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J.B. HOYT
DIRECTOR, GOVERNMENT RELATIONS

May 16, 2012

Hampton Newsome, Esq.
Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
Room M-8102B
600 Pennsylvania Ave, NW
Washington, DC 20580

Via: <https://ftcpublic.commentworks.com/ftc/energylabelingamendmentsnprm>

Re: RIN 3084-AB15, Appliance Labeling Rule

Dear Mr. Newsome:

Whirlpool Corporation, the world's largest manufacturer and marketer of major home appliances, has worked closely with the FTC on appliance labeling since the inception of this action in 1979.

Whirlpool manufactures and sells nearly 10 million of the products subject to this rule every year. As such, we believe we are qualified to offer comment and perspective in this matter.

We appreciate the opportunity to submit these comments and are open to any additional dialog you may request.

Sincerely,

A handwritten signature in black ink, appearing to be the initials "J.B.H.", is located below the "Sincerely," text.

**Comments of Whirlpool Corporation Regarding
RIN 3084-AB15, Appliance Labeling Rule
Submitted May 16, 2012**

Overall Comment

The Appliance Labeling Rule was developed in the late 1970's and has been in effect since 1980. The basics of execution, a printed heavy paper tag attached to each affected product, have not changed in the ensuing 32 years. During that same time, the U.S. has experienced a significant change in technology, in turn leading to significant changes in the means by which consumers obtain, review and manage information.

According to recent research¹, 66% of past major appliance purchases were researched prior to purchasing and approximately 75% intend to do research prior to making future purchases. The ubiquitous nature of the internet has enabled this form of research by consumers. Indeed, consumers conduct their own research and often know the specific item they want before going to the store. Consequently, dependence on sales personnel and on-product information has declined. Increasingly, consumers are using their smartphones while shopping in-store to compare prices and other attributes online.

In this technology-enabled, 21st Century world, we believe that the existing paper tag is no longer relevant on the sales floor. Hence, we propose that the current paper tag be eliminated. In place of the tag the FTC should create a public version of the existing database further enabling consumers to research energy efficiency of products as part of the research they are already doing prior to entering a retail store.

Finally, the tag is placed on all products at the time of manufacture. Yet only a small percentage of units produced (perhaps 10%) are ever shown on retail sales floors. The remaining 90% of tags are never seen until the consumer takes delivery of the appliance in his/her home. Eliminating tags would reduce waste and avoid sending over 20 million unseen tags to landfills annually.

The electronic images of the tags should continue to be shown on manufacturer and retailer websites, further supporting the pre-buy research consumers are doing. (See additional comments in Section D, below.)

Comments Regarding Amendments Proposed by FTC

A. Harmonization of Reporting and Testing Requirements

Whirlpool wholeheartedly endorses the implementation of one common database which encompasses the requirements of both FTC and DOE. As noted, today there is considerable duplication of effort on the part of manufacturers to provide similar, but slightly different, data to both agencies. We further encourage the integration of the EPA Energy Star® database into this common repository. This is another database where the data has significant overlap with that currently sought by FTC and DOE.

To further enable this common database we offer the following suggestions:

1. The comparative database suggested above would utilize a subset of this more comprehensive database.

¹ Bellomy Research, Spring 2012, presented at 2012 AHAM Annual Meeting

2. Annually request and publish data on units manufactured in the prior year rather than those shipped in the prior year. Failure to adopt this change will result in continuation of two separate databases. Additionally, manufacturing data is readily attainable and is relevant to all current products. The added time to track those few models that may have remained in inventory, but not manufactured in a particular year, is not value-added. To reiterate, we support continuation of the FTC approach whereby manufacturers submit data on units manufactured in the prior year.
3. FTC follows the DOE sampling plan which allows manufacturers to provide conservative ratings of product energy efficiency. We ask FTC to confirm that it concurs with conservative ratings.
4. This recommendation could be implemented within 12 months of publishing such a requirement.
5. The cost to implement would be quite modest. Indeed, this proposal should lead to manufacturer cost savings in the longer term.

B. Adhesive Labels for Clothes Washers, Dishwashers and Refrigerators

If the suggestion above of dropping the paper label and replacing it with an on-line database is adopted, this point becomes moot. We do not support the recommendation of the FTC for several reasons:

1. Adhesives can (and often do) leave a mark or residual material on appliance surfaces. This is true on all finishes, but more pronounced on stainless steel, an increasingly popular appliance surface. Such marks are exacerbated by higher heat (summer warehousing and transportation (and/or longer time from manufacture to sale).
2. Use of adhesives will add cost in manufacturing.
3. Increasingly, manufacturers, including Whirlpool, utilize a protective plastic film on door surface of many refrigerators as a means of reducing marring prior to installation in the consumer's home. Were EnergyGuide tags adhered to this film rather than the product itself, the tag would be lost when the product was prepped for retail display. For various manufacturing reasons, placing the tag under the film is not practical.
4. Most manufacturers, including Whirlpool, produce many models which are sold in both the U.S. and Canada. Use of adhesives would preclude the current practice of printing two-sided tags (U.S. EnergyGuide tag on one side, Canadian EnerGuide tag on the other). Use of two separate tags would significantly increase both the cost and manufacturing burden for manufacturers.
5. Adhesives would further preclude harmonization with Canada as regulations in that country require the use of string tags.
6. We appreciate the FTC concern with lost/missing tags on retail sales floors. One solution may be the Australian approach of requiring two strings on tags. Note that this would not preclude actions of individual retailers where they remove tags on sales floors.

In addition to the concerns noted above, we do not believe that adhesive tags would improve the effectiveness or availability of the tags on retail sales floors. Tags are not present for one of three reasons:

1. Some retailers remove them when preparing product for display. Retailers often prefer to have consumers focus on their own point-of-purchase information and may not recognize that the regulations preclude their removal.
2. Consumers may pull them off for future reference while shopping.
3. Some manufacturer sales people have been known to remove competitor's tags, particularly when their own product's energy consumption may be unfavorable.

C. Room Air Conditioners

If the suggestion above of dropping the paper label and replacing it with an on-line database is adopted, this point becomes moot. Otherwise, we are opposed to this proposal because:

1. While retailers may display room air conditioners in boxes stacked on shelves or on the showroom floor, they also often display at least one unit of each model outside of the box so that consumers can see the actual product prior to making a purchase. That means that the label on the product is also visible to consumers and that they can use it to compare products
2. This proposal would differ from requirements in Canada. Because the same room air conditioners are generally sold in both the US and Canada, this would necessitate a label on the product to comply with Canadian requirements and one on the box to require with U.S. requirements. Thus, the proposal would result in decreased harmonization between the two countries while adding significant cost and burden to comply with the added labeling requirements

If the proposal to require labeling on the box were put in place, we strongly recommend the following:

1. Allow the label to be either in black and white or in color (as not all cartons are printed in color).
2. Allow direct printing on the carton or use of an adhesive label.
3. Identify where on the box the label would be placed.
4. Identify whether the label would be required on one or more sides (there is no assurance that when the boxes are stacked, the side with the label would be visible to consumers).

D. Website and Paper Catalog Disclosures

Regarding the availability of EnergyGuide tag images, Whirlpool currently provides electronic access to tag images for all current products. We maintain the availability of these images after ceasing production and until the product is declared obsolete. By that time all retailers of the model has placed it on their website. We believe this timeframe to be adequate as we have had no retailer complaints regarding availability.

Regarding websites and paper catalogs, we offer the following perspective:

1. Requiring the EnergyGuide tag image to be displayed "clearly and conspicuously and in close proximity to the covered product's price" would dramatically alter the ability of manufacturers (or retailers) to display product photos and descriptive information. While web pages allow unlimited size through the use of scrolling, most consumers do not scroll through longer pages.

2. Similarly, requiring the image only “on each web page that contains a detailed description of the covered product and its price” would significantly reduce the readability and usability of these pages.
3. Today Whirlpool Corporation brands websites allow access to the tags under a tab which also includes access to Use & Care Guides, installation instructions and other literature. This allows full-scale display of the entire tag. We are unaware of any consumer failure to access the tag in this fashion.
4. We do concur with continuation of the current practice of abbreviated text disclosure in printed catalogs.

E. Ceiling Fan Labels

Whirlpool does not manufacture this product, so has no comment

F. Clothes Washer Capacity

If the suggestion above of dropping the paper label and replacing it with an on-line database is adopted, this point becomes moot. Disclosure of capacity would add further clutter to the tag and increase the opportunity for consumer confusion. Capacity is regularly disclosed in manufacturer literature (printed and on-line), retailer point-of-purchase material and the Energy Star website (where appropriate). We do not see a need to disclose it yet again. As the FTC is aware, in May 2011 virtually all manufacturers voluntarily agreed to use only the DOE capacity measurement in consumer communications. We are unaware of any misuse of capacity in determining energy (or water) efficiency since that time. This proposal is attempting to solve a problem which does not exist.

We find the draft language for §305.20 (b)(C) to be confusing:

1. The title. “Clothes washers and dishwashers” suggests that the capacity measurement which follows is relevant to both products. Obviously, that is not the case for dishwashers. Please clarify.
2. The dishwasher cost is based on 215 cycles per year, which is similar to the “4 washloads a week” cited.
3. In 2015 the clothes washer standard will be moving from 392 loads per year (similar to the 8 washloads per week in the draft language), to 295 loads per year which is significantly different. We suggest the language be updated to reflect the 2015 regulation.
4. The 2012 DOE price for electricity is 11.84 cents per kWh and \$1.059 per therm. We suggest this be more accurately reflected in the language.

G. QR Codes on EnergyGuide Labels

If the suggestion above of dropping the paper label and replacing it with an on-line database is adopted, this point becomes moot. We do not believe that consumers find data on greenhouse gases and/or full fuel cycles to be relevant to their purchase decision. We believe this proposal would only add clutter to the tag and increase the opportunity for consumer confusion. Further, we do not find value in directing consumers to a common website rather than a brand-specific website. Finally, were this to be implemented it would add cost both to calculate any data for FTC and for the printing of EnergyGuide tags.

H. Definitions of Refrigerators and Refrigerator-Freezers

We strongly support using the DOE definitions.

I. Clarification of Prohibited Acts Provision

We support and concur with this clarification.

J. Amended Rule Title

We support the shorter title.

Additional Comment

Over the next few years DOE is transitioning to several new test procedures (2014, refrigerators, room air conditioners; 2015 clothes washers). The current language does not allow for the EnergyGuide tag to distinguish between a product tested under the old test procedure and one tested under the new test procedure. The results for the same exact product will be different when different test procedures are utilized. We urge the FTC to adopt a transition method for these products which is similar to that used for clothes washers in 2004 when the J-1 test procedure was introduced. In that case, a reverse-printed black bar at the top of the EnergyGuide tag indicated to consumers that the new product was tested under a new test procedure which was not comparable to the old procedure. This allowed consumers to compare like tags while not comparing unlike tags. Given the large number of models a manufacturer such as Whirlpool must test and certify, a significant transition period is required. Time is also necessary for retailers to update displays and signage on their floors. We recommend that the 2004 process be put in place at least six months prior to each test procedure transition and remain in place for 12 months thereafter. Finally, 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.

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