



Hampton Newsome
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580

November 15, 2010

Re: October 27, 2010 Petition from NEMA to Delay or Repeal FTC Lighting Labeling Rule, 75 Fed. Reg. 41696 (July 19, 2010)

On behalf of Public Citizen and Sierra Club, Earthjustice submits the following comments on the National Electrical Manufacturers Association's (NEMA's) October 27, 2010 petition to FTC regarding the light bulb labeling rule. We oppose each of the requests in that petition.

None of NEMA's objections to the labeling rule appear to be based on new developments. As discussed below, NEMA raised many of these same concerns during the comment period on the proposed rule. FTC considered NEMA's comments and, to the extent FTC thought them valid, incorporated them into the final rule. It would be arbitrary and capricious for FTC to now delay the rule based on comments the Commission previously rejected. Furthermore, delaying or voiding the rule's requirements would be detrimental to consumers, who would benefit from widespread and rapid adoption of the new labels. Finally, NEMA's suggestion that the delays and exemptions are necessary to allow for the development of LEDs and other new technologies is particularly unpersuasive. The deployment of those technologies does not depend on the rule, and NEMA can not guarantee speedier deployment in the absence of the rule.

Below, we address each of NEMA's requests one by one.

1) FTC should keep the final rule's effective date of July 2012.

As pointed out in the separate comments of Natural Resources Defense Council (NRDC), consumers need access to the information required by the new FTC light bulb labeling rule as soon as possible. This information is critically important for consumers facing the array of new lighting choices on the market, and will lead to significant energy savings. Nothing in NEMA's petition justifies delaying the labeling requirements for six additional months.

Notably, NEMA's request for a blanket six-month extension conflicts with NEMA's earlier statements on the time needed to comply with the rule. NEMA originally requested an effective date that would allow manufacturers to roll out new labels within one to two years after the rule's finalization. 75 Fed. Reg. at 41710. The rule gave manufacturers a full year and encouraged them to begin using the label before that deadline arrived. *Id.* Rather than do that, NEMA has moved the goalposts on FTC, requesting a six-month additional delay for the effective date of the *entire* rule. But NEMA has not presented any evidence, and certainly no

new evidence, demonstrating that its members are wholly unable to meet the time frame it originally suggested would be feasible with respect to at least some products. In fact, NEMA's petition indicates the opposite: "Lamp manufacturers are prepared to be fully compliant with the new labeling rules for all LED products and new halogen incandescent types ... *with no exceptions or delays.*" NEMA Petition (Oct. 27, 2010) at 4 (emphasis added).

2) FTC should not delay labeling requirements for medium-base CFLs.

The delay NEMA requests for CFLs would delay the rule beyond the two-year outer limit NEMA requested in its comments on the proposed rule, as noted above. The basis for this appears to be that the CFL market is complicated. But the fact that there are more lighting products on the market today than in the past only reinforces the importance of labeling to consumers.

This is especially true when it comes to CFLs. The basis of the new rule is that the "current labeling requirements ... are not effective for high efficiency bulbs." 75 Fed. Reg. at 41698. Specifically, consumer research showed buyers interpreted the wattage as an indicator of light output, rather than of energy use. 74 Fed. Reg. at 57952. Rather than justifying a delay, the proliferation of CFLs and other high-efficiency bulbs has exposed the urgent need for improved labels. *See id.* ("[A] wattage based approach does not work in a market that includes different high efficiency bulbs because the wattage needed to attain a particular light output can differ substantially across these technologies.").

3) FTC should not exempt any more incandescent lamps than it already has.

NEMA argues that general service incandescent lamps affected by the 2007 Energy Independence and Security Act (EISA) should be exempt from the new labeling requirements because these lamps will begin to disappear from the market within 17 to 29 months of the effective date of the rule. NEMA also argues that those incandescent reflector lamps affected by DOE efficiency standards should be exempt for similar reasons. FTC rejected both of these arguments in the final rule, and neither has become more persuasive with time.

Requiring updated labels for these lamps while they are still for sale is especially important, because they are the least efficient lamps on the market. No amount of comparative cost information on CFL labels will be useful to consumers looking only at incandescent lamps. But a label on an incandescent lamp that shows the average annual cost to operate that bulb may make consumers think twice about buying that lamp.

The requested exemptions would also undermine the rule's effort to help consumers understand the performance and energy usage of high-efficiency lighting. Consumers must be able to use the label on an incandescent as a reference point for interpreting the label on a CFL. This is particularly true of information about light appearance: If CFLs alone display such information, it will be of little use to consumers seeking to purchase lamps that approximate the color characteristics of the incandescent lamps they have traditionally bought. For this reason, we also oppose NRDC's suggestion that FTC permit manufacturers of general service incandescent lamps to opt out of providing the side/back panel information required by the labeling rule.

FTC has already considered and largely rejected exemptions for the incandescent lamps covered by EISA and DOE efficiency standards. 75 Fed. Reg. at 41699. FTC did tailor the rule to exempt those bulbs that will be phased out within six months of the effective date of the labeling rule. *Id.* In deciding that it would not grant further exemptions, FTC concluded, “[b]ecause these bulbs will remain in production for more than a year after the effective date of the final amendments, and because Congress has identified them as inefficient, applying the new labeling requirements to the bulbs will provide benefits to consumers that outweigh any additional cost to industry.” *Id.*

NEMA has presented no evidence to rebut that conclusion.

Respectfully submitted,

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