



January 28, 2011

Re: Lamp Labeling—Effective Date Extension, P—114200, 75 Fed. Reg. 81943 (December 29, 2010).

On behalf of Public Citizen, Earthjustice submits the following comments on FTC's proposed response to the National Electrical Manufacturers Association's (NEMA's) October 27, 2010 petition regarding the light bulb labeling rule ("the Rule").

We support FTC's decisions to maintain the effective date of the Rule for CFLs and to deny the requested exemption for 40- and 60-watt incandescent bulbs. This will ensure that consumers will be able to compare the operating costs and appearance of CFLs and common incandescent bulbs for at least two years while these incandescent bulbs remain on the market.

However, we object to the proposed six-month extension for the effective date of the rule and to the proposed exemption for 75-watt incandescent bulbs. We incorporate by reference our previous comments (attached) opposing each of NEMA's requests, and we offer the following additional comments.

1) FTC's purported justifications do not support extending the Rule's compliance date by six months.

We continue to object to NEMA's request for a blanket six-month extension of the Rule. As we said in our earlier comments, the request is based on old evidence, previously rejected by FTC, and conflicts with NEMA's own prior statements that manufacturers could comply with the Rule within one to two years.

Neither of FTC's further justifications for the extension—that it will coincide with the effective date for heightened efficiency standards, and that manufacturers will be able to comply with the current effective date for LED and halogen bulbs—support granting the extension.

A delayed Rule will simply not help consumers navigate the transition to more efficient lighting as well as a Rule that takes effect on time would, regardless of the timing of federal efficiency standards covering 100-watt incandescent bulbs. The sooner consumers have access to information about estimated operating costs of other bulbs, the sooner they will be able to make better informed purchasing decisions. Moreover, because consumers often purchase multiple light bulbs at once to ensure a supply of replacements, a six-month delay is likely result in purchasing decisions that will unnecessarily waste energy and drive up consumer electric bills for years to come. Finally, rapid implementation of the Rule is especially important in light of warnings of hoarding and runs on incandescent bulbs before they become obsolete.

NEMA's admission that it does not need a blanket extension is a similarly dubious justification for granting NEMA a blanket extension. As we noted in our earlier comments, NEMA's petition indicates, "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). Yet FTC is proposing to grant NEMA a delay for all products, even those for which NEMA asserts that no delay is necessary. At a minimum, FTC should avoid delaying the application of the Rule to LED products and halogen incandescent lamps, but FTC has not shown why the proposed six-month delay is necessary for any lamps.

2) FTC's justifications for exempting 75-watt incandescent bulbs from the Rule are arbitrary and capricious

In response to NEMA's request that FTC exempt all incandescent bulbs that will not meet pending federal efficiency standards, FTC proposes to split the difference by exempting 75-watt incandescent bulbs.

FTC's primary justification for this is that 75-watt incandescent bulbs will remain on the market for just a year after the Rule takes effect. But of course that is only true if FTC first delays the effective date of the entire Rule by six months. As noted above and in our earlier comments, such a six-month delay would unnecessarily deprive consumers of valuable information and is not supported by any evidence before the agency or by the FTC's own rationalizations. Without such a delay, the Rule will be in effect for a year and a half before inefficient 75-watt bulbs are phased out.

Regardless, even if FTC does delay the effective date of the Rule by six months, consumers would still derive valuable information from labels that allow them to compare 75-watt incandescent bulbs with more efficient substitutes. In fact, FTC previously suggested that a year and a day would be sufficient time for the benefits of improved labeling to outweigh the costs of its implementation. 75 Fed. Reg. at 41699 ("Because 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.") (emphasis added). FTC's new claim that taking one day off that time period tips the balance the other way is perplexing. See 75 Fed. Reg. at 81946.

FTC suggests that because 75-watt incandescent bulbs make up less of the market than 40- and 60-watt bulbs, consumers' need for information for 75-watt incandescent bulbs is less compelling. *Id.* But this is contradicted by FTC's previous findings about the benefits consumers will derive from labeling of 75-watt and other inefficient bulbs. 75 Fed. Reg. 41699. Further, as 100-watt incandescents disappear from store shelves, many consumers' first reaction will be to reach for the next-highest wattage incandescent lamp. See 74 Fed. Reg. at 57952 (consumers use wattage as a measure of brightness). Therefore, 75-watt incandescents may see a significant temporary jump in market share. Requiring labels for 75-watt incandescents will also minimize confusion with the compliant halogen lamps being introduced for applications that formerly used 100-watt incandescents. Many of these halogen lamps may be very close in wattage to the 75-watt incandescent bulb. See 42 U.S.C. § 6295(i)(1)(A) (applying a 72-watt limit to the former 100-watt incandescent lumen range). FTC also fails to note that because 75-watt incandescent bulbs represent a comparatively small share of manufacturers' general service

lamp model offerings, redesigning their labels is likely to be proportionately inexpensive for manufacturers.

Finally, FTC should not rely on its hope that exempting 75-watt incandescent bulbs from the Rule will result in speedier labeling of CFLs, as it has no guarantee that such a tradeoff will take place.

For these reasons, as well as those stated in our earlier comments, we oppose FTC's proposal to delay the Rule at all or to exempt any incandescent bulbs from the Rule.

Respectfully submitted,

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