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By E-Mail

Daniel Cohen
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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 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. 28518 (May 15, 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its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed.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. Annual Certification Requirements

Consistent with those objectives, and as we commented in August of 2011, 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. 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 serves 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.

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.

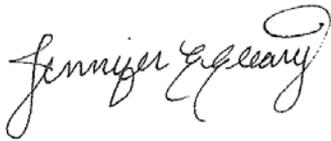
Furthermore, uncertainty as to whether DOE will impose verification requirements as part of the energy conservation program is causing uncertainty for already existing industry programs such as AHAM’s. For example, we have put in place requirements to comply with the EPA administered verification program 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 cursive script that reads "Jennifer Cleary". The signature is written in black ink and is positioned above the printed name and title.

Jennifer Cleary
Director, Regulatory Affairs

cc: Ashley Armstrong, DOE
Hampton Newsome, FTC