decreasing burden for manufacturers, the requirement that these reports are due on the same deadline has turned out to increase the amount of work that must be done by that date because the reports are so different. In other words, the harmonization of the reporting deadline has not succeeded in mitigating the burden of the duplicative reporting requirements. The main differences in the reports are 1) the models required to be listed in the report; and 2) the information required to be reported.

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. 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.

Manufacturers must include the following information in reports to FTC per 16 C.F.R.

305.8(a)(1):

1. Brand name;
2. Model numbers for each basic model;
3. Total energy consumption . . . used to calculate the estimated annual energy consumption or energy efficiency rating;
4. The number of tests performed;
5. Capacity; and
6. For models that use more than one energy source or more than one cycle, each separate amount of energy consumption.

In addition to the above information, manufacturers must include the following in reports to DOE, per 10 C.F.R. 429.12(b):

1. Product or equipment type;
2. Product or equipment class;
3. Manufacturer's name and address;
4. Private labeler's name and address (if applicable);
5. For each brand, the basic model number and the individual manufacturer's model numbers covered by that basic model (with some exceptions);
6. Whether the submission is for a new model, discontinued model, a correction, data on a carryover model, or a model that has been found in violation of a voluntary industry certification industry;
7. U.S. Customs and Border Protection importer identification numbers;
8. Whether certification is based upon a waiver of test procedure requirements;
9. Whether certification is based upon any exception relief from applicable energy conservation standard and the date such relief was issued;
10. Whether the certification is based upon the use of an alternate way of determining measures of energy conservation and the approval date; and
11. Product specific information (which is often voluminous and detailed).

As the above demonstrates, there is significant overlap between the DOE and FTC annual certification reports. And these reports are submitted for the very same products. But there is also significant variance between the two reports, and it is the differences in the reports that significantly increase the burden and paperwork on manufacturers. Manufacturers should not be required to submit two different reports on the same products to two different federal agencies. Accordingly, AHAM urges DOE and FTC to coordinate their reports so that manufacturers are required to submit only one report on one deadline to one agency. Even if the report must be submitted to both agencies, that submission should be streamlined.

Because DOE requires information that is not directly related to a manufacturer's production, it is significantly more burdensome than the report that manufacturers have long submitted to FTC. Accordingly, if the federal government is going to require an annual report, AHAM urges the

federal government to require the submission of information from the FTC report. This report could be submitted to DOE or to FTC, whichever is preferable to the federal government. If DOE requires the additional information, it could require it on a one time basis only—the re-reporting of the same data annually does nothing to add to DOE’s information base. The additional models and information DOE seeks in the annual report is unnecessary and serves only to add significant burden and time to manufacturer compliance efforts. Even if there is some information in addition to what FTC currently requires that DOE determines is necessary to have in a report in order to aid it in its enforcement efforts, that data should be kept to a minimum and should be required on a single report.

II. 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.

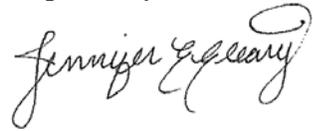
In particular, we note that currently there is duplicative verification testing occurring in support of the ENERGY STAR program—both EPA and DOE administer programs. Having two federal programs, while also encouraging other third party verification programs, such as AHAM’s, is an unnecessary redundancy 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 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.

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

Respectfully Submitted,

A handwritten signature in black ink, reading "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
Hampton Newsome, FTC