



December 28, 2009

Federal Trade Commission
Office of the Secretary, Room H-135 (Annex N)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Proposed labeling requirements for lamps, 74 Fed. Reg. 57950 (11-10-09)

We have the following comments on the above proposal.

First, the proposed rule does not satisfy the statutory mandate that the label provide such information as the Commission deems necessary "to enable consumers to select the most energy efficient lamps which meet their requirements." 42 U.S.C. 6294(a)(2)(D)(i). Without any comparative efficiency information on the label (such as the categorical label proposed by NRDC), consumers will not as a practical matter be able to identify the most energy efficient lamps which meet their requirements. Information on annual operating cost is helpful, but does not allow the consumer to determine whether the particular lamp in the package is the "most energy efficient," as required by the statute. It is not practicable for consumers to visually compare the annual operating costs on labels of separate lamp packages in a retail store, both because of the large number of different models and because a given in-store retailer is highly unlikely to carry and display every lamp model that is on the market. See, e.g., <http://www.buylighting.com/> ; <http://www.lightbulbs.com/> (showing large numbers and varieties of lamps).

The statutory requirement that the rules enable consumers to select "the most energy efficient lamps" is not altered by language added to the statute requiring FTC to consider the effectiveness of current labeling and "alternative labeling approaches that will help consumers to understand new high-efficiency lamp products and to base the purchase decision of the consumers on the most appropriate source that meets the requirements of the consumers for lighting level, light quality, lamp lifetime, and total lifecycle costs." Id. 6294(a)(2)(D)(iii). Nothing in this language purports to repeal the mandate in §6294(a)(2)(D)(i), and well-settled rules of statutory construction preclude an implied repeal. Moreover, the proposed rules do not in fact satisfy the requirement to help consumers understand new high efficiency lamp products and make informed purchase decisions based on the consumers' lighting level needs and lifecycle costs, especially because the rules do not require watt-equivalent and comparative information on the label.

Second, the proposal provides that bulk shipping containers that are meant to display lamps for retail sale can contain lamp packages that do not have labels, as long as the bulk container is labeled. (p.57967 cols 1-2). That approach violates the above-cited statutes, because it allows distribution and display of lamps in individual packages that have no energy efficiency

information at all. There is nothing in the rule to prevent a retailer or other person from taking the individual (unlabeled) packages out of the bulk container and displaying them separately. Moreover, the bulk container exemption creates a substantial risk of undermining enforcement of labeling requirements for all lamps. It will be difficult for FTC to verify or refute claims by retailers or manufacturers that an unlabeled lamp package displayed separately in a store came from a bulk container. FTC cites no reason for the bulk container exemption, and given that it violates the statute and undermines enforcement, the exemption must be deleted from the rule.

Third, FTC states that it is proposing to allow manufacturers until 2012 to submit energy data reports because the DOE standards applicable to CFLs and incandescent lamps do not take effect until then. 74 Fed. Reg. at 57,960. This rationale is arbitrary because it ignores the fact that the energy data reports serve the independent and important purpose of enabling verification of the claims manufacturers make on the product labels.

Sincerely,

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Attorney