
BSH HOME APPLIANCES CORPORATION

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Submitted Electronically

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Attorney, Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Room M-8102B
600 Pennsylvania Ave., NW
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<https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm>

Re: BSH Home Appliances Corporation comments on Appliance Labeling Amendments, Matter No. R611004

Dear Mr. Newsome:

BSH Home Appliance Corporation respectfully submits the following comments to the Federal Trade Commission (FTC or Commission) on its Notice of Proposed Rulemaking on Appliance Labeling Amendments, Matter No. R611004, 77 Fed. Reg. 15298 (March 15, 2012).

It is the general opinion of BSH that the Commission should do a more extensive overhaul of the Appliance Labeling Rule to reflect the current electronic age, rather than the paper-based world in which the rule was initially promulgated. Doing so would resolve many of the issues the proposed amendments attempt to address. If, however, the Commission decides to instead move forward with the proposed amendments, BSH offers specific comments on how to ensure that those amendments provide the intended benefit to consumers without adding unnecessary cost and burden to manufacturers.

I. The EnergyGuide Label Generally

The proposed amendments do not reflect the current electronic age, but instead reflect the paper-based world in which the Commission's rules were initially promulgated. Many of the issues with which the proposed amendments attempt to resolve could be much more easily addressed if the paper-based physical EnergyGuide label were abandoned in favor of an electronic approach. BSH proposes that FTC eliminate the paper labels and instead publish the annual reporting information on a publicly accessible database that would allow consumers to comparison shop. Given that 66% of consumers who purchased an appliance in the past 12 months researched their purchase before going to the store or purchasing it on a website and 72% say they will do some form of

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research before their next major appliance purchase,¹ BSH believes that the showroom focus is outdated, and that it would be sufficient and effective to provide this information to consumers online. Our proposal would represent a more wholesale revision of the rules, and thus, we would be open to further discussions with the Commission about how such a system could be implemented.

II. Transition Labeling Refrigerator/Freezers and Clothes Washers

As the Commission is aware, the Department of Energy (DOE) has recently revised the test procedures for refrigerator/freezers and residential clothes washers as well as the standards for refrigerator/freezers. Finalized revisions to the clothes washer standards are also expected in the near future. Compliance with the revised test procedures and standards for refrigerator/freezers will be required on September 15, 2014. The exact compliance date for the new clothes washer test procedure and standards will be announced when the final standards are promulgated, but the date is expected to be in 2015. BSH has requested that DOE permit early compliance with the refrigerator/freezer standards and test procedure as of January 1, 2014, and DOE has indicated that it plans to soon issue guidance on the transition to those new standards and test procedures.

A. Refrigerator/Freezers

The magnitude of the change to the standards and test procedures in 2014 for refrigerator/freezers is the largest it has been since energy labeling began. The refrigerator test procedure will increase measured energy by approximately 14% (though this varies across product classes, manufacturers, and even individual models). It will include a constant adder to account for icemaker energy (84 kWh) as well as changes in the way adjusted volume is measured. In addition, the stringency of the standards has been significantly increased. And FTC will likely be changing the cost figures for the label as well based on its review schedule.

To accomplish these changes, the work is not just on the part of manufacturers, but trade partners as well. The change will be difficult to accomplish at any time, but is particularly so during the peak buying season, which is the summer months (roughly April through September, but it may vary) because of production schedules, promotions, etc. The fact that the transition will occur during this period, September 2014, only further increases the magnitude of the change. Add to that another change on the near horizon to incorporate measured icemaker energy (as opposed to the constant adder) sometime around, per our predictions, 2016, which will mean another test procedure change and standards impact.

BSH understands that rating a new model under the new test procedure will require label changes and could require model number changes. If a manufacturer has a large number of stock keeping units (SKUs), it is impossible to accomplish this all at one time—all new models cannot be introduced on one day. It is also impossible to get all of the new floor models on the floor on the compliance date. Manufacturers need the flexibility to spread out introductions of all these new

¹ Bellomy Research Inc. April 2012 for AHAM.

models. Thus, as discussed above, BSH has requested that DOE allow early compliance with the 2014 standards and test procedure, beginning on January 1, 2014.

An early compliance option is the best way to minimize unnecessary and costly duplicative testing and labeling requirements, and to incentivize early compliance with a higher efficiency level. We hope that DOE will allow for the option to test and rate models under the new test procedure beginning on or after January 1, 2014. As a complement to that option, BSH also requests that the Commission allow for the option of displaying on the EnergyGuide labels the rating and estimated yearly operating cost based on the new test procedure on or after January 1, 2014. This will help to minimize consumer confusion as new models are introduced to comply with the new standards. Without an option for early compliance and labeling, manufacturers may need to introduce new models designed to meet the new standards before the September 2014 compliance date and label those products based on the old test procedure, and then, on September 14, they would need to provide a new label based on the new test procedure. This would mean that consumers would see the same units with different energy and cost representations. That is a situation manufacturers wish to avoid to the extent possible. An option for early labeling will also minimize duplicative testing (i.e., testing a newly introduced model under both the old and the new test procedure) and costly retail floor model changes.

There will also be consumer confusion during the transition to the new standards and test procedure because, if a consumer tries to compare an older, less efficient model to a new, more efficient model using the labels as they currently exist, the older model will likely appear (incorrectly) more efficient and less costly to operate because the old test procedure results in less measured energy on average. In addition, for models that comply with the current standard and that will also comply with the new standard using the new test procedure, consumers will see different energy use and cost information on the EnergyGuide label for the same units depending on how long it takes for the older models to sell through. (Importantly, in that situation the actual cost to operate the unit for the consumer will not even change, thus compounding the complexity and confusion).

These changes are much more significant than the usual changes in the cost of energy that the Commission undertakes every five years for which there is no special labeling provided. When the Commission updates the cost of energy, the estimated yearly operating cost changes only slightly and the reported kWh per year remains constant. The likelihood of consumer confusion is minimal in that situation and it does not result in a unit appearing more or less efficient than it did previously because the kWh per year disclosure does not change. In the scenario under which the test procedure will impact measured energy, everything will change and it will change significantly because the changes to the test procedure will result in significantly increased measured energy in most, if not all, cases. Furthermore, a failure to allow for a special label will disincentivize early compliance with the standards, and thus result in lost energy savings, because some manufacturers may decide to hold introduction of new models as long as possible because they will *appear* less efficient to consumers than older, less efficient models. Accordingly, AHAM has requested that the Commission provide a transitional label to aid consumers during the transition time and BSH agrees with the AHAM approach.

We also request that the Commission not require model number changes for older models that also comply with the new standards under the new test procedure. Instead, the Commission should allow this to be noted in DOE certification reports and FTC annual submissions. For example, the reporting template could ask which test procedure is the basis for the certification or could allow the same model number to be listed twice on the report—once with the old test procedure values and once with the new test procedure values. This will minimize consumer confusion and mitigate the burden on consumers. We understand that the Commission may be concerned that this would cause confusion for consumers who purchase a product online and get a product with a different label delivered to their home. But prescribing model number changes will not resolve that concern because retailers and manufacturers are unlikely to show two separate listings for the same product even if the model numbers differ. Similarly, if the same product with different model numbers is available, there is no assurance that a consumer who orders model “A” (old) will not have model “B” (model A tested under the new test procedure) delivered to their home because manufacturers and retailers would likely view them as identical. And, to the extent there would be consumer confusion, under the proposal, consumers would have access to certification data to determine why there is a perceived difference.

B. Clothes Washers

BSH expects that it will also request that DOE permit early compliance with the clothes washer standard and test procedure. Our request will likely be to permit early compliance beginning on January 1, 2015, which is the date that compliance with the new clothes dryer standard will be required. Manufacturers generally introduce clothes washers and clothes dryers at the same time, and so, we expect that some manufacturers will begin selling clothes washers that meet the new standards under the new test procedure as of the January 1, 2015 date. Accordingly, we also request that the Commission permit early compliance with respect to the EnergyGuide label just as we proposed with regard to refrigerator/freezers.

Harmonization of Reporting and Testing Requirements

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 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 Commission proposed to allow manufacturers to meet the FTC reporting requirements by using DOE’s web-based tool for energy reporting (CCMS). It also proposed to harmonize FTC reporting requirements with DOE certification rules by requiring the same report content as DOE. The proposed rule text states “each manufacturer of a covered product subject to the disclosure

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requirements of this part and subject to Department of Energy certification requirements in 10 CFR 430 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 430 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429.” Finally, the amendments would specify that manufacturers must test their products in accordance with DOE’s testing requirements. FTC sought comment on its proposals, including the need for the changes, and the costs and benefits of the proposals.

A. Report Content

BSH agrees that FTC and DOE should have harmonized reporting requirements. When DOE revised its rules, DOE harmonized its annual reporting deadlines with FTC’s deadlines, but did not harmonize the content of the report. Thus, manufacturers are currently submitting two different reports on the same date for the same product types to two different federal agencies, and without FTC’s proposed rule revisions, would be required to continue this 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, BSH supports FTC’s proposals to allow manufacturers to meet the FTC reporting requirements by using DOE’s web-based energy reporting tool and by requiring the same report content as DOE. BSH also supports the Commission’s proposal to reference DOE’s testing requirements.

B. Models to Be Included in the Report

The report content 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 reported 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. Accordingly, BSH supports 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.” The Commission should not revise its rules to match DOE’s overly burdensome scope.

BSH does believe that ultimately, harmonization between the two agencies' reports is critical, and thus, 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 urge 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. If the Commission adopts its proposal to allow manufacturers to meet the FTC reporting requirements by using DOE’s web-based energy reporting tool, there is no added burden caused by FTC retaining its narrower reporting scope.

C. Conservative Rating

DOE has recognized the value of conservative ratings and has expressly encouraged and permitted such ratings:

[M]anufacturers may rate models conservatively, meaning the tested performance of the model(s) must be at least as good as the certified rating, after applying the appropriate sampling plan. *The sampling plans are designed to create conservative ratings, which ensures that consumers get—at a minimum—the efficiency indicated by the certified rating.* In this final rule, DOE allows manufacturers to use conservative ratings beyond those provided by the sampling plans.²

BSH believes that the Commission’s proposal to harmonize with DOE requirements would (and should) also extend to conservative rating because the DOE certified value should be the same as the value on the EnergyGuide label.

III. **Adhesive Labels for Clothes Washers, Dishwashers, and Refrigerators**

The Commission proposed to prohibit hang tags on clothes washers, dishwashers, and refrigerators and, instead, to require adhesive labels. FTC stated that this proposal is designed to decrease the number of missing labels in showrooms because hang tags appear to detach easily. The Commission sought comment on whether requiring adhesive labels (and prohibiting hang tags)

² Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment, Final Rule, 76 Fed. Reg. 12422, 12429 (Mar. 7, 2011) (emphasis added).

for these products would improve label availability in showrooms. The Commission also asked whether the proposal accomplishes its goal of providing disclosures to consumers.

BSH opposes FTC's proposal to require adhesive labels and prohibit hang tags for the following reasons:

1. Difficulties with stainless and specialty painted models. Adhesive labels can cause product damage, especially on stainless and specialty painted models, which are popular with consumers. According to AHAM industry shipment data, about 30% of major home appliances (ranges, refrigerators and dishwashers) shipped last year were stainless steel, and the trend is expected to increase. Furthermore, adhesive labels may not increase the availability of disclosures to consumers. Stainless and specialty painted models are often shipped with a protective film covering. If the label were adhered on the outside of that film, the label will be removed when the film is discarded, potentially before placement on the showroom floor. It could also require re-sticking of the label after the film is removed, an action over which manufacturers have no control and may decrease the adhesive quality of the label, thus not accomplishing the goal of providing consistent disclosure to consumers. If the label is placed underneath the film, that would require assembly-line reconfiguration, which would add significant cost to comply with FTC's requirements.
2. Eliminates harmonization with Canadian requirements. The proposal eliminates manufacturers' ability to use a U.S.-Canada label because the back of the label could no longer be used for a Canadian label. Thus, manufacturers would be required to ship two labels with every product. Because the same products are sold in the US as in Canada, the Commission should have a North American market in mind when it adopts new requirements, and should avoid enacting regulations that would add to cumulative regulatory burden. This proposal would do just that by eliminating an opportunity to streamline US and Canadian requirements. It would be best if the two countries had the same label so that two-sided labels would no longer be necessary. FTC should not depart further from that ultimate goal by eliminating the second-best option, which is a double-sided tag.
3. Problems with adhesive during storage or shipping. Adhesive labels will be problematic when product is stored in a warehouse for an extended period of time and/or when it is shipped overseas—the label could become too sticky or lose its adhesive quality depending on the atmospheric conditions. Hang tags do not pose this problem.
4. Adds significant compliance cost and burden. The Commission's proposal would add significant compliance costs due to the extra cost of the adhesive and the additional equipment and labor that would be required to glue instead of hang the label. The disruption and cost required to stick labels on millions of units in order to ensure that the thousands that actually reach showroom floors display the label is not justified in light of the concerns raised above, most significant of which is that the Commission's proposal would not achieve the goal of increasing disclosures to consumers.

BSH does not, however, object to the Commission allowing the use of adhesive labels as an option. Manufacturers should be able to decide whether to include adhesive or hang tag labels. If the Commission moves forward with a requirement to use adhesive labels for these products and to prohibit hang tags, an approach we strongly oppose, it would be better to have a smaller label for clothes washers and dishwashers. That will, however, even further disrupt harmonization with Canada, and those issues would need to be resolved.

IV. Clothes Washer Capacity

The Commission proposed to require that EnergyGuide labels for clothes washers disclose capacity in cubic feet instead of the general capacity (standard/compact) currently provided on the label. The Commission stated that the proposal would complement recent DOE and industry efforts to ensure consistency in clothes washer capacity disclosures, which would provide consumers with consistent information whether they are looking at FTC labels, manufacturer advertising, or DOE certification data. Under the proposal, manufacturers would continue to measure capacity using DOE procedures. The Commission sought comment on this proposal.

BSH agrees that capacity should be communicated to consumers via the DOE measured volume. But BSH does not believe it is necessary to add this capacity measurement to the EnergyGuide label. To do so would add unnecessary information to an already crowded label, which will serve to confuse consumers with yet another number they may not understand. And the capacity measurement is already easily available to the consumer in product literature, on manufacturer websites, and on the ENERGY STAR website (where applicable). Furthermore, manufacturers may wish to use the same label for multiple models with the same energy use. If the capacity varied slightly among those models (and that variation did not impact measured energy), under FTC's proposed amendment, the manufacturer would need to create different labels for all those models, which adds unnecessary cost. Accordingly, the Commission should retain the general capacity disclosure on the EnergyGuide label.

V. Definitions of Refrigerator and Refrigerator-Freezers

FTC proposed to conform its definitions for the terms "electric refrigerator" and "electric refrigerator-freezer" to the Department of Energy's revised definitions for those terms, as promulgated in 75 Fed. Reg. 78810 (Dec. 16, 2010). BSH supports this proposal, which will provide consistency and clarity for regulated parties and consumers.

VI. Web Site and Paper Catalog Disclosures

The Commission proposed amendments that would require retail web sites to post the full EnergyGuide label online. In order to ensure that retail web sites have access to the label, the proposed rule would require that manufacturers make the EnergyGuide labels easily available online and to continue to do so for two years after the manufacturer ceases to make the model. The Commission sought comment on its proposal, including comments on the costs and benefits of the proposal for businesses and consumers.

BSH does not oppose the proposed requirement for manufacturers to make labels easily available online in order to ensure that retail web sites have access to the label. But the proposed two year requirement after production ceases is far too long and burdensome for manufacturers, and is without a corresponding benefit. BSH would instead propose that the label be required to remain available online for six months after the manufacturer ceases to make the model. There are several issues associated with keeping the label online for a long period after production ends (especially any longer than six months). First, how will future label changes be addressed? If the label changes, manufacturers should not be required to change the label for a model that is no longer in production. And that situation should be expressly addressed in the rules in order to provide regulated parties with clarity and consistency. Furthermore, for products that are no longer in production when the proposed rule becomes effective, would manufacturers need to make that label available online for the remainder of the two years after production ceased? Or would the requirement apply only to models currently in production at the time the rule goes into effect? BSH believes it should be the latter.

VII. QR Codes on EnergyGuide Labels

The Commission sought comment on whether it should require manufacturers to place QR codes on EnergyGuide labels. If implemented, consumers would connect to government web sites or other sources providing detailed product information, such as the broad energy impacts and GHG emissions associated with a product's use. The Commission requested that comments address whether the codes should link to any particular information and whether the codes could pose significant burdens for manufacturers.

BSH would not support a requirement for manufacturers to place QR codes on EnergyGuide labels. The label already contains the information consumers need. And the label is already crowded. Adding QR codes to it would only serve to confuse consumers. Manufacturers should have the ability to add QR codes to their own labels and product literature and to direct consumers to their website, not to a government or other outside website that provides only redundant information already available on the EnergyGuide label or elsewhere. Use of QR codes is rapidly evolving, and the Commission should avoid prescriptive rules at this stage.

In addition, a required QR code would be overly burdensome, especially if it required additional data collection and/or reporting (GHG emissions, etc.). To add a QR code to the label would require special software be developed. And manufacturers already have burdensome annual reporting requirements under the Commission and DOE rules. There is no need to add to that burden with a requirement that would serve only to provide unnecessary or duplicative information to consumers.

BSH appreciates the opportunity to submit these comments on the FTC's Notice of Proposed Rulemaking on Appliance Labeling Amendments, and would be glad to further discuss this matter should you request.

Respectfully Submitted,

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