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Submitted by E-Mail

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

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Re: AHAM Supplemental Comments;  
Appliance Labeling Amendments; Matter No. R611004

Dear Mr. Newsome:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following supplemental 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). These supplemental comments address refrigerator/freezers that are equipped with the option to install an automatic icemaker (“icemaker ready models” or “kitable models”).

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.

A kitable/icemaker ready model is a refrigerator/freezer that leaves the manufacturer's warehouse without an icemaker, but in which an icemaker could later be installed.<sup>1</sup> As we have previously described, the icemaker could be installed at several points in the distribution chain, including by the retailer or the end user. In addition, as the Department of Energy (DOE) has recognized, it is not always the case that only the same manufacturer's ice maker need be installed—another manufacturer's icemaker may be compatible. (See 77 Fed. Reg. 3559, 3568 (Jan. 25, 2012)).

As we noted in our comments dated May 16, 2012, the new refrigerator-freezer test procedure will account for icemaking energy via a constant adder of 84 kWh per year. Because of this change, an issue arises for icemaker ready models. DOE has decided that those models must be certified as two separate models (i.e., with an automatic icemaker and without an automatic icemaker) because a consumer may purchase either version. As AHAM previously commented, we strongly urge the Commission not to follow that approach with regard to labeling icemaker ready models. Specific issues such an approach would create include:

- We understand from DOE that it may have been contemplated that the value reported on the EnergyGuide label for kitable models would depend on how the unit is sold. That approach is nearly impossible to carry out in practice because manufacturers treat kitable models as one model. In addition, an icemaker can be added to a kitable model at different times, and so it would be impossible to know which label to include. For example, the icemaker could be added by the retailer at the point of sale or by the consumer after purchasing the refrigerator/freezer. Given the many different times at which the icemaker could be added, which label would be required to be put on the product, at which time, and under which circumstance?
- If the Commission were to follow DOE's approach, the consumer will not always get the claimed energy or better. For example, a consumer who purchases a kitable model without the icemaker installed and then later decides to install the icemaker would not be aware of the exact amount of added energy use.
- As far as AHAM is aware, all manufacturers assign kitable models with one model number and treat them as a single model. It is unclear from DOE's final rule if, in order to certify products, manufacturers would need to create two model numbers for kitable units. AHAM opposes that approach because it would mean that manufacturers would need to overhaul their model numbering schemes, which is impossible given that when these models leave the warehouse, they do so in the same way every time—without the icemaker. (We are currently requesting guidance from DOE on this issue.)

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<sup>1</sup> Note this clarification from earlier comments and DOE's discussion in the Test Procedure Final Rule, 77 Fed. Reg. 3559, 3568 (Jan. 25, 2012), which indicated that kitable models could leave the factory with or without an icemaker. We clarify that manufacturers only consider a model to be "kitable" or "icemaker ready" if it leaves the factory without the icemaker.

- Because manufacturers necessarily assign icemaker ready models one model number, DOE's approach, if extended to the EnergyGuide label, will create confusion among manufacturers and consumers. Consumers could see the same model on the floor with different energy claims and different estimated yearly operating costs.

Given these problems, AHAM previously proposed that the Commission treat icemaker ready models as units with icemakers in all cases. In other words, we proposed that the Commission require only one EnergyGuide label for kitable models and that label should report the energy use, yearly estimated operating cost, and other relevant information as though the product has an icemaker.

After further consideration, we still propose that the Commission require only one EnergyGuide label for icemaker ready models. But we now propose that the value on the label be the energy use without the icemaker, at least for the duration of time that the icemaker adder of 84 kWh is in place. This approach makes better sense because when the icemaker ready model leaves the manufacturer's factory, it does not have an icemaker and may never get one. The consumer should, however, know of the consequences of later adding an icemaker and, if the retailer has already installed one, should know what the energy consumption of that unit is likely to be with the icemaker. Thus, we propose that in addition to the annual operating cost to operate the unit without the icemaker, the Commission require a statement on the label indicating what energy use will be if an icemaker is installed: "With an icemaker, estimated yearly electricity use is estimated to increase by 84 kWh/year, which adds \$ 9 to the estimated yearly operating cost." This statement could be placed in the bulleted list of statements at the bottom of the label or in another location the Commission deems appropriate. Because icemaker energy under the test procedure will be a uniform adder, this statement would be the same on every icemaker ready unit. Like our previous proposal, this approach represents a bright line rule that is easy to apply and enforce. It is also the clearest and most accurate approach because one model number will have one energy label, and, unlike our previous proposal, consumers will be able to see the energy use that corresponds to how they purchase the product and will understand the energy consequences of later installing an icemaker should they choose to do so.

Together with energy efficiency advocates, AHAM has submitted to DOE a test procedure for measuring ice maker energy use. We expect that DOE will soon open a rulemaking to propose and finalize that test procedure and that compliance with that test procedure will be required in the next few years. As we have discussed with the Commission, that will also likely result in a standards change (a crosswalk to ensure that the stringency of the standard does not change). At that time, we have proposed in comments dated July 16, 2012, and September 11, 2012, that the "blue label" would go back to black text. We would also anticipate that labeling of icemaker ready units will need to be reconsidered at that time. Once icemaker energy is measured, there will be additional issues that arise. For example, it is possible that more than one icemaker could be installed into the same icemaker ready model, and thus, it may be difficult or impossible for the manufacturer to predict the exact energy use of the icemaker for an icemaker ready model. We expect to address this and other issues with DOE during the test procedure rulemaking and will make a labeling proposal to FTC depending on the resolution of those issues.

AHAM appreciates the opportunity to submit these supplemental comments on the FTC's Notice of Proposed Rulemaking on Appliance Labeling Amendments, and we would be glad to further discuss this matter should you request. We respectfully request that the FTC place these comments on the public record and address them in the current rulemaking as time is of the essence regarding AHAM's proposal.

Respectfully Submitted,

  
Jennifer Cleary  
Director, Regulatory Affairs