
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

extent, for personal use or consumption by consumers.

Finally, commenters should address whether the Lighting Facts label should appear on the package of general service fluorescent lamps.¹⁹ Currently, the Rule requires an encircled “E” on the package of these lamps to denote compliance with federal efficiency standards. When it issued this requirement in 1994, the Commission declined to require more detailed disclosures (*e.g.*, lumens, life, *etc.*) because of similarities in the characteristics of competing general service fluorescent lamps.²⁰ The Commission asks now whether it should reconsider this decision and, if so, why. In particular, comments should address the extent to which these products are sold to consumers in the residential market, the amount of energy such products use, the variability in energy use between comparable products, the burdens associated with such label changes, and the likelihood the new label information would help consumers in their purchasing decisions for these products.

B. LED Test Procedure

Based on unchallenged support in the comments, the Commission proposes to require a specific test procedure, IES–LM–79–2008 (LM–79), for measuring LED light output and color characteristics to help ensure consistent label content. The July 2010 Notice identified this procedure as a “safe harbor,” allowing manufacturers to use LM–79 as a reasonable basis for LED light output claims. Now, the Commission proposes to make the procedure mandatory and provide manufacturers one year to begin using the procedure as the basis for their label information for LED bulbs. The Commission seeks comment on this proposal.

Comments provided convincing support for the adoption of LM–79.²¹ CEE argued that an FTC requirement for LM–79 would create more consistency in the market. It explained that the procedure offers the only test available to measure LED products, given their unique properties. CEE also noted that representatives of industry, research institutions, and test laboratories contributed to its development and that the EN

¹⁹ One commenter, Meirowsky, suggested that the Commission label these products but did not provide details.

²⁰ 59 FR 25176, 25197 (May 13, 1994).

²¹ See NEMA, CEE, and Cree, Inc.

²² The Commission also received comments on issues already addressed by the Final Rule notice (*e.g.*, bulb life disclosures, mercury disclosures, color rendering index, and dimmers) and issues not identified for comment in that notice (*e.g.*, operating temperature disclosures). This Notice does not address those issues because the Commission has already considered them earlier or because they are not relevant to the issues currently under consideration.

²³ 75 FR at 41701.

²⁴ *Id.*

²⁵ *Id.*

²⁶ EPCA authorizes the Commission to consider “alternative labeling approaches that will help consumers to understand new high-efficiency lamp products and to base the purchase decisions 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 cost.” 42 U.S.C. 6294(a)(2)(D)(iii). Although EPCA gives the FTC authority to require affirmative energy disclosures on packages and products, the statute does not indicate that the FTC has authority to prohibit what are otherwise truthful, substantiated claims. Under § 5 of the FTC Act, the Commission has authority to prohibit deceptive and unfair claims. 15 U.S.C. 45(a)(1). There is no evidence that the watt-equivalence claims discussed here are categorically deceptive or unfair. In fact, as the Commission has acknowledged previously (74 FR 57950, 57955 (Nov. 10, 2009)), watt-equivalence claims may be useful to consumers as they transition toward using

comments did not address these concerns in any detail.

However, even in the absence of rigid watt-equivalence standards, manufacturers must ensure they can substantiate their watt-equivalence claims. The comments highlight the need for manufacturers to ensure their watt-equivalence claims are not deceptive. In particular, manufacturers must take into account the brightness of the bulbs they are comparing, as well as other material factors such as light appearance (*i.e.*, color temperature). To help manufacturers with these claims, the ENERGY STAR program has issued watt-equivalence standards that provide general benchmarks for comparing the light output of traditional incandescents to CFLs. In the short run, the Commission recommends that manufacturers adhere to the benchmarks in the ENERGY STAR watt-equivalence guidelines (see Table 1 below) unless they have a reasonable basis for a different equivalence standard. Simply put, if a manufacturer's claim is inconsistent with the ENERGY STAR benchmarks, it must possess another competent and reliable basis to substantiate its claims and should consider clearly qualifying its claims to avoid deception. Deceptive watt-equivalence comparisons are subject to FTC law enforcement actions under § 5 of the FTC Act.

TABLE 1—ENERGY STAR WATT-EQUIVALENCE BENCHMARKS

A-shaped incandescent bulb	Typical luminous flux (lumens)
25	250
40	450
60	800
75	1,100
	1,100

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lumens as the primary indicator of brightness. The Commission does not set environmental or performance standards, particularly if such standards will prohibit truthful, non-deceptive claims. (16 CFR 635.5 (Feb. 5, 2010) (proposed rule) with new decausa a Y Smcomwon(wufuf, (wufpud)TJf un, the)TJf makavnd shoipuaaforeign(ed)T2anguTgijwon(auJf(01 T packag, wufuf))TJf abufbeir claTptoi()ludenanufa a)TJfL ufrGasissrTison. For(ed)Thtalyi40 yetas, Cts

²⁷ 16 CFR 14.9 (*see* 38 FR 21494 (Aug. 4, 1973)); *see also* 16 CFR 610.4(a)(3)(ii) (mandatory disclosures about free credit reports must be made in same language as that principally used in the advertisement); 16 CFR 308.3(a)(1) (mandatory disclosures about pay-per-call services must be made in same language as that principally used in advertisement); 16 CFR 455.5 (where used car sale conducted in Spanish, mandatory disclosures must be made in Spanish); 16 CFR 429.1(a) (in door-to-door sales, failure to furnish completed receipt or contract in same language as oral sales presentation is an unfair and deceptive act or practice).

ipued

1. How prevalent today are non-English claims on light bulb packages? What are the languages being used? What types of information is typically conveyed through such non-English claims?

2. Do any light bulb packages currently include non-English information without displaying a bilingual version of the required FTC label? If so, please address whether, in such circumstances, the English label sufficiently conveys lighting information to non-English speaking consumers given the label's emphasis on numerical information. If so, why? If not, why not?

3. Would a bilingual label

²⁸ See 75 FR at 41698, n.16.

²⁹ See NEMA, Cree, Inc., and CEE. Power factor, which is expressed as a number between 0 and 1, is a measure of the efficiency with which a device uses the power made available to it from the electric grid.

³⁰ In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

public comments that it receives on or before September 22, 2011. You can find

more information, including routine (more information) by the Privacy Act, n

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³³ The Commission has increased its estimate of the hours required to make this change from earlier estimates given recent concerns raised about the burden of implementing label changes. See 75 FR 81943 (Dec. 29, 2010).

³⁴ See U.S. Department of Labor, National Compensation Survey: Occupational Earnings in the United States 2009 (June 2010), Bulletin 2738, Table 3 ("Full-time civilian workers," mean and median hourly wages), <http://www.bls.gov/ncs/ncswage2009.htm>, at 3-12.

³⁵ This assumes that manufacturers will change packages for one third of their products in the normal course of business over the compliance period (i.e., 2½). The two and a half year compliance period and the notice provided by this proceeding should minimize the likelihood that manufacturers will have to discard package inventory. In addition, manufacturers may use stickers in lieu of discarding inventory.

³⁶ See 75 FR at 41712 n. 149 and accompanying text.

³⁷ See *supra* note 34.

³⁸ The Commission also assumes conservatively that manufacturers will conduct new testing for 3,000 out of the 6,000 estimated covered products. The Commission does not expect the specific LED testing requirements will increase burden because existing burden estimates account for testing of products already covered by the Rule. See 75 FR 81943 (Dec. 29, 2010).

³⁹ *Supra* note 34.

³¹ 44 U.S.C. 3501–3521.

³² The PRA analysis for this rulemaking focuses strictly on the information collection requirements created by and/or otherwise affected by the amendments. Unaffected information collection provisions, specifically those regarding recordkeeping and reporting requirements, have previously been accounted for in past FTC analyses under the Rule and are covered by the current PRA clearance from OMB.

Comments on any proposed labeling requirements subject to review under the Paperwork Reduction Act should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule and Tfl

⁴⁰ See 75 FR at 41712.

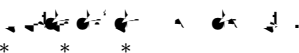
305 of title 16, Code of Federal Regulations, as follows:

PART 305 RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (APPLIANCE LABELING RULE”)

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.3, revise paragraphs (l), (m), (n), (o), (p) and (q) to read as follows:

§ 305.3 D 

(l) *General service lamp* means:
(1) A lamp that is a consumer product and is:

- (i) A compact fluorescent lamp;
- (ii) A general service incandescent lamp;
- (iii) A general service light-emitting diode (LED or OLED) lamp; or
- (iv) Any other lamp that the Secretary of Energy determines is used to satisfy lighting applications traditionally served by general service incandescent lamps.

(2) Exclusions. The term general service lamp does not include—

- (i) Any lighting application or bulb shape described in paragraphs (n)(2)(ii)(A) through (Q) of this section; and
- (ii) Any general service fluorescent lamp.

(m) *Compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a screw, GU-10 pin, or GU-24 pin base, and a rated input voltage range of 115 to 130 volts; however, the term does not include any lamp that is specifically designed to be used for special purpose applications described in paragraphs (n)(2)(ii)(A) through (Q) of this section.

(n) *Incandescent lamp*:

(1) Means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage up to 199 watts, has a screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer

bulb to direct the light, an R, PAR, ER, BR, BPAR, or similar bulb shapes with screw bases and a rated voltage or voltage range that lies at least partially within 115 and 130 volts;

(iii) Any general service incandescent lamp (commonly referred to as a high or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp);

(2) General service incandescent lamp means

(i) In general, a standard incandescent, halogen, or reflector type lamp that—

(A) Is intended for general service applications;

(B) Has a screw base;

(C) Has a lumen range of not more than 2,600 lumens; and

(D) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(ii) Exclusions. The term “general service incandescent lamp” does not include the following incandescent lamps:

(A) An appliance lamp as defined at 42 U.S.C. 6291(30);

(B) A black light lamp;

(C) A bug lamp;

(D) A colored lamp as defined at 42 U.S.C. 6291(30);

(E) An infrared lamp;

(F) A left-hand thread lamp;

(G) A marine lamp;

(H) A marine signal service lamp;

(I) A mine service lamp;

(J) A plant light lamp;

(K) A rough service lamp as defined at 42 U.S.C. 6291(30);

(L) A shatter-resistant lamp (including a shatter-proof lamp and a shatterprotected lamp);

(M) A sign service lamp;

(N) A silver bowl lamp;

(O) A showcase lamp;

(P) A traffic signal lamp; or

(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);

(3) Incandescent reflector lamp means a lamp described in paragraph (n)(1)(ii) of this section; and

(4) Tungsten-halogen lamp means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(o) Light-emitting diode (LED) means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device.

The output of a light-emitting diode may be in—

(1) The infrared region;

(2) The visible region; or

(3) The ultraviolet region.

(p) Organic light-emitting diode (OLED) means a thin-film light-emitting

device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

(q) General service light-emitting diode (LED or OLED) lamp means any light-emitting diode (LED or OLED) lamp that:

(1) Is intended for general service applications;

(2) Has a screw base;

(3) Has a lumen range of not more than 2,600 lumens; and

(4) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

* * * * *

3. In § 305.5, paragraphs (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e), add a new paragraph (b), and revise the newly designated paragraph (c) to read as follows:

§ 305.5 D 

(b) Manufacturers and private labelers of any covered product that is a general service light-emitting diode lamp must determine the product's light output and correlated color temperature using “IES LM-79-08, Electrical and Photometric Measurements of Solid-State Lighting Products.” This procedure is incorporated by reference into this section. The Director of the Federal Register approved these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the test procedure may be inspected or obtained at the Federal Trade Commission, Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, DC 20580; at the National Archives and Records Administration (NARA) by calling (202) 741-6030 or going to http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html; or from the Illuminating Engineering Society at www.iesna.org.

(c) Unless otherwise provided in paragraph (a) or (b) of this section or § 305.8, manufacturers and private labelers of any covered product that is a general service fluorescent lamp, general service lamp, or metal halide lamp fixture, must, for any representation required by this Part including but not limited to of the design voltage, wattage, energy cost, light output, life, correlated color temperature, or color rendering index of such lamp or for any representation made by the encircled “E” that such a lamp is in compliance with an

applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For

representations of the light output and life ratings of any covered product that is a general service lamp, unless otherwise provided by paragraph (a), the Commission will accept as a reasonable

basis scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent	IES LM 9.
Compact Fluorescent	IES LM 66.
General Service Incandescent (Other than Reflector Lamps)	IES LM 45.
General Service Incandescent (Reflector Lamps)	IES LM 20.
For measuring laboratory life (in hours):	
General Service Fluorescent	IES LM 40.
Compact Fluorescent	IES LM 65.
General Service Incandescent (Other than Reflector Lamps)	IES LM 49.
General Service Incandescent (Reflector Lamps)	IES LM 49.

4. In § 305.15(d)(4) is revised to read as follows:

305.15 L

(d) * * *

(4) For any covered product that is a general service lamp and operates at discrete, multiple light levels (e.g., 800, 1600, and 2500 lumens), the light output, energy cost, and wattage disclosures required by this section must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the shortest lived operating mode. The multiple numbers shall be separated by a "/" (e.g., 800/1600/2500 lumens) if they appear on the same line on the label.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2011-19041 Filed 7-29-11; 8:45 am]

BILLING CODE 6750 01 P

¹ 17 CFR 145.9.

² See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

³ 7 U.S.C. 1 *et seq.*