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January 11, 2016

Via Online Comment Portal

Mr. Hampton Newsome
Attorney
Division of Enforcement, Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, D.C. 20580

Re: Energy Labeling Amendments (16 CFR Part 305) (Project No. R611004)

Dear Mr. Newsome:

Thank you for the opportunity to comment on the proposed Federal Trade Commission (FTC) Energy Labeling Amendments (16 CFR Part 305) (Project No. R611004), found at 80 Fed. Reg. 67351, published November 2, 2015.

Whirlpool Corporation (Whirlpool) is the number one major appliance manufacturer in the world, with approximately \$20 billion in annual sales, 100,000 employees and 70 manufacturing and technology research centers throughout the world in 2014. The company markets Whirlpool, KitchenAid, Maytag, Consul, Brastemp, Amana, Bauknecht, Jenn-Air, Indesit and other major brand names in more than 170 countries. Additional information about the company can be found at WhirlpoolCorp.com, or find us on Twitter at @WhirlpoolCorp.

As a very active member of the Association of Home Appliance Manufacturers (AHAM), Whirlpool has worked closely with them in the development of the comments they submitted (under separate cover) on these proposed amendments. **Please be advised that we support and echo the positions taken by AHAM. Detailed on the following pages are our comments, which emphasize certain AHAM positions and supplement other positions, particularly on the implications of these amendments on ENERGY STAR logo use, additional burdens imposed by the amendments that are not addressed in AHAM comments, suggestions for less burdensome alternatives to FTC's proposal, and the proposed compliance period for the new refrigerator EnergyGuide label.**

Undue Burden on Manufacturers

As mentioned above, we have worked with AHAM on the development of their comments, and support their positions taken, particularly that we strongly oppose FTC's proposal to require manufacturers and private labelers to submit links to their EnergyGuide labels through the Department of Energy's (DOE) Compliance Certification Management System (CCMS) reports. Aside from the discussion of FTC's questionable legal authority for this proposal, which is addressed in detail within AHAM's comments, we would like to emphasize the burden that this proposal would impose on a large appliance manufacturer.

As the largest appliance manufacturer, that distributes in commerce thousands of models across several categories requiring EnergyGuide labels, we do not agree with FTC's assertion that this proposal would not create undue burden on manufacturers. As AHAM mentioned in their comments, there are a number of different groups working together in a lengthy, yet organized, product launch process. Within the process, these interdependent groups work together ensure that models reach market by a target date. Any delay in that process, whether it is a day or a couple weeks, is a significant business disruption that could jeopardize a manufacturer's market position and result in a financial loss for the manufacturer. This is particularly problematic for models with already tight project launch timelines.

What FTC's proposal would do is require that we reverse our current process to hold off on marketing activities like creating webpages for individual models and uploading EnergyGuide labels online, until after we can confirm that certifications were accepted by DOE. We would now have to ensure that the marketing activity of uploading an EnergyGuide label to our website occurs before we can go ahead and send in a certification, because we need to have a link ready before we can complete the CCMS report. For Whirlpool, this would mean that the group that handles certifications is now dependent on the marketing group to upload EnergyGuide labels before a model can be certified to DOE, and we can begin the next phase of the product launch process. Any delay in the marketing group uploading the EnergyGuide labels online would delay the certification and thus push the entire project timeline back, which as we mentioned, can be a major business disruption.

Our certification group would also now be required to coordinate with the marketing functions of any private labelers to ensure that the private labeler uploaded the EnergyGuide label to their website and get that URL link, before they go ahead and certify any models that we manufacturer and certify for private labelers. So not only is there additional coordination needed among different functions within a company, but there is now this additional coordination needed between different functions at different companies.

Implications for ENERGY STAR Logo Use on EnergyGuide Labels

This FTC proposal would require that manufacturers misuse the ENERGY STAR logo on their EnergyGuide labels for models that are not yet certified to ENERGY STAR, which constitutes an ENERGY STAR labeling violation. Manufacturers would publicly display an ENERGY STAR logo on the EnergyGuide labels of models that have been designed and tested to meet ENERGY STAR, but have not yet been certified through a Certification Body as meeting ENERGY STAR requirements and thus allowed to use the ENERGY STAR mark in a manner consistent with ENERGY STAR labeling guidelines. Manufacturers should not have to choose whether to be compliant with this FTC proposal to upload an EnergyGuide before a model is certified to ENERGY STAR, or commit an ENERGY STAR labeling violation.

Suggestions for Less Burdensome Alternatives

While we strongly oppose the proposal put forth by FTC, we would still like to offer suggestions to FTC in the event that they continue with this proposal, despite strong industry alignment against it. First, Whirlpool believes that manufacturers should be given flexibility in how they can meet the proposed requirement to submit links to their EnergyGuide labels through the CCMS reports. Manufacturers should be able to choose between the proposal to upload EnergyGuides on their webages before they certify and an alternative path towards compliance, depending on which path they view is the least burdensome and disruptive option for them. This alternative path would still meet the intent behind FTC's proposal to make it easier for consumers and retailers to locate EnergyGuide labels online.

In addition to the option of submitting URL links to EnergyGuide labels in the CCMS report, manufacturers should also have the option to provide a link to an online public database maintained by

the manufacturer that houses all EnergyGuide labels and is searchable by model number. For example, Whirlpool has a cross-brand manuals and literature database that houses all documents associated with a given model, including EnergyGuide tags (see www.whirlpool.com/manuals/). For a consumer or retailer that is interested enough in searching the DOE CCMS database to locate an EnergyGuide tag for a certain model, they would be able to copy that model number into our database containing EnergyGuide labels and quickly locate not only that label, but all the other relevant documents that they may be interested in, including installation instructions, use and care guides, product dimensions, etc. In that respect, this alternative option to meet the requirement could be even more beneficial for consumers and retailers, as they become aware of this cross-brand manual and literature database maintained by the manufacturer, so they don't have to search elsewhere for these documents that they may also be trying to locate.

Second, Whirlpool believes that FTC should grandfather in the countless existing models that are currently in the CCMS database and only make this requirement effective for models certified after a certain future date. For a large manufacturer like Whirlpool, it would take many man-hours to retrieve those EnergyGuide labels for thousands of models in distribution in commerce, and then send in corrections to existing certification reports with the links included. If FTC insists that all models certified before the rule becomes effective have a link to the EnergyGuide label, Whirlpool would propose that, as a compromise, we provide the link to our manuals and literature database for those models.

90-Day Lead-in Time for Refrigerator Label

As AHAM mentioned in their comments, the 90 day lead-in to comply with the updated refrigerator labels is much too tight a timeframe, as there are many activities that a manufacturer would have to accomplish between final rule and effective date, and we realistically could not accomplish them without disrupting existing business priorities to narrowly focus on compliance with this new label.

After the rule is effective, we would have to design new label templates for hundreds of models currently being manufactured, get quotes from suppliers to print the new tags, sign contracts/agreement with suppliers that will print the new tags, update the website for hundreds of models by uploading these new labels to the website, potentially updating certification reports with the new URL links to these templates, and coordinate with OEMs and private labelers.

Without abandoning existing business priorities to focus on compliance for this, we do not think that 90 days is a reasonable compliance period. We would recommend six to twelve months as a more appropriate compliance period.

Thank you again for your consideration and we look forward to continued discussion. As always, please do not hesitate to ask us for any clarifications on these comments.

Sincerely,



Sean Southard
Senior Analyst, Regulatory Affairs