



Department of Energy
Washington, DC 20585

February 19, 2010

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

Dear Mr. Newsome:

Subject: DOE Comments on Proposed Rulemaking for FTC Lighting Label

The Department of Energy (DOE) appreciates the opportunity to provide comments to the Federal Trade Commission (FTC) on proposed amendments to the Appliance Labeling Rule requiring new light bulb packaging disclosures. The changes that the Commission presents in the Notice of Proposed Rulemaking published on November 10, 2009, are clear and appear to meet the objectives in accordance with EISA 2007 directives. DOE generally supports the proposed changes, and agrees with the Commission's intent to provide the information about medium screw-based light bulbs in a format and context that will be more useful to consumers than the current required packaging disclosures.

Specifically, DOE would like to share some concerns and thoughts for the Commission's consideration. DOE's recent experience with introducing and managing a voluntary lighting label using similar disclosures may be useful to the Commission as it proceeds to finalize the new labeling requirements. Our comments will focus primarily on the proposed FTC Lighting Label as it relates to solid-state lighting (SSL) products and market impacts.

DOE Lighting Facts Background

In December 2008, DOE established the Lighting Facts^{CM} Program, featuring the Lighting Facts label for LED products that displays photometric performance measurements common to all general purpose lighting: lumens, efficacy, watts, correlated color temperature (CCT) and color rendering index (CRI). The Lighting Facts label for LED products promotes accuracy in LED product information, and is predicated on the need for manufacturers to report measurements according to the industry standard for testing photometric performance, IES LM-79-2008. The program grew out of concern that some LED products were not delivering on their performance claims based on independent testing conducted through the DOE CALiPER test program. Low light output and poor or inconsistent color quality were the most common shortcomings revealed by the testing. Because these are the same quality problems experienced in the early stages of CFL market introduction, DOE did not want to risk a similar outcome of slow market adoption due to wide-spread consumer dissatisfaction.

The primary target audience for the DOE Lighting Facts program is not currently the consumer, rather its audience includes manufacturers of LED products and others in the supply chain that select and specify products to sell and promote to the end consumer—retail lighting buyers, distributors, lighting professionals (eg. specifiers and designers) and utility energy efficiency program sponsors. The program engages these market actors through a partnership network supported with web-based resources (www.lightingfacts.com) and encourages them to use and request the Lighting Facts label as a primary evaluation tool for product selection. The supply chain partners also have the confidence that DOE has verified that all the products registered to use the Lighting Facts label have been tested to LM-79, and that DOE monitors and enforces the accuracy of the reported label through third-party testing.

The industry response to the program has been overwhelming in the first year, and continues to gain traction with partner and product additions. To date, more than 350 products have been submitted and approved for use of DOE's Lighting Facts label. The extensive list of more than 250 manufacturers represents a critical mass of the LED luminaire and lamp industry. Some of the largest retailers and distributors of lighting products have also joined Lighting Facts, including The Home Depot, Lowes, Costco Wholesale and Grainger. In fact, one of the best success stories is a nationwide product recall that Costco forced on a lighting manufacturer whose product was found to be out of compliance with the Lighting Facts program.

Along with successes have come the lessons learned from introducing a highly-visible program. The most important lesson became evident almost immediately after the program was introduced -- the data that manufacturers were entering on their Lighting Facts label was not credible. While there were some who were following the rules and accurately reporting valid test results on their products, there were just as many who were listing values that were completely fictitious and unsupported by any test data. DOE took immediate steps to establish a process requiring manufacturers to submit test results followed by a manual verification that the data was valid and accurate. Without such a verification component, manufacturers would make false claims with no repercussions, causing a lack of confidence and credibility in the label and program.

Areas of Concern

The Commission's objectives for the proposed the new labeling requirements for all medium screw-based lamps, including LED replacement lamps, focus on the need to better communicate general consumer guidance and representations of lighting performance in lay terminology and shift the emphasis to lumens rather than watts. We believe the disclosure information that will be required on all packaging and on the products will be helpful to the consumer in understanding what they are buying.

However, the Commission's proposed disclosures allow self-reporting by manufacturers that is unsubstantiated by any independent validation or proof of test data until they have been in the market for almost a full year. The Commission is proposing general reporting

requirements for submission of annual product test reports beginning in 2012. Even then, the Commission's list of "applicable DOE test procedures" does not include the industry standardized test procedures for LED photometric performance that measure light output, efficacy and color characteristics (IES LM-79-2008), and lumen depreciation (IES LM-80-2008). It should be noted that there is no definitive test procedure for measuring LED lifetime. The industry standardized test for lumen depreciation, LM-80, only provides a gross estimation of lifetime of the LED device as a component, but it requires further extrapolation of the test results to determine the actual lifetime. For all LED replacement lamps, these two tests offer the currently available support for the disclosures on lumens, color temperature and, to a lesser extent, lifetime. By contrast, DOE's Lighting Facts label carries the assurance that it has been independently vetted and verified according to LM-79 test data provided in advance of label use approval. Without this assurance, the program credibility is called into question and the consumer has no way to know if the information is accurate.

A related area of concern is that the Commission's proposed label name is the same name that is registered for use by the DOE—"Lighting Facts." While the FTC's proposed label format is different, it does use the "Lighting Facts" title and is proposing to use the same color scale for the CCT measurement. Having both labels available in the market will undoubtedly cause some consumer confusion over which label to trust. While it could be argued that there are enough differences in the purpose, target audiences, and content to make them distinctive, the reality is that the consumer will not know or understand the difference between the labels. The existence of both labels on consumer packaging is further complicated by the possibility that the label disclosures for the same metrics on the same products will be significantly different. Incongruent labeling will lead to distrust and undermine the whole market for LED lighting.

Recommendations

DOE respects the need for the Commission to move forward with the proposed lighting labeling requirements, and is committed to making it work for LED replacement lamp products. Keeping the issues in mind that we have raised, we believe there is a path forward for the two programs and labels that will accomplish the dual goals of providing consumer awareness about lighting attributes and the assurance that the disclosures are accurate.

To reduce potential consumer confusion related to LED lighting products, the programs will establish clear dividing lines along products, audiences, and packaging requirements. Specifically, this would include:

- The FTC mandatory disclosure labeling will be required on consumer packaging for all LED medium screw-based replacement lamps. DOE's voluntary Lighting Facts program will continue to support pin-based LED replacement lamps and all LED luminaires.

- DOE will continue to work with retail lighting buyers, specifiers, designers and utilities to encourage their need to use the DOE Lighting Facts label for all LED lighting products they consider for sale or promotion.

To reduce the potential for misuse and fraudulent claims, DOE will coordinate with the Commission on questionable practices discovered through the verification and quality assurance efforts. Specifically, this would include:

- If the Commission has concerns about specific LED replacement lamp products listed on the DOE Lighting Facts registry, the DOE will be willing share LM-79 test results for those products.
- DOE will report to the Commission any manufacturer whose product claims are determined to be inconsistent with the Lighting Facts label for all LED lamps and luminaires.

Additionally, DOE strongly recommends that the Commission add all relevant industry standardized test procedures that have been developed specifically for measuring LED performance to the list of applicable tests for the annual submission requirement. In the very least, this would include the aforementioned IES-LM 79-2008 and IES LM 80-2008.

Sincerely,

Dr. James Brodrick
Solid-State Lighting Program Manager
U.S. Department of Energy