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Submitted Electronically

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Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Office of the Secretary, Room H-113 (Annex N)
600 Pennsylvania Ave., NW
Washington, DC 20580

<https://ftcpublic.commentworks.com/ftc/regulatoryreviewschedule>

Re: Regulatory Review Schedule

Dear Mr. Chung:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Federal Trade Commission (FTC or Commission) on its regulatory review schedule, 76 Fed. Reg. 41150 (July 13, 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.

I. Duplicative Information Collection

FTC sought comment on whether the Commission has any rules or guides that duplicate or conflict with other agencies' requirements. FTC further asked whether it currently collects any information that it does not need or use effectively to achieve regulatory objectives.

Currently, because the Department of Energy (DOE) has issued new regulations regarding certification and compliance with federal energy efficiency standards for appliances, both DOE

and FTC are collecting different annual reports regarding energy efficiency standards information for the same products and on the same date. AHAM urges FTC and DOE to coordinate their required annual reports in order to decrease the cumulative regulatory burden on appliance manufacturers. In particular, AHAM supports continued use of the long-required FTC annual report, 16 C.F.R. 305.8(a)(1), to satisfy DOE 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)).

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 FTC and DOE 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.

As we have commented to DOE, 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.

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 FTC or DOE, 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.

In addition, it may make sense for all federal agencies to pull information from some form of central database. Similarly, there are state and regional agencies seeking related product information, often in varying data formats (e.g., the California Energy Commission). It might be helpful to have a central repository of product data that would decrease the cumulative data submission burden on appliance manufacturers and provide a common data source for all federal, state, and regional agencies. If the data set were to include confidential business information, it would, of course, need to be treated as such by all parties with access to the information.

II. Accelerated Review of the Appliance Labeling Rule

FTC stated that it plans to accelerate its review of the Appliance Labeling Rule, 16 C.F.R. Part 305, from 2018 to 2012 in order to address rapid changes in appliance technology and the increasing cost of energy. AHAM urges FTC to consider whether this acceleration is necessary. Rules and regulations should not be frequently revised unless they are outdated, overly burdensome, or deficient.

AHAM appreciates the opportunity to submit these comments on the FTC's regulatory review schedule and would be glad to further discuss this matter should you request.

Respectfully Submitted,

Jennifer Cleary
Director, Regulatory Affairs

cc: Ashley Armstrong, DOE
Daniel Cohen, DOE
Hampton Newsome, FTC