



October 27, 2010

Donald S. Clark, Secretary
Office of the Secretary
U.S. Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: F.T.C. Appliance Labeling Rule Amendments,
Final Rule, 75 Fed.Reg. 41696 (July 19, 2010)

Dear Mr. Clark:

The National Electrical Manufacturers Associations (NEMA), on behalf of its member companies who manufacture lamps and are subject to the amendments to the Appliance Labeling Rule adopted by the Commission and effective July 19, 2011 ("Final Rule"), petitions the Federal Trade Commission to (1) amend the effective date of the Final Rule to January 1, 2012, (2) allow an exception to that deadline for medium base compact fluorescent lamps until January 1, 2013, and (3) include an exception from the products covered by the Final Rule for (a) general service incandescent lamps that will be obsoleted by the energy conservation standards enacted by Congress in Section 321(a)(3)(A)(ii)(cc) of the Energy Independence and Security Act of 2007 (P.L. 110-140, 121 STAT. 1577), and (b) certain incandescent reflector lamps that will be obsoleted July 14, 2012 by the energy conservation standards adopted by the Secretary of Energy pursuant to a Final Rule adopted on July 14, 2009 and effective September 14, 2009. 74 Fed.Reg. 34080 (July 14, 2009). For the reasons explained below, each aspect of the relief sought are needed; otherwise NEMA and its lamp manufacturer members believe that there is a high probability of significant non-compliance by the July 19, 2011 effective date that was not intended by the Commission.

NEMA is the leading national trade association of choice for the electrical manufacturing industry. NEMA's approximately 400 member companies manufacture products used in the generation, transmission and distribution, control, and end-use of electricity. These products are used in utility, medical imaging, industrial, commercial, institutional, and residential applications, and include lighting systems components and products, including incandescent, fluorescent, incandescent reflector lamps, and solid state lighting. NEMA's lamp manufacturers make and sell a substantial majority of the general service lamps sold in the United States that are affected by the Final Rule.

BACKGROUND

Much of the information presented herein is derived from assessments undertaken by lamp manufacturers after the Final Rule was published, when they evaluated the resources, both financial and human, as well as the engineering and supply-chain logistical challenges to comply with the Final Rule. This information was not part of the record before the Federal Trade Commission when it made its decision setting a one-year effective date for compliance. In the Final Rule, the Commission noted when the Appliance Labeling Rule was first adopted for lamps in 1994, the lamp industry was able to comply without any discernible problem within a one-year period following publication of that rule. 75 Fed.Reg. at 41710. The unstated assumption underlying that observation and the Commission's belief that a one-year period should be "adequate time to redesign labels and packaging," *id.*, is that the lamp industry today is substantially the same lamp industry that existed in 1994. With this petition, NEMA hopes the Commission will appreciate that this assumption is not well-founded and needs to be revisited.

In 1994, the lamp industry's product mix was not terribly different than it had been for most of the 20th century. The every-day residential light sources at that time were "A-line" general service incandescent lamps and incandescent reflector lamps. There were only a very small number of medium-screw base compact fluorescent lamps (CFL) on the market in 1994, which represented a very tiny percentage (< 1%) of general service lighting applications for homes. Most CFL product available then was a pin-based product used in commercial applications and not subject to the FTC's Appliance Labeling Rule. General service screw-based advanced halogen incandescent lamp products and solid state lamp products were not part of the marketplace at that time.

Today, 1994's bread and butter general service incandescent and incandescent reflector products will shortly be obsoleted and eliminated from the market by the energy conservation standards enacted by Congress in 2007 and by the Secretary of Energy in 2009. The residential lighting marketplace and the mix of products available, in part spurred by a combination of public incentives and regulatory standards, has been transformed and is being transformed in a way that has brought, and is now bringing, a much larger number of general service lamp products to residential consumers than previously existed, and certainly much larger than what existed in 1994. For example, a full-line lighting manufacturer can have as many as 3500 product identification codes that will have to be addressed to comply with the Final Rule.¹ In contrast, the number of product identification codes that were impacted by the 1994 Rule for a full-line manufacturer was approximately 1500 at most. For a full-line lamp manufacturer, approximately 25% of these packaging types are incandescent or halogen lighting products that will be obsoleted; at least as many of the affected packages now contain integral CFL (CFLi) product, which have captured almost 20% of the general service

¹ This number is not a reference to the number of different types of lamp products impacted by the Final Rule. It is a reference to the number of different types of packaging styles and configurations effected by the Final Rule.

residential lighting market. The remainder are newer technology products that have been introduced to the market in recent years.

The other significant development that has taken place in recent years is the lengthening supply chain to United States retail shelves. In large part, this reflects the inroads that CFL*i* product has made in the residential lighting market. Almost all of the CFL*i* product is sourced from Asia and packaged in Asia. A manufacturer of CFL*i* product can have 4 or more independent suppliers in Asia, some of whom have package engineering capability and others who do not. In 1994, the bread and butter residential lighting products were largely sourced from manufacturing facilities in the United States owned by the manufacturer whose name was on the product. One consequence of the fact that a large number of the packages impacted by the rule come from outside the United States is that the effective date of the Final Rule becomes a date of import requirement, which means that the product must actually be produced and packaged some time before the July 19, 2011 effective date. But the lengthy supply chain also means that the logistical task of complying with the Final Rule is significantly more complex than it was in 1994.

Moreover, the 1994 rule only required three changes to the package, adding Lumens, Watts and Life to the front of the package. This change was relatively modest in comparison to adding Lumens and Annual Operating Cost to the front of the package and adding a sizable nutritional-type label to the back of the package. In many cases, the new rule will require the package to be completely redesigned as opposed to making the small package adjustments that where possible to comply with the 1994 rule.

CFLs present an industry challenge due to the extraordinary number of product types and packaging configurations—multiple geometries, extended side panels, blister packs, all accompanied by small sizes with limited or no space (real estate) on the package to accommodate the label and lighting facts requirements of the Final Rule with the required font size, character and content. This packaging engineering challenge will likely require hundreds of package types to be re-engineered by each manufacturer, requiring new molds, greater cube dimensions and different tray packing and palletizing configurations. In other words, it is not merely the case that compliance will be limited reprinting of cardboard packaging to add the new content requirements. Blisterpacks and package size changes are implicated by the Final Rule, and this has implications for retail stores as well. The engineering tasks will be further complicated by long and complex supply chain patterns, most from Asia, involving dozens of contract manufacturing entities accompanied by equally complex packaging and graphics vendors mostly located in Asia.

Moreover, due to the rapidly accelerating product life cycle, many CFL types in the market today will be discontinued within 12-18 months as better performing options with less mercury, better color and more features (dimming, faster instant-on etc). These product displacements could affect as many as one-third of the CFL offerings.

Currently, lamp manufacturers are invested heavily in new product development and introduction to create and bring to market new energy efficient technologies. Each manufacturer currently has a queue of new technology product introductions in its product pipeline to which package engineering and design personnel are already committed to full-time. Getting these products to market is critical to the lighting market transformation contemplated by EISA-2007.

Packaging Flexibility

To allow possible solutions that don't require a mechanical package redesign for packages that are limited on space or have odd configurations, we recommend that FTC consider allowing the following options to only be used where the standard labeling scheme will not fit:

1. The front and/or rear boxes can be condensed if needed, as long as the font size is unaffected.
2. The required language in the rear boxes can be split onto more than one line to allow for unusual spaces as long as the font size is not affected.
3. As proposed for the Canadian label, allow the front or rear label to be scaled by no more than 80% of required size as long as the print remains legible.
4. ~~FTC offers a compressed label for packages less than 24 sq. inches in size.~~
While industry appreciates the concept of additional flexibility for smaller packages, none of the lamps covered by regulation would actually fit in a box that was 24 sq. inches, basically a 2" x 2' x 2" box. The size of these products renders this provision unusable. To be able to use this provision on the smallest lamp types and packages covered by this regulation, industry recommends that the compressed label be allowed for packages up to 48 sq. inches in size. Also clarify, that on blister packs, this does not include the bulb area. Consider also allowing space taken up by required warnings and graphics to be excluded from the 48-inch requirement.
5. Allow a second language to be scaled at no less than 80% of English copy as long as print remains legible.

WHAT THIS PETITION DOES NOT CONTEMPLATE

This Petition does not seek any change in the content of the label or the judgments made by the Commission in deciding the labeling content requirements.

Lamp manufacturers are prepared to be fully compliant with the new labeling rules for all LED products and new halogen incandescent types (those that will pass the efficiency threshold set by EISA '07) with no exceptions or delays. Additionally, all new CFL product that is brought on the market will be labeled in accordance with the new FTC Rule as they are brought on the market. Emphasis here is important because the primary motivation for the new labeling is to educate consumers on the new technology where the greatest concerns about product performance and labeling integrity exist.

Nor does the Petition contemplate changes in the requirements with respect to website-displayed information.

JUSTIFICATION FOR RELIEF SOUGHT BY PETITION

Lamp manufacturers have been disinvesting in traditional incandescent lighting technologies that cannot meet the new energy conservation standards since the day EISA-2007 was signed into law. This disinvestment is irreversible. Legal requirements in the European Union, Canada and Mexico that are similar to EISA-2007's energy conservation requirements have broadened the impact of this disinvestment. The only investment that lamp manufacturers are currently making in these obsoleted products is the investment in exiting those product lines. Current packaging for many of these products has not been touched in nearly a decade or more, and but for the amendments in the Final Rule, there would be no reason to change that packaging. The Final Rule forces lamp manufacturers to reinvest in these products from which they have been disinvesting for several years.

While the Commission exempted from the Appliance Labeling Rule Amendments the traditional general service incandescent lamp products (100 watt) that would not meet the energy conservation standards effective January 1, 2012, the Rule requires relabeling of products that will be on store shelves no longer than 17 months (75 watt) and 29 months (60 and 40 watt). This mandatory re-investment in obsolete products is contrary to the entire intent of EISA-2007, which was to redirect scarce manufacturer resources and investments toward energy efficient lighting technologies and away from the inefficient technologies. Thus packaging for approximately 25% of the product identification codes impacted by the Final Rule are for obsoleted products that will have to be redone, and this packaging change will have a lifespan of no more than 17 months or 29 months, when it would normally have lifespan of a decade or more. Lamp manufacturers do not have the human resources nor the time resources to address packaging changes in obsoleted products when the challenges presented by the changes required for the energy efficient lighting products represented by CFL, halogen incandescent and solid-state technologies are still complex and require more time.

Most of the information required by the Final Rule for general service incandescent lamps is already on current packaging. In the Final Rule, the Commission sought comment on consumer education, and this data could be central to the consumer education effort of the FTC and others.

The industry needs a 6 month extension for the entire rule until January 1st, 2012. The industry also asks for an additional 12 month extension (until January 1, 2013) to implement the Final Rule's requirements for CFL lamps, because of the engineering challenges and supply-chain logistical challenges. Not a single lamp company has the internal resources available to implement the new labeling rules for CFL and will have to outsource a very substantial portion of this activity. Internal company resources are largely devoted to new product development and launches, primarily LED solid-state lighting. The number of product identification codes for CFLi for a full-line

manufacturer can be as high as 1800 – 2000. This number alone is larger than the 1994 product-identification codes residential lamps that were impacted by the 1994 Appliance Label Rule, and as explained above, CFL packaging is more variable and, in some cases, more complex than general service incandescent lamp and reflector lamp packaging.

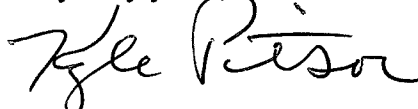
Manufacturers will have to be engaged with their retail customers about expected packaging changes for some products once the engineering has been worked out, so that manufacturers are assured that the new packaging will work on their retail shelves.

While the multiple supply source supply chain logistical challenges have already been discussed, there are some manufacturers of CFLs who are suppliers to other manufacturers for a portion of their product. Thus these manufacturers will not only have to devote scarce resources to the packaging requirements for their own products, but also their brand label customers as well.

CONCLUSION

For the foregoing reasons, NEMA petitions the Federal Trade Commission to (1) amend the effective date of the Final Rule to January 1, 2012, (2) allow an exception to that deadline for medium base compact fluorescent lamps until January 1, 2013, and (3) include an exception from the products covered by the Final Rule for (a) general service incandescent lamps that will be obsoleted by the energy conservation standards enacted by Congress in Section 321(a)(3)(A)(ii)(cc) of the Energy Independence and Security Act of 2007 (P.L. 110-140, 121 STAT. 1577), and (b) certain incandescent reflector lamps that will be obsoleted July 14, 2012 by the energy conservation standards adopted by the Secretary of Energy pursuant to a Final Rule adopted on July 14, 2009 and effective September 14, 2009. 74 Fed.Reg. 34080 (July 14, 2009).

Very truly yours,



Kyle Pitsor
Vice-President Government Relations

cc: Hampton Newsome, Esq.