ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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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

https://ftcpublic.commentworks.com/ftc/energylabeling

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

Dear Mr. Newsome:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Federal Trade Commission (FTC or Commission) on its proposed Energy Labeling Amendments, (16 CFR Part 305) (Project No. R611004), 80 Fed. Reg. 67351 (Nov. 2 2015).

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.

AHAM supports the FTC and Department of Energy (DOE) in efforts to save energy and help consumers make purchase decisions that are informed by energy use and efficiency. We recognize that an integral part of the appliance program is appliance labeling, but it is critical that FTC not unnecessarily increase the compliance burden on manufacturers, particularly where the burden is not balanced by a demonstrable benefit to consumers.

## I. Online Label Database

FTC proposed to require manufacturers and private labelers to submit links to their EnergyGuide labels through their Compliance Certification Management System (CCMS) report. FTC does not believe the proposal will create undue burden on manufacturers because 1) DOE and FTC require manufacturers to submit annual reports through CCMS; and 2) manufacturers must display their labels online. Accordingly, FTC believes the inclusion of links in those reports will simply require manufacturers to add a link on CCMS and delete links when removing or replacing the corresponding web pages. AHAM previously commented that this proposal may run afoul of DOE certification requirements, but FTC indicated that because the proposed rule requires manufacturers to submit the label links prior to distributing the products in commerce, it was unclear how that would occur. FTC sought comment on the proposal, including comments clarifying how the proposal would run afoul of DOE certification requirements.

AHAM continues to strongly oppose FTC's proposal to require manufacturers and private labelers to submit links to their EnergyGuide labels through their CCMS report. For the reasons described in our previous comments and below, the proposal will increase manufacturer burden and provide little, if any, benefit to consumers and retailers who are unlikely to reference CCMS. Even if the proposal were justified, AHAM questions whether FTC has the authority to add to the reporting requirements DOE requires.

The Commission indicated that its proposed requirement "stems from EPCA's mandate that manufacturers 'provide' a label, the Commission's general authority to require manufacturers to submit information, and the Commission's authority to specify the manner in which labels are displayed. 42 U.S.C. 6296 (a) & (b); 42 U.S.C. 6294(c)(3)." But nowhere does EPCA give the Commission authority to determine what DOE's report must include which is essentially what FTC is proposing to do. Although the Commission issued amendments in 2013 to streamline data reporting by permitting manufacturers to demonstrate compliance with FTC's reporting requirements by filing their annual report on CCMS, that rulemaking did not merge the DOE and FTC reporting requirements themselves. DOE is the agency with authority to require reporting on CCMS and, accordingly, changes made to those reporting requirements must be done through a DOE rulemaking.

AHAM strongly supports DOE and FTC's efforts to streamline data reporting of the same data and continues to encourage the agencies to work together so that manufacturers can file one report with the Federal government. Annual reporting is burdensome and any effort to minimize that burden is appreciated. But AHAM does not believe it is appropriate for FTC to impose additional reporting requirements without a full certification, compliance, and enforcement rulemaking by DOE that can fully evaluate whether the provision of the information will conflict with any DOE's requirements and can address the enforcement implications associated with the proposal. AHAM opposes a requirement to include links to online labels in the CCMS requirement and believes that the best course of action is for FTC to abandon this proposal. But, should FTC move forward over AHAM's objection, it should do so in coordination with DOE through a DOE rulemaking.

Aside from questions of legal authority, the Commission's proposal is flawed from a practical perspective and, as we commented in our earlier comments and clarify here, AHAM believes the proposal contradicts DOE's requirements.

Each manufacturer must, before distributing in commerce any basic model of a covered product or covered equipment subject to an applicable energy conservation standard, and annually thereafter, submit a certification report to DOE certifying that the basic model meets the applicable energy conservation standards. *See* 10 C.FR. 429.12(a). EPCA defines "distribute in commerce" as "to sell in commerce, to import, to introduce or deliver for introduction into commerce, or to hold for sale or distribution after introduction into commerce." 42 U.S.C. 6291(16). DOE does not have a definition of "distribute in commerce," but it has adopted a number of factors it will consider to determine if a product has been distributed in commerce including, whether units have been included in marketing material made available to the public (e.g., on websites or in catalogs); whether the manufacturer has distributed marketing material that includes a claim or statements regarding the product's efficiency; whether a unit has been shown at a trade show. *See, e.g.,* 76 Fed. Reg. 12422, at 12426-27 (Mar. 7, 2011).

AHAM's concern that FTC's proposal to require links to EnergyGuide labels in the certification report conflicts with DOE's requirements stems from DOE's interpretation of "distribute in commerce," which includes making marketing material and energy efficiency claims available publicly prior to certification. Companies have developed processes to ensure that energy labeling, including the development and uploading of the EnergyGuide label on a website for retailer and/or consumer access, occurs only *after* a basic model has been certified. Penalties for distributing a product in commerce before certification are substantial and, accordingly, companies are loathe to risk a determination by DOE that the product has been distributed in commerce prior to certification.[1] Thus, companies do not upload EnergyGuide labels to websites until *after* certification is complete. This concern that FTC's proposed requirement to require a link to the EnergyGuide label in the CCMS report could cause conflicts with DOE's interpretation of "distribute in commerce," is another reason why, if pursued, this proposal should be done through DOE rulemaking, not these proposed amendments to the Energy Labeling Rule. Better yet, FTC should simply abandon this proposal which offers little, if any, utility to consumers who rarely, if ever, reference CCMS or to retailers, who already have easy access to labels online.

In addition to AHAM's concerns regarding FTC's authority to require an additional element in the CCMS report and the potential conflict between the proposal and DOE's requirements, FTC's proposal is burdensome and difficult from a practical perspective for a number of reasons:

- As discussed above, processes are in place to ensure websites are not created until *after* certification, meaning that a link would not yet be available in most cases at the time of

[1] *See* DOE, Civil Penalties for Energy Conservation Standards Program Violations—Policy Statement, at 3 (Issued May 7, 2010, Revised March 13, 2014) ("Generally, the Department seeks the maximum civil penalty against manufacturers and private labelers that knowingly distribute in commerce products or equipment that violate the federal energy or water conservation standards.").

certification. To require manufacturers to later update certification reports when those links become available would create substantial burden.

- Currently, manufacturers' understanding of DOE's interpretation of "distribute in commerce" drives early certification in some cases. For example, a research and development model may be certified but never labeled because the manufacturer wants to show it at a trade show to test or generate interest before the manufacturer is ready to sell that model. In such cases, no EnergyGuide label would be developed at the time of certification. Manufacturers understand the label to be required only when the product is ready to be sold. These timing differences will often make it difficult or impossible to provide a link to the online EnergyGuide label at the time of certification. And, as mentioned above, later revising a certification report after a label is available will add unnecessary burden.

- Different teams of people work on the activities that go into the certification and labeling of a basic model. Typically, an engineering team (Team 1) will complete the testing phase, which includes product testing and data analysis that feeds into the label. That same team will complete the certification, which involves populating the form with data collected from a variety of sources and filing with DOE and relevant state agencies. But a second team (Team 2) is often responsible for designing the label template and ensuring the label is printed either internally or through a third-party vendor. That process can be lengthy, particularly if several quotes need to be sought from third parties. A third team (Team 3) uploads the label online for retailers and on company websites as part of the marketing activities. These three teams do not often work together, yet their work may be ongoing at the same time and/or dependent on another team completing its tasks. For example, Team 2 may be developing the label at the same time Team 1 is completing the certification report. And Team 3 does not typically begin its work until after Team 1 and Team 2 have completed the certification and label development. This process is detailed graphically in Exhibit A for clarity.

- Websites are not static—they change frequently. And the teams making the changes to the website are unlikely to notify the teams of people responsible for updating certifications. Even if they did notify the certification team, it would be burdensome to require companies to update their certifications every time the website for an EnergyGuide label changed. This is of particular concern because there are legal obligations associated with the information provided in a manufacturer's certification report and penalties for not meeting those obligations. Accordingly, AHAM is concerned that if the links provided in the report become outdated, manufacturers could be at risk of receiving a warning letter from or be subject to other enforcement action by DOE.

- For some product launches, such as those that are additions to existing platforms, there are quick timelines to get to market. For those launches, the testing, label development, and certification phase may only last a couple of weeks (as opposed to months for longer product launches). In that case, a delay of even a day can mean that the product will not launch on time. Delays of a couple of days are likely if FTC requires links to labels in

the CCMS report because Team 1 will have to wait for Teams 2 and 3 to complete their work before the certification can be filed.

- Developing a website containing the EnergyGuide label prior to certification so that the link can be included in the certification report means that companies will potentially be giving away competitive information—capacity and energy efficiency—a couple of weeks earlier than necessary.

- FTC and DOE have different requirements regarding the scope of the annual report. FTC requires only that models produced in the past year be included and online labels must only be made available for six months after production ceases. DOE, on the other hand, requires that models available for sale be included in the CCMS annual report.[2] This means that EnergyGuide labels are not likely to be available for all products on the CCMS database.

For all of the reasons discussed above, AHAM strongly opposes FTC's proposal to require manufacturers to include links to EnergyGuide labels in the CCMS report. The proposal is fraught with problems from a practical perspective and may conflict with DOE's requirements, FTC's authority to finalize the proposal is questionable, and the benefit to consumers and retailers is non-existent. Accordingly, AHAM urges the Commission to abandon this proposal.

## II. Consolidated Refrigerator Ranges

The Commission proposed to amend the refrigerator label to include two range groups: one grouped by applicable model subcategory (e.g., door configuration) and the other covering all refrigerators. Consistent with the existing rule, both subcategories would include separate ranges organized by capacity.

AHAM continues to oppose adding a consolidated range to the refrigerator label, particularly because, as we have previously commented, some of the data upon which FTC relies is questionable at best. For example, FTC relies upon a survey of EarthJustice members which clearly comes from a biased sample of respondents that may have a better understanding of energy consumption that the average consumer. In addition, FTC has done nothing to demonstrate that consumers will understand the proposed label or that adding the consolidated range will assist consumers in making their purchasing decision. Before implementing a change like this, FTC should have such data and provide it to stakeholders for comment.

If, however, FTC decides to include consolidated ranges on the refrigerator EnergyGuide label over AHAM's objection, AHAM would prefer the Commission's most recent proposal for a hybrid approach that includes a range grouped by model subcategory and the consolidated range.

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[2] For further detail, we incorporate by reference and include as Exhibit B, AHAM's comments on DOE's Regulatory Burden RFI dated July 17, 2015. Those comments indicate that DOE should harmonize the scope of its report with FTC's narrower scope.

It is essential that FTC preserve the opportunity for consumers to compare products of similar configuration and features and the proposal to include two ranges on the label does that.

FTC proposed to include the wording, "all models" next to the consolidated range on the label. That may be somewhat misleading because the range appropriately includes only models of similar capacity. Accordingly, AHAM suggests that the Commission change that language to reflect that the range compares all models of similar capacity.

FTC also proposed updated ranges based on new model data from the DOE database, including a new range reflecting consolidated range data for all refrigerators. AHAM does not oppose that change. We note, however, that now that companies have had experience printing the transitional labels for refrigerators and clothes washers, AHAM has heard some reports that the amount of black ink on the transitional label is causing difficulties. Specifically, the transitional labels use a lot of ink and, because that ink takes a long time to dry, some are experiencing increased printer jams. Accordingly, AHAM suggests that, at the same time FTC requires implementation of any new label for refrigerators (and, eventually, clothes washers) it also provide a slightly revised version of the transition label that uses less black ink, but retains the yellow numbers. We suggest this slight revision because we recognize that both the Commission and AHAM put an extensive amount of work into designing the existing transition label and developing the language to be clear for consumers. We do not wish to redo or negate that work. We seek simply to reduce some of the problems some companies are experiencing with printing the label.

The Commission plans to provide manufacturers with 90 days after the final amendments to comply with the updated labels. It takes time to change to a new format when the changes are as significant as what FTC is proposing. Accordingly, 90 days is not enough for a change of this scale. AHAM expects that members will provide more detail in individual written comments regarding the activities in which they each need to engage to implement this change. But companies agree that six months to a year would provide them the time they need to complete the transition.

## III. Portable Air Conditioners

The Commission proposed to require portable air conditioner (PAC) labels after DOE completes its test procedure rulemaking—i.e., prior to the compliance date of energy conservation standards for portable air conditioners. The Commission found that labeling this product category will assist consumers in their purchasing decisions and will be economically and technologically feasible. The proposed label would include ranges of comparability, which the Commission would publish after data becomes available. FTC will make its final determination once DOE finalizes the test procedure, based on comments received in this rulemaking. FTC will provide manufacturers with time to test their products and report energy data before labeling begins. After the data is available, FTC will publish ranges of comparability as well as a compliance data for the new labels.

Although AHAM does not oppose the Commission's proposal to require EnergyGuide labels for PACs, AHAM strongly opposes the Commission's proposal to do so prior to the compliance date

of an energy conservation standard. Recognizing that it takes considerable effort to design products to meet an energy conservation standard, especially a new standard, EPCA provides manufacturers with a five year lead-in period to new energy conservation standards. *See* 42 U.S.C. 6295(I). The pre-development, development, and tooling phases of launching a new product take years to complete and require extensive company resources. And, as the Commission and DOE are well aware, bringing a product to market requires more than just development. Companies must also ensure that the products it will release meet the applicable standard and must certify compliance with DOE and, if applicable, include an EnergyGuide label. As described in Section I and Exhibit A, there are a multitude of company resources and a significant amount of time and coordination that go into these activities.

The Commission's proposal to require EnergyGuide labeling for PACs prior to the compliance date of a new energy conservation standard will require companies to divert resources from developing new, more efficient products to labeling. It will also be much more burdensome than FTC staff estimated in its paperwork reduction act analysis. In order to comply with FTC's proposal, manufacturers will need to:

- Determine the list of active models, which will require coordination with sales and marketing teams, many of which are overseas. This could take weeks.

- Determine basic models—currently, products are not grouped into basic model groups based on efficiency. Accordingly, manufacturers will need to determine which models to group together for purposes of reporting. The amount of time this will take depends on the number of models a manufacturer has.

- Test their full existing line of products—products which may no longer exist upon the compliance date of the standard. FTC indicated that it believes manufacturers will test two units per basic model, and that testing would require one hour per unit tested. AHAM's experience with other product categories indicates that companies are much more likely to test a minimum of four units per basic model. And, FTC's estimate of one hour for the test is an underestimation—it likely does not include the time required to run-in the unit and to set up the unit for test. AHAM's experience, based on witnessing PAC testing at several laboratories, is that the test takes at least a day (8 hours minimum) to complete for each basic model and occupies the test chamber, thus making it unavailable for other activities. This time includes the time it takes to run-in the unit (break in the compressor) and to do the setup required in the test procedure. Depending on the number of basic models a company has, testing will take different amounts of time to complete—for some it will take several months.

- Conduct data analysis on testing to determine if the tests are valid and to determine efficiency values to report. AHAM members expect this will take about two to four hours per basic model to complete. This does not seem to have been accounted for in FTC's paperwork reduction analysis, but AHAM would include this either in the testing or reporting section of that analysis.

- Report data to FTC to develop the ranges and annually thereafter. FTC estimated the report to take two minutes per basic model. AHAM believes, however, that FTC is missing several of the elements that go into reporting. Reporting requires all of the above activities to take place. And data must be quality checked before being reported. The data entry itself, which seems to be what FTC's estimated two minutes takes into account, is the least burdensome portion of the process. It takes much longer to gather and check the information being entered into the report. AHAM members believe it is likely that each report will take a minimum of 40 hours to complete, including the data gathering and quality control.

- Label products. FTC staff estimated that it will take about six seconds per unit to affix labels. But the labeling process involves much more than the physical affixing of the label to the product. Manufacturers must design the label template and ensure the label is printed either internally or through a third-party vendor. That process can be lengthy particularly if several quotes need to be sought from third parties. In addition, manufacturers need to ensure the proper parts are on the line in order to apply the label. Organizing the labeling process is likely to take at least 40 hours in addition to the estimated six seconds it takes to physically affix the label to each unit.

- Develop consumer and retailer education materials because capacities per the DOE test procedure will be very different than existing capacities. This will likely be a large effort similar to that AHAM and its members, together with FTC and DOE, engaged in for refrigerators during the transition to amended standards. *See, e.g.*, http://coolenergysavings.org.

As discussed above, the steps in the certification and labeling process are pictured in Exhibit A. Each of these steps, as outlined in Section I and Exhibit A, requires a different team of people to complete. These teams, particularly Team 1, need to be focused on product development and testing to comply with the new energy efficiency standard and requiring them to engage in these burdensome reporting and labeling activities for a label that will be on the product for only a short period of time prior to the compliance date of a standard is unduly burdensome. Accordingly, the Commission should require EnergyGuide labels only when compliance with the energy conservation standard is required. That will allow manufacturers to engage in the extensive development and testing activities required to innovate and bring more efficient products to market.

Although FTC plans to require label content consistent with the current room air conditioner label content and format, FTC did not propose to combine ranges of comparability with RACs because it is not clear whether consumers routinely compare PACs to RACs when shopping. AHAM agrees that FTC should not combine ranges for PACs and RACs.

FTC did not propose to require labeling based on existing industry test procedures because it is concerned that, if the DOE test procedure differs significantly from industry tests, the labels would have to change and may not be comparable. AHAM agrees.

## IV. Dual Mode Refrigerator-Freezers

Consistent with AHAM's suggestion, FTC proposed that labels for convertible refrigerator-freezers report the most energy intensive configuration. The Commission sought comment on that proposal. AHAM fully supports the proposal and appreciates FTC's clarification on labeling for these products.

## V. Miscellaneous Refrigeration Products

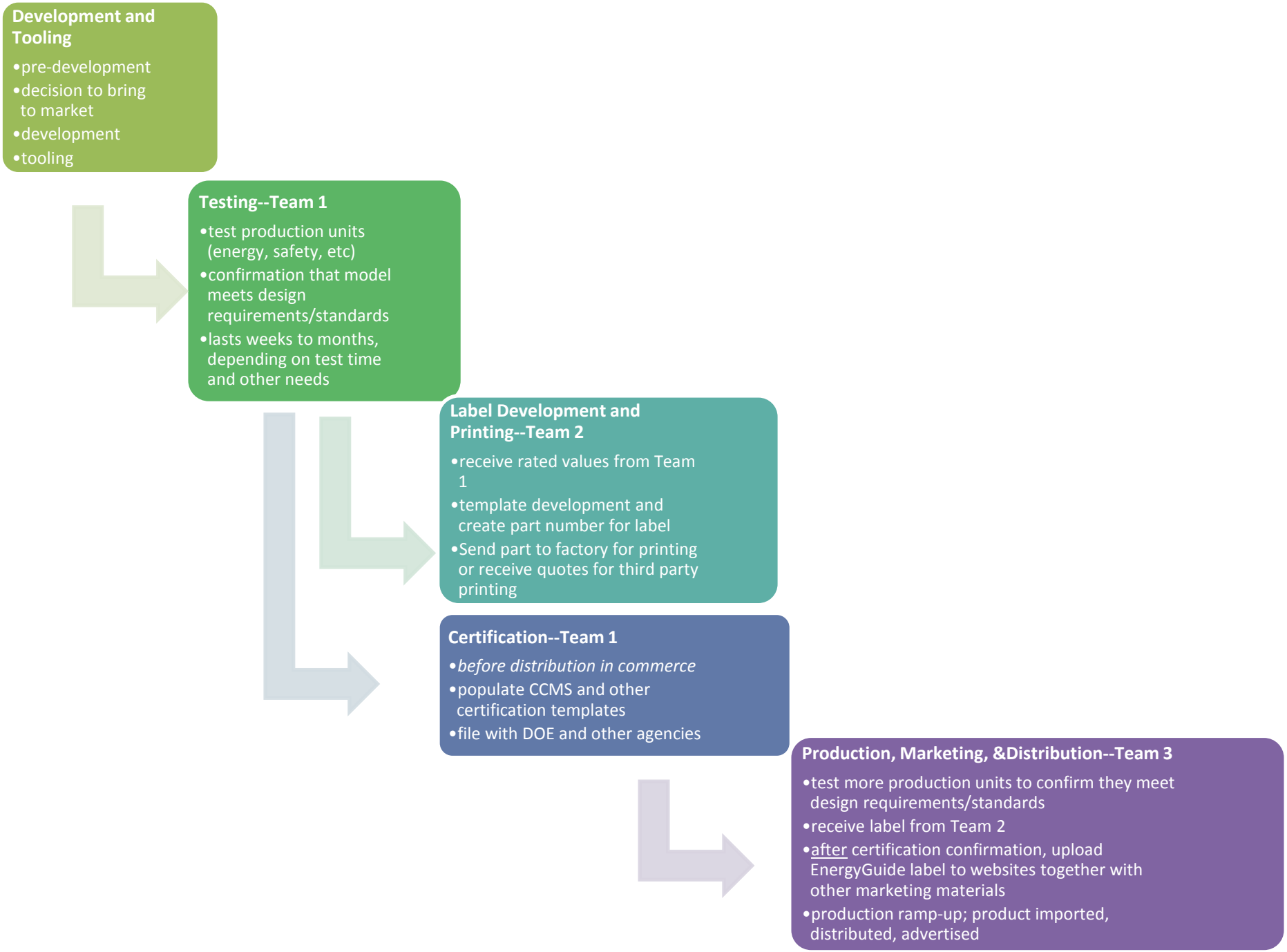
Until DOE completes its rulemakings on test procedures and energy conservation standards for miscellaneous refrigeration products, FTC does not plan to propose to propose any specific labeling requirements. AHAM agrees with FTC's decision not to require labeling until after the test procedure and standards are complete. The Commission should not require labeling until compliance with the energy conservation standards are required for the same reasons discussed above in Section III.

AHAM appreciates the opportunity to submit these comments on the Commission's proposed Energy Labeling Amendments and would be glad to discuss these matters in more detail should you so request.

Respectfully Submitted,

Jennifer Cleary
Director, Regulatory Affairs

# Exhibit A


Development and Tooling
•pre-development
•decision to bring to market
•development
•tooling
Testing--Team 1
•test production units (energy, safety, etc)
•confirmation that model meets design requirements/standards
•lasts weeks to months, depending on test time and other needs
Label Development and Printing--Team 2
•receive rated values from Team 1
•template development and create part number for label
•Send part to factory for printing or receive quotes for third party printing
Certification--Team 1
•*before distribution in commerce*
•populate CCMS and other certification templates
•file with DOE and other agencies
Production, Marketing, &Distribution--Team 3
•test more production units to confirm they meet design requirements/standards
•receive label from Team 2
•after certification confirmation, upload EnergyGuide label to websites together with other marketing materials
•production ramp-up; product imported, distributed, advertised

# Exhibit B

ASSOCIATION OF HOME APPLIANCE MANUFACTURERS

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July 17, 2015

By E-Mail

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Re: Regulatory Burden RFI

Dear Mr. Stevenson:

The Association of Home Appliance Manufacturers (AHAM) respectfully submits the following comments to the Department of Energy (DOE) on its Regulatory Burden RFI, 80 Fed. Reg. 38019 (July 2, 2015).

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.

As part of its implementation of Executive Order 13563, "Improving Regulation and Regulatory Review," issued on January 18, 2011 (Executive Order), DOE is seeking comments and information from interested parties to assist it in reviewing its existing regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed. One of the mandates in Executive Order 13563 was for agencies to weigh the benefits and costs of their regulations. In addition, agencies are to tailor regulations to impose the least burden on society, consistent with achieving regulatory objectives. DOE seeks comment from interested parties to identify rules that are most in need of review and to assist DOE in prioritizing and properly tailoring its retrospective review process. AHAM provides several suggestions in the comments that follow.

## I. Order of Rulemakings

In the recent past, and particularly in the past year, DOE has regularly been developing standards in the absence of a final test procedure. Not only is DOE developing test procedures at the same time it is evaluating potential standards, but in many cases, DOE has failed to finalize test procedures prior to proposing new or amended standards or has issued the final test procedure together with the proposed standards rule.

Minimally acceptable engineering analysis and sound policy conclusions can only be based on a known and final test procedure which government, manufacturers, and other stakeholders have had the opportunity to use in evaluating design options and proposed standard levels. 42 U.S.C. § 6295(r) requires that a new standard must include test procedures prescribed in accordance with 42 U.S.C. § 6293. This requirement is meaningless if a test procedure is not finalized in a sufficient period of time before a proposed rule is issued, much less finalized, so that the government and its contractors, manufacturers, and other stakeholders can evaluate the significance and the meaning of the possible standards. Otherwise, the resulting analysis is chaotic and based too much on speculation to be acceptable.

Surely no standard can pass the substantial evidence test if it is not based on a final test procedure, if one is required. And that test procedure must have been based on a full and useful opportunity for the public to comment on the procedure and its impact on proposed standard levels. Section 7 of the Process Improvement Rule states that DOE will attempt to identify any necessary modifications to establish test procedures when "initiating the standards development process." Further, section 7(b) states that "needed modifications to test procedures will be identified in consultation with experts and interested parties early in the screening stage of the standards development process." And section 7(c) states that "final, modified test procedures will be issued prior to the ANPR and proposed standards." The same principles apply to new test procedures and the Process Improvement Rule indicates that it also applies to development of new standards.

Not only does the practice of proceeding with standards development without a final test procedure raise concerns about the quality of DOE's analysis and make it difficult for stakeholders to meaningfully engage in the rulemaking process, but it also increases regulatory burden. In several recent rulemakings, such as those for portable air conditioner standards and conventional cooking product standards, AHAM and its members sought to provide data on the efficiency of products in the market. But without a final test procedure, it was difficult (if not impossible) to do so. Lab time is limited and best spent on activities not related to rulemaking, such as product development. Companies are not inclined to continually test their products under various versions of DOE's proposed test procedures or under existing test procedures not necessary for any current compliance or marketing need. To do so is expensive and time consuming. In some cases, AHAM has been able to obtain some test data, but not enough to be useful in a standards analysis because it would provide an incomplete and potentially inaccurate picture of the market. And, in some cases where amendments are significant or a test procedure is new, it would not match DOE's test data under the proposed test procedure, thus causing the type of confusion and chaos discussed above.

DOE can easily reduce the burden on regulated entities by following the Process Improvement Rule and finalizing test procedures far enough in advance of proposed standards such that stakeholders have sufficient time to test according to the new or revised procedure and can fully understand the impacts of any future proposed standards.

Similarly, DOE, in several recent instances, has proceeded to develop amended standards immediately before or after the compliance date of an amended standard. Specific examples of which AHAM is aware and on which we have commented include proposed standards for commercial clothes washers, residential dehumidifiers, and residential dishwashers. The result is that DOE is forced to rely on data from the most recent rulemaking and can evaluate only the few products on the market meeting the amended standard. DOE cannot properly evaluate the full range of products that will be available on the market to meet the amended standard in order to inform its analysis on the next amended standard. And industry cannot catch its breath—just as companies finish the development and implementation of a standard, they must engage in the rulemaking process for the next standard. This leaves little time to assess the success of the most recent standards and the products developed to meet them. And it diverts significant resources away from innovation. In evaluating ways to reduce regulatory burden, DOE should consider the timing of its analyses on amended standards and should ensure that enough time is provided after the compliance date of a standard to allow DOE to analyze new products on the market and to allow companies to innovate.

## II. Annual Certification Requirements

Consistent with the objectives outlined in Executive Order 13563, and as we commented in August of 2011, June of 2012, September 2012, and, again in July 2014, 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). 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)). In addition, the Federal Trade Commission (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 harmonized its annual reporting deadlines with FTC's deadlines. And FTC now permits manufacturers to comply with its annual certification requirements by submitting the required DOE annual report on CCMS. But the models that must be included in each report continue to 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 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, and, thus AHAM continues to object to DOE's broad-brush approach.

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, AHAM supported 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." AHAM argued that FTC should not revise its rules to match DOE's overly burdensome scope. And, consistent with AHAM's comments, FTC did not change the scope of its requirements to match DOE's overly broad requirements.

AHAM does believe that, ultimately, harmonization between the two agencies' reports is critical, and thus, with these comments, we continue to advocate for DOE to reevaluate the scope of products required to be included in its annual certification statement requirement and adopt the FTC approach. 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. *See, e.g.*, 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). AHAM has commented to this effect on several occasions, but DOE seems to have ignored our comments to date. In fact, on June 25, 2014, AHAM sent a letter to DOE regarding Docket No. EERE-2012-BT-TP-0016 in which we indicated that "AHAM commented in August 2011, June 2012, September 2012, and again in September 2013 in direct response to DOE's most recent proposed rule to amend the refrigerator/freezer test procedure that the 20 hour estimate is an extreme underestimation of the certification burden. . . . Although the burden varies based on each manufacturer's model mix, manufacturers have indicated that, for refrigerator/freezers, they spend the better part of the month of July filling out the annual certification form. Some manufacturers have indicated that they have dedicated staff for that function and that the certification process takes a total of 100 to 200 hours." And, on July 9, 2014, AHAM submitted comments on Docket No. EERE-2013-BT-TP-0009 stating that "[a]s we commented on June 19, 2012, September 7, 2012, and September 18, 2012, 20 hours is a gross underestimation of the certification reporting burden. In the face of several comments from AHAM to this effect, we cannot understand why DOE continues to include 20 hours as its estimate. For residential clothes washers, some manufacturers have recently indicated that certification burden is as many as 100 hours. None reported a burden under 50 hours." We incorporate by reference both our June 25, 2014 letter and July 9, 2014 comments here. This burden is largely based on the broad scope of models DOE requires to be included in its annual report. Were DOE to follow FTC's approach, the annual certification burden would dramatically decrease.

The additional models DOE seeks in the annual report are unnecessary and serve only to add significant burden and time to manufacturer compliance efforts. We thus urged 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. The FTC's final rule maintained the scope of its report and, thus, it continues to be restricted to "each basic model in current production." Federal agencies should have harmonized requirements and those requirements should not add unnecessary burden. Accordingly, DOE should harmonize its requirements. This is a change that can be made without impairing DOE's regulatory programs and will ensure that the Department is not collecting information it does not need. It will also streamline DOE's reporting requirements and achieve DOE's regulatory objectives more efficiently.

## III. Battery Charger Standards

In 2012, DOE recognized that "nationwide standards [for battery chargers] would be expected to eliminate industry burden in complying with a patchwork of state standards." Yet, three years later, DOE has yet to promulgate a Federal standard for battery chargers. In the mean time, California and other states have adopted standards effective as early as February 1, 2013. Accordingly, AHAM, both separately and together with other trade associations, commented that DOE should move swiftly to finalize the battery charger standards for product classes 2 through 4.

DOE's own analysis determined that the California standards would result in a negative net present value. Yet DOE has done nothing to ensure Federal preemption of the standard and avoid that result. In fact, DOE has ignored its statutory mandate under which it was to have published a final rule in the battery charger and external power supply rulemaking four years ago—in July 2011. DOE only issued the notice of *proposed* rulemaking in March 2012. And then in June 2012, DOE extended the comment period on that proposed rule, thus further delaying the rulemaking process. After so delaying the rulemaking, DOE then declined to adopt standards for battery chargers, instead further delaying standards for those products. To date, DOE has yet to issue a proposed rule. DOE's failure to publish a final rule has resulted in a state standard, adopted in other states as well, that DOE itself determined has a negative net present value. DOE has, thus imposed increased regulatory burden on regulated parties by permitting a patchwork of state standards, which is counter to Executive Order 13563 and DOE's own acknowledgement that a state patchwork of standards, starting with California, will create industry regulatory burden. DOE should act to eliminate this patchwork of state standards and should address the increased regulatory burden it has already caused in its analysis of any proposed standards.

AHAM appreciates the opportunity to submit these comments and would be glad to discuss this matter further should you so request.

Respectfully Submitted,

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