within the regions currently being served.

Mormac maintains that the ownership of Moran by Messrs. Tregurtha and Barker and their involvement in the management of Moran will not result in any change in competitive conditions for U.S.-flag vessels providing domestic coastwise marine transportation and harbor tug services or for U.S.-flag vessels providing tanker services from Alaska to the continental U.S. The only effect of the proposed transaction will be a change in the ownership of Moran. Furthermore, it is expected that the management of Moran will remain with Moran after the acquisition. Messrs. Tregurtha and Barker will serve as Chairman and Vice Chairman thereof, respectively.

Moran and Mormac are, and will remain, according to Mormac, entirely separate corporate entities that will maintain separate and discrete accounts so there will be no issue of a subsidy leakage or diversion of subsidy. Following the consummation of the proposed transaction, Mormac and Moran will consent to examination of their books and records to the extent necessary to establish that there is no diversion of subsidy. Mormac will receive no benefit from the operations of Moran and Moran will receive no benefit from the operations of Mormac.

Moran believes that no U.S.-flag competitor of Moran will be subject to unfair competition nor will the ownership of Moran by Messrs. Barker and Tregurtha and their family members be prejudicial to the purposes and policies of the Act.

Mormac contends that no disputed issue of material fact is anticipated by a transaction that simply changes ownership of a company providing existing services. Any competitive condition that existed before the transaction will exist after the transaction. Mormac believes that no credible argument of leakage can be raised, eliminating the possibility of any argument that a change in ownership and the continuation of current services will result in unfair competition to any U.S.-flag vessel. Under these circumstances, should there be any request to intervene in this application, no issue is expected by Mormac to be raised that could not be addressed on the basis of available information provided to the record or subject to official notice and certainly no issue that would involve the submission of substantial evidence, either written or oral.

In Mormac's view, approval of this application is also entirely consistent with the purposes and policies of the Act. This acquisition will be a significant expansion of Messrs. Barker's and Tregurtha's U.S.-flag fleets and a strong statement of continuing support for the U.S. merchant marine by individuals who have a long history in and are well respected by the maritime industry.

Mormac requests the scope of domestic operations permitted under the ODSAs be modified to allow ownership of Moran by Lakes Shipping Company, Inc., Messrs. Barker and Tregurtha and members of their immediate families, as well as to allow Messrs. Barker and Tregurtha to serve as officers and directors of both Mormac and Moran, with Moran continuing to be involved in its current services (modified and expanded as circumstances warrant and permit).

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 805(a) of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on May 24, 1994. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

Dated: May 11, 1994.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies))

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 94–11825 Filed 5–12–94; 8:45 am]

BILLING CODE 9410–81–M

UNITED STATES INFORMATION AGENCY

The Role of Legislative Staff and Information Resources in the Legislative Process (Africa); Public and Private Non-Profit Organizations in Support of International Educational and Cultural Activities

AGENCY: Notice—Request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) of the United States Information Agency (USIA) proposes the development of a multi-phased exchange program for legislative staff of four francophone African countries. The participating countries are Benin, Cote d'Ivoire, Mali and Niger The project should introduce participants to the responsibilities of various professional staff in conducting the business of a legislature, emphasizing professional non-partisan roles. The project may address a wide range of administrative, legal, fiscal, and research services or concentrate on a few of notable priority. It also should illustrate the role of information resources in conducting policy analysis and drafting legislation as well as the role of archival materials in establishing the legislature's official legal record. The project should facilitate access to resource materials to promote the the study of the legislative process and should law the foundation for collaboration between U.S. and African legislatures and professional support organizations.

A U.S. not-for-profit institution will design and execute the program and select the American presenters. The institution should demonstrate success in coordinating international exchange programs for senior-level foreign participants. The applicant institution should have substantive working relationships with U.S. public and private sector organizations involved with legislative affairs and the professional development of key staff in Congress or in state assemblies. The program will begin in the fall of 1994.

Interested applicants are urged to read the complete Request for Proposals (RFP) announcement before addressing inquires to the Office. After the RFP deadline, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until the final decisions are made.

ANNOUNCEMENT NUMBER: This Announcement number is E/P–94–30. Please refer to this number and the title given above in all correspondence or telephone calls to USIA.

DATES: *Deadline for Proposals:* All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on July 8, 1994. Faxed documents will not be accepted, nor will documents postmarked July 8, 1994, but received at a later date. It is the responsibility of the grant applicant to ensure that proposals are received by this deadline. Grant activity should begin after October 1, 1994.

ADDRESSES: You must submit the original and 14 copies of the proposal as instructed in the application checklist provided in the Application Package. The original and two copies should contain all applicable TABS. The rest of the copies should contain TABS A through D only. Please submit your proposal and copies by the application deadline to: U.S. Information Agency, REF: Citizen Exchanges: Role of Legislative Staff and Information Resources in the Legislative Process, (Africa), E/P–94–30, Office of Grants Management (E/XE), 301 Fourth Street, SW., room 336, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact the Office of Citizen Exchanges (E/PS), U.S. Information Agency, 301 Fourth Street, SW., room 224, Washington, DC, 20547, telephone: 202–619–5319, fax: 202–619–4350, to request a detailed application package which includes all necessary forms and guidelines for preparing proposals, including specific budget preparation instructions. Agency representatives are able to answer only technical questions about this competition. For technical information, contact Stephen Taylor, Program Specialist, Africa, Near East and South Asia Division, Office of Citizen Exchanges.

Project Overview

Several francophone African countries are strengthening their democratic institutions, having recently completed the transition to a representative system of government. National legislatures in these countries have the opportunity to gain greater independence, develop more effective legislation and take steps to serve more forcefully as a balance to executive power. The viability and institutional independence of these legislative bodies could be enhanced by the services of trained staff prepared to play a support role for lawmakers and the legislative process. Legislative staff also are well paced to provide continuity regardless of the legislature's partisan make-up or the political fortunes of elected representatives.

In the United States, Congress and state legislatures employ professional staff to conduct research, draft legislation, analyze budgets, maintain records, monitor compliance with legislation and perform other duties. In many cases, professional staff provide these services on a non-partisan basis. For example, on Capitol Hill, the Office of the Legislative Counsel assists committees in drafting and amending legislation. The clerk of the House and secretary of the Senate, selected by the majority party, assist in processing legislation and performing various reporting functions. The House Office of the Law Revision Counsel updates and publishes an official classification of U.S. laws. In drafting bills, lawmakers rely on non-partisan support organizations such as the Congressional Research Service, which analyzes public policy issues, and the Congressional Budget Office, which provides analyses of fiscal issues.

While not every one of these services is directly applicable to needs in Africa, they reflect the evolving demands placed upon the U.S. Congress and could help guide efforts to promote professional development of legislative staff in Africa. The legislatures in Mali, Niger and Benin are drafting landmark legislation aimed at implementing political and economic reforms. Legislators and observers have identified the need for assistance in bill drafting, improving legislative procedures and developing strategies to make better use of legislative archives. In most cases specialized training is not available, and staff could benefit from a project aimed at enhancing their capabilities to assist lawmakers fulfill their mandates. Legislators and staff also are seeking reference materials to support their legislative initiatives. In Cote d'Ivoire, where the ruling party has held power for 30 years, parliamentary elections scheduled for 1995 could alter the political landscape. Legislative aides in Cote d'Ivoire, and all these states, could benefit from a program that demonstrates the role of professionalism and nonpartisanship in conducting the business of the legislature.

Objectives

The project should be designed to:

—Provide an overview of the structure and practices of representative government in the United States, including the interrelationship between the three branches of government;
—Introduce participants to the professional support offices and staff employed by the U.S. Congress and appropriate state legislatures;
—Demonstrate the roles and skills of professional staff in the day-to-day operations of a legislature and the nature of their interaction with lawmakers;
—Analyze the relationship between partisan politics and the professional responsibilities of legislative staff;
—Develop workshops and appropriate instructional material designed to address identified needs and enhance the capabilities of professional aides to improve the legislative process;
—Develop strategies for improving management of archives, legislative records and other official documentation;
—Develop appropriate training methods to prepare project participants to train others involved in the legislative process;
—Devise strategies to facilitate access to reference materials and other appropriate information about the structure and functioning of the U.S. Congress, state legislatures and other democratic institutions; and
—Lay the groundwork for collaboration between the professional support services for U.S. legislatures and counterpart services of African legislatures.

Programmatic Considerations

Pursuant to the legislation authorizing the USIA Bureau of Educational and Cultural Affairs, all programs sponsored by that Bureau must be balanced and non-partisan in nature and representative of the diversity of American political, social and cultural life.

USIA will give careful consideration to proposals which demonstrate: (1) In-depth, substantive knowledge of management and policy development issues relative to the legislative process;

(2) First-hand connections with appropriate U.S. public and private sector organizations and institutions involved in legislative affairs;

(3) The capacity to organize and manage international exchange programs, including appropriate orientation for the participants, handling of pre-departure arrangements and monitoring and problem-solving in such programs.

USIA is especially interested in multi-phase programs in which the phases build on one another and lay the groundwork for new and long-term relationships between American and African professionals. Proposals which are overly ambitious and those which

are very general will not be competitive. Office of Citizen Exchanges grants are not given to support projects whose focus is limited to technical matters, or for scholarly research projects, developing publications for dissemination in the United States, individual student exchanges, film festivals, or exhibits. Neither does the Office of Citizen Exchanges provide scholarships or support for long-term (a semester or more) academic studies. Competitions sponsored by other Bureau offices are also announced in the Federal Register and may have different application requirements as well as different objectives.

Programming elements might include workshops or seminars overseas led by American experts, a study tour in the U.S. for selected African participants, U.S.-based internships, and specialized American consultancies overseas. A planning visit overseas by the American organizer can also be considered if crucial to successful development and implementation of the program.

Selection of Participants

The U.S.-based phase of the project should be designed for legislative staff from Benin, Cote d'Ivoire, Mali and Niger, probably totalling about 12 persons. Participants should have professional responsibilities related to the operation of the national legislature. USIS personnel overseas will select the African participants, although recommendations from the grantee institution are welcome. USIS offices will facilitate the issuance of visas and can also help with the distribution of program-related materials to African participants. Two U.S. State Department interpreters and one escort officer will be available for a U.S. study tour. For the program phases in Africa, the grantee institution will select the American presenters in consultation with USIA. American presenters conducting in-country activities should be French-fluent.

Programming Suggestions

The proposed project should include at least one phase for African participants in the U.S. and at least one phase for American specialists in Africa. The following ideas should serve not as a blueprint, but as a stimulus for development of an original program design.

The project should include formats which maximize interaction between the delegates and the speakers/presenters. The program design should provide adequate time for delegates to meet individually with American professionals who have similar interests and specializations. It is preferred, though not essential, that presenters be familiar with issues pertaining to the political process in the participating African countries.

U.S. Study Tour Phase

The U.S. study tour (approximately 3–4 weeks) could begin with an introduction to the U.S. Congress and its relationship to the other branches of the national government. However, the program should focus on one or more state legislatures whose scope and structure offer comparisons more relevant to African legislative bodies. Participants would learn about the professional duties of various legislative aides, as well as support staff including legal counsels, researchers, analysts, archivists, clerks and administrators.

Participants might also benefit from observing the activities of lawmakers' personal staff who perform functions such as constituent services and media relations as well as committee staff who assist in setting agendas, organizing hearings and drafting legislation. Activities should stress the importance of professionalism in enhancing the long-term viability of the legislature and consider the impact of partisan politics on the professional staff's pursuit of its responsibilities.

Participants also should study a variety of archival materials and their usage in supporting the legislative process and establishing the official record. Activities should help guide efforts to formulate appropriate strategies for handling archival materials in the participants' home countries.

Phase in Africa

It is recommended that the grantee institution organize a series of workshops to be conducted in the participating African countries. The workshops would bring together legislators and legislative staff to develop strategies aimed at strengthening the institutional capabilities of the legislature. This might include creating new staffing patterns, improving communication techniques, or revising job responsibilities. The U.S. presenters would also examine archives and advise participants on developing appropriate archiving systems. The U.S. presenters would conduct activities in French.

The themes, objectives and design of the activities in Africa would most likely be based on discussions among the grantee institution, E/P, USIS posts and key players in the legislative process in the participating countries. This multi-phased exchange program should promote development of institutional linkages designed to advance the study of the legislative process. E/P encourages applicant institutions to consider strategies to facilitate access to information resources focusing on democratic institution building. This material might include reference books, periodicals, bibliographies, handbooks for elected representatives and lists of organizations that could offer assistance.

Program Responsibilities

The grantee institution's responsibilities include: selecting speakers, themes and topics for discussion; organizing a coherent progression of activities; orienting and debriefing participants; providing any support materials; providing all travel arrangements, lodging and other logistical arrangements for the African participants, escort interpreters and U.S. presenters who travel to Africa; and overseeing the project on a daily basis to achieve maximum program effectiveness. The grantee institution is responsible for coordinating plans and implementation with P/E, participating USIS posts, and any African co-host institutions.

At the start of each phase, the grantee institution will conduct an orientation session for the delegation. At the conclusion, the institution will conduct participant evaluations and submit to E/P a final program report summarizing the entire project and resulting organizational links. To prepare the participants for their U.S. experience, E/P encourages the grantee organization to forward to participants a set of preliminary materials outlining the basic principles of representative government, the role of professional legislative staff and other appropriate background information about the project. E/P will ask African participants to prepare brief outlines describing their own particular interests in these areas. The grantee institution should brief the American presenters on the African delegates' backgrounds, interests and concerns.

Other Program Considerations

Consultation with the participating USIS posts in the development of the project proposal is encouraged. Letters of commitment from participating U.S. institutions would enhance a proposal.

USIA also encourages the development of specialized written materials to enhance this professional development program. In developing written materials, consideration should be given to their wider use in Africa, beyond the immediate training at hand

USIA is interested in organizations' ideas on how to "reuse" specialized materials by providing them to universities and libraries or other institutions for use by a larger audience. If not already available, glossaries of specialized terms should be developed. However, please note that, according to current USIA regulations, materials developed with USIA funds may not be distributed in the United States.

Funding

Competition for USIA funding support is keen. Selection of a grantee institution is based on the substantive nature of the program proposal; the applicant's professional capability to carry the program through to a successful conclusion; and cost effectiveness, including in-kind contributions and the ability to keep overhead costs at a minimum. USIA will consider providing funding up to approximately $160,000, but organizations with less than four years of successful experience in managing international exchange programs are limited to $60,000, and their budget submissions should correspond to this limitation. USIA will consider funding the following costs:

1. International and domestic air fares; visas; transit costs (e.g., airport fees); ground transportation costs;

2. *Per diem:* For foreign participants during activities in the United States, organizations have the option of using a flat rate of $140/day or the published Federal Travel Regulations (FTR) per diem rates of individual American cities.

Note: U.S. institutional staff must use the published FTR per diem rates, not the flat rate.

For activities overseas, standard Federal Travel Regulations per diem rates must be used.

3. *Escort-interpreters:* Interpretation for U.S.-based programs is provided by the State Department's Language Services Division. Typically, delegations ranging from 8–12 participants require two simultaneous interpreters and one escort officer. Grant proposal budgets should contain a flat $140/day per diem rate for each State Department escort/interpreter, as well as home-program-home air fare of $400 per interpreter and any U.S. travel expenses during the program itself. Salary expenses are covered centrally and are not part of the applicant's budget proposal. USIA grants do not pay for foreign interpreters to accompany delegations during travel to or from their home country. Interpreters are not available for U.S.-based internship activities.

4. *Book and cultural allowances:* Participants are entitled to a one-time book allowance of $50 plus a cultural allowance of $150 per person during programs taking place in the United States. U.S. staff do not receive these benefits. Escort interpreters are reimbursed for actual cultural expenses up to $150.00.

5. *Consultants:* Consultants may be used to provide specialized expertise or to make presentations. Honoraria generally should not exceed $250/day. Subcontracting organizations may also be used, in which case the written contract(s) should be included in the proposal.

6. *Materials development:* Proposals may contain costs to purchase, develop and translate materials for participants. USIA reserves the rights to these materials for future use.

7. Room rentals, which generally should not exceed $250/day.

8. One working meal per project, for which per capita costs may not exceed $5–$8 for a lunch or $14–$20 for a dinner. The number of invited guests may not exceed the number of participants by more than a factor of two to one.

9. *Return travel allowance:* $70 for each participant which is to be used for incidental expenditures incurred during international travel.

10. Other costs necessary for the effective administration of the program, including salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the application package.

E/P encourages cost-sharing, which may be in the form of allowable direct or indirect costs. E/P would be especially interested in proposals which demonstrate a program vision which goes well beyond that which can be supported by the requested USIA grant and which would try to use a USIA grant to leverage additional funding from other sources to support elements of the broader program plan.

The Recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, Attachment E, "Cost-sharing and Matching," and should be described in the proposal. In the event the Recipient does not meet the minimum amount of cost-sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

Please note: All delegates will be covered under the terms of a USIA-sponsored health insurance policy. The premium is paid by USIA directly to the insurance company.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the Application Package. Confirmation letters from U.S. and foreign co-sponsors noting their intention to participate in the program will enhance a proposal. Because this is a competitive solicitation, representatives of the Office of Citizen Exchanges can only respond to technical questions.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Package.

Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals will be reviewed by USIS posts and by USIA's Office of African Affairs. Proposals may also be reviewed by the Office of the General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant, all preparation and submission costs are at the applicant's expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on the following criteria:

1. Institutional Reputation and Ability

Applicant institutions should demonstrate their potential for excellence in program design and implementation and/or provide documentation of successful programs. If an applicant is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past

Agency grants as determined by USIA's Office of Contracts will be considered. Relevant substantive evaluations of previous projects may also be considered in this assessment.

2. Project Personnel

The thematic and logistical expertise of project personnel should be relevant to the proposed program. Resumes or C.V.s should be summaries which are relevant to the specific proposal and no longer than two pages each.

3. Program Planning

A detailed agenda and relevant work plan should demonstrate substantive rigor and logistical capacity.

4. Thematic Expertise

Proposal should demonstrate the organization's expertise in the subject area which promises an effective sharing of information.

5. Cross-Cultural Sensitivity and Area Expertise

Evidence should be provided of sensitivity to historical, linguistic, religious, and other cross-cultural factors, as well as relevant knowledge of the target geographic area/country.

6. Ability to Achieve Program Objectives

Objectives should be realistic and feasible. The proposal should clearly demonstrate how the grantee institution will meet program objectives.

7. Multiplier Effect

Proposed program should strengthen long-term mutual understanding and contribute to maximum sharing of information and establishment of long-term institutional and individual ties.

8. Cost-Effectiveness

Overhead and direct administrative costs to USIA should be kept as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

9. Cost-Sharing

Proposals should maximize cost-sharing through other private sector support as well as direct funding contributions and/or in-kind support from the prospective grantee institution and its partners.

10. Follow-on Activities

Proposals should provide a plan for continued exchange activity (without USIA support) which ensures that USAI-supported programs are not isolated events.

11. Project Evaluations

Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. USIA recommends that the proposal include a draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives. Grantees will be expected to submit intermediate reports after each project component is concluded or quarterly, which is less frequent.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency which contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about September 26, 1994. Award grants will be subject to periodic reporting and evaluaton requirements.

Dated: May 9, 1994.

David Michael Wilson,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–11497 Filed 5–12–94; 8:45 am]

BILLING CODE 8230–01–M

University Democratization in South Africa Program

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Academic Programs (E/A) requests proposals from post-secondary institutions to develop a program to assist educational reform in South African post-secondary institutions as the country moves towards a nonracial democracy. The purpose of the project is to enable university student leaders and university student affairs officials to undertake a program in management skills and conflict resolution at a U.S. academic institution. The American institution should also plan to coordinate post training follow-up activities in South Africa. The institutional agreement will be for a period of two years. Interested applicants are urged to read the complete Federal Register announcement before requesting application packets from the Office of Academic Programs.

DATES: Deadline for proposals: All copies must be received at the United States Information Agency by 5 p.m. Washington, DC time on June 10, 1994. Proposals received after this deadline will not be eligible for consideration.

Faxed documents will not be accepted nor will documents postmarked on June 10, 1994 but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline.

ADDRESSES: The original and 9 copies of the completed proposal application, including required forms, should be submitted by the deadline to: U.S. Information Agency, REF: University Democratization in South Africa Program/RFP, Office of Grants Management (E/XE), room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets which include all necessary forms and guidelines for preparing proposals, including specific budget preparation information, contact Nancy Searles, Branch Chief at (202) 619–5370, or Ellen Beralson, Deputy Branch Chief, Africa Branch at (202) 619–5376, Fax: (202) 619–6137 or write to the following address: Office of Academic Programs, rm. 232, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION:

Overview

The University Democratization in South Africa Program focuses on education reform to enable students, faculty and administrators of selected South African universities to shift from the confrontation of an apartheid culture to the cooperation implicit in a democratic society. This project will provide university student leaders and university facility and administrative staff tasked with student affairs management with training in conflict resolution and in university administration. The South African institutions which will participate are the University of Fort Hare, the University of Zululand, the University of the North and the University of the Western Cape.

Eligibility

In the U.S., participation in the program is open to accredited two-year and four-year colleges and universities, including graduate schools. Consortia of

universities and/or community colleges, individually or as systems, are also eligible. In South Africa, participation is limited to the University of the Western Cape, the University of Fort Hare, the University of the North, and the University of Zululand. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium.

Participants representing the U.S. institution traveling under USIA grant support must be U.S. citizens. Participants representing South African institutions must be citizens, nationals, or permanent residents of South Africa.

The Agency invites proposals from eligible Historically Black Colleges and Universities (HBCU's) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also encouraged to apply.

Project Design

The project should begin with a conference in South Africa bringing together American experts and South Africans students, instructors, and staff to provide initial training in student affairs/educational administration and conflict resolution and to develop subsequent programming. Incorporating South African citizens' aspirations and objectives into the overall training plan is crucial to the success of the project.

The second phase of the project would focus on formal training at the U.S. host institution. The administering U.S. institution, in consultation with the United States Information Service offices (USIS) in Pretoria, and the project participants would select a group of South Africans to come to the U.S. institution for courses, workshops, and guided research on student politics in democratic societies, managing change in educational institutions, conflict resolution, and general management skills. Research might focus upon creating a history of the South African student movement, outlining its role in democratizing educational institutions, and devising models for exercising student power in a democratic South Africa. The U.S. academic experience should be from six weeks to one semester in length. Longer stays for the purpose of pursuing an advanced degree will not be sponsored. Participants may enroll in established courses at the administering institution. However, the institution should also be able to organize customized training sessions for the group participants. The final format of the academic program will depend upon consultation among the U.S. and South African participants at the initial conference in South Africa.

The final segment of the grant would be follow-up workshops organized by the South African participants at their home institutions with facilitation and consultation from the U.S. instructors in the program. The U.S. institution may also propose to assist with publication and dissemination of findings developed during the U.S. training program and the final South African workshops.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Budget

Competition for USIA funding is keen. The selection of a grantee institution will depend on program substance, cross-cultural sensitivity and ability to carry out the program successfully. Since USIA cooperative assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support.

A proposal's cost-effectiveness, including in-kind contributions and ability to keep administrative costs low, is a major consideration in the review process.

Funding for this grant is limited to $250,000. Preference will be given to the most competitive budget proposals. Qualified organizations with less than four years of successful experience in managing international exchange programs are limited to grants of $60,000.

A comprehensive line item budget should be submitted with the proposal by the application deadline. Specific guidelines for budget preparation are available in the application packet.

Application Requirements

Proposals must be submitted within the deadline and conform to the program design. The proposal package should include one original and 14 complete copies and all required documentation. Proposal should be presented as follows:

1. An executive summary (abstract), not to exceed two double-spaced pages.

2. A narrative, not to exceed 20 double-spaced pages, showing the intellectual rationale and goal of the program, how the program will accomplish its goals and how it relates to USIA's mission to increase mutual understanding between people of the United States and of other societies. This section should include a concise description of the project's work plan, spelling out program schedules, thematic agenda and proposed itineraries. Participant selection should be discussed in detail. This section should conclude with a discussion of any follow-up activities planned; how the organization intends to evaluate the project; and what groups, beyond the direct participants, will benefit from the project.

3. A comprehensive line item budget. See application package.

4. Resumes (not to exceed two pages each) for key personnel.

5. Confirmation letters from foreign co-sponsors noting their intention to participate in the program.

6. USIA compliance forms, furnished with the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

1. Quality of Program: Quality of program plan, including quality and rigor of the training, workshops and other activities as called for in this request, thorough conception of project, and demonstration of how participants' needs will be met.

2. Institutional Capability: Institutions should demonstrate their potential for program excellence and/or provide documentation of successful programs. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts will be considered.

3. Project Personnel: Personnel's professional and logistical expertise should be relevant to the proposed program. Resumes should be relevant to the specific proposal.

4. Thematic Expertise: Proposal should demonstrate the organization's expertise in the subject area.

5. Program Planning: Detailed agenda and work plan should demonstrate substance and logistical capacity. Agenda and plan should adhere to the program overview described above.

6. Ability to Achieve Program Objectives: Objectives should be realistic and attainable. Proposals should clearly demonstrate how the grantee institution will meet the program's objectives.

7. Cross-Cultural Sensitivity/Area Expertise: Proposal should demonstrate sensitivity to historical, linguistic and other cross-cultural factors, and relevant knowledge of South Africa.

8. Multiplier Effect: Proposed programs should strengthen long-term mutual understanding and include maximum sharing of information.

9. Cost-Effectiveness: The overhead and administrative components should be as low as possible. All other items proposed for USIA funding should be necessary and appropriate to achieve the program's objectives.

10. Cost-Sharing: Proposals should show cost-sharing through direct funding contributions and in-kind support from the prospective grantee institution.

11. Project Evaluation: Proposals should include a plan to evaluate the activity's success.

12. Evidence of program sustainability after the expiration of USIA funded grant.

Notice

The terms and conditions published in the RFP are binding any may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about August 5, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: May 6, 1994.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 94–11596 Filed 5–12–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 92
Friday, May 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FOREIGN CLAIMS SETTLEMENT COMMISSION

F.C.S.C. Meeting Notice No. 8–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time	Subject Matter
Wed., May 25, 1994 at:	Oral Hearings on objections to Proposed Decisions issued on claims against Iran:
9:00 a.m.	IR–0589—Thomas H. Hancock.
	IR–2463—William R. Clem.
	IR–1140—Gerald Stewart.
10:00 a.m. ..	IR–2929—Eric Jecubic.
	IR–2930—Philip Jecubic.
10:30 a.m. ..	IR–1768—William L. Jenson.
11:00 a.m. ..	IR–0980—Richard J. Hallwood.
2:00 p.m. ...	IR–2744—Frank Burroughs.
3:00 p.m. ...	IR–2433—Thomas G. Pobanz.
3:30 p.m. ...	IR–1831—Eva J. Tabe.
4:00 p.m. ...	IR–2756—Delta Geotechnical.
Thurs, May 26, 1994 at 10:30 a.m..	Consideration of Proposed Decisions on claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6029, Washington, DC 20579. Telephone (202) 616–6988.

Dated at Washington, DC on May 11, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–11863 Filed 5–11–94; 3:10 pm]

BILLING CODE 4410–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–94–16]

TIME AND DATE: May 18, 1994 at 2:30 p.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–699 (Preliminary) (Stainless Steel Angles from Japan)—briefing and vote
5. Inv. Nos. 701–TA–355 and 731–TA–660 (Final) (Grain-Oriented Silicon Electrical Steel from Italy and Japan)—briefing and vote
6. Outstanding action jacket: None

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205–2000.

Issued: May 9, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–11828 Filed 05–11–94; 12:17 pm]

BILLING CODE 7020–02–U

federal register

Friday
May 13, 1994

Part II

Department of Labor

Wage and Hour Division

29 CFR Part 570

Child Labor Regulations, Orders and Statements of Interpretation; Proposed Rules

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215–AA89

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is proposing revisions in subpart C (Child Labor Reg. No. 3) to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports. The proposed exception limits such employment to outside school hours and to duties customarily performed by typical sports attendants (e.g., batboys/girls, ballboys/girls, etc.). Technical modifications are proposed in the procedure for obtaining occupational variations for 14- and 15-year-olds enrolled in Work Experience and Career Exploration Programs. Among other revisions to update these regulations, the Department is also proposing to delete the procedures relating to hazardous occupation determinations in Subpart D (Child Labor Reg. 5), which, for the most part, have been replaced by the notice-and-comment requirements of the Administrative Procedure Act.

DATES: Comments are due on or before July 12, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW. Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The proposed rules contain no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The information collection requirements contained in § 570.35a, which are not modified by this proposal, were previously approved by the Office of Management and Budget under OMB control number 1215–0121. The general FLSA information collection requirements (including requirements contained in part 570) were approved by the Office of Management and Budget under the control number 1215–0017.

II. Background

The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions on occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14-and 15-year-olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR Part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

(1) Outside school hours;

(2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any day when school is not in session;

(5) Not more than 3 hours in any day when school is in session; and

(6) Between 7 a.m. and 7 p.m.; except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

The Department is proposing an exception from the above permissible hours and time standards for 14- and 15-year-olds employed as attendants in professional sports. The Department suspended enforcement of the child labor regulations as applied to batboys/girls employed in professional baseball during the 1993 baseball season, and subsequently extended the policy to attendants in other professional sports while reviewing such employment under the child labor regulations.

During 1986 and 1987, the Department conducted a study at the request of the Congress [1] to determine whether a change in the permissible hours of employment for batboys and batgirls would be detrimental to their well-being and whether any changes to existing standards should be proposed. The Department concluded that changes in permissible hours and time standards for batboy/girl work would not be detrimental to their health and well-being. The Department surveyed 157 professional league baseball teams and conducted selected on-site interviews with parents, teachers, team owners, and batboys/girls and found that youths genuinely enjoyed the experience. The Department could find no evidence that school grades were adversely affected by such work. The Department also advised the Congress that regulatory modifications, rather than legislative change, would be the best vehicle to

[1] See section 801, Public Law 99–425 (September 30, 1986).

address the matter of permissible hours for batboys/girls.

The Department's Child Labor Advisory Committee (CLAC), established in 1987 to provide advice and guidance in the development of possible proposals to change existing standards, recommended that existing hours and time of work standards be retained for 14- and 15-year-olds employed as sports attendants, including batboys/girls; and that the work performed in such activity be limited to traditional duties, i.e., putting out and taking in field equipment, running errands for players, and supplying the umpire with balls. While the Committee's advisory view was taken into consideration, the Department also continued to consider other pertinent information, including inquiries received from interested parties concerning the employment of youth in sports-related activities, such as scorekeepers, concession stand helpers, ball monitors and sideline officials. One inquiry concerned conforming the Federal child labor regulations to a State of Wisconsin provision which permits youths under age 14 to be employed by high schools as ball monitors and sideline officials at football games. Another was received from the Grant County (Kansas) Recreation Commission concerning 14- and 15-year-olds employed as scorekeepers and concession stand helpers in summer softball, baseball, and other sports programs. Also, the National Association of Professional Baseball Leagues, Inc. (NAPBL) petitioned [2] the Department in June 1993 to revise the regulation to permit the employment of 14- and 15-year-olds as batboys for professional baseball clubs. According to the NAPBL, existing hours and time-of-day standards effectively preclude baseball teams from lawfully employing youth under the age of 16. The NAPBL contended further that such employment is not adverse to the health and well-being of youth and that the denial of the batboy/girl experience is inconsistent with the intent of the FLSA's child labor provisions.

Some employers are covered by all of FLSA's provisions, while others are covered by the FLSA but may be exempt from its minimum wage and overtime provisions though not its child labor provisions.[3] Other employers that are not covered by the FLSA are subject to varying State child labor requirements. The practice of providing sport-attendant experiences to America's youth is a longstanding tradition. As a consequence, many professional and semi-professional sports teams, i.e., baseball, basketball, etc., have violated Federal child labor regulations by employing underage youth, particularly 14- and 15-year-olds, as sports-attendants.

The Department believes that a change in the existing Federal hours and times standards to allow employment of 14- and 15-year-olds as batboys/girls, ballboys/girls, or in other sports-attendant capacities would not be inconsistent with FLSA's oppressive child labor provisions and, therefore, proposes a narrow exception from the requirements of Child Labor Reg. 3 for such work. Specifically, the proposed exception is limited to employment by professional sports organizations and would apply only if the duties performed are traditional in nature and the work is outside regular school hours. Thus, the current restrictions when school is in session, i.e, 3-hour daily limit, 18-hour weekly limit, and 7 p.m. end-of-day time restriction, and the current 9 p.m. end-of-day time restriction when school in not in session would not apply to 14- and 15-year-old sports-attendants.

The Department recognizes that a delicate balance exists between the value of jobs that provide positive, formative experiences, and the possible negative effects that excessive employment of youth can have on their academic performance and their health and well-being. The Department believes that the proposed change for 14- and 15-year-olds in sports attending activities will not have an adverse effect on their health, well-being, or educational development. Further, the Department believes that the employment opportunities for 14- and 15-year-olds as provided herein is consistent with the purpose of the FLSA to permit safe and healthy employment opportunities under conditions which protect the health, well-being, and schooling of such young workers. See 29 U.S.C. 203(l).

In addition, the Department proposes to delete the regulations at 29 CFR part 570, subpart D (Child Labor Reg. 5). These regulations provide a procedure for the Secretary to promulgate or amend hazardous occupation orders (HOs), which identify occupations in which employment of minors under 18 years of age is prohibited because the Secretary, pursuant to section 3(l) of the Act, has determined that the occupations are particularly hazardous for such workers or detrimental to their health or well-being. The Department proposes to repeal Child Labor Reg. 5, because its procedural requirements are no longer necessary, and because the continued existence of the regulation poses the potential for confusion regarding the process to be utilized by the Secretary in the review, amendment, and promulgation of HOs.

Child Labor Reg. 5 was promulgated in 1938, immediately after the enactment of the FLSA (3 FR 2640 (1938)). Although neither the FLSA nor other laws required such procedures, the Children's Bureau, which at that time was charged with administration of the FLSA child labor provisions, prescribed the process so that the public would be informed of the Department's intentions regarding the creation or amendment of restrictions on the employment of minors in hazardous occupations. The original Child Labor Reg. 5 identified certain mandatory steps, including public hearings, to be taken in HO promulgation. The Congress, however, imposed a standardized procedure in 1946 for all Federal agencies to follow when issuing or amending regulations. The procedures in this law, the Administrative Procedure Act (APA), 60 Stat. 237, provide greater administrative flexibility than the process in Child Labor Reg. 5, in that, for example, the APA does not mandate a public hearing in every case prior to promulgation of a regulation. There have been no changes to Child Labor Reg. 5 except for a technical amendment in 1961 (26 FR 5005 (1961)) to more align the HO process with APA requirements, i.e., hearings were identified among various optional steps which the Department could utilize.

It is the Department's view that Child Labor Reg. 5 is no longer necessary. The procedures set out in this regulation are not substantively different from the APA requirements which control DOL rulemaking, including promulgation of HOs. While the optional steps identified in the regulation are matters which the Department may choose to undertake in the promulgation of particular HOs, these steps—involving study, drafting,

[2] Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provision for affording interested parties an opportunity to be heard.

[3] For example, section 13(a)(3) of the FLSA exempts any employee employed by an amusement or recreational establishment from the minimum wage (section 6) and overtime (section 7) provisions of the Act, but not from the child labor provisions (section 12), if the establishment does not operate for more than seven months in any calendar year, or if during the preceding calendar year the establishment's average receipts for any six months were not more than 33½ percent of its average receipts for the other six months.

examination, and review of options and standards—are integral parts of the Department's deliberative, policy-making process and, thus, they need not and should not be set out in detail in regulations. Further, it is the Department's view that the regulation potentially creates confusion in that the Child Labor Reg. 5 procedures may be viewed incorrectly as mandatory steps for promulgation of HOs. The proposed repeal of Child Labor Reg. 5 will eliminate the possibility of confusion.

The Department is also proposing a technical modification in the regulations that is considered necessary and appropriate in connection with the Work Experience and Career Exploration Program (WECEP) to facilitate applications for certification under this program. Section 570.35a of the regulations provides for the employment of 14- and 15-year-olds in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP).[4] A condition for approval of such programs is that they provide sufficient safeguards to ensure that the employment will not interfere with the schooling of the minors or with their health and well-being. Enrollees in approved WECEPs may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours, in occupations other than:

(1) Those in manufacturing and mining;

(2) Those declared to be hazardous for the employment of minors under 18 years of age (set forth in subpart E of the regulations); or

(3) Those declared to be hazardous for employment of minors below the age of 16 in agriculture (set forth in subpart E–1 of the regulations).

The regulations at § 570.35a(c)(3) allow the Administrator of the Wage and Hour Division to approve a variance from the prohibited occupations in individual cases or classes of cases after notice to interested parties and an opportunity to furnish views. In State Educational Agency applications for WECEP program approval and requests for variances from the Reg. 3 occupations restrictions in those programs pursuant to § 570.35a(c)(3), the Department has consistently approved variances for particular activities which, within the operation of programs that meet all the WECEP criteria, have been determined by the Department not to interfere with the health and well-being of the 14- and 15-year-olds enrolled in the programs. To provide pertinent guidance to the State Educational Agencies and other interested parties, the Department proposes to amend the WECEP regulations to specify that the following activities will be ordinarily considered to be acceptable for participants in approved WECEP programs:

(1) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;
(2) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;
(3) Retrieving and/or placing food in coolers/freezers;
(4) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the minor's weekly hours worked; and
(5) Operating noncommercial dishwashers.

In effect, the revised WECEP regulations would contain a limited exception to the Reg. 3 occupations restrictions for WECEP participants engaged in the specified activities. Further, in order to preserve the Department's discretion to modify the Reg. 3 restrictions in special circumstances where a WECEP program applicant can demonstrate that the program will provide safe and suitable employment, the WECEP regulation will continue to contain a provision for obtaining variances from occupational restrictions similar to variance procedures under other programs administered by the Department's Wage and Hour Division, e.g., see § 5.14 of 29 CFR part 5 (Davis-Bacon and Related Acts) and § 4.123 of 29 CFR part 4 (McNamara-O'Hara Service Contract Act).

In addition, the Department is proposing to delete the exception contained in § 570.35(b) for enrollees in work training programs conducted under the Economic Opportunity Act of 1964. This Act has been repealed and the exception is no longer appropriate.

Executive Order 12866

The Department believes that this proposed rule is not a "significant regulatory action" within the meaning of Executive Order 12866. It proposes to change the permissible hours and time standards to permit greater flexibility in the employment of 14- and 15-year-olds as professional sports attendants. While the changes proposed are expected to enhance opportunities for employment, the impact on overall employment levels of 14- and 15-year-olds is modest. Other proposed changes are technical in nature and are expected to have only a minor impact on the employment of 14- and 15-year-olds. Accordingly, these changes are not expected to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that the proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed change to provide an exception from the permissible hours and time standards for minors 14 and 15 years of age when employed as attendants in professional sports has narrow application and will affect only a limited number of employers of which some may be considered small entities. Although the other technical changes may affect small entities, the impact is believed to be insignificant. For these reasons, the Department believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. The Secretary of Labor has certified to this effect to the Chief Counsel for Advocacy of the Small Business Administration. Therefore, no regulatory flexibility analysis is required.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Accordingly, 29 CFR part 570 of the Code of Federal Regulations is proposed to be amended as set forth below.

[4] Twelve States have Departmental approval to operate WECEP programs in the 1992–94 school years.

Signed at Washington, DC., on this 4th day of May 1994.

Robert B. Reich,

Secretary of Labor.

Bernard E. Anderson,

Assistant Secretary for Employment Standards.

Maria Echaveste,

Administrator, Wage and Hour Division.

PART 570—CHILD LABOR REGULATIONS, ORDERS AND STATEMENTS OF INTERPRETATION

1. The authority citation for part 570 continues to read as follows:

Authority: Secs. 3, 11, 12, 52 Stat. 1060, as amended, 1066, as amended, 1067, as amended; 29 U.S.C. 203, 211, 212.

Subpart C—Employment of Minors Between 14 and 16 Years of Age (Child Labor Reg. 3)

2. In § 570.35 of subpart C, paragraph (b) is proposed to be revised to read as follows:

§ 570.35 Periods and conditions of employment.

* * * * *

(b) In the case of minors 14 and 15 years of age who are employed to perform sports-attending services at professional sporting events, i.e., baseball, basketball, football, soccer, tennis, *etc.*, the requirements of paragraphs (a)(2) through (a)(6) of this section shall not apply, provided that the duties of the sports-attendant occupation consist of pre- and post-game or practice setup of balls, items and equipment; supplying and retrieving balls, items and equipment during a sporting event; clearing the field or court of debris, moisture, *etc.* during play; providing ice, drinks, towels, *etc.*, to players during play; running errands for trainers, managers, coaches, and players before, during, and after a sporting event; and returning and/or storing balls, items and equipment in club house or locker room after a sporting event. For purposes of this exception, impermissible duties include grounds or field maintenance such as grass mowing, spreading or rolling tarpaulins used to cover playing areas, *etc.*; cleaning and repairing equipment; cleaning locker rooms, showers, lavatories, rest rooms, team vehicles, club houses, dugouts or similar facilities; loading and unloading balls, items, and equipment from team vehicles before and after a sporting event; doing laundry; and working in concession stands or other selling and promotional activities.

3. Section 570.35a(c)(3) of subpart C is proposed to be revised to read as follows:

§ 570.35a Work experience and career exploration programs.

* * * * *

(c) * * *

(3) Occupations other than those permitted under §§ 570.33 and 570.34, except ordinarily for the following if expressly identified in the program application:

(i) Using a deep fryer or cooking at a grill with a maximum temperature of 375 degrees;

(ii) Operating power-driven mowers, weed-eaters, trimmers and whips with nylon string only;

(iii) Retrieving and/or placing food in coolers/freezers;

(iv) Loading and unloading goods weighing up to 30 lbs. provided that such work does not exceed 30 percent of the weekly hours worked; and (v) Operating noncommercial dishwashers. Employment in other activities may be approved by the Administrator of the Wage and Hour Division in acting on the program application if the Administrator finds that the applicant has demonstrated that the terms and conditions of the proposed employment will not be particularly hazardous or detrimental to the health or well-being of the minor enrolled in an approved program.

* * * * *

Subpart D—[Removed and Reserved]

4. Subpart D, consisting of §§ 570.41 through 570.49, is proposed to be removed and reserved.

[FR Doc. 94–9946 Filed 5–12–94; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 570

RIN 1215–AA09

Child Labor Regulations, Orders and Statements of Interpretation

AGENCY: Wage and Hour Division.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor (Department or DOL) is considering proposing revisions in the child labor regulations issued pursuant to the Fair Labor Standards Act (FLSA), 29 CFR part 570, which set forth the criteria for the permissible employment of minors under 18 years of age. In particular, subparts C and E of these regulations are under review. Subpart C (Child Labor Reg. 3) specifies permissible hours and time standards, as well as occupational limitations, for 14- and 15-year-old employees. Subpart E identifies occupations deemed particularly hazardous for, or detrimental to the health or well-being of, employees under 18 years of age. This advance notice of proposed rulemaking seeks the views of the public on needed changes to these regulations, and also with respect to other aspects of the regulations.

DATES: Comments are due on or before August 11, 1994.

ADDRESSES: Submit written comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, room S3506, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: J. Dean Speer, Director, Division of Policy and Analysis. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile ("FAX") machine to (202) 219–5122 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8412. This is not a toll free number.

SUPPLEMENTARY INFORMATION: The child labor provisions of the Fair Labor Standards Act (FLSA) establish a minimum age of 14 years for employment in most nonagricultural occupations. The Secretary of Labor is authorized to provide by regulation for the employment of young workers 14 and 15 years of age in suitable occupations other than manufacturing or mining, and during periods and under conditions which will not interfere with their schooling or with their health and well-being. These provisions also permit 16- and 17-year-old minors to be employed in the nonagricultural sector, without hours or time limitations, subject to prohibitions in occupations found and declared by the Secretary of Labor to be particularly hazardous, or detrimental to the health or well-being of minors under age 18. In

agriculture, minors 14 and older may be engaged in general employment, subject to prohibitions on occupations declared particularly hazardous by the Secretary of Labor. Additionally, in agriculture 12- and 13-year-olds may be employed with written parental consent or on a farm where the minor's parent is also employed. Under very limited waiver conditions, 10- and 11-year-olds may be employed outside of school hours in agriculture as hand harvesters of short season crops for a maximum annual period of eight weeks.

The regulations for 14- and 15-year olds are known as Child Labor Regulation No. 3 (Reg. 3) and are contained in subpart C of 29 CFR part 570. Reg. 3, as amended, limits the hours that 14- and 15-year-olds may work to:

(1) Outside school hours;

(2) Not more than 40 hours in any one week when school is not in session;

(3) Not more than 18 hours in any one week when school is in session;

(4) Not more than 8 hours in any day when school is not in session;

(5) Not more than 3 hours in any day when school is in session; and

(6) between 7 a.m. and 7 p.m., except during the summer (June 1 through Labor Day) when the evening hour is extended to 9 p.m.

Summer school sessions are considered to be "outside school hours," i.e., nonschool weeks. Also, 14- and 15-year-olds enrolled in a State-approved, school-supervised Work Experience and Career Exploration Program (WECEP) may be employed for up to 23 hours in school weeks, 3 hours on school days, and during school hours.[1]

Child Labor Reg. 3 permits work by 14- and 15-year-olds in certain occupations in retail, food service, and gasoline service establishments, and prohibits their employment in certain other work, including work prohibited by hazardous occupational orders.

Pursuant to the FLSA child labor provisions, the Secretary has issued standards governing employment of minors under 18 years of age in nonagriculture occupations. The 17 nonagricultural hazardous occupations orders (HOs) now in effect are contained in 29 CFR part 570, subpart E. Prohibitions established by these HOs apply either on an industry basis, specifying the occupations in the industry that are not covered, or on an occupational basis irrespective of the industry in which performed. The current nonagricultural HOs deal with manufacturing and storing explosives (HO 1); motor-vehicle driving and outside helper (HO 2); coal mining (HO 3); logging and sawmilling (HO 4); power-driven woodworking machines (HO 5); exposure to radioactive substances (HO 6); power-driven hoisting apparatus (HO 7); power-driven metal-forming, punching, and shearing machines (HO 8); mining, other than coal mining (HO 9); slaughtering, or meat-packing, processing, or rendering (HO 10); power-driven bakery machines (HO 11); power-driven paper-products machines (HO 12); manufacturing brick, tile, and kindred products (HO 13); power-driven circular saws (HO 14); wrecking, demolition, and ship-breaking operations (HO 15); roofing operations (HO 16); and excavation operations (HO 17).

Occupations in agriculture found particularly hazardous and, consequently, prohibited by the Secretary for children below the age of 16 are contained in subpart E–1 of 29 CFR part 570.

Because of changes in the workplace and the introduction of new processes and technologies since the adoption of current regulatory standards, as well as changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences, the Department is undertaking a comprehensive review of the criteria for child labor employment, and is considering proposing revisions to Regulations, 29 CFR part 570. Accordingly, this advance notice of proposed rulemaking is being published to obtain the views of the public with respect to the matters set out below as well as to any other issues of interest under this regulation.

I. Permissible Hours, Time-of-day, and Occupational Standards Under Child Labor Reg. 3

Since the regulations relating to hours, time and occupations were last amended, the Department has engaged in periodic reviews of the appropriateness of these regulations.

Thus, for example, in 1982, the Department published a proposal in the **Federal Register** to, among other things, modify the permissible periods of work for 14- and 15-year-olds.[2] This proposal would have increased the maximum daily hours from 3 to 4 hours on a school day, and increased the maximum weekly hours of employment when school is in session from 18 to 24 hours. The proposal would have further permitted 14- and 15-year-olds to work up to 36 hours in any week when school was in session for only a portion of the week due to holidays or vacation periods. Finally, this proposal would have generally expanded the end-of-day time restriction from 7 to 9 p.m. on school days, and would have established a 10 p.m. end-of-day limit on any day during the summer months or preceding a nonschool day. The 1982 proposal generated considerable public interest and controversy. The Department subsequently suspended the proposal from further consideration, and it was not implemented as a final rule.[3]

In August 1987, the Department established a Child Labor Advisory Committee (CLAC)[4] to provide advice and guidance in the development of possible proposals to change existing standards. In its review of hours and time of work issues, the Committee recommended that existing hours and time of work standards be retained without modification.

In the U.S. Congress, bills have been introduced in the House and Senate that include, among other things, hours and time restrictions for 14- and 15-year-old employees. Bills to reform the FLSA's child labor provisions, H.R. 1106, introduced February 24, 1993, and S. 86, introduced January 21, 1993, would allow 14- and 15-year-olds to work only for 3 hours a day and 15 hours a week, or between the hours of 7 a.m. and 7 p.m. when school is in session. Under H.R. 1106, 16- and 17-year-old minors could not, for the first time, work more than 4 hours a day or 20 hours a week, or before 6 a.m. or after 10 p.m. when school is in session. These hours and time restrictions for 14- and 15-year-olds are similar to the existing regulations, except that the bills set a 15 hours-per-week limit (rather than the current, regulatory 18).

Under a model State child labor law drafted by the Child Labor Coalition (a child labor advocacy group of 35 organizations interested in updating child labor laws), the maximum hours of employment for 14- and 15-year-olds would be set at 15 hours a week while in school, and 30 hours a week when school is not in session. For 16- and 17-year-olds, the maximum work hours would be 30 when school is in session and 40 hours when it is not.

[1] Twelve States had Departmental approval to operate WECEP programs in the 1992–94 school-years.

[2] 47 FR 31254, July 16, 1982; 47 FR 34166, August 6, 1982 (extending the comment period to January 13, 1983).

[3] 50 FR 17434, April 29, 1985 (DOL's Semiannual Regulatory Agenda).

[4] The CLAC was composed of 21 members representing employers, education, labor, child guidance professionals, civic groups, child advocacy groups, State officials, and safety groups.

The Department has also continued to receive input from the public suggesting that certain changes be made in the regulations.[5] The National Restaurant Association (NRA), the International Association of Amusement Parks and Attractions (IAAPA), and the Fresno (California) Private Industry Council, among others, have requested that the Department change the regulations. Correspondence has also been received from individual employers, Members of Congress, and members of State legislatures.

In 1992, for example, the NRA noted that nearly 20 percent of employed teens work in food service occupations and that roughly 25 percent of the industry's hourly workers are in their teens. The NRA also pointed to a high overall teen unemployment rate and suggested a number of reforms to the regulations, including:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for four days or less due to holiday or vacation breaks (currently limited to 18 hours during weeks when school is in session for one or more days);

(2) Expanding the limit to 4 hours on Sundays through Thursdays, i.e., days followed by school days, and to 8 hours on Fridays and Saturdays (currently limited to 3 hours on school days);

(3) Changing the 7 p.m. limitation during the school year to 9 p.m. on Sundays through Thursdays and to 11 p.m on Fridays and Saturdays; and

(4) Changing the 9 p.m. limitation during the summer vacations (from June 1 to Labor Day) to 11 p.m.

Reforms suggested by the International Association of Amusement Parks and Attractions (IAAPA) include:

(1) Allowing 14- and 15-year-olds to work up to 24 hours a week when school is in session for 5 days, and up to 36 hours a week when school is in session for any part of a week due to holidays or vacation (with the actual hours limit determined by subtracting from 40 hours, 4 hours for each day that school is in session during the partial school week);

(2) Changing the current 3-hours-per-day limit when school is in session to 4 hours; and

(3) Changing the 9 p.m. end-of-day limitation during the summer period to 11 p.m.

The Department is also aware of the child labor standards established by State governments. In this regard, nearly all States have employment restrictions applicable to young workers and, although many have adopted standards similar to the Federal standards for 14- and 15-year-olds, the restrictions vary significantly. For example, most States limit the number of hours that may be worked in a day when school is not in session to 8 hours; only three States allow more than 8 hours of work in a day when school is not in session. Most States limit the number of hours that may be worked in a week when school is not in session to 40 hours; fifteen States, however, permit work in excess of 40 hours when school is not in session, with the number of hours allowed ranging from 44 to 56. With respect to the number of hours that may be worked in a week when school is in session, a large number of the States do not have any specific restrictions. Eighteen States restrict work to no more than 18 hours; two States restrict work to 16 and 15 hours, respectively; two States restrict work hours to 18 hours but allow more hours when school is not in session for a full week; and seven other States have provisions that allow work in excess of 20 hours a week when school is in session.

Of the States that restrict daily work hours, 20 provide for a 3-hour limitation on a school day, whether or not the following day is a school day; one State sets a 3-hour limit on days followed by a school day; and one State permits longer hours on Saturdays and Sundays. A daily limit of 4 hours is allowed by seven States, with one of these States permitting additional hours on Fridays and on a school day preceding a day when school is not in session.

Four States have established maximum permissible daily and/or weekly combined school and work hours, i.e., 10 total hours of combined school and work on a daily basis, or 48 total hours of combined school and work on a weekly basis.

In 28 States, work beyond 7 p.m. is prohibited except during the summer, on a holiday, or on a day preceding a day when school is not in session, when work until 9 p.m. is allowed in 26 of these States, and until 10 p.m. in the other two States. Two additional States prohibit work after 7 p.m. at all times. An additional 19 States allow work at least until 8 p.m.; another five States permit work until 10 p.m.

In addition to allowing more working hours during the summer, State standards often distinguish between days preceding a school day from those preceding a non-school day. Several States also make a distinction between full school weeks and weeks when school is in partial session because of holiday and vacation time, permitting more hours to be worked in partial school weeks.

Under the Department's Work Experience and Career Exploration Program (WECEP), which began in 1969, 14- and 15-year-old enrollees were initially permitted to work up to 28 hours per week when school was in session and up to 4 hours on a school day, any portion of which could be during school hours. Studies of WECEP indicated that limited labor market experience in a controlled school setting had a definite positive impact on the scholastic performance and school attendance of participating 14- and 15-year-old students. These studies also established that the optimum hours—at which students attained the greatest educational benefits—were fewer than the maximum hours originally allowed. As a result, in 1975, the permissible hours of employment under WECEP were reduced to 3 hours per day and 23 hours per week, and these revised standards were adopted in final regulations published in the **Federal Register** on September 3, 1975. See 29 CFR 570.35a(d).

The Department is also aware that some employers of young workers have adopted special programs designed to achieve complementary integration of educational and work experiences. Such employers may, for example, ascertain young workers' grade point averages (GPA) at the time of hiring; arrange work schedules, subject to parental consent, to accommodate the scholastic needs of students; allow young workers to study at the workplace; give bonuses for superior academic achievement or school attendance; monitor young workers' academic performance and school attendance during employment; and ensure that students, prior to hiring, know their employment rights and the regulations applicable to minors.

The Department seeks comments on whether there is a need for changes in the requirements of Child Labor Reg. 3 for students participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers.

The Department, for the reasons discussed above, is particularly interested in obtaining public comment on the appropriateness and feasibility of the following matters:

[5] Section 570.38 of the regulations provides that persons desiring revisions of subpart C of part 570 may submit in writing to the Secretary of Labor a petition setting forth the changes desired and the reasons for proposing them. In response, the Secretary may either schedule hearings or make other provisions for affording interested parties an opportunity to be heard.

1. Should greater flexibility be allowed in the permissible hours of work for 14- and 15-year-olds whose employers have a formal "employer-parent-school" program that links meaningful work experiences with support for the attainment of the student-employee's educational goals and ongoing academic performance? Commenters are requested to include specific recommendations as to the standards or criteria that should be considered for inclusion in any future rulemaking to define such special programs, and as to the changes in permissible work hours that would be appropriate for 14- and 15-year-olds whose employers maintain such programs. Commenters are also requested to provide information regarding the implications for employer recordkeeping that might be necessary for the Department to monitor compliance with the standards for any such programs, and recommendations for how these recordkeeping requirements should be addressed.

2. The current regulations contain an end-of-day restriction of 7 p.m. on days when school is in session. A less restrictive time of 9 p.m. is permitted during the summer vacation period defined in the regulations as June 1 through the Labor Day holiday. When school is in session, the regulations make no distinction between a day preceding a school day and one preceding a non-school day, i.e., typically Fridays, Saturdays, and days before a school holiday. Should there be different restrictions on times of work on days preceding a non-school day and, if so, why? Would any such changes interfere with the schooling, health, or well-being of young workers? If an end-of-day restriction different from 7 p.m. is appropriate on days preceding a non-school day, what should the time restriction be on such days, and why? Should the Department consider a later end-of-day time for work during the summer months when school is not in session? If so, what should that time be and why?

3. The regulations currently limit the daily hours that may be worked by 14- and 15-year-olds to 3 hours on days when school is in session; 8 hours when school is not in session. Should a distinction be made in the number of hours that may be worked on a day preceding a non-school day (typically Friday, Saturday, and the day before a school holiday) and, if so, how many hours should be permitted and why?

4. Weekly hours for 14- and 15-year-olds are limited by the regulations to 18 hours when school is in session. While some States permit more hours, only two limit permissible weekly hours to less than the 18-hour standard, one to 16 and another to 15. On the other hand, the child labor reform bill pending in the U.S. House of Representatives (H.R. 1106) and the Model state law drafted by the Child Labor Coalition would limit the number of hours that may be worked each week to 15. Should the existing Federal standard be changed and, if so, how many hours should be permitted and why? Should a distinction be made for those weeks when school is in session less than five days?

5. Traditionally, schools were not "in session" during the summer months and the regulations reflected this common schedule by providing less-restrictive hours and time limitations during the summer vacation period between June 1 and the Labor Day holiday. School systems, however, have begun converting to non-traditional attendance schedules and remain open year-round. For example, some public and private schools have implemented academic quarter-year, trimester, or other alternative attendance schedules under which the schools schedule classes year-round, but not all students are attending school at any point in time. For these schools, the traditional concept of the "summer vacation break" between June 1 and Labor Day has become irrelevant. Additionally, home education programs are now more common, not only in school jurisdictions where the public schools operate on uniform attendance calendars applicable to all students, but also in school jurisdictions where the public schools operate year-round or on a platoon system. Should the regulations be changed to accommodate different structures for when school is "in session" and what are the particular changes that should be made to reflect the characteristics of alternative school schedules? If the concept is based on the schedule for school attendance of individual student-employees (rather than the entire school system), how do employers and student-employees determine when different hours restrictions are applicable and what records would have to be maintained to ensure compliance?

The Department is also reviewing the occupational provisions contained in Reg. 3 to determine what changes, modifications, or clarifications, if any, are appropriate for 14- and 15-year-old employees. The Department is interested in obtaining public comment on all aspects of these provisions, including the following matters:

1. Section 570.34(b)(5), promulgated prior to the advent of the fast food industry, prohibits cooking by 14- and 15-year-olds employed by retail and food establishment cooking at soda fountains, lunch counters, snack bars, or cafeteria serving counters. This prohibition has been interpreted by the Department to allow cooking only when the activity is in "plain view" of customers. Thus, the cooking prohibition applies to full service restaurants and certain fast food restaurants where the cooking configuration does not permit customers to plainly view the cooking activity. Should cooking be permitted in retail and food establishments, and, if so, what restrictions, if any, would be appropriate to ensure the safety and health of young workers? Should all cooking be prohibited, and, if so, why?

2. Section 570.33(b) prohibits the employment of 14- and 15-year-olds in any occupation which involves "* * * any power-driven machinery other than office machines." The operation of certain power-driven devices, equipment, and tools in retail, food service, and gasoline service establishments is expressly permitted by § 570.34. In such industries, 14- and 15-year-olds may, for example, operate vacuum cleaners, floor waxers, dishwashers, toasters, dumbwaiters, popcorn poppers, milk shake blenders, and coffee grinders. Fourteen- and 15-year-olds are also permitted to operate office machines in connection with office and clerical work and cash registers in connection with retail sales work. Should any of the machines, *etc.*, expressly permitted in Reg. 3 be reconsidered because their use adversely affects the health and well-being of such workers? If so, why? Are there power-driven machines, *etc.*, in the contemporary workplace not now expressly permitted by Reg. 3 which 14- and 15-year-olds should be allowed to operate? If so, identify the machines and explain why their use should be permitted. Also, questions periodically arise about the meaning of "power-driven" and whether the term includes tools, equipment, *etc.*, that are activated by battery power, i.e., many tools and devices are now power-activated by rechargeable battery units. Should the term "power-driven" include equipment, tools, etc. powered by such sources, and why or why not?

3. In addition, consideration is being given to two clarifying modifications which would incorporate existing Departmental enforcement policy into the regulations. Section 570.34(b)(7) prohibits 14- and 15-year-olds from working in freezers and meat coolers. Such workers are prohibited from working as dairy stock clerks, meat

clerks, deli clerks, produce clerks, or frozen-food stock clerks where their duties would require them to enter and remain in coolers or freezers for prolonged periods. Inventory and cleanup work involving prolonged stays in freezers and coolers also is prohibited. On the other hand, food preparers in fast food restaurants or cashiers in grocery stores whose duties require entry to such refrigeration equipment only momentarily to retrieve items are not considered as working in coolers and freezers for enforcement purposes. Because this traditional interpretation of the "cooler and freezer" prohibition is not specifically contained in the regulations, a regulatory clarification may be appropriate.

Similarly, a regulatory clarification to reflect longstanding policy concerning solicitations for newspaper subscriptions may be appropriate. Section 13(d) of the FLSA exempts from the minimum wage, overtime, and child labor provisions (§§ 6, 7, and 12) "* * * any employee engaged in the delivery of newspapers to the consumer." Accordingly, such work is outside the scope of the child labor regulations. However, the Department has held, on the basis of a legal opinion from the Solicitor, that the "newspaper" exemption does not apply when the minor is performing nonexempt work such as participation in a sales blitz where newspaper subscriptions are solicited outside the assigned paper route for delivery by other delivery persons. Should this enforcement position be incorporated in the provisions of Child Labor Reg. 3?

The Department recognizes the delicate balance between the value of jobs that provide positive, formative experiences, and the negative effects that excessive hours of employment of youth can have on their academic performance, and their health and well-being. Public comments, which should include supporting data whenever available, are specifically invited on such relevant factors as:

(1) The need for safe and healthy employment opportunities for 14- and 15-year-olds;

(2) The biological developmental factors, such as muscle coordination and attention span, present in 14- and 15-year-olds which should be considered with regard to their conditions of employment;

(3) The educational needs of 14- and 15-year-olds and the effect on their academic success of longer and/or later hours of work;

(4) The correlation between longer and/or later hours of work and the safety and health of 14- and 15-year-olds;

(5) The correlation between employment opportunities for 14- and 15-year-olds and their personal and educational development; and

(6) The potential effects of specific changes in the regulations on the employment opportunities of 14- and 15-year-olds.

II. Nonagricultural Hazardous Occupations Orders for the Employment of Youth Under 18 Years of Age

The first seven HOs were developed under the direction of the Children's Bureau between 1939 and 1946. In 1946, authority for the program was transferred from the Children's Bureau to the Department of Labor under Reorganization Plan No. 2. HOs 8 through 17 were issued by the Bureau of Labor Standards between 1950 and 1963. In the intervening years, the Department has made some clarifying modifications to these HOs that largely incorporate Departmental interpretations and enforcement policy, and hazardous occupations in agricultural were promulgated in 1970.

As a result of various recommendations made by the Department's Child Labor Advisory Committee (CLAC), a notice of proposed rulemaking was published to clarify or modify HO 2, HO 10, and HO 12 on October 23, 1990 (55 FR 42812). The final rule, published on November 20, 1991 (56 FR 58626), clarified the existing HOs to:

(1) Eliminate exemption procedures contained in HO 2 which allowed minors under 18 years of age to work as school bus drivers;

(2) Specify that restaurants, fast food establishments, and other retail establishments are subject to HO 10 prohibiting minors under the age of 18 from using power-driven meat processing equipment;

(3) Specifically provide that meat slicers are meat processing equipment within the meaning of the HO 10 prohibitions; and

(4) Amend HO 12 to expressly prohibit minors under the age of 18 from using power-driven paper baling machinery in the processing of waste paper.

The CLAC made a number of additional recommendations which were not included in the HO 2, 10, and 12 rulemaking. For example, the CLAC recommended that HO 10 be amended to also include bacon slicing machines in the list of prohibited machines, and to prohibit the use of such machines without regard to the purpose of their use, i.e., power-driven meat processing machines used primarily for processing products other than meat. The CLAC also was of the view that food processing in industries other than meat processing, such as poultry, fish, and seafood processing, should be studied by the Department to determine the need for protecting young workers from hazardous activity. With respect to HO 2, the CLAC made several recommendations, including defining and delimiting the terms "occasional and incidental" driving and "outside helper," specifically prohibiting the operation of trucks on private property, and specifically excluding motorcycles, mopeds, or similar vehicles from the "occasional and incidental" exception. With respect to HO 11, the CLAC recommended a complete ban on the operation of all power-driven bakery machinery, and also recommended further study of power-driven paper products machines addressed in HO 12.

Of particular concern to the CLAC was the lack of sufficient and relevant data to support comprehensive review of existing HOs or findings that certain contemporary occupations, processes, machinery and worksites are particularly hazardous for employment of youths under age 18, or detrimental to their health or well-being. The lack of comprehensive statistics on minors injured in the workplace has been a longstanding concern of the Department. Historically, some limited information was generated, largely from secondary sources and statistical records from the few States that compiled worker compensation data, to support the case for each of the existing HOs. Fundamental to some of the existing HOs (e.g., HO 15, shipbreaking), however, was the notion that work found to be particularly hazardous or detrimental to the health and well-being of adult workers would be injurious to minor workers.

To address this concern, the Department is continuing its efforts to develop reliable youth injury statistics through enhancements of information reported by the Bureau of Labor Statistics (BLS). BLS is redesigning its Occupational Safety and Health Statistical reporting system to collect more comprehensive work-related injury and illness data on all workers, including young workers. This new system, the Survey of Occupational Injuries and Illnesses, will collect information from about 280,000 establishments from a sampling frame of approximately six million establishments. The new survey will include data by occupation, age, gender, race, and length of service with details on, among other things, the nature of the injury/illness, the part of body affected, the primary and secondary sources of the injury/illness, and the event or exposure leading to the injury/illness.

BLS has developed another major safety and health data reporting system with its Census of Fatal Occupational Injuries program. This data base includes information on fatally injured workers (industry, occupation, age, sex, and race) and the fatal events (nature of the injury and how it happened).

The Department believes that such injury data is essential to support ongoing comprehensive and systematic reviews of occupations, processes, machinery, and worksites which are particularly hazardous for workers under 18 years of age, or detrimental to their health or well-being. While such data will enhance the Department's ability to pinpoint patterns of injuries and illness by various characteristics, i.e., problems areas, specific information about workplaces, processes, and machines causing injuries or illness must still be identified, e.g., data can indicate that a "machine" was the object which produced injuries in a particular industry, but specific information on the type of machine and/or its peculiar characteristics may continue to be a key part of HO determinations.

The Department's review of State child labor laws supports the view of the CLAC that the existing HOs need to be revisited and that contemporary circumstances may warrant new or different protections for minors under the age of 18. The standards in those States that regulate employment under age 18 prohibit employment on certain types of machines, in work involving hazardous substances, in hazardous locations, in dangerous occupations, and in specific industries. While specific prohibitions vary widely among these States, a significant number of States have promulgated work prohibitions in areas of particular interest to the Department: At least nine States (Connecticut, Florida, Iowa, Louisiana, Maryland, Minnesota, New Jersey, New York, and Washington) prohibit exposure to carcinogenic, corrosive or toxic substances; a number of States (Arkansas, Connecticut, Delaware, Florida, Maryland, and Pennsylvania) prohibit work on electric apparatus or wiring; four States (Illinois, North Dakota, Washington and Wisconsin) now prohibit exposure to body fluids and infectious agents; and several States (Colorado, Connecticut, Florida, Minnesota, and Washington) place restrictions on work above specified heights.

Further, the Department is aware of Congressional interest in the updating of workplace protections for minors under the age of 18. The bills referred to above, H.R. 1106 and S. 86, would direct the Secretary of Labor to find and declare HOs prohibiting the employment of minors in poultry processing, fish and seafood processing, and in the handling of pesticides. In addition, H.R. 1106 would, among other things, eliminate any exemption from the motor vehicle operation prohibition in HO 2 except for driving by a 17-year-old that is "secondary and incidental" to the minor's main occupation; and expressly apply HO 10 to restaurants and fast food establishments.

While the Department is interested in obtaining public comment on any modifications, deletions, clarifications, or other changes that may be appropriate in existing HOs, and any areas of work that should be addressed by new HOs, public comment is specifically invited on the appropriateness and feasibility of the following:

1. Food Processing

HO 10 currently prohibits the employment of youth under 18 in certain occupations involving slaughtering, meat-packing or processing, or rendering. There are no comparable restrictions involving poultry processing and fish and seafood processing. Should the Department adopt restrictions in these industries, and, if so, are there particular machines or operations which should be restricted? To what extent are minors under 18 employed in such industries, and what is the nature of the work performed? Should such restrictions encompass all food processing? Do studies, injury and illness data, *etc.*, exist which support prohibiting the employment of minors under the age of 18 in all food processing activity?

2. Hazardous Wastes and Toxic Substances

Existing regulations do not address exposures to hazardous wastes and toxic substances in nonagricultural employment. In agriculture, the handling of or applying toxic agricultural chemicals by youth under the age of 16 is prohibited (see § 570.71(a)(9)). The model State child labor law drafted by the Child Labor Coalition, discussed above, would ban all occupations involving the loading, mixing, applying, handling, or working around or near any fertilizer, herbicides, fungicides, pesticides, insecticides, and/or any other chemical. In addition, this model legislation would prohibit the loading, handling, mixing, or applying of chemicals, including cleaning agents or disinfectants, which could result in allergic reactions, poisonings, or internal or external injuries. The use or handling of heavy metals, including mercury and lead, would also be prohibited by the proposed model legislation.

A number of States have adopted standards along the same lines. Several States, for example, prohibit exposure to carcinogenic, corrosive, or toxic substances. Working with lead, working in the manufacturing of paint, acids or poisons, and exposure to asbestos and related substances are other areas banned by particular States.

Is there a commonly understood definition of toxic or hazardous substances, and what standards or criteria would be appropriate for use in Federal standards for workers under 18 years old? Should different standards apply to 14- and 15-year-olds? Are there data to support such standards or criteria? Should specific substances or materials be identified in an HO, or would a more generic framework be appropriate? Is an occupational and/or industry framework a reasonable alternative, and, if so, which occupations and/or industries create the greatest concerns that such exposure is detrimental to the health and well-being of youth under age 18? What are the compliance difficulties associated with limiting employment in this area, and how can they be minimized?

3. Electric Apparatus and Wiring

Available injury and illness data indicate a high incidence of fatal injuries in the construction industry resulting from electric shock. A significant number of these deaths were suffered by workers between the ages of 16 and 19. Construction industry accidents involving electric shock are attributed to working directly with electricity, using hand held power driven tools, from electric cords, and from ladders, scaffolds and other equipment coming in contact with overhead wires. While the current child labor regulations do not deal with electricity, at least six States prohibit young workers from working with electric apparatus and wiring.

Should consideration be given to establishing a prohibition of such activity in the construction industry? Why? Should a broad-based generic prohibition be considered as opposed to occupational-specific prohibitions, and, if so, how should the prohibition be formulated? Should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners as in the case of certain other HOs (HOs 5, 8, 10, 12, 14, 16, and 17)?

4. Heights

Under HO 16, all occupations in roofing operations are prohibited. The

HO's prohibition does not include gutter and downspout work; the construction of the sheathing or base of roofs; or the installation of television antennas, air conditioners, exhaust and ventilating equipment, or similar appliances attached to roofs.

Several States currently restrict work above certain heights by young workers. These standards either involve work performed at heights above 10 feet or at heights 6 feet above ground, and include elevated surfaces such as scaffolds and ladders.

While work in roofing occupations is specifically prohibited by HO 16, work in other occupations requiring work on a roof are not. Should all occupations involving work on roofs be prohibited? If so, why? As above, should consideration be given to the possible development of a generic restriction with cross-industry application or to particular occupations and/or industries, e.g., the construction industry? Also, should an exemption be permitted for employment of 16- and 17-year-old apprentices and student learners?

5. Body Fluids and Infectious Agents

The States of Wisconsin and Washington have prohibited all minors from working in occupations involving exposure to body fluids including blood or infectious agents, and in 1993 the States of North Dakota and Illinois banned such employment for minors under the age of 16. Other States accomplish a similar objective using an industry/occupation approach. In Virginia, for example, minors under the age of 16 cannot work as laboratory helpers, therapists, orderlies, or nurses' aides in any hospital, nursing home, clinic, or other establishment providing care for resident patients. Minors under the age of 18 are prohibited by the State of Washington from employment in the occupation of nurses' aid, except as a student or after training, and by the State of Wisconsin from employment in hospitals and nursing homes. The model State law drafted by the Child Labor Coalition, referred to above, would ban all occupations involving the handling or storage of blood, blood products, body fluids and body tissues, and medical or other dangerous wastes.

What evidence exists to support a finding that such exposures are particularly hazardous, or detrimental to the health or well-being of young workers, or that they are at risk in the absence of work prohibitions? Are other governmental safeguards, i.e., standards established by the Occupational Safety and Health Administration (OSHA), sufficient to protect minors? As above, would an occupation/industry-specific approach, in contrast to a generic formulation, be more feasible, and, if so, why?

6. Student-Learner Exceptions

Another area of the regulations under review concerns the student-learner provisions in § 570.50(c). Certain of the HOs (HO 5, 7, 10, 12, 14, 16, and 17) contain an exemption for the employment of student-learners between the ages of 16 and 18. For the exemption to apply, §§ 570.50(c)(2)(i) and (ii) require a written agreement which provides that the work of the student-learner in a vocational training program involving these otherwise prohibited occupations and activities must be "incidental" to the training and that the work is "intermittent and for short periods of time." The Department is seeking comment on whether there is a need for changes to these two requirements for student-learners participating in programs under statewide School-to-Work Opportunities systems advocated by the School-to-Work initiative jointly sponsored by the Departments of Education and Labor (see 59 FR 5266 (February 3, 1994) and 59 FR 11154 (March 9, 1994)). Programs developed under this initiative are intended to give youth access to education and training opportunities that will prepare them for high-skill, high-wage careers. The Department solicits public comment on whether any changes are needed to these two requirements in order to facilitate this objective. The changes being considered would be limited to student-learners under School-to-Work Opportunities programs and would affect only those HOs which have traditionally included a student-learner exception. School-to-Work Opportunities programs would remain subject to the requirements that the activity be performed under the direct and close supervision of a qualified and experienced person, that safety instructions be given by the school and correlated by the employer with on-the-job training, and that a schedule of organized and progressive skill development activities be prepared. Also, work done in prohibited occupations would be an essential and integral part of the student-learner's training program. If there are no changes made to the student-learner exception, would this significantly foreclose school-to-work training opportunities? If this were the case, what other alternatives should the Department consider to facilitate the effectiveness of employment in the School-to-Work Opportunities program?

III. General

In soliciting comments on the above or any other aspects of the child labor regulations considered appropriate by commenters, such as the HO 10 exemption for bacon-slicing machines, the Department is specifically interested in data, reports, cost-benefit analyses, studies and other documentation which support the positions taken or otherwise relate to the Department's objective to develop updated, realistic health and safety standards for today's young workers. Any impact on school-to-work transition programs should also be discussed.

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 570

Child labor, Child labor occupations, Employment, Government, Intergovernmental relations, Investigations, Labor, Law enforcement, Minimum age.

Signed at Washington, DC, on this 4th day of May, 1994.

Maria Echaveste,

Administrator, Wage and Hour Division.

[FR Doc. 94-9947 Filed 5-12-94; 8:45 am]

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May 13, 1994

Part III

Federal Trade Commission

16 CFR Part 305

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") issues final rules that add general service fluorescent lamps, medium base (integrally ballasted) compact fluorescent lamps, and general service incandescent lamps (both reflector and nonreflector) to the list of products subject to provisions of the above referenced rule, commonly referred to as the Appliance Labeling Rule ("Rule"). Lamps often are referred to as "light bulbs" or "electric lights." This action is taken pursuant to the Energy Policy Act of 1992 ("EPA 92"), which directed the Commission to prescribe, by April 25, 1994, rules requiring such lamp products to be labeled with disclosures that will enable purchasers to select the most energy efficient lamps that meet their requirements. At the same time, the Commission temporarily stays § 305.8(a)(3) of the Rule, which requires manufacturers to file annual reports, until the U.S. Department of Energy adopts test procedures for lamps under EPA 92. The Commission also exempts from the requirements of §§ 305.11(e) and 305.14(d) of the Rule, which require disclosures on labels and in catalogs, those lamp products that will be eliminated from the market as of October 31, 1995, by minimum efficiency standards specified in EPA 92.

EFFECTIVE DATE: May 15, 1995.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, James G. Mills, or Terrence J. Boyle, Attorneys, Federal Trade Commission, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, 601 Pennsylvania Ave., NW., Washington, DC 20580, telephone numbers 202–326–3013, 202–326–3035, and 202–326–3016, respectively.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92[1] amends in several respects the Energy Policy and Conservation Act of 1975 ("EPCA"), which requires the Commission to prescribe labeling rules for certain major household appliances and other products.[2] The EPA 92 amendments to EPCA direct the Commission, within 18 months of the statute's enactment, to prescribe rules requiring that certain types of lamp products be labeled with "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements."[3] Pursuant to this statutory directive, the Commission published a Notice of Proposed Rulemaking ("NPR") on November 15, 1993, soliciting written public comments on proposed amendments to the Appliance Labeling Rule ("Rule"), 16 CFR part 305 (1993), to include these categories of lamp products.[4] The Commission also conducted a Public Workshop-Conference ("Workshop") on January 19, 1994, to discuss the proposed amendments, and accepted supplemental written comments from the Workshop participants following the completion of the Workshop.

After evaluating the written comments, the transcript of the Workshop, and the supplemental comments, the Commission is amending the rule to impose labeling and other disclosure requirements for the lamp products referenced in EPA 92. The amendments are discussed in detail in part IV, below. The amendments appear in "Text of Amendments," below. The Commission also has determined that the final rules announced today overlap certain provisions of the Commission's pre-existing Light Bulb Rule pertaining to the required disclosure format for wattage, light output, and laboratory life ratings and to the voltage level at which those ratings are to be tested.[5] Following this proceeding, the Commission will consider whether any additional action is necessary concerning the Light Bulb Rule.

II. Background

A. Overview of the Appliance Labeling Rule

EPCA, enacted in 1975, is generally designed to promote improved energy efficiency of consumer products. 42 U.S.C. 6201 (1988). As amended by EPA 92, it establishes energy consumption standards or water use standards for certain categories of major home appliances and other products, 42 U.S.C.A. 6295 (West Supp. 1993), and directs the U.S. Department of Energy ("DOE") to prescribe test procedures to measure the energy consumption or water use of those products. 42 U.S.C.A. 6293 (West Supp. 1993). EPCA also directs the Commission to prescribe, or in some cases to consider prescribing, rules requiring appliances and other products to be labeled with disclosures of estimated annual energy cost, another useful measure of energy usage or efficiency, or of water use rates. 42 U.S.C.A. 6294 (West Supp. 1993).

Following enactment of EPCA in 1975, the Commission adopted the Appliance Labeling Rule.[6] The Rule requires that certain major home appliances, including furnaces, refrigerators and air conditioners, be labeled with EnergyGuides.[7] In addition, the Rule requires fluorescent lamp ballasts to be labeled or marked with the symbol "E" enclosed in a circle, to denote that the ballast meets an energy efficiency standard established under EPCA.[8] The Rule, as

[1] Public Law 102–486, 106 Stat. 2776, 2817–2832 (Oct. 24, 1992) (codified in 42 U.S.C. 6201, 6291–6309).

[2] 42 U.S.C. 6291 *et seq.* EPCA also has been amended by the National Energy Conservation Policy Act of 1978 ("NECPA"), Public Law 95–619, 92 Stat. 3258 (1978); the National Appliance Energy Conservation Act of 1987 ("NAECA 87"), Public Law 100–12, 101 Stat. 103 (1987); and the National Appliance Energy Conservation Amendments of 1988 ("NAECA 88"), Public Law 100–357, 102 Stat. 671 (1988).

[3] 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). Pursuant to other EPA 92 amendments to EPCA, the Commission also amended the Rule to require the disclosure of water usage rates for certain plumbing products. 58 FR 54955 (1993).

[4] 58 FR 60147 (1993).

[5] Prior to EPA 92, the Commission issued a rule, known as the "Light Bulb Rule," governing the most common types of incandescent lamps. Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409 (1993); *see* 35 FR 11784 (1970). The labeling rules announced in this notice duplicate certain disclosures required by the Light Bulb Rule.

[6] 44 FR 66466 (1979). The Commission has amended the Rule on several occasions to add labeling requirements for additional product categories. 52 FR 46888 (1987) (adding a new product category of central air conditioners and heat pumps and two additional subcategories of furnaces, pulse combustion furnaces and condensing furnaces); 54 FR 28031 (1989) (adding a new product category of fluorescent lamp ballasts); and 58 FR 54955 (1993) (adding new product categories of showerheads, faucets, water closets and urinals).

[7] For example, labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must disclose the estimated annual operating cost (*e.g.*, "$240.00"). 16 CFR 305.11(a)(5)(i)(E). Labels for room air conditioners, central air conditioners, heat pumps, and fact sheets for furnaces, by contrast, must disclose the energy efficiency rating (*e.g.*, "10.5" for a central air conditioner or "96.5" for a furnace). 16 CFR 305.11(a)(5)(i)(E), 305.11(a)(5)(iii)(C), 305.11(b)(3)(v). In two separate proceedings, the Commission is considering proposals to amend the current disclosure requirements for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters and room air conditioners, 53 FR 22106 (1988) and 58 FR 12818 (1993), and to issue labeling rules for pool heaters, instantaneous water heaters, and heat pump water heaters, 58 FR 7852 (1993).

[8] 16 CFR 305.11(d). A fluorescent lamp ballast is a device that is used to start and operate fluorescent

recently amended, also requires showerheads, faucets, water closets and urinals to be marked permanently and/or labeled with certain disclosures about their water use.[9]

Except for fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials for products covered by the Rule to contain disclosures of required energy consumption and efficiency information or water use information.[10] Further, the Rule requires, for furnaces, disclosure of energy usage information on fact sheets, 16 CFR 305.11(b), and, for central air conditioners and heat pumps, similar disclosures on fact sheets or in industry directories, 16 CFR 305.11(c). For fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials to contain the same symbol that is required on labels. 16 CFR 305.13(c), 305.14(c).

EPCA authorizes the Commission to assess monetary civil penalties for violations of the Rule. 42 U.S.C. 6303(a), (d) (1988). The Rule provides that manufacturers or private labelers who knowingly distribute products covered by the Rule that are not properly labeled are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(1). Manufacturers, distributors, or retailers who knowingly remove or make illegible a required label similarly are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(2). Manufacturers or private labelers who fail to include required disclosures in their catalog advertising are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(5). Manufacturers or private labelers who fail to keep records or provide reports or product samples as specified by the Rule also are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(2). EPCA also grants to the U.S. District Courts authority to issue injunctions against such violations. 42 U.S.C. 6304 (1988).

B. Lamp Labeling Amendments to Appliance Labeling Rule Required by EPA 92 Amendments to EPCA

The EPA 92 amendments to EPCA require that the Commission issue labeling rules no later than April 25, 1994, for "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps," as those terms are defined in EPCA. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). These are the lamps used in the majority of household and commercial settings. See Part IV.A.1.–3, below. The lamp labeling rules must require conspicuous disclosure on the packaging of the lamp of "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.* The rules must apply to lamp products manufactured after the twelve month period beginning on the date of publication of the rule. *Id.* The Commission also is requiring disclosures in catalogs from which these lamp products can be ordered.

C. Requirements of Light Bulb Rule

The Light Bulb Rule covers, with some exceptions, the category of general service incandescent (nonreflector) lamps.[11] It does not cover general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent reflector lamps. The EPA 92 amendments require the Commission to issue labeling rules for all of these lamps.[12]

The Light Bulb Rule requires that package containers disclose clearly and conspicuously the enclosed bulb's electrical energy consumption expressed in average initial wattage, light output expressed in average initial lumens, and average laboratory life expressed in hours.[13] It specifies placement and size of the disclosures on packages.[14] It also requires that the disclosures of the bulb's wattage, light output, and laboratory life be made in accordance with the requirements of a specific federal purchase specification, and that the disclosures be based upon "generally accepted and approved test methods and procedures."[15] Finally, the Light Bulb Rule prohibits specific claims for these lamp products unless certain conditions are met.[16]

The Light Bulb Rule remains effective notwithstanding the labeling rules for lamp products that the Commission now adopts. The Commission does, however, note two provisions of the Light Bulb Rule that are different from the lamp labeling rules. The first concerns the format requirements for disclosing the design wattage, light output and laboratory life ratings of general service incandescent nonreflector lamps. The second provision concerns the Light Bulb Rule's requirement that the testing for, and required disclosures of, wattage, light output and laboratory life ratings of general service nonreflector lamps be at the lamp's design voltage. The rules announced today also prescribe that these required ratings disclosures must be made in a specified manner and must be based on testing at 120 volts, regardless of the design voltage. Manufacturers are permitted to provide these ratings based on the design voltage. Because these different rule provisions are not contradictory, manufacturers will be able to comply with both without incurring significant additional costs.[17] Following this proceeding, the Commission will decide what further action, if any, it should take concerning the Light Bulb Rule.

D. Procedures Used in Rulemaking Proceeding

In the NPR, the Commission invited interested persons to submit by December 30, 1993, written comments on any issue of fact, law or policy that might have bearing upon the proposed lamp labeling rules. The Commission also announced in the NPR that the Commission's staff would conduct a Workshop, with the assistance of a neutral, third-party facilitator, to afford Commission staff and interested parties an opportunity to discuss issues raised

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lamps by providing a starting voltage and current and limiting the current during normal operations. 16 CFR 305.3(j).

[9] 58 FR at 54965–66; to be codified at 16 CFR 305.11(e).

[10] 58 FR at 54964; to be codified at 16 CFR 305.13(a), .14(a)–(b), (d).

[11] 16 CFR 409.1 n. 3.

[12] Thus, today's amendments apply to: (1) General service incandescent (reflector and nonreflector) lamps; (2) medium base (integrally ballasted) compact fluorescent lamps; and (3) general service fluorescent lamps.

[13] 16 CFR at 409.1(a). If lamps are sold without sleeves or packaging, or are sold in universal or interchangeable sleeves or packaging without the information listed above, then all these disclosures must appear clearly and conspicuously on the lamps themselves. *Id.* at 409.1(a)–(b).

[14] *Id.* at 409.1 n. 4.

[15] *Id.* at 409.1 n. 1. For multiple filament ("three-way") lamps, it requires that wattage and lumen ratings be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Because the federal purchase specification cited in the Light Bulb Rule does not cover multiple filament lamps, that Rule allows industry members to substantiate wattage, light output, and laboratory life ratings using tests that are based upon generally accepted and approved test methods. It requires disclosure of the specific method used to determine the life rating, for example, that the lamp is burned on all three positions equally or that it is based on the life of the major filament (medium light level) of the lamp. *Id.*

[16] *Id.* at 409.1(c)–(d). For example, § 409.1(c) prohibits representations that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output unless specific factors are taken into account and clearly and conspicuously disclosed.

[17] The requirement to provide disclosures at 120 volts on lamps that have a different design voltage affects a very small segment of the market. Further, those manufacturers who make 125 or 130 volt lamps have a market incentive to provide the ratings at their design voltages whether or not it is required. Furthermore, the various size specifications set by the Light Bulb Rule only prescribe minimum sizes for these rating disclosures, which prevents the disclosures specified by today's rules from becoming too small.

in the rulemaking proceeding, particularly areas of significant controversy or divergent opinions that were raised in the written comments. The Commission announced that the discussion during the Workshop would be transcribed and the transcription would be placed on the public record. The NPR directed persons interested in participating in the Workshop to notify the Commission staff by December 15, 1993.[18]

The Workshop was to focus primarily on considering what information might be "necessary to enable purchasers to select the most energy efficient lamps which meet their requirements," where the disclosures should be made, and the manner and layout for making the disclosures. Participants in the Workshop also were to be afforded an opportunity to address additional issues raised in the proceeding. The Workshop, however, was not intended to achieve a consensus among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. The Workshop instead was intended to elicit information on the basis of which the Commission could determine how to design the lamp labeling rules.

The Workshop took place at the Federal Trade Commission, Pennsylvania Avenue and Sixth Street, NW., Washington, DC, on January 19, 1994. With the following exceptions, the proceeding was conducted as explained in the NPR. First, because of the limited number of parties who requested to participate in the Workshop, all parties who timely submitted requests to participate, and timely filed written comments, were selected. Second, the Commission allowed any interested party who attended the Workshop to make limited oral presentations. Third, in response to a petition from the National Electrical Manufacturers' Association ("NEMA"),[19] the Commission extended the deadline for participants and others who made oral presentations during the Workshop to submit supplemental written comments from 24 hours to one week following the close of the Workshop.[20]

E. Identification of Parties Who Filed Written Comments

The Commission received comments responding to the NPR from industry members, trade associations, energy and environmental interest groups, federal and state agencies, utility companies, testing laboratories, private standards-setting organizations, universities and other interested parties. The following parties filed written comments:[21] (1) Angelo Brothers Company ("Angelo") (G–1); (2) American Council for an Energy-Efficient Economy ("ACEEE") (GG–1); (3) Inchcape Testing Services, ETL Testing Laboratories, Inc. ("ETL") (GG–2); (4) General Electric Company ("GE") (G–2); (5) Henry Gluckstern, Esq. ("Gluckstern") (GG–3); (6) Green Seal ("Green Seal") (GG–4); (7) The Home Depot ("Home Depot") (GG–5); (8) Illuminating Engineering Society of North America ("IES") (GG–6); (9) Lawrence Berkeley Laboratory ("LBL"), University of California (GG–7); (10) Massachusetts Office of the Attorney General ("MA AG") (GG–8); (11) Minnesota Department of Public Service ("MN DPS") (GG–9); (12) Missouri Department of Natural Resources ("MO DNR") (GG–10); (13) Dickstein, Shapiro & Morin, on behalf of National Electrical Manufacturers Association ("NEMA") (G–3); (14) New England Power Service ("NEPS") (GG–11); (15) Northwest Real Group ("NW REAL"), on behalf of Eugene Water and Electric Board, Grays Harbor Public Utility District, Idaho Department of Water Resources (Energy Division), Idaho Power Company, NW Power Planning Council, Oregon Public Utility Commission, PacifiCorp, Public Power Council, Puget Sound Power and Light Company, Salem Electric, Seattle City Light, and Snohomish County Public Utility District # 1 (GG–12); (16) Oregon Department of Energy ("OR DOE") (GG–13); (17) Oregon State University ("ORSU") (GG–14); (18) Osram Sylvania, Inc. ("Osram") (G–4); (19) Philips Lighting Company ("Philips") (G–5); (20) Lighting Research Center ("LRC"), Rensselaer Polytechnic Institute (GG–15); (21) Scientific Certification Systems, Inc. ("SCS") (GG–16); (22) Supreme Corporation ("Supreme") (G–6); (23) U.S. Environmental Protection Agency ("US EPA") (GG–17); (24) Washington State Energy Office ("WA SEO") (GG–18); (25) Hubbell/Lighting Division ("Hubbell") (GG–19); (26) Scientific Certification Systems, Inc. ("SCS") (GG–20) (revised version of GG–16); (27) Matsushita Electric Corporation of America ("Panasonic") (G–7).

Philips (G–14), Osram (G–15), and GE (G–16) also filed written comments in response to the separate notice published by the Commission concerning its request to OMB for approval of the collection of information burden hours imposed by the proposed lamp labeling rules under the Paperwork Reduction Act ("PRA").[22]

F. Identification of Parties Who Participated in Workshop and Those Who Filed Supplemental Written Comments

The following parties were selected as participants and attended the Workshop:

(1) Steven Nadel, Deputy Director, ACEEE. ACEEE is a nonprofit research organization that seeks to promote energy efficiency.

(2) Barton Pasternak, Vice President of Corporate Development, Angelo. Angelo Brothers Company is the largest non-manufacturing seller and distributor of incandescent light bulbs in the United States.

(3) W. Scott Seeley, Counsel, Gail Cohen, Product Manager for incandescent and three-way lamps, Russ Churchill, Manager, GE Lighting Institute, GE. GE is a full-line manufacturer of lamps.

(4) Arthur Weissman, Vice President of Standards and Planning, Green Seal. Green Seal is a nonprofit environmental organization involved in labeling and standards-setting. Green Seal recently issued a standard for compact fluorescent lamps, and has certified several products under that standard.

(5) Mark Eisen, Manager of Environmental Marketing, Home Depot. Home Depot is a home center retailer.

(6) Rita Harrold, Director of Educational and Technical Development, and Ed Robinson,

[18] 58 FR at 60163.

[19] Petition dated December 15, 1993, from Mark L. Perlis, Dickstein, Shapiro & Morin, counsel for NEMA.

[20] Order dated Dec. 21, 1993, of Lewis R. Parker, Chief Judge, FTC. See 58 FR at 60164.

[21] All public documents are filed in the Commission's File No. R611004. Staff submissions for the public record are filed in category "C. Miscellaneous Staff Materials Assembled After NPR Filed." Industry comments are filed in category "G. Lamp Products Proceeding—Industry Comments." Other comments are filed in category "GG. Lamp Products Proceeding—Comments from Other Sources." Documents are numbered sequentially, such as Document No. G–1, Document No. G–2. In this notice, comments are cited by an identification of the commentor, the comment number and the relevant page number(s), *e.g.*, "Angelo, G–1, 1–3." Supplemental comments are designated in addition as: "(Supp.)." The Workshop transcript is filed in category "L. Transcripts of Public Hearings." Discussion by more than one party in the transcript is cited by a reference to the transcript and the relevant page number(s), *e.g.*, "Tr., 15–20." Discussion by one party in the transcript is cited by an identification of the party, a reference to the transcript and the relevant page number(s), *e.g.*, "Osram (Tr.), 80–81." Although the following comments were submitted shortly after the initial or supplemental written comment due dates, the Commission has placed them on the public record and considered them as part of the rulemaking record of this proceeding: Panasonic, G–7; Hubbell, GG–19; SCI, GG–20; and MA AG (Supp.), GG–23. One supplemental comment, NEMA, G–17, was received on March 4. This comment has been placed on the public record of this proceeding, but is not included as part of the rulemaking record.

[22] 58 FR 60652 (1993).

Regional Vice President, IES. IES disseminates information on the art and science of illumination, through publications and educational programs.

(7) Barbara Atkinson, LBL. LBL operates an energy analysis program that provides assistance to the U.S. Department of Energy about federal policy options and the Energy Policy Act. LBL also conducts research on lighting technologies.

(8) Bill McAvoy, Assistant Attorney General, MA AG. MA AG works with utilities such as New England Power regarding conservation programs.

(9) Mark Perlis, Counsel, *NEMA*. NEMA is a trade association that includes manufacturers of lamp products.

(10) Meredith Miller, *NEPS*. NEPS is a service company for three retail electric power companies in New England, Rhode Island, and Massachusetts, and New Hampshire. NEPS provides incentives to residential customers to encourage compact fluorescent lamp purchases.

(11) Peter Bleasby, Director of Industry Relations and Standards, *Osram*. Osram manufactures most types of lamp products.

(12) Al Rousseau, Manager of Technical Relations, *Philips*. Philips manufactures most types of lamp products.

(13) Bob Davis, Research Assistant Professor, *LRC*. LRC conducts an efficient lighting research and development program.

(14) Bruce Siegal, President, *Supreme*. Supreme is a small family-owned lamp manufacturer, specializing in the manufacture of long-life lamps specifically designed for vibration service and rough surface applications.

(15) William VonNeida, *US EPA*. US EPA conducts a "Green Lights" program as its flagship voluntary pollution prevention program to reduce greenhouse gas emissions. In the program, US EPA encourages businesses, government, and other organizations to use energy-efficient lighting.

In addition to the participants listed above, Larry Galowin, Laboratory Accreditation Program, National Voluntary Laboratory Accreditation Program, *National Institute of Standards and Technology ("NIST")*, U.S. Department of Commerce, also attended and made oral presentations during the Workshop.

The following parties who made oral presentations during the Workshop also filed supplemental written comments after the Workshop: *ACEEE* (GG–21); *Angelo* (G–8); *GE* (G–9); *LBL* (GG–22); *NEMA* (G–10); *Osram* (G–11); *Philips* (G–12); *Supreme* (G–13); *MA AG* (GG–24); and *NIST* (GG–23).

III. Disclosures and Other Requirements Proposed in NPR

In informal communications with the Commission's staff during the period after EPA 92 was enacted and before the Commission published the NPR, representatives of several industry members and environmental interest groups suggested various labeling requirements for lamps. Two of the more specific suggestions were described in the NPR, along with the Commission's proposals.[23]

A. NEMA's Proposals

NEMA suggested that the Commission adopt particularized disclosure requirements for different types of lamp products.[24] For general service fluorescent lamps and incandescent reflector lamps, for which EPCA establishes energy conservation standards, NEMA suggested disclosure only of the encircled capital letter "E," similar to the current requirement for fluorescent lamp ballasts.[25] This symbol would designate that the product meets the established energy conservation standards. In support of this proposal, NEMA stated that the performance of all the interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards established by EPA 92 become effective[26] will vary only slightly.

NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the product itself, no smaller than the lamp designation information for wattage. NEMA suggested that, if the Commission cannot require etching on the product, it should require that the packing carton containing one or more lamps be marked with the encircled "E," in color contrasting ink and no smaller than the manufacturer's name or logo.

For general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps, NEMA suggested that "light output" (in lumens), watts, life, design volts, and bulb quantity contents (*i.e.*, number of bulbs in the package) be disclosed according to specified format requirements on at least one panel of the outer sleeve of the package. One or more of these items also could be disclosed on the remaining panels. For general service incandescent lamps (other than reflector lamps), the term "lumens," in the specified format, would follow beside or below the numerical value for light output. For medium base compact fluorescent lamps, the term "lumens (base-up)" would be used instead of "lumens."[27]

NEMA also suggested that the labeling rules require an "energy efficiency index" (consisting of "lumens per watt," rounded to the next highest number, and "yearly energy cost" of operating the lamp) on packages of general service incandescent lamps (other than reflector lamps) and medium base compact fluorescent lamps.[28] The energy efficiency index would include the disclosure: "Lumens per watt." The yearly energy cost would include the disclosure: "At 4 hours per day at $.10 per kilowatt-hour."

NEMA further suggested that, if the manufacturer elects to place the energy efficiency label on a panel other than the primary display panel of the package, it should be required to provide an additional "energy flag" on the primary display panel. The energy flag would include only the "energy index" value (*i.e.*, lumens per watt).[29] The designation "Energy Index" would be printed with the energy index value inside the flag, and a reference to "See package back" would be printed immediately below the flag.

NEMA also suggested that the Commission require that manufacturers of all lamp products covered by the labeling rules include on the outer (packing) cases in which the lamps are shipped a label or pre-printed message stating: "Product herein tested and labeled in compliance with the Energy Policy Act of 1992" or, alternatively, with an approved symbol. NEMA suggested that the advisory statement be integrated with or be placed adjacent to the usual case contents label and included format recommendations.

B. ACEEE's Proposals

ACEEE also submitted specific labeling suggestions for discussion

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[23] 58 FR at 60152–60.

[24] NEMA, C–41, C–42.

[25] See Part II.A, above.

[26] The effective dates are April 30, 1995, for some lamp products, and October 31, 1995 for other lamp products. 42 U.S.C.A. 6295(i)(1) (West Supp. 1993).

[27] See note 136, below.

[28] The "energy efficiency index" would be a square, at least one inch by one inch, divided in the middle by a horizontal line. The lumens per watt would appear in the top portion of the square, and the yearly energy cost in the bottom. The letters and numbers would be printed in black (or whatever dark color is used in creating the Universal Product Code symbol). See Illustration 1, 58 FR at 60153.

[29] The "energy flag" would be a right triangle one inch in height and resting on a perpendicular side one and one-half inches in length. See Illustration 2, 58 FR at 60154.

purposes.[30] ACEEE stated that because purchase patterns vary for residential and commercial purchasers, different labeling approaches would probably be warranted. It pointed out that commercial purchasers generally have a greater technical understanding about lamp products, whereas residential purchasers generally know very little about lighting and need information that is non-technical and easily understood. It also noted that residential purchases generally are made through grocery, hardware, and other retail outlets, where products in boxes or other packaging are selected by the purchaser off the shelf in small quantities. ACEEE stated that, in contrast, commercial purchasers generally order medium to large quantities of lamps from lighting distributors, using information in catalogs and sales brochures, as well as information provided orally by sales personnel. These commercial purchases often are shipped in case quantities, and printed packages for individual lamps are rare.

ACEEE suggested that two types of information appear on labels for residential purchasers: annual operating cost and relative light output. It proposed that relative light output be measured by comparing the lumen output of a product to a reference lamp, with a reference lamp defined for each common type and wattage of lamp.[31] It also suggested that annual operating cost include both the purchase cost (manufacturer's suggested list price prorated for an assumed annual hours of operation) and annual electricity cost (for average operating hours and electricity cost).[32] ACEEE suggested that use of an annual operating cost metric would allow purchasers to compare products with different lives and costs.

ACEEE further stated that a lumens-per-watt disclosure probably should not be used for residential purchasers. ACEEE maintained that such a disclosure could encourage residential purchasers to buy higher wattage lamps that have higher lumens-per-watt ratings, when a lower wattage lamp with a lower lumens-per-watt rating might provide sufficient light for their needs and cost less to operate at the lower wattage. For commercial purchasers, on the other hand, ACEEE suggested that a lumens-per-watt rating probably would be acceptable because catalog display space is likely to be very limited and commercial purchasers are more sophisticated.

ACEEE supported disclosure of relevant information on lamp packages and other point-of-sale materials that provide information on particular products, such as fact sheets and special displays for residential sales. For commercial sales, it suggested requiring the information in catalogs and other sales materials that provide information on specific products. Finally, ACEEE recommended that the Commission specify label content and size, but that the Commission allow manufacturers to develop their own customized designs, consistent with Commission specifications.

C. Commission's Proposals

1. Disclosure Requirements

Based on the options discussed in the NPR about the kinds of information purchasers need to select lamp products and the proposals suggested by interested parties (as summarized above), the Commission proposed requiring disclosure of two types of information for lamp products covered by the labeling rules. One category included basic performance information (such as light output, which is needed to select lamp products that meet purchasers' requirements), and the other category included various supplemental disclosures designed to further facilitate selection of the most energy efficient lamp. Each category is discussed below.

a. Basic disclosures. The Commission proposed requiring that lamp package labels and catalogs conspicuously disclose the following information: (1) Lumens (whether identified by that term, or another such as "brightness" or "light output"); (2) watts; (3) design volts (if other than 120 volts); (4) average life (in hours); and (5) number of items in the package.[33] For multiple filament ("three-way") general service incandescent lamps, the Commission proposed requiring that lumens, watts, and design volts be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Finally, the Commission proposed that the following statement appear on package labels and in catalogs from which the lamps could be ordered: "More efficient lamps may have a higher purchase price, but may cost you less overall."

b. Supplemental disclosures. The Commission proposed requiring, for all lamps to be covered by the labeling rules, that package labels and catalogs from which the lamps may be ordered also make a supplemental disclosure. The Commission proposed two alternatives for primary consideration: (1) A lumens-per-watt disclosure; or, (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and use period.

The NPR explained that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA) has the advantage of simplicity. But, as ACEEE noted, such a disclosure could lead to lumen over-purchasing because higher wattage bulbs often produce disproportionately more lumens and thus often have a better energy index although they use more energy. The Commission stated that this drawback possibly could be avoided if the Commission required a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Alternatively, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by the lamp, based on use for a specified usage period, such as a normal average life in hours of a lamp or a length of time based on average usage patterns. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy cost of a lamp product. At the same time, the Commission stated that it would consider carefully whether such disclosures effectively communicate the extent to which a higher initial bulb cost can be compensated for by lower operating costs over the bulb's life.[34]

The Commission indicated that, although average or estimated usage patterns (*e.g.*, one year) could be used in a monetary cost of operation disclosure, there are no established usage patterns and estimated use will vary depending upon the location of the lamp. In addition, the Commission noted that it would have to determine what unit cost for electricity to use. The Commission explained that, to prevent possible confusion, it might be appropriate to require disclosure of how the estimated energy cost was determined.[35] The Commission recognized, however, that

[30] ACEEE, C–40.

[31] For example, ACEEE suggested a 60 watt standard incandescent A-lamp as the reference lamp for a 15 watt compact fluorescent lamp. The relative light output of the compact fluorescent lamp might be 88%, based on average light output.

[32] ACEEE, C–40, 3, illustrated this as follows: Assuming 1,000 hours per year of operation and $.08 per kilowatt-hour unit electricity cost, a 15 watt compact fluorescent lamp (with a $20 list price and 10,000 hour rated life) will have an annual operating cost of $3.20 {[$20/{10,000 hour life/1,000 hours per year} + [15 watts X 1,000 hours per year/1,000 Wh/kWh X $.08 per kilowatt hour]}. In comparison, a standard 60 watt general service incandescent A-lamp (with a $1.00 list price and 1,000 hour rated life) will have an annual operating cost of $5.80.

[33] 58 FR at 60154–56.

[34] See notes 106, 108, below.

[35] *Id.*

additional information could unduly complicate the label and not be useful.

Because some purchasers may be interested in computing lamp costs comprehensively, including consideration of the initial purchase price and replacement cost, the Commission also proposed requiring that information be provided to purchasers to enable them to determine the "estimated total operating cost" of the lamp for a standard time period. But, recognizing that purchasers desiring such information would need to make calculations for each bulb they were considering, the Commission stated that it would consider carefully the extent to which consumers actually would use the proposed disclosures in making a purchase decision. The Commission noted that, as a practical matter, consumers may disregard, or consider too complex, any disclosure requiring computations of this sort, and that any such required disclosures, therefore, may not be useful to consumers in their efforts to choose an energy efficient bulb.

2. Where Disclosures Should Be Made

In the NPR, the Commission explained that residential purchasers normally buy lamp products through retail outlets, such as hardware, home center, and grocery stores. Residential purchasers, therefore, normally have the opportunity to examine lamp product packaging prior to purchase. The disclosures proposed for packaged product labels would provide residential purchasers with the information they need to select the most energy efficient lamps that meet their requirements.

According to industry representatives, however, some products, such as general service fluorescent lamps, frequently are shipped without individual lamp sleeves or packaging other than the bulk shipping case, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers. For these products, the Commission suggested two options. Option One would require the basic and supplemental disclosures (except for the number of items in each package) on an adhesive, hang tag, or similar type of label, attached to each unpackaged product. Option Two would require the manufacturer to include, with each bulk shipping case, statements disclosing all the required information for the enclosed products (except for the number of items in each package). Option Two also would require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product.

Some sellers also sell lamp products to residential purchasers and commercial purchasers through catalogs. These purchasers will not see the disclosures on the product's packaging until the product is delivered, and may rely primarily (or solely) on information in the catalogs from which the lamps are ordered. For these purchasers, the catalog serves the same informational function as a package does for a retail purchaser. The Commission, therefore, proposed that the basic as well as the supplemental disclosures be made both on package labels and in catalogs each time each different lamp product is listed for sale.

3. Format of Disclosures

The Commission explained in the NPR that it could specify that required disclosures be made through use of a flexible standard that requires "clear and conspicuous" disclosures. Under this "performance" standard, complying firms would be free to design disclosures as they wish in response to market considerations, as long as the disclosures were clear and conspicuous. The Commission stated that, alternatively, it could require that the disclosures comply with a design format specified by the Commission.

The Commission indicated that, in choosing a format standard, it would be guided by the need to direct the purchaser's attention to the information that is most important, and the need for the information to be organized so it could be easily understood and acted upon. For example, the Commission stated that it would consider requiring that those items deemed most important to purchasers be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.

4. Substantiation and Sampling Requirements

In the NPR, the Commission proposed requiring that manufacturers follow testing and test specimen sampling procedures to be specified in the final labeling rules to substantiate all disclosures they must make on labels, catalogs and point-of-sale written materials. The Commission stated that when DOE issues testing and sampling procedures for general service fluorescent lamps and general service incandescent reflector lamps, or for any additional lamp products, the Commission would consider whether to adopt the DOE procedures as the required substantiation under the labeling rules.[36] The Commission solicited comments about current industry testing and sampling procedures, such as those issued by IES and the American National Standards Institute ("ANSI"), that would be adequate in the interim to substantiate the disclosures it proposed.

To enable the Commission to determine whether required disclosures are accurate, the NPR also proposed requiring that manufacturers, upon request by the Commission, submit, at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. Any charge levied by the laboratory for testing, however, would be paid for by the Commission.[37]

5. Recordkeeping and Reporting Requirements

The Commission proposed requiring that manufacturers of all covered lamp products maintain records to substantiate each item that the final rules required to be disclosed, and proposed requiring manufacturers to submit those records to the Commission within 30 days of a request. The Commission also proposed requiring that lamp manufacturers submit annual reports on or before March 1 each year. As proposed, the yearly reporting requirement would not become effective until after DOE issues test procedures for specific lamp products covered by the labeling rules. The Commission stated that it would publish a notice after DOE had issued test procedures, announcing when the initial reports would be due.

The Commission proposed requiring that each report contain the same type of information that currently is required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this reporting requirement, the Commission proposed accepting trade association directories and similar submissions in

[36] EPA 92 amended EPCA to establish minimum energy efficiency standards for general service fluorescent lamps and incandescent (reflector) lamps. 42 U.S.C.A. 6295(i) (West Supp. 1993). The amendments require DOE to issue specific testing procedures for these lamp products. 42 U.S.C. 6293(b)(6) (West Supp. 1993). EPCA does not establish energy conservation standards or require DOE to issue test procedures for medium base compact fluorescent lamps or general service incandescent lamps (other than incandescent (reflector) lamps). However, DOE has authority to issue test procedures for categories of products that are not specified in EPCA, 42 U.S.C. 6292(b), 6393(b)(1)(B) (1988), and to set minimum efficiency standards for those products, 42 U.S.C.A. 6295(l) (West Supp. 1993).

[37] Based on EPCA, 42 U.S.C. 6296(b)(3) (1988), the Appliance Labeling Rule, 16 CFR 305.16, applies this requirement to other products.

lieu of individual annual reports, as it does for other product categories.

6. Other Matters

The Commission proposed amending § 305.1 of the Appliance Labeling Rule, 16 CFR 305.1, which summarizes the Rule's coverage, to include a description of the disclosures proposed for labels and catalogs. The Commission also proposed amending § 305.2 of the Rule, 16 CFR 305.2, which contains definitions of words used in EPCA, to include definitions for additional words to be used in the Rule, based on definitions in EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993).

IV. Analysis of Disclosures and Other Requirements Adopted by the Commission

The Commission received information from the public relating to this rulemaking proceeding from three sources: written comments filed in response to the NPR, testimony during the Workshop, and supplemental written comments following the Workshop. The discussion below includes information from all three sources, as well as documents placed on the public record by the Commission's staff during the rulemaking proceeding.

In some cases, participants in the proceeding modified their position on one or more of the issues as the rulemaking progressed. In instances in which the commentor's position on a particular issue changed, the Commission has taken the commentor's most recent comments as its final position on that issue. Similarly, whenever the Commission refers to a commentor's position on a particular issue, if it has changed since its original formulation, the Commission notes that change.

A. Lamp Products Covered by Labeling Rules

EPCA specifically defines the lamp products that are covered by the Commission's lamp labeling rules. Under EPCA, as amended by EPA 92, the Commission's labeling rules apply only to "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps." 42 U.S.C.A. 6294(a)(2)(c)(i) (West Supp. 1993). These lamp products are described in more detail below.

1. General Service Fluorescent Lamps

The term "fluorescent lamp" means a lamp containing a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light. 42 U.S.C.A. 6291(30)(A) (West Supp. 1993). EPCA includes only the following fluorescent lamps:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more.

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more.

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements.

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

42 U.S.C.A. 6291(30)(A)(i)–(iv) (West Supp. 1993).

The term "general service fluorescent lamp" means fluorescent lamps that can be used to satisfy the majority of fluorescent applications. 42 U.S.C.A. 6291(30)(B) (West Supp. 1993). The definition specifically excludes fluorescent lamps designed and marketed for specific lighting applications.[38]

2. General Service Incandescent Lamps

The term "incandescent lamp" means a lamp in which light is produced by a filament heated to incandescence by an electric current. 42 U.S.C.A. 6291(30)(C) (West Supp. 1993). The definition includes only the following incandescent lamps:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium 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, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) A high(er) wattage reflector lamp which has a rated wattage above 205 watts.

(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).

42 U.S.C.A. 6291(30)(C)(i)–(iii) (West Supp. 1993).

The term "general service incandescent lamp" means any incandescent lamp (other than a miniature or photographic lamp) that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications. 42 U.S.C.A. 6291(30)(D) (West Supp. 1993). The definition specifically excludes incandescent lamps designed and marketed for specific lighting applications.[39] Included within the category of "general service incandescent lamps" are incandescent reflector lamps. The term "incandescent reflector lamp" means a lamp described in item (ii), above. 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

3. Medium Base Compact Fluorescent Lamps

The term "medium base compact fluorescent lamp" means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp. 42 U.S.C.A. 6291(30)(S) (West Supp. 1993). Thus, the definition does not include other types of compact fluorescent lamps that operate with a separate ballast, even if the lamp or the separate ballast has a medium screw base.

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[38] The exclusions are: (i) Fluorescent lamps designed to promote plant growth; (ii) fluorescent lamps specifically designed for cold temperature installations; (iii) colored fluorescent lamps; (iv) impact-resistant fluorescent lamps; (v) reflectorized or aperture fluorescent lamps; (vi) fluorescent lamps designed for use in reprographic equipment; (vii) fluorescent lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (viii) fluorescent lamps with a color rendering index of 82 or greater. 42 U.S.C.A. 6291(30)(B)(i)–(viii) (West Supp. 1993).

[39] EPCA excludes any "general service incandescent lamp" specifically designed for: (i) Traffic signal, or street lighting service; (ii) airway, airport, aircraft, or other aviation service; (iii) marine or marine signal service; (iv) photo, projection, sound reproduction, or film viewer service; (v) stage, studio, or television service; (vi) mill, saw mill, or other industrial process service; (vii) mine service; (viii) headlight, locomotive, street railway, or other transportation service; (ix) heating service; (x) code beacon, marine signal, lighthouse, reprographic, or other communication service; (xi) medical or dental service; (xii) microscope, map, microfilm, or other specialized equipment service; (xiii) swimming pool or other underwater service; (xiv) decorative or showcase service; (xv) producing colored light; (xvi) shatter resistance which has an external protective coating; or (xvii) appliance service. 42 U.S.C.A. 6291(30)(D)(i)–(xvii) (West Supp. 1993).

B. Disclosures for Lamps Generally

Several comments stated that the main purpose of energy labeling for lamps is to encourage purchasers to move towards the purchase of more energy efficient lighting like compact fluorescent lamps.[40] The potential for energy savings through the use of more efficient lighting is high, particularly in commercial settings where lighting is the single largest source of electricity consumption. About 41 percent of electricity, and 28 percent of total energy, consumed in the commercial sector is for lighting.[41] Fluorescent lamps consume about 55 percent of lighting electricity in the commercial sector,[42] with incandescent reflector lamps consuming most of the remainder. In the residential sector, energy use for lighting is small, though not trivial, representing about seven percent of residential energy use.[43] Incandescent lamps provide most lighting in residences.

General service fluorescent lamps provide lighting through a system known as a luminaire. Under EPCA, the term "luminaire" means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply through a ballast. 42 U.S.C.A. 6291(29)(F) (West Supp. 1993). Compact fluorescent lamps also provide lighting through a system. For compact fluorescent lamps, the system includes the fluorescent lamp and a ballast. Some compact fluorescent lamps are sold for use with separate ballasts. The lamp labeling rules, however, cover only those defined as medium base compact fluorescent lamps, *i.e.*, those that have an integral ballast and medium screw base. Incandescent lamps also have medium screw bases. They provide lighting by heating an internal filament to incandescence by an electric current, and can be used, for example, in table or floor lamp fixtures or in ceiling or wall fixtures. Medium base (integrally ballasted) compact fluorescent lamps are meant for use as replacements for incandescent lamps in these applications.

Increasing the efficiency of a lighting system that currently uses incandescent lamps can be accomplished by selecting a more efficient incandescent lamp, such as a more efficient halogen incandescent lamp, or a more efficient medium base compact fluorescent lamp. To the extent the efficiency of general service fluorescent lighting systems can be increased, it can be accomplished by increasing the efficiency of the lamp, the ballast or the luminaire, or a combination of those separate parts. In designing the disclosure requirements for these different lamp types, therefore, the Commission has considered the effect of the minimum energy efficiency standards specified by EPCA on the lamps that will remain on the market after the standards become effective, and how best to provide purchasers with the information necessary for them to select the most efficient lamps that meet their requirements.

Several comments stated generally that any labeling requirements for lamps should meet one or more of the following standards: Simple, uniform, comprehensible, cost-effective and based on readily available information.[44] In response to a question in the NPR, some comments favored different types of disclosures based on the category of purchaser—residential or commercial. One comment, however, specifically stated that the disclosures should be the same for both categories.[45] Most industry members supported a "bifurcated" approach to labeling (discussed in detail below), with a requirement for detailed disclosures of performance characteristics on packaging for general service incandescent lamps and compact fluorescent lamps and a requirement for disclosure of only an encircled "E" on packaging for general service incandescent reflector lamps and general service fluorescent lamps.[46] Several other comments, however, favored requiring the same detailed disclosures of performance characteristics on the packaging of all the lamp types covered by the labeling rules.[47]

Two of the three categories of lamps covered by the labeling rules have medium size, screw-in bases that fit into standard screw-in lamp receptacles.[48] These are: General service incandescent (reflector and nonreflector) lamps, and medium base compact fluorescent lamps. The method of connection to the power source is the same for these types of lamps, and the Commission is prescribing similar labeling requirements for them. The Commission discusses the comments on the proposals for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps and the labeling rule requirements for them together in Part IV.C, below. The Commission discusses the comments on, and the requirements for, general service incandescent reflector lamps in Part IV.D, below. The comments and final requirements respecting the fourth type of lamp—general service fluorescent lamps—are described in Part IV.E, below.

C. Disclosures for Medium Base General Service Incandescent (Nonreflector) Lamps and Compact Fluorescent Lamps

Virtually all the comments recommended that the Commission require some version of the basic disclosures that the Commission proposed in the NPR for both general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps.[49] The disclosures the Commission is requiring, each of which is discussed separately below, are: design voltage (if other than 120 volts), energy used (in terms of watts), light output (in average initial lumens), average laboratory life (in hours), number of items in the package (if more than one), and a supplemental disclosure, consisting of an advisory statement.[50] Because the comments usually discussed recommendations regarding the disclosures for these two types of medium screwbase lamps together, and because these lamps are generally interchangeable, the Commission discusses the comments and the final disclosure requirements

[40] See, *e.g.*, NEMA, G–3, 35; Gluckstern, GG–3, 1.

[41] U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency* (hereinafter referred to as "OTA Report"), OTA–E–518 (Washington, DC; U.S. Government Printing Office, May 1992), C–6, 50. Commercial buildings used 12.9 quads of energy at a cost of $68 billion in 1989. About two-thirds of this energy was in the form of electricity. In addition to lighting, space heating and space cooling were the other principal end uses. *Id.* at 21.

[42] *Id.* at 54.

[43] *Id.* at 50–51.

[44] GE, G–2, 4–5, (Tr.), 106; NEMA, G–3, 10–11; Osram, G–4, 2; IES (Tr.), 62; MN DPS, GG–9, 1; OR DOE, GG–13, 1.

[45] See 58 FR at 60158. Comments favoring different types of disclosures: ACEEE, GG–1, 1; IES, GG–6, 1–2; OR DOE, GG–13, 2; WA SEO, GG–18, 3. Specifically recommending identical disclosures for both types: MN DPS, GG–9, 1.

[46] See, *e.g.*, NEMA, G–3; Osram, G–4; Philips, G–5; GE, G–2.

[47] See, *e.g.*, Angelo, G–1; ACEEE GG–1; LBL, GG–7; MN DPS, GG–9; WA SEO, GG–18.

[48] The third category, general service fluorescent lamps, are not screwed into lamp receptacles, but have prongs at either end of the lamp tube or receptacles for prongs that are at either end of the lamp fixture.

[49] 58 FR at 60154–55.

[50] See 16 CFR 305.11(e), 305.14(d) in Text of Amendments, below. For descriptions of the items recommended for required disclosures, see, in particular, Angelo, G–1, 2; GE, G–2, 7, (Ans.), 1; NEMA, G–3, 39, (Supp.), G–10, 10–12; Osram, G–4, 2, (Supp.), G–11, 1–2; Philips, G–5, 1–2, (Supp.), G–12, 1; Panasonic, G–7, 2; ACEEE, GG–1, 1; OR DOE, GG–13, 7–8; LRC, GG–15, 2; WA SEO, GG–18, 1–2.

for these types of medium screw base lamps together in this section.

A few comments recommended that required labeling for compact fluorescent lamps include additional information, such as the lamp's incandescent wattage equivalency, color and temperature ratings, noise and interference factors, and whether the lumen output of the lamp is substantially different in a base-up or base-down installation.[51] The Commission discusses these issues in Part IV.C.4, below.

1. Basic Disclosures

a. *Voltage.* Voltage refers to the electromotive force of electricity.[52] In the residential market, the voltage provided by electric utilities in this country for lighting purposes is primarily 120 volts,[53] but may range from approximately 115 to 125 volts.[54] Voltage is not a characteristic of a lamp product, but the operation of a lamp is affected by the voltage at which it operates. For a given lamp, the higher the voltage, the higher the light output in lumens, the higher the wattage, and the shorter the life.[55] In the NPR, the Commission proposed requiring that manufacturers disclose voltage on packaging only if the product's "design voltage," *i.e.*, the voltage at which the lamp was designed to operate, is other than 120 volts.

During the proceeding, commentors explained that lamps produced for use in this country fall into three basic categories, based on their design voltage. The vast majority of lamps have a design voltage of (*i.e.*, are manufactured to operate at) 120 volts.[56] A minority of lamps are produced with a different design voltage because they are intended for use in limited areas of the country, such as the Northwest, in which the line voltage is 125.[57] The last category includes lamps with a design voltage of 130. These lamps typically are produced with a heavier filament and have longer lives when used at 120 volts (though providing less light) than competing lamps with design voltages of 120 volts. They are generally sold as "long-life" products[58] and are marketed throughout the country, regardless of the line voltage in the particular area.[59]

The Commission's Light Bulb Rule currently requires manufacturers to disclose watts, light output in lumens and average laboratory life in hours for incandescent lamps, based on operation at the lamp's stated design voltage.[60] EPCA, as amended by EPA 92, on the other hand, states that: "Labeling information for incandescent lamps shall be based on performance at 120 volts input, regardless of the rated lamp voltage." 42 U.S.C.A. 6294(a)(2((C)(i) (West Supp. 1993).[61] The statutory language and the comments received raise two issues that the labeling rules must address concerning voltage. First, should the rules require that the design voltage always be disclosed, or that the design voltage be disclosed only if it is other than 120 volts? Second, what labeling information (*i.e.*, which disclosures) must be based on tests conducted at 120 volts (regardless of the design voltage)?

Virtually all the comments that discussed voltage agreed that it is an important element that affects operation of lamp products. Several comments agreed with the Commission's proposal to require that voltage be disclosed if the design voltage of the product (the voltage at which the product was designed by the manufacturer to operate) is other than 120.[62] None suggested that disclosure of voltage in labeling is necessary for lamps with a design voltage of 120.[63]

The issue of the voltage at which the required disclosures of watts, light output, life and energy efficiency should be based was the subject of considerable discussion during the Workshop.[64] Several industry representatives supported requiring disclosure of wattage, light output in lumens, and average laboratory life based on operation of the lamp at its design voltage, if the design voltage is other than 120.[65] They suggested that only the energy index (*i.e.*, lumens per watt) should be disclosed at 120 volts regardless of the lamp's design voltage. They argued that only the efficiency measure is covered by the requirement in EPCA that labeling disclosures for incandescent lamps be measured at 120 volts.[66] Other commentors contended,

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[51] See, *e.g.*, NW REAL, GG–12, 1; OR DOE, GG–13, 2–7, 7–8; ORSU, GG–14, 2–3; LRC, GG–15, 1–2; MA AG (Supp.), GG–24, 2; Philips (Supp.), G–12, 1; ACEEE (Supp.), GG–21, 3. See also note 136, below.

[52] The term "volt" (a unit of potential difference and of electromotive force) is defined as the difference of electric potential between two points of a conducting wire carrying a constant current of one ampere, when the power dissipated between those points is equal to one watt. U.S. Department of Commerce, National Institute of Standards and Technology, "The International System of Units (SI)," NIST Special Publication 330 (1991 edition), August 1991 (hereinafter cited as "NIST Publication 330"), at 19.

[53] NEPS (Tr.), 37 (for residential consumers, voltage provided by utilities for lighting is predominately 120 volts); ACEEE (Tr.), 38 (120 volts is normal for vast majority of homes); IES (Tr.), 62 (same). Utility companies in some parts of the country, however, such as the Northwest, provide other voltages such as 125 volts, and manufacturers ship lamps with those design voltages to those areas. Osram (Tr.), 51–52 (ships 125-volt lamps to Northwest, which has slightly higher line voltage); GE (Tr.), 60 (Northwest/TVA is 125 volts); Osram (Tr.), 64 (ships 125-volt lamps to Seattle and TVA). In recognition of the predominant demand for lamps that operate at 120 volts, manufacturers design most incandescent lamps for operation at that voltage. GE (Tr.), 37–38 (90% or more). See also Osram (Tr.), 64–65 (no more than 10% of its incandescent lamps have 125 design voltage).

[54] Even within a given locality, the voltage may vary by plus or minus five percent. NEPS (Tr.), 37.

[55] See, *e.g.*, GE (Tr.), 35.

[56] See note 53, above.

[57] *Id.*

[58] See GE (Tr.), 35–36; Supreme (Tr.), 39.

[59] See, *e.g.*, ACEEE (Tr.), 202.

[60] 16 CFR 409.1 n. 1.

[61] Neither the EPA 92 amendments to EPCA nor the legislative history of the EPA 92 amendments define more specifically the labeling disclosures for incandescent lamps that must be based on operation at 120 volts.

[62] See, *e.g.*, NEMA (Supp), G–10, 10–11; ACEEE (Tr.), 38; Osram (Supp.), G–11, 1; Philips (Supp.), G–12, 1.

[63] See, *e.g.*, ACEEE, GG–1, 1.

[64] See Tr., 35–65. The discussion of this issue throughout the comments and Workshop transcript usually was directed specifically at general service incandescent lamps. In some instances, it was unclear whether the comments were meant to apply also to other lamp types. But, there are no references to this issue specifically pertaining to compact fluorescent lamps.

[65] NEMA (Tr.), 39–40, 54, (Supp.), G–10, 19–21 (the Commission views these statements as NEMA's final position on the issue); Osram (Tr.), 41, (Supp.), G–11, 2. See also Angelo, G–1, 2 (but note that Angelo later recommends disclosures at 120 volts in the Workshop at Tr. 57); GE, G–2, 7, (Ans.), 1; Osram (Tr.), 41, 58–59, (Supp.), G–11, 2; ACEEE, GG–1, 1 (ACEEE, too, later recommends in the Workshop that all disclosures be at 120 volts, (Tr.), 59); OR DOE, GG–13, 7; WA SEO, GG–18, 1.

[66] In its supplemental comment, NEMA stated:

A question was raised at the Workshop as to whether the last sentence of section (sic) (324(a)(2)(C)(i) of EPCA) should be interpreted to apply only to energy efficiency labeling or to all items required to be disclosed under the Commission's regulations. There is no published legislative history interpreting this provision. However, NEMA representatives were involved in extensive discussions with energy efficiency organizations and congressional staff over the language of the Energy Policy Act. Throughout those discussions, everyone's attention was focused on how best to educate consumers to select the most energy efficient lamp. NEMA representatives sought inclusion of the requirement that all lamps' efficiency ratings be based on a comparable operation at 120 volts. NEMA's objective was to prevent some manufacturers or importers from disguising low efficiency lamps by claiming efficiency ratings at voltages greater than 120 volts. NEMA was concerned that if a consumer faced 120 and 130 volt lamps in the same store, it be clear that the 130 volt lamp would be substantially less efficient when operated at 120 volts (Tr. 40–41). NEMA did not intend to force manufacturers to cease production or alter existing ratings of higher voltage lamps for use in niche markets. Thus, in construing section (sic) (324(a)(2)(C)(i)) of EPCA, NEMA urges that the provision be fairly read in the context of the legislative discussions and that congressional intent is best served by requiring that only lumens per watt measurements be based on 120 volts operation.

NEMA (Supp.), G–10, 20–21. See also GE (Supp.), G–9, Ex. 4; Osram (Tr.), 51–52 (most purchasers do not see mix of products based on different voltages

however, that for general service incandescent lamps the labeling rules should require that wattage, light output, life and energy index disclosures be made at 120 volts because most purchasers operate lamps at 120 volts and performance claims should be based on a uniform standard.[67]

The Commission has determined that the final labeling rules should require that all the specified disclosures be based on operation at 120 volts, but that it should not require disclosure of voltage unless the design voltage is other than 120, since all required lamp disclosures will be based on a uniform voltage.[68] For the vast majority of purchasers in the country, lamps will be operated at 120 volts, regardless of the design voltage designated by the lamp manufacturer. For these purchasers, who represent 90% or more of the market for these lamps in the U.S., therefore, disclosures of the lamp's performance in watts, lumens, life and energy efficiency at a different voltage, such as 125 or 130 volts, would misrepresent the performance they receive in actual use.[69] The Commission realizes that, for those purchasers whose line voltage is other than 120 volts, disclosure of these performance characteristics at 120 volts will not represent the lamp performance they will experience. These purchasers, however, represent a small minority in the marketplace. For lamps with a design voltage of 130, but expected to be operated at 120 volts, the disclosures will be accurate.[70]

The final rules, therefore, require that the disclosures of watts, lumens, and hours of life be based on operation of the lamp at 120 volts. Because medium base compact fluorescent lamps compete directly with incandescent lamps, purchasers often will compare these different lamp types when making purchasing decisions. Therefore, the Commission also is requiring that the performance disclosures for medium base compact fluorescent lamps be based on operation at 120 volts.

The labeling rules, however, allow manufacturers who distribute lamps with different design voltages to provide additional information based on the design voltage of the lamps when operated under those other voltages. Because the Commission is allowing manufacturers to provide additional information to purchasers whose line voltage varies from 120 volts, there is no reason to believe that manufacturers will cease production of lamps designed to operate at different voltages, as NEMA speculated.[71] See §§ 305.11(e)(1)(A)(ii) and 305.11(e)(1)(C) in "Text of Amendments," below.

b. *Wattage.* Watt ratings on lamps refer to the unit of electrical power that the lamp will consume.[72] In the NPR, the Commission proposed requiring that watts be disclosed. There was no disagreement during the proceeding regarding the need for or appropriateness of requiring disclosure of wattage on labels for general service incandescent (nonreflector) lamps and compact fluorescent lamps.[73] This information is often used by residential purchasers as the basis for selecting a lamp because they often associate light output with the wattage ratings of the general service incandescent lamps they currently use. But, wattage information also is important to know for safety reasons. Lamp fixtures often are marked with the maximum wattage lamp the fixture is designed to use. For incandescent lamp fixtures in particular, use of a lamp with a higher wattage than that marked on the fixture can result in a safety hazard created by the higher heat output from the higher wattage lamp. Purchasers, therefore, need wattage information in addition to lumen output when selecting the appropriate lamp to meet their requirements.

Accordingly, the Commission is requiring disclosure of watts on packages. In addition, to help purchasers understand the meaning of watts, the Commission is requiring that the phrase "energy used" precede the wattage number and term "watts." The juxtaposition of the "watts" and "energy used" disclosures, in conjunction with the "lumens" and "light output" disclosures, discussed in Part IV.C.1.c.i, below, can help educate purchasers on the relationship between the amount of light a lamp produces and the amount of energy used to produce the light. These disclosures, along with the Advisory Disclosure described in Part IV.C.2.c, below, will enable purchasers to select the most energy efficient products that meet their lighting needs. At the same time, the combined disclosures will provide retail purchasers with the "watt" information they may be most accustomed to using as the basis for their purchasing decisions, and which they may need to avoid purchasing a lamp product that is inappropriate for the lamp fixture in which it will be used. See §§ 305.11(e)(1)(A)(iii) and 305.11(e)(1)(B) in "Text of Amendments," below.

c. *Light output in lumens.* The terms "lumens," "lumen output," or "lumen rating" refer to a lamp product's light output.[74] This information is designed to permit the purchaser to determine whether a given lamp will provide sufficient light to meet the purchaser's requirements and to compare the relative light output of competing lamp products. Some retail purchasers may generally refer to this concept as "brightness," but this term actually means something different from light output, according to accepted industry definitions.[75] In the NPR, the

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on store shelves, but purpose of the statute's requirement was to require efficiency be based on constant voltage for situations when mix of products were on shelves at same time). But see NEMA, G–3, 45 ("Section 324(a)((2))(C)(i) of EPCA requires that labeling information for incandescent lamps be based on performance when operated at 120 volts input, regardless of the rated lamp voltage. The Commission's regulations should expressly require manufacturers of incandescent lamps to disclose all performance characteristics when operated at 120 volts, regardless of the rated voltage.").

[67] See MN DPS, GG–9, 2; NEPS (Tr.), 44; LRC (Tr.), 44, 54–55; Angelo (Tr.), 57; ACEEE (Tr.), 59; IES (Tr.), 62.

[68] See 16 CFR 305.11(e)(1)(C) in Text of Amendments, below. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of wattage, light output, and life must each be followed by the phrase "at 120 volts." Manufacturers of such lamps may also disclose the lamps' wattage, light output and life at the design voltage. In such cases, the disclosures of wattage, light output, and life must each be followed by a phrase indicating the voltage at which the additional disclosures were measured, *e.g.*, "at 125 volts."

[69] See note 53, above.

[70] See Angelo (Tr.), 63:

(P)eople may choose life or lumen output but if it's tested at 120 then there's no reason to go through the deception of saying it's a 130-volt lamp. It's simply enough to say that this lamp is going to produce less lumens[,] meaning it's going to have a different filament and it has really nothing to do with design wattage, it has to do with life and lumens. So in the circumstance of the people who were buying it for that reason, why go through a deception? Why not just tell them [it's] at 120 and let it be billed as a 120-volt lamp with less lumens and more life?

[71] NEMA (Supp.), G–10, 21.

[72] The term "watt" (a unit of power) is defined as the power which in one second gives rise to energy of one joule. NIST Special Publication 330, at 18. In EPCA, as amended by EPA 92, the term "lamp wattage" means "the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts." 42 U.S.C.A. 6291(30)(O) (West Supp. 1993).

[73] The Light Bulb Rule already requires a wattage disclosure for incandescent lamps. 16 CFR 409.1(a)(1).

[74] Under EPCA, the term "lumen output" means "total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary [of DOE]." 42 U.S.C.A. 6291(30)(Q) (West Supp. 1993). For incandescent lamps, the Light Bulb Rule already requires that light output be disclosed in lumens.

[75] Brightness is measured in candelas and means the intensity of the light, whereas light output,

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Commission proposed requiring that packaging disclose lumens (whether identified by that term, or another such as "light output"). There was agreement among the participants in the proceeding that light output in lumens should be disclosed.

i. Emphasis on light output in disclosures. Although light output is the primary descriptor of whether a specific lamp will provide the necessary lighting to meet a particular need, it appears that residential purchasers, at least, often purchase lamps based on the product's rated wattage.[76] For these purchasers, different wattages are associated with various lighting needs. There are lamp products with substantially different wattage ratings, however, that can provide almost the same light output in lumens. Stated another way, by choosing lamps on the basis of light output, consumers could meet their lighting needs and use less energy by selecting a lamp of a lower wattage.[77]

Four comments agreed that a key element in getting consumers to purchase more energy efficient lamps is to encourage them to shop for light output in lumens, rather than for energy usage in watts, as they currently are more accustomed to do.[78] Several comments favored furthering this objective by making the disclosure of light output (in lumens) as prominent as or more prominent than the wattage disclosure on current packaging.[79] Some comments also suggested that, because residential consumers are often unfamiliar with the term "lumen," the disclosure of lumens should be accompanied by a descriptive phrase that would be more familiar, such as "light output" or "brightness."[80] There was, however, information presented at the Workshop indicating that lumens is not an unfamiliar concept to many consumers, even though wattage may be a more significant factor in making purchase decisions.[81]

The Commission agrees that the labeling rules should assist purchasers in shopping for lamps on the basis of light output in lumens rather than watts. Because competing lamp products may provide the same lumen output at varying wattage ratings, purchasers can reduce their energy costs for lighting by purchasing lamp products that provide the lumens they need at the lowest wattage ratings. Current packaging generally highlights wattage, and purchasers may be accustomed to selecting lamp products based on wattage instead of lumens (*e.g.*, they simply replace a burned out 100 watt lamp with a new 100 watt lamp).

It is in the interest of energy efficiency, therefore, to design labeling information to highlight the importance of light output in lumens. Accordingly, the Commission is requiring that the lumens disclosure be identified primarily as one of "light output," and that this light output disclosure be the first of the three basic performance disclosures appearing on the primary display panel. In addition, to remind consumers that wattage is not a measure of light output, the wattage disclosure will be identified primarily as "energy used."[82] See § 305.11(e)(1)(B) of the rule in "Text of Amendments," below. Coupled with the educational information currently being provided by manufacturers, utility companies and others in the marketplace, this increased emphasis in labeling on light output and clarification of the meaning of wattage should help educate consumers to save energy costs by purchasing the lowest wattage lamp that provides the light output they need.

ii. Average initial lumens vs. average mean or average lumens. In general, the light output in lumens of a given lamp product is greatest at the beginning of its life (*i.e.*, its "initial lumens"). Light output in lumens degrades over the lifetime of the lamp. According to generally accepted industry standards, the light output for a lamp can be measured and expressed in terms of average initial lumens (at or near the beginning of the lamp's life), as average or mean lumens over the duration of the lamp's real or projected lifetime, or as a range of lumens. In determining the most appropriate lumen disclosure for each type of lamp product, the Commission has considered the comments concerning the effect of degradation on the different lamp types and the measure of light output in lumens that will give purchasers the most accurate and uniform information on which they can compare competing products and make purchase decisions.

There was considerable discussion in the written comments and at the Workshop about how and at what point or points in a lamp's operation light output should be measured.[83] Some comments suggested that the required disclosure should be of mean or average lifetime lumens,[84] while others believed that lumens should be expressed as initial lumens.[85]

During the Workshop, representatives of GE and Osram explained in some detail how lumens are measured under current industry methods. One of the issues discussed was the extent to which lumens degrade (or diminish) over the life of a lamp.[86] There was general agreement among most of the Workshop participants that the extent of degradation of competing general service incandescent lamps and of medium base compact fluorescent lamps over the average lifetime of a compact fluorescent lamp (10,000 hours) is substantially the same.[87]

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which is measured in lumens, means amount of flow of light.

[76] See Part IV.C.1.b, above.

[77] For example, a general service incandescent halogen lamp can provide a greater light output in lumens than a standard general service incandescent lamp of the same wattage rating. In addition, a compact fluorescent lamp can provide the same or greater light output in lumens than a general service incandescent halogen lamp at a significantly lower wattage rating.

[78] Angelo, G–1, 2, (Tr.), 182–183; Osram, G–4, 2; Philips, G–5, 2–3; GE, G–2, 7, (Tr.), 181–182. See Part IV.C.1.b, above.

[79] Angelo (Tr.), 182–183 ("make lumens more prominent"); GE, G–2 (Ans.), 1 ("prominent"); Philips, G–5, 1–2 ("at least 50% that of the wattage"); MO DNR, GG–10, 3 ("more prominently"); WA SEO, GG–18, 1–2 ("of equal size and prominence"). But see GE (Tr.) 181–182 (the change in prominence should be gradual).

[80] GE, G–2, (Ans.), 9 ("brightness (lumens)"); Philips, G–5, 2–3 ("light output"); ACEEE, GG–1, 3 ("light output: XX Lumens"); MO DNR, GG–10, 3 ("brightness (lumens)"). But see OR DOE, GG–13, 3 ("lumen disclosure should *be* in lumens, not "brightness" or "light output").

[81] According to research conducted by Conway/Milliken & Associates for GE in July 1992, 55% of all consumers understand the meaning of lumens, even though they may purchase based on wattage. GE (Tr.), 109–10. See GE (Supp.), G–9, 1, Ex. A. But see Angelo (Tr.), 134–35 (disagrees and thinks that most consumers do not know watts are a measurement of energy as opposed to a measurement of light, because, up until now, they have purchased on the basis of watts).

[82] The Commission is not specifying type size for these disclosures because of the huge variety of packaging styles and sizes, and the need to vary type size according to the package.

[83] See, *e.g.*, Tr., 66–86.

[84] Philips (Tr.), 74 (a rating based on a long-term average of tested lumens that would be rounded); NEPS (Tr.), 67, 72; SCS, GG–16, 1–3 (details reasons for disclosing "mean lumen output range," including differing lumen depreciation and lumen output values and differences in lumen output from differences in fixtures, installations, sensitivity to temperature, and/or ballasts).

[85] See, *e.g.*, Osram (Tr.), 68; NEMA (Supp.), G–10, 15–16; Philips (Supp.), G–12, 2; LBL (Supp.), GG–22, 3.

[86] See Tr., 66–86.

[87] Because compact fluorescent lamps have longer lives than incandescent lamps, this comparison requires that several general service incandescent lamps be considered for the comparison. Specifically:

> Over the life span of a compact fluorescent product, generally speaking, after the first hundred hours—and the initial lumens are measured at one hundred hours burning—the product declines in output slowly over a life of perhaps 10,000 hours. If you look at what happens for the equivalent number of incandescent lamps, then obviously every time you replace an incandescent lamp say after 750 hours, your light output goes up to the initial again, and then drops off to some lower figure. If you take the difference in the averages between what you get from that whole bunch of incandescent lamps and what you get from the

Accordingly, most Workshop participants concluded that it would be appropriate for the Commission to require disclosure of average initial lumens.[88] Because it is easier to measure the light output of lamp products as initial lumens, and a requirement to disclose light output in initial lumens is consistent with the requirements of the Light Bulb Rule, the Commission has determined to require disclosure of average initial lumens on the packages of these products.[89] See § 305.11(e)(1)(A)(iv) in "Text of Amendments," below.

d. *Average lamp life.* Lamp life refers to the lamp's average life or lifetime, measured under laboratory conditions (*i.e.*, average laboratory life).[90] In the NPR, the Commission proposed requiring disclosure of average life (in hours). During the proceeding, two issues emerged relating to the proposed requirement to disclose lamp life: (1) How to determine the life of the product; and (2) whether to express life in years (based on an average usage period, such as three hours per day) or hours.

i. *How to measure lamp life.* Laboratory lamp life is determined by measuring the length of time (in hours) the lamp will operate before burning out. The IES standard calls for the lamp to be operated according to an on/off cycling schedule. The life of a lamp is the number of burning hours to failure. Some industry members, however, to save time, will use one or two variations of this standard. In one case, they will use a "steady burn," in which there is no on/off cycle. In the other case, they will burn the lamp at much higher voltages than normal and extrapolate the lamp's laboratory life from the test results.[91]

In the discussion of lamp life determination during the Workshop, the participants agreed that consistency is of considerable significance for this disclosure. Specifically, it is most important that the estimated life of competing lamp products be measured in a manner that yields comparable results. Participants did not, however, agree that any particular test procedure should be required by the labeling rules.

As discussed in Part IV.G, below, the Commission has determined at this time not to require for any of the basic disclosures that any specific test procedure be used. The Commission, however, is requiring that manufacturers have a reasonable basis, consisting of competent and reliable scientific tests, to substantiate these disclosures. To meet this reasonable basis standard for substantiating light output and laboratory life disclosures, manufacturers may rely on tests conducted pursuant to the specific IES test procedure referenced in the Rule. These test procedures, which comments recognized as appropriate test standards used by the industry, require on/off cycling. The Commission concludes that requiring manufacturers to have competent and reliable scientific tests to substantiate laboratory life claims is sufficient to ensure that manufacturers determine average laboratory life in a way that will produce consistent results. See the discussion of substantiation in Part IV.G, below.

ii. *Years vs. hours.* The other issue concerning lamp life pertained to how the lifetime should be expressed. ACEEE originally recommended that life be expressed in years, but later suggested requiring disclosure of both years and hours.[92] NEMA recommended that the required disclosure of life be in hours, because a disclosure in years would involve fractions of less than one year for some lamp products and assumptions about average hours of use in a year.[93] No commentors were aware of any studies demonstrating average usage periods for either commercial or residential users for particular types of lamps or uses. The Light Bulb Rule currently requires that life of incandescent lamps be disclosed in hours, 16 CFR 409.1(a)(3), and many manufacturers express lamp life in hours for other lamps. Accordingly, the Commission has determined to require a simple disclosure of average laboratory life in hours, rather than years (or both hours and years). The labeling rules, therefore, require that the average laboratory life of lamp products be disclosed in hours. See § 305.11(e)(1)(A)(v) in "Text of Amendments," below.

e. *Quantity of lamps in package.* There was no disagreement with the proposal to require the disclosure on packages of the number of bulbs contained in the package if there were more than one. This requirement, therefore, appears in the final labeling rules. See § 305.11(e)(1)(A)(i) in "Text of Amendments," below.

2. Supplemental Disclosure Options

To supplement the disclosures of wattage, light output and laboratory life, the Commission proposed in the NPR requiring disclosure of an efficiency measure of each lamp's performance. The Commission proposed two alternatives for primary consideration: (1) An energy efficiency measure such as lumens per watt; and (2) a disclosure of the estimated energy cost of the lamp based on a specified unit energy cost and usage period. The NPR also described similar suggestions made by ACEEE and NEMA. As is further set forth below, the Commission has concluded that neither a lumens-per-watt disclosure nor an operating cost disclosure is likely to increase consumers' abilities to choose the most efficient lamp for their needs. Instead, the Commission has concluded that the basic information required to be disclosed should be supplemented by the Advisory Disclosure described in Part IV.C.2.c, below.

a. *Energy index.* The Commission explained in the NPR that a lumens-per-watt disclosure (*i.e.*, the "Energy Index" that had been suggested by NEMA), which would rate the efficiency of a lamp product in converting electric energy into light output, has the advantage of simplicity. It pointed out, however, that such a disclosure could suffer from the drawback identified by ACEEE (*i.e.*, because higher wattage bulbs often have disproportionately greater light output, they often will use more energy as well as have a better energy index). Thus, a lumens-per-watt disclosure alone could lead to lumen and watt over-purchasing. The Commission inquired whether this

single curve with the compact fluorescent, it is not a very big percentage. It is perhaps around five percent. That is far less than you will get by differences in light output from incandescent lamps due to fluctuating voltage.

Osram (Tr.), 80–81.

[88] *See* GE (Tr.), 67 ("Whether I would want product A or product B from a light output or an efficiency standpoint, you'll still make the same decision."); Osram (Tr.), 81 ("Our procedures, both nationally and internationally for rating products at initial value is something that we can live with as an industry, and something that we can measure with some consistency, and can be enforced."); NEMA (Supp.), G–10, 15–15; LBL (Supp.), GG–22, 3 ("There was considerable discussion at the Workshop on whether initial lumens, or mean or maintained lumens, should be reported on lamp labels. LBL concurs with the position that the difference between the lumen depreciation of general service incandescent lamps and compact fluorescent lamps is small enough that initial lumens (per the standard test procedure) are acceptable."); Philips (Supp.), G–12, 3. *But see* MA AG (Supp.), GG–24, 2, fn. 1 ("Manufacturers should disclose if a compact fluorescent lamp or an energy efficient incandescent lamp's lumen degradation is faster or further or both than the degradation of a conventional incandescent lamp.").

[89] This requirement is consistent with the Light Bulb Rule. 16 CFR at 409.1(a)(2).

[90] In EPCA, as amended by EPA 92, the terms "life" and "lifetime" mean "length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume." 42 U.S.C.A. 6291(30)(P) (West Supp. 1993).

[91] See Supreme (Tr.), 89–90.

[92] ACEEE, GG–1, 2, (Supp.), GG–21, 1 ("For example, a label might read: Lamp Life: 1000 hours (0.9 years at 3 hours per day).").

[93] NEMA (Supp.), G–10, 21 note *.

drawback could be avoided by requiring that the Energy Index be accompanied by a disclosure such as: "Select the light output you require before comparing the energy index of different bulbs."

Most of the comments supported requiring a disclosure of the energy efficiency of lamp products in the form of lumens per watt and that it be called an "energy index."[94] One participant compared this to a miles per gallon disclosure for gasoline, which consumers presumably understand.[95] Although consumers could otherwise ascertain the information from the separately required disclosures of lumens and watts, the energy index reduces this information to a single figure.[96] Several comments favoring this disclosure also recommended that it be no less than 50% of the size of the light output disclosure and that it be accompanied by a definition or explanation of its meaning on the same or another panel.[97] Two comments recommended that the Commission require disclosure of a "range" of energy indices for available general service incandescent lamps and compact fluorescent lamps like those the Commission requires for other products under the Appliance Labeling Rule, with the performance of the labeled lamp indicated on the range.[98]

Two comments opposed an energy index as unnecessary or confusing.[99] Other comments were concerned with the potential overbuying problem identified by ACEEE (that the disclosure could unintentionally force consumers to "overbuy" watts and lumens because higher wattage incandescent lamps tend to have higher energy indices.)[100] Three comments, however, agreed with the Commission's suggestion that the potential problem might be avoided by requiring the prominent disclosure of wattage next to the energy index disclosure and/or a definition or explanation that informs purchasers to look for the lumens they want and then select the highest energy index.[101] One comment indicated that the potential overbuying problem was not likely to be a significant one.[102]

The Commission has determined not to require disclosure of a lumens-per-watt index. Although support was expressed in the rulemaking proceeding for this proposal, disclosing such an index could result in consumers purchasing more watts than they need. This overbuying may occur because a lumens-per-watt index will rise with wattage of incandescent lamps. Thus, a consumer who buys the lamp with the highest lumens-per-watt index may select a lamp that has a higher than required light output and wattage. For example, overbuying may occur if a consumer selects a 100-watt incandescent lamp with a 17 lumens-per-watt index as a replacement for a 60-watt incandescent lamp with a 14 lumens-per-watt index or a 75-watt incandescent lamp with a 16 lumens-per-watt index.

An energy index based on lumens per watt also could confuse consumers who understand correctly that higher wattage lamps use more energy. Because a lumens-per-watt index tends to increase with the wattage of incandescent lamps, these consumers might be led to believe that lamps with higher energy index numbers generally cost more to operate. In that event, the much higher energy index numbers that would appear on the labels of compact fluorescent lamps actually could mislead some consumers into believing that these lamps were less energy efficient.

In light of these potential disadvantages, the Commission has determined not to adopt a lumen-per-watt index as a supplemental disclosure. The Commission has concluded that the objectives of EPA 92 will be better achieved by supplementing the basic disclosures with the Advisory Disclosure described in Part IV.C.2.c, below, which informs consumers how to use the basic disclosures to select the most efficient lamp for their needs.

b. Energy operating cost. Another proposal for conveying lamp efficiency information was to require an energy operating cost disclosure. As described in the NPR, ACEEE suggested requiring disclosure of estimated annual operating cost.[103] NEMA suggested requiring disclosure of both an estimated annual operating cost and a lumens-per-watt energy index.[104] Based on these suggestions and other considerations discussed in the NPR, the Commission proposed requiring disclosure of estimated monetary cost of energy information, as an alternative, or in addition to, a lumens-per-watt disclosure of the lamp's energy efficiency.[105]

In the NPR, the Commission stated that it might require a disclosure of the estimated monetary cost of the energy used by a lamp based on its use for a specified period, such as the lamp's life in hours or a length of time based on average usage patterns. The Commission explained that such a disclosure could be based on the representative average unit cost of electricity, as specified in the Appliance Labeling Rule, 16 CFR 305.9, or on an assumed unit cost. The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy costs of competing lamp products. At the same time, the Commission stated that it would consider carefully whether such disclosures, particularly when the costs are prorated over a period of time that is less than the life of a very energy efficient bulb, communicate effectively the extent to which a higher initial lamp cost can be compensated for by lower operating costs over the lamp's life.[106]

The Commission pointed out in the NPR that, if it adopted a monetary cost of operation disclosure, it would have to base the disclosure on an average or estimated usage pattern (*e.g.*, one year). The Commission noted, however, that there are no established usage patterns, and estimated use will vary depending upon the location and use of the lamp. In addition, the Commission would have to determine what unit cost of electricity to use. The representative average unit cost of electricity, as specified in the Appliance Labeling Rule (16 CFR 305.9), changes annually, and thus could result in consumer confusion if lamps manufactured in different years were available for sale at the same time. To avoid possible confusion, the Commission explained that it might require manufacturers to

[94] See, *e.g.*, NEMA, G–3, 34–35, (Supp.), G–10, 12; Osram (Tr.), 124, (Supp.), G–11, 2; Philips, G–5, 2, (Supp.), G–12, 1; Panasonic, G–7, 2; LBL, GG–7, 1; MN DPS, GG–9, 2; OR DOE, GG–13, 2; LRC, GG–15, 2; US EPA, GG–17, 2–3; WA SEO, GG–18, 2; NEPS, GG–11, 3; GE (Tr.), 110, 140, 155, 198, (Supp.), G–9, 1 (GE would prefer that the Commission require only a disclosure of lumens and watts and no energy index, but would prefer an energy index disclosure over an energy cost disclosure).

[95] Osram (Tr.), 124.

[96] See *Id.* at 125.

[97] NEMA (Supp.), G–10, 12; Osram (Supp.), G–11, 2; Philips (Supp.), G–12, 1.

[98] LBL (Supp.), GG–22, 3; NIST (Supp.), GG–23, 2–3.

[99] IES, GG–6, 2; SCS, GG–16, 4.

[100] Angelo, G–1, 2; GE, G–2, (Ans.), 1–2; ACEEE, GG–1, 3, (Supp.), GG–21, 1; MO DNR, GG–10, 2.

[101] LRC, GG–15, 2; WA SEO, GG–18, 2.

[102] OR DOE, GG–13, 2 (may be a problem for some lamps, but not true in general).

[103] 58 FR at 60154.

[104] *Id.* at 60153.

[105] *Id.* at 61055.

[106] For example, if a monetary cost of operation disclosure were adopted, one usage period for which disclosures could be calculated is 750 hours, which is approximately the life of general service incandescent lamps with the shortest lifetimes. A second option would be to set a longer period (*e.g.*, 1000 hours). But, where this period exceeds the average life of the lamp, the cost of replacement of the lamp might come into play. A third option would be to use a shorter period, such as one hour, 10 hours, or 100 hours. A shorter period, however, might be too small to illustrate sufficiently energy cost differences among competing lamps.

include an explanation of how the estimated energy cost was determined in immediate proximity to the monetary cost estimate disclosure.[107] The Commission recognized, however, that the additional information could unduly complicate the label, and therefore not be helpful to purchasers.

Because some purchasers may be interested in computing lamp costs comprehensively, including the initial purchase price, the Commission proposed requiring information to enable them to make the necessary calculations to determine the "estimated total operating cost" of the lamp for a standard time period.[108] But, recognizing that purchasers would need to make calculations for each lamp they considered, the Commission stated that it would consider carefully the extent to which purchasers actually would use the proposed disclosures in making a purchase decision. As a practical matter, the Commission noted that purchasers, particularly retail consumers, may disregard, or consider too complex, any disclosure requiring computations of this sort, and therefore that such required disclosures may not be useful to purchasers in their efforts to choose an energy efficient lamp. The NPR solicited comments on both the annual operating and total operating cost disclosures proposed by the Commission.[109]

The 17 comments that addressed cost disclosures were evenly divided. Seven comments recommended that the Commission require some kind of cost disclosure.[110] Seven comments opposed such a requirement.[111] Two commentors initially supported cost disclosures, but later recommended against them.[112] One comment stated that if cost disclosures were required, the NEMA proposal described in the NPR for estimated annual operating cost along with an energy index would be the best.[113]

Of the comments favoring a cost disclosure, only one recommended including the purchase price of the lamp in the cost disclosure.[114] Most comments that supported cost disclosures, as well as some comments in opposition and some additional comments, opposed requiring disclosure of the "estimated total operating cost."[115] The objection most often offered was that manufacturers have no control over the retail price of the products they manufacture, which would make it impossible to disclose on packages a meaningful operating cost figure that includes purchase price.

The comments supporting disclosure of estimated annual operating cost favored the approach because they believe that consumers understand dollars and that operating cost would provide useful information.[116] Most of these comments recommended using a fixed unit cost for electricity, rather than the national average cost figures published annually by DOE, and a fixed usage period.[117]

Of those comments opposing required disclosure of operating cost, most contended that cost disclosures would be difficult to develop and would make disclosures too complicated, regardless of whether annual or total costs were used.[118] Several comments remarked that cost disclosures in U.S. dollars would result in crowded labels and consumer confusion because of the United States' increased trade with Canada and Mexico under the North American Free Trade Agreement ("NAFTA").[119]

Some comments that opposed mandatory cost disclosures recognized that manufacturers might want to disclose some cost information voluntarily in point-of-sale materials.[120] Several comments recommended that the Commission regulate how cost disclosures on packaging or in point-of-sale materials should be made, if the manufacturer wishes to make them. Of these, some recommended that the Commission require manufacturers to disclose the product usage period and energy cost assumptions upon which their cost claims were based.[121] Other

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[107] This would allow purchasers to compare the energy costs of competing products with different lifetimes based on a time line that is within the lifetime of all the competing products and is large enough to illustrate clearly the differences among energy costs and, therefore, of energy efficiencies. In the alternative, the Commission explained that it could require that monetary cost of operation estimates be based upon a constant unit cost of electricity, such as 10 cents per hour, which although not fully accurate for all purchasers, would facilitate lamp-to-lamp comparisons.

[108] Specifically, the Commission proposed requiring the following statement:

IMPORTANT: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for 750 hours of use is: ([*Figure A*] × the purchase price for one light) + [*Figure B*]). Compare this cost to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens. The manufacturer would determine and preprint Figure A and Figure B in this disclosure. The NPR explained how the manufacturer would calculate these figures and included examples. The Commission proposed a more detailed disclosure for multiple filament general service incandescent lamps.

[109] See Questions 3 ("Disclosure of Monetary Cost of Operation") and 4 ("Disclosure of Estimated Total Operating Cost"), 58 FR at 60158–59.

[110] ACEEE, GG–1, 1–2, (Tr.), 113–114, 149, (Supp.), GG–21, 1; Gluckstern, GG–3, 1; MN DPS, GG–9, 2; MO DNR, GG–10, 2; NEPS, GG–11, 2–3; LRC, GG–15, 2–3; US EPA, GG–17, 3.

[111] GE, G–2, 7, (Tr.), 170; NEMA, G–3, 35–38, (Tr.), 131, 133, 139. (Supp.), 13, 23–26; OR DOE, GG–13, 3–5; Osram (Tr.), 131, (Supp.), 3; Philips (Supp.), G–12, 1; Green Seal (Tr.), 159; SCS, GG–16, 4–5.

[112] Angelo, G–1, 3 (support), (Tr.), 136, 157, 158 (oppose); LBL, GG–7, 1–2 (support), (Supp.), G–22, 4 (oppose).

[113] WA SEO, GG–18, 2.

[114] NEPS, GG–11, 2–3. But see NEPS (Tr.), 199 ("I have put it in my comments as something to be considered, and I am very willing to back off on [life-cycle cost disclosure].").

[115] See Angelo, G–1, 3; Osram, G–4, 2; Philips, G–5, 2; Panasonic, G–7, 2; ACEEE, GG–1, 1–2, 4 (retail prices vary too much to require disclosure of estimated total operating cost); MN DPS, GG–9, 2 (price based cost too complicated unless Commission prescribes a table with several fixed prices for both bulb types); MO DNR, GG–10, 2; LRC, GG–15, 2–3 (cost based on purchase price is practically useless); US EPA, GG–17, 3 (life-cycle cost would be the best, but it's too complicated; thus, estimated annual operating cost over a standard time period is the best compromise).

[116] See, e.g., ACEEE (Tr.), 149 ("We think you really need a dollar cost disclosure. People understand dollars.")

[117] See, e.g., ACEEE (Supp.), GG–21, 1 (But see ACEEE, GG–1, 1–2, in which ACEEE advocated earlier the use of a rounded version of the DOE annual energy cost.); MN DPS, GG–9, 2; MO DNR, GG–10, 2; LRC, GG–15, 2–3; US EPA, GG–17, 3.

Even Philips, which opposed cost disclosure requirements, agreed that, if they were required, they should be based on a fixed energy cost. Philips, G–5, 2.

[118] See, e.g., SCS, GG–16, 4–5 ("Given that the most accurate presentation of operating costs is utility district based (due to utility rates (affecting operating cost) and rebates (affecting purchase cost)) rather than national, printing operating costs directly on the product package is problematic.")

[119] IES, GG–6, 2 ("Will labeling requirements necessitate bi- and tri-language packaging to explain the (U.S. cost) information?"); Osram (Tr.), 121; (Supp.), G–11, 3; GE, G–2, (Ans.), 4, (Tr.), 140 ("The result of dollar cost operation on package would force manufacturers to make country-specific packaging. Country-specific packaging means that we are less efficient and we are not as able to meet consumer demands in the three (national) markets."), 141 (noting that there could be special problems with products bound for Canada, which would need bi-lingual labels and, if cost were required, cost disclosures in both US and Canadian dollars).

[120] Osram (Supp.), G–11, 2; LBL (Supp.), GG–22, 4 (contending that the information necessary to make informed purchasing decisions between two lamps of different efficiencies and price takes two forms: Total operating costs, and total life-cycle costs. "Since electricity rates vary considerably by region, hours of lamp usage vary by consumer, and retail price depends on factors outside the manufacturers' influence, it is difficult to present this information on a product label. However, guidelines should be established by the Commission for presentation of these quantities in point-of-purchase information to avoid confusing or inaccurate claims in product advertising."); SCS, GG–16, 4–5.

[121] NEMA (Supp.), G–10, 25 note ** ("NEMA believes that the Commission should not mandate specific assumptions that must be used in voluntary cost disclosures. Rather, the Commission should require that manufacturers who choose to make disclosures must disclose their assumptions about the cost of electricity and annual hours of lamp use."); Philips (Supp.), G–12, 1 ("Any such

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comments suggested that the Commission should prescribe standardized assumptions for any voluntarily-made operating cost disclosures.[122]

The Commission has determined not to require disclosure of operating cost information for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps. The Commission agrees that fluctuations in retail purchase prices for lamp products and utility company rebates make it a practical impossibility for manufacturers to disclose a meaningful total operating cost that includes purchase price.[123] The Commission also agrees that varying energy rates and consumer usage patterns would make it necessary to require computation of annual operating cost on the basis of questionable assumptions.[124] This would make it difficult, if not impossible, to provide current, accurate and meaningful annual operating cost information for prospective lamp purchasers.[125] Because purchasing decisions are likely to be made very quickly for lamps, which are relatively low-priced items, complicated disclosures involving operating costs are unlikely to be heeded by purchasers at the point of sale and may possibly be confusing.[126] Therefore, a required energy operating cost disclosure would not be useful in helping buyers make purchasing decisions.[127]

The labeling rules do not prohibit manufacturers from disclosing operating cost information, if they choose to do so. The Commission has determined not to prescribe standardized assumptions for these disclosures. The final labeling rules, however, require that, if manufacturers voluntarily choose to make operating cost disclosures on packaging labels, in catalogs or in point-of-sale printed materials, they disclose the unit energy cost, usage patterns, purchase price, and other assumptions upon which the operating cost claims are based. See §§ 305.11(e)(3), 305.13(a)(2) and 305.14(d)(2) in "Text of Amendments," below.

c. Advisory disclosure. As discussed above, the Commission has determined to require that packaging and catalogs contain an Advisory Disclosure that advises consumers how to select the most efficient lamp for their needs. The Advisory Disclosure is:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement advises consumers how to use the lumen and wattage disclosures that will be on the packages to make energy efficient choices. It has the benefits of the explanatory statement that would have accompanied the Energy Index, without the potential overbuying drawback of the index number itself. Like the proposed Energy Index, it may alert consumers to consider lamps, such as halogen incandescent lamps or compact fluorescent lamps, which have lower wattages but produce comparable amounts of light output as higher-wattage incandescent lamps.

3. Additional Disclosures for Multiple Filament Incandescent Lamps

For multiple filament ("three-way") general service incandescent lamps (*i.e.*, incandescent lamps with two filaments of different wattage that can be burned either separately or together, producing three different light output levels), the Commission proposed requiring that design voltage, wattage, light output and an efficiency measure be disclosed for operation at each level. It proposed that the life rating be based on the life of the first filament that fails. The Commission solicited comments on whether and how proposed operating cost disclosures should apply to multiple filament lamps.[128]

Five comments addressed how to disclose wattage, light output, laboratory life and the energy index for these lamp products.[129] There was general agreement among these comments that the Commission should require disclosure of watts and lumens for all three settings, and that the required disclosure of the laboratory life of the lamp should be determined on the basis of the major filament.[130] One comment recommended requiring use of the average wattage "as used" in calculating an estimated operating cost.[131]

Based on the discussion in Part IV.C.1.a-e, above, the Commission has determined to require, for multiple filament lamps, the same disclosures required for a single filament lamp, i.e., energy used (in terms of wattage), light output (in lumens), laboratory life (in hours) and the Advisory Disclosure. Consistent with the Light Bulb Rule, the Commission has determined to require disclosure of wattage and light output for each light output level of a multiple filament lamp. The Commission has determined to require disclosure of average laboratory life on the basis of the filament that fails first, rather than on the major filament, as suggested by the comments.[132] If the secondary filament routinely fails before the major filament, basing the life estimate on the major filament would not be helpful to purchasers. For the reasons explained in Part IV.C.2.b, above, the Commission has determined not to require energy operating cost information for multiple filament lamps. See § 305.11(e)(1)(G) in "Text of Amendments," below.

(voluntary operating cost) disclosures should be based on substantiated test data and any assumptions (should be) disclosed on the package.").

[122] See Angelo (Tr.), 136, 157 (suggesting that the Commission set a standard to avoid one manufacturer using 10 cents per kWh and another using 15 cent per kWh), 158; GE (Tr.), 170 ("We do agree that if cost of operation is going to be optionally claimed on a package, then it is a good idea to have a standard set of assumptions."), 170–72 (cautioning that, unless the required assumptions are keyed into flexible marketplace standards, there is a risk of their becoming outdated, which would undermine credibility and inhibit the main goal: Consumers switching from general service incandescent lamps to compact fluorescent lamps); Green Seal (Tr.), 159 ("* * * I think it makes sense, therefore, to lay out what the assumptions are and once that is done, there is a standard."); Osram (Supp.), G–11, 2 (supports development of a common set of criteria for operating cost disclosures on lamp packages where the manufacturer chooses to display them, and suggests basing disclosures in meantime on 1100 hours use per year and 10 cents per kilowatt-hour).

[123] To encourage the use of compact fluorescent lamps, some utility companies offer significant rebates to their customers for purchasing them. These offers usually accompany the consumers' utility bills, and include explanations of why compact fluorescent lamps can save energy and money.

[124] Various studies have shown that 1100 operating hours per year is the average figure for a lamp in a residential setting. Osram (Tr.), 122. To use this average where the lamp a consumer actually purchases only has a 750 hour life, however, could be confusing. GE (Tr.), 155. See notes 106, 108, above.

[125] Also, because the dollar cost figure on the package will not relate to what the consumer is paying for the lamp, it is likely to be confusing to consumers. Tr., 132–33, 138–39.

[126] See, *e.g.*, NEMA, G–3, 36–37. According to GE, of industry sales of all incandescent lamps to residential purchasers in 1992, 36% were sold through mass merchants, 31% through food and grocery outlets, 22% through hardware and home center stores, 7% through drug stores and 4% through all other outlets. GE (Tr.), 105(4). Seventy eight percent of all these lamps are purchased by residential consumers walking themselves through the purchase decision, without expert assistance. GE (Tr.), 105(5). In addition, the average residential consumer spends 53 minutes total for all purchases per stop in grocery or food stores, GE (Tr.), 108, so the consumer obviously spends little time deciding which lamp to purchase in these stores.

[127] In contrast, information disseminated to consumers in other ways, such as utility company bill inserts, may be more useful.

[128] See 58 FR at 60155, and Questions 3 and 4, at 60158–59.

[129] NEMA, G–3, 45, (Tr.), 206–207, (Supp.), G–10, 14; GE (Tr.), 211; Osram (Supp.), G–11, 3; Philips (Supp.), G–12, 1; OR DOE, GG–13, 7.

[130] *Id.*

[131] ACEEE, GG–1, 3.

[132] This is consistent with the Light Bulb Rule. 16 CFR 409.1 n. 1.

4. Additional Disclosures Recommended for Compact Fluorescent Lamps

Several comments recommended requiring disclosures for compact fluorescent lamps that would be unique to this type of lamp. These suggestions are discussed below.

a. Equivalence claims. In its proposal described in the NPR, ACEEE suggested that the relative light output of a compact fluorescent lamp be measured by comparing it to an incandescent reference lamp, with an incandescent reference lamp being defined for each common type and wattage of compact fluorescent lamp.[133] Presumably, this would provide those purchasers who use watts when buying incandescent lamps with light output information they could use in deciding which compact fluorescent lamp would provide the most comparable replacement for that incandescent reference lamp. Responding to this suggestion, some comments recommended against requiring that the lumens of compact fluorescent lamps be expressed as a percentage of the light output of an incandescent reference lamp.[134] Others favored such an approach.[135]

The Commission believes that the disclosure of wattage, light output in lumens, and the other factors required by the final labeling rules, will be sufficient to allow purchasers to compare competing products when making purchasing decisions, without the necessity of tying a compact fluorescent lamp to a specific incandescent reference lamp. Therefore, the Commission has decided not to require disclosure of an equivalent reference lamp for each compact fluorescent lamp. Manufacturers may voluntarily choose to make equivalence claims, however.

b. Base-up/base-down measurement. Most comments that specifically addressed the light output performance of compact fluorescent lamps suggested that lumen measurements for these products vary depending on whether the lamp is tested in a base-up or base-down position.[136] For example, there was testimony at the Workshop to the effect that there could be as much as a 20 to 30 percent variation in light output between a base-down and a base-up configuration, depending on the lamp and its installation.[137] The comments also state that no test procedure has yet been developed to measure lumens accurately for compact fluorescent lamps in a base-down position.[138]

There was general agreement among these comments that the fact that lumens will vary between base-up and base-down applications should be addressed in the disclosure requirements. Most comments also agreed that, if there were more than a five percent difference between base-up and base-down lumens, manufacturers should be required to disclose each separately, disclosing base-down lumens to the best of their ability.[139] The Commission agrees that, to the extent the base-up/base-down positioning of compact fluorescent lamps affects the light output of the lamps significantly, those differences in light output should be disclosed. The Commission finds that a difference of more than five percent in lumen output is significant, and has determined that the labeling rules shall require disclosure of light output in lumens for both base-up and base-down positions when the manufacturer has reason to believe that the difference between the two disclosures would be more than five percent. Therefore, if the manufacturer has reason to believe the light output at a base-down position would be more than 5% different, the label also must disclose the light output at the base-down position or, if no test data for the base-down position exist, that the light output for a base-down position might be more than 5% less. See § 305.11(e)(1)(E) in "Text of Amendments," below.

c. CRI and CCT. Some comments suggested that the Commission require the disclosure of the color rendering index ("CRI") and the correlated color temperature ("CCT") for compact fluorescent lamps.[140] These two measurements are used by the industry to describe the color of the light that compact fluorescent lamps produce. The record on whether these factors should be disclosed is insufficient for the Commission to prescribe labeling requirements. Although these are useful disclosures for commercial consumers and for some knowledgeable residential consumers, they are not necessary for them or other purchasers to select the most energy efficient lamps to fill their lighting needs. Additionally, it would be difficult to explain the meaning and use of these items in concise and simple terms on the limited space available on lamp packaging. To the extent such information is important, it is likely that manufacturers, utility companies and other interested parties voluntarily will provide that information on packaging or by other means. If they do not and consumers are dissatisfied with the performance of compact fluorescent lamps, they will not make repeat purchases of compact fluorescent lamps. Consequently, the Commission is not requiring the disclosure of CRI or CCT for compact fluorescent lamps.

d. Operating temperature. OR DOE recommended that the Commission require disclosure of the effect of operating temperature on compact fluorescent lamps. OR DOE stated that many fluorescent products do not start or operate well at very low temperatures, such as in outdoor

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[133] 58 FR at 60154.

[134] LBL (Supp.), GG–21, 2 ("CFL package information should *not* claim equivalent light output based on incandescent wattage").

[135] MN DPS, GG–9, 2 ("It would be confusing to express light output of a lamp as a percent of a reference lamp. Comparison with reference lamps is an excellent approach, but the comparison should be simply stated in watts, lumens per watt and lumens. It would be especially helpful in encouraging the sale of compact fluorescent lamps to have a comparable light output compact fluorescent lamp as the reference lamp for incandescent lamps and vice-versa."); LRC, GG–15, 2; MA AG (Supp.), GG–24, 2.

[136] See, *e.g.*, ACEEE, GG–1, 3, (Tr.), 234, (Supp.), GG–21, 3; OR DOE, GG–13, 10; LRC, GG–15, 2, (Tr.), 235; US EPA, GG–17, 2; Osram (Tr.), 233, 242; GE (Tr.), 236; NEMA (Tr.), 272; Philips (Supp.), G–12, 1; LBL (Supp.), GG–22, 2. Compact fluorescent lamps normally are tested for light output ratings with the base facing upward. On the other hand, compact fluorescent lamps used as replacements for incandescent lamps normally are used with the base facing downward. This difference in position may result in a different light output. In addition, the temperature of the environment surrounding the compact fluorescent lamp also affects light output. When compact fluorescent lamps are used in enclosed luminaires with internal temperatures that are elevated above room temperature, the result may be reduced light output. The same is true when compact fluorescent lamps are operated outdoors at low temperatures. Rensselaer Polytechnic Institute, Lighting Research Center, National Lighting Product Information Program, Specifier Reports: Screwbase Compact Fluorescent Lamp Products ("Rensselaer Report"), Vol. 1, Issue 6, April 1993, C–3, at 6.

[137] *See, e.g.*, US EPA, GG–17, 2; Osram (Tr.), 233; LRC (Tr.), 235.

[138] See ACEEE (Supp.), GG–21, 3; LBL (Supp.), GG–22, 2; OR DOE, GG–13, 10.

[139] LRC (Tr.), 235; ACEEE (Tr.), 239, (Supp.), GG–21, 3 (would prefer that a test procedure for base-down lumens be developed but supports disclosure based on multiplier in interim); NEMA (Tr.), 272; Philips (Supp.), G–12, 1.

[140] WA SEO, GG–18, 3; MA AG, GG–8, 3, (Supp.), GG–24, 1–2; OR DOE, GG–13, 5–7, 7–8; ORSU, GG–14, 2–3. EPCA defines these two terms as follows:

The term "color rendering index" or "CRI" means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature. 42 U.S.C.A. 6291(30)(J) (West Supp. 1993).

The term "correlated color temperature" means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source. 42 U.S.C.A. 6291(30)(K) (West Supp. 1993).

The NPR proposed including these definitions of CRI and CCT in the Rule because they are terms that will often be used in connection with the marketing of fluorescent lamp products and because DOE may include them in its standards or test procedure rules.

lighting in cold temperatures, and do not provide full light output at very low or very high temperatures.[141] The record does not contain sufficient specific information for the Commission to conclude how significant and extensive the effects of temperature are on compact fluorescent lamps in actual practice and to determine what specific disclosures are needed. Moreover, it appears that manufacturers already disclose the temperature factor in some instances on compact fluorescent lamp packages. To keep the required disclosures simple and concise, therefore, while fulfilling the statutory mandate concerning the important information the labeling rules should provide, the Commission has determined not to require disclosures concerning the operation of compact fluorescent lamps under these operating conditions.

e. Noise and interference factors. Several comments suggested requiring disclosure of warning-type information, such as the possibility that compact fluorescent lamps will interfere with some remote control and other electronic devices.[142] One comment recommended requiring the disclosure of power quality and noise factors.[143] Although noise interference warnings appear on packaging for at least some compact fluorescent lamps, there was insufficient information presented on the rulemaking record about how significant these factors are. In light of this, as well as the practical necessity to limit required disclosures to the most important information consumers need, the Commission has determined not to require disclosure of these factors. To the extent manufacturers wish to disclose information about any of these factors in a truthful and non-deceptive way, they will be free to do so.

5. Location and Format of Packaging Disclosures

a. Location. As described in the NPR, NEMA proposed that the disclosures discussed above for general service incandescent (nonreflector) lamps and medium base compact fluorescent lamps appear on at least one panel of the outer sleeve of lamp packages. NEMA suggested that the Commission specify both type size and relative size specifications for the disclosures, and that the Commission require that the supplemental disclosures NEMA proposed (the energy index and estimated annual operating cost) be disclosed in a square at least one inch by one inch.[144]

ACEEE's suggestions, as described in the NPR, did not contain specific format recommendations. ACEEE suggested, however, that the Commission specify label content and size, while allowing manufacturers flexibility to design their own customized labels within the specified parameters.[145]

The Commission did not propose specific formats in the NPR for the size or location of the disclosures under consideration. The Commission stated, however, that it would consider requiring that the principal disclosures be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.[146]

Accordingly, the Commission has determined to require that the basic disclosures[147] and the Advisory Disclosure be made on the principal display panel of packages for these two types of lamps. The comments that addressed where these disclosures should be made agreed that key disclosures should be on the front panel, or on "at least one panel."[148] The Commission has determined that it is unnecessary to prescribe exact specifications for all aspects of the required disclosures. But, to ensure prominent display of the light output figure as well as the word, "lumens," the Commission is specifying format requirements for these and the other performance disclosures.[149] See §§ 305.11(e)(1)(A) and 305.11(e)(1)(B) in "Text of Amendments," below.

b. Type size, pominence, and graphic enclosures. Many comments stressed the importance of making the light output disclosure with prominence that is equal or similar to the energy used (wattage) disclosure. These comments agreed that, to encourage consumers to shop for lamps based on efficiency, the disclosure requirements should direct consumers' attention to light output in lumens. To accomplish this, the comments generally recommended that the lumens number be disclosed in a size that is at least 50% as large as the wattage number and that it be disclosed with prominence equal to the disclosure of watts.[150]

The Commission agrees that the requirements should direct consumers to the lumen disclosure, and facilitate consumers' understanding of the meaning of the various terms. In the Commission's experience, this will be facilitated by using simple, understandable language and putting the most important information first. Accordingly, the amended rule specifies that the required disclosures appear in the following order:

(1) The term "light output" followed by the lumens figure, and, in close proximity to either of these, the term "lumens;"

(2) The term "energy used" followed by the wattage figure, and, in close

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[141] OR DOE, GG–13, 5–6. OR DOE's comment directed this concern to all fluorescent lamp products. Because general service fluorescent lamps are purchased overwhelmingly for commercial use, and most commercial purchasers are more knowledgeable about the factors affecting performance of those lamp products, the Commission is addressing this issue primarily as it concerns compact fluorescent lamps purchased by residential consumers.

[142] MA AG, GG–8, 1–3, (Supp.), GG–24, 1–2; NEPS, GG–11, 3; LBL, GG–7, 2.

[143] ORSU, GG–14, 3.

[144] 58 FR at 60153–54.

[145] *Id.* at 60154.

[146] *Id.* at 60156.

[147] The basic disclosures are: design voltage (if other than 120), energy used (expressed in watts), light output (expressed in lumens), life (expressed in hours), and number of bulbs in package (if more than one).

[148] See, *e.g.*, OR DOE, GG–13, Enclosure (showing proposed disclosures for front and back package panels); Osram (Supp.), G–11, 1 (disclosures should be made on the main panel); Philips (Supp.), G–12, 1 (disclosures should be on at least one panel of the lamp package); NEMA, G–3, 39, (Supp.), G–10, 10 (the main disclosures should be on at least one panel of the package). Although its comment was directed at the disclosure of an energy efficiency range, NIST's remarks on disclosure location are pertinent:

> The side of the package is not in a prominent display situation since the customer must remove the package in order to examine the sidebar information. That is probably too late in the decision process for many purchasers. It would seem to be more advantageous to show such information on the front of the package. Then the buyer could more readily determine that there is another option before removing from the shelf. As GE noted, the crowded display areas can become confusing, if not overwhelming, for a wise choice to be made from the many offerings displayed. Therefore, it seems to be even more important to get the information displayed up front.

NIST (Supp.), GG–23, 2.

[149] See NEMA, G–3, 6 (package design plays an important part in the sale of lamps, package has limited space, specific words and formats matter greatly).

[150] See, *e.g.*, Angelo (Tr.), 156; GE, G–2, 7, (Ans.), 9, (Tr.), 179 (does not believe that lumens should be larger than watts on the package); NEMA, G–3, 39 (wherever wattage is displayed, light output must be disclosed in close proximity, in type that is at least 50 percent the size of the wattage figure); 42 (Commission should consider requiring all disclosures of wattage be accompanied by a reference to light output of equal size and prominence), (Supp.), G–10, 12 (disclosure of light output in lumens should be at least the same size and no less prominent that the disclosure of wattage); Philips, G–5, 2 (the words Light Output should appear in close proximity to the wattage, in print at least 50% that of the wattage); MO DNR, GG–10, 3 (brightness (lumens), yearly energy costs, and lamp life should be more prominent than other required information such as watts, volts, and size); WA SEO, GG–18, 1–2 (to begin steering consumers to lumens, lumens disclosure should be larger in comparison to watts than is presently required; it should perhaps be of equal size and prominence); Osram (Supp.), G–11, 1 (light output disclosure should be no smaller than the wattage disclosure); ACEEE (Supp.), GG–21, 1 (agrees with the proposal forwarded by Angelo that the lamp package have both lumens and watts printed in equal size).

proximity to either of these, the word "watts;" and

(3) The term "life" followed by the life in hours figure and, in close proximity to either of these, the word "hours."

In addition, the disclosures must conform to the following type size requirements:

(1) The three numerical figures must be of equal size;

(2) The terms "light output," "energy used" and "life" must be of equal size; and,

(3) The terms "lumens," "watts," and "hours," must be of equal size but only approximately 50% of the size of the terms "light output," "energy used," and "life," while still clear and conspicuous.

See § 305.11(e)(1)(B) and appendix K in "Text of Amendments," below.

The rules require that lamp packages contain an Advisory Disclosure to educate purchasers how to select the most efficient lamp that meets their needs. The required Advisory Disclosure is:

> To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

This statement must appear on the primary display panel of the lamp package, along with the required disclosures of lumens, watts and life. The Commission is not specifying the type size or style of this reference, but it must be clearly and conspicuously displayed. See § 305.11(e)(1)(F) in "Text of Amendments," below.

6. Disclosures in Catalogs

In the NPR, the Commission proposed that required information be disclosed both on packages and in catalogs from which the lamp products may be purchased.[151] EPCA authorizes the Commission to require that information required on labels be contained in catalogs. 42 U.S.C. 4296(a) (1988). For consumers who purchase lamps through catalogs for either residential or commercial use, the catalog serves the same informational function as a package does for those who purchase the product off a store shelf.

Most of those who commented on this issue generally supported the Commission's proposal. NEMA originally recommended against the Commission's proposal, arguing that the disclosures that NEMA had proposed were uniquely suited to the size and space constraints of packages, and did not necessarily translate well to disclosures in catalogs.[152] In its final comment, however, NEMA recommended requiring disclosure of all required information in catalogs, except lumens per watt and number of bulbs in the package.[153] OR DOE and WA SEO recommended that all required disclosures be required in ordering catalogs.[154] Home Depot recommended that the Commission clearly define "catalog" to differentiate between manufacturers' catalogs and retailers' advertising catalogs or circulars from which lamps can be ordered.[155]

The Commission has concluded that the required disclosures are important to both commercial and residential purchasers of these two types of lamps, whether they are purchasing the lamps in a store or through a catalog. The Commission has determined, therefore, to require that all disclosures that § 305.11(e) requires on packaging be made clearly and conspicuously in catalogs from which the lamps can be ordered, with the exception of the number of lamps in a package. The Commission is not requiring this last disclosure in catalogs because catalogs often offer lamps packaged in different ways. In some cases, lamps are offered in cartons containing smaller packages of several bulbs apiece. In others, lamps are offered in bulk quantities and the lamps are not shipped in retail-store-type packages. In both cases, the catalogs clearly disclose price and quantity with respect to the lamps described on their pages. In contrast, in some instances at point of sale, without actually opening a package, it is not clear how many lamps are inside.

For catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. The Commission also agrees with OR DOE's recommendation that, in cases in which the same disclosure applies to entire categories of products in the catalog, it is only necessary for the required disclosure to be made once on each page on which such products appear. Accordingly, the labeling rules allow this accommodation. See § 305.14(d)(1) in "Text of Amendments," below. The Rule also requires that, if manufacturers make operating cost claims in catalogs, they disclose, clearly and conspicuously, the assumptions (unit cost of electricity, usage period, purchase price, *etc.*) that were used. See § 305.14(d)(2) in "Text of Amendments," below.

7. Disclosures in Point-of-Sale Printed Materials

In the NPR, ACEEE suggested that the required disclosures for residential purchasers be disclosed on point-of-sale materials as well as on packages.[156] The Commission proposed that, as one option for disclosures for lamps sold in bulk without individual packages, manufacturers be required to include the prescribed information in written materials in shipping cartons and retailers be required to disclose it at point of sale.[157] This proposal was based on EPCA, which authorizes the Commission to require disclosure, in written materials displayed or distributed at point of sale, of any information required on labels. 42 U.S.C. 6294(c)(4) (1988). In the "Questions for Comment" section of the NPR, the Commission solicited comment on the appropriateness of point-of-sale requirements.[158]

The comments were divided on whether the Commission should require disclosures in point-of-sale materials for general service incandescent lamps and compact fluorescent lamps. ACEEE consistently recommended that the Commission require disclosure of annual operating and life-cycle cost information in point-of-sale materials.[159] Although initially neutral on this point, NEMA ultimately opposed mandatory disclosures at point of sale in favor of a requirement that manufacturers be required to disclose only the assumptions upon which any voluntary point-of-sale disclosures are based.[160] GE stated that, if the Commission wished to provide additional information explaining the meaning and use of the lumens-per-watt energy index disclosure, the method most suited for such disclosures is in point-of-sale materials.[161] LBL suggested that the

[151] 58 FR at 60154–56.

[152] NEMA, G–3, 46–47

[153] NEMA (Supp.), G–10, 14.

[154] OR DOE, GG–13, 9 (labeling disclosures for all products should also be required in catalogs from which these products are sold, whether at retail or wholesale; where a labeling requirement applies to entire categories of products in the catalog, the disclosure could be made once, prominently, at the very least on each page); WA SEO, GG–18, 4.

[155] Home Depot, GG–5, 2.

[156] 58 FR at 60154.

[157] Id. at 60155.

[158] Id. at 60159.

[159] ACEEE, GG–1, 3–4, (Tr.), 169, 188, 201, (Supp.), GG–21, 1. ACEEE recommended charts disclosing several lumens-per-watt efficiencies cross-referenced to various operating costs based on different unit costs for electricity. LBL appeared to support this approach, but recommended disclosing different wattages in place of lumens per watt. LRC (Tr.), 188–189.

[160] Initial neutrality: NEMA, G–3, 40–42, 47. Later opposition: NEMA (Tr.), 190–192, (Supp.), G–10, 14, 26.

[161] GE (Ans.), G–2, 1.

Commission either prescribe the assumptions upon which operating cost disclosures are based (such as cost of electricity and hours of use) or, at least, require that manufacturers disclose whatever assumptions they use in point-of-sale materials.[162] Osram supported the disclosure of operating costs only at point of sale and recommended that the Commission prescribe specific cost and use assumptions for those disclosures.[163] Home Depot and SCS recommended that the Commission issue no requirements relating to point-of-sale disclosures, but that it allow such disclosures voluntarily.[164]

The Commission has determined not to mandate particular disclosures at the point of sale (other than the disclosures on packaging). The Commission's requirements for disclosures on packages and in catalogs will provide purchasers of general service incandescent lamps and compact fluorescent lamps with information sufficient to enable them to select the most energy efficient lamps to fill their lighting needs.

Several comments suggested that the Commission also require disclosure of energy cost information, or at least specify the bases (*i.e.*, the unit energy cost and usage patterns) on which any voluntarily made energy cost claims are calculated. The Commission declines to do so, for the same reasons the Commission determined not to require disclosure of energy cost information on packaging or to prescribe the assumptions on which voluntary energy cost information is provided. The Commission has concluded, however, that it is important that consumers be made aware of the assumptions on which any energy cost claims on packaging or in point-of-sale written materials are based. Therefore, the final labeling rules require that the assumptions (unit cost of electricity, purchase price, hours of use, patterns of use, *etc.*) on which any voluntary claims about energy operating cost are made be clearly and conspicuously disclosed in connection with such claims on packaging or in point-of-sale written materials.[165] See § 305.11(a)(2) in "Text of Amendments," below.

D. Disclosures for General Service Incandescent Reflector Lamps

In the NPR, the Commission stated that incandescent reflector lamps would be within the category of general service incandescent lamps under the Commission's proposed labeling rules.[166] As such, the rule amendments would have required manufacturers of these products to disclose design voltage (if other than 120), wattage, light output (expressed in lumens), life (expressed in hours), a supplemental disclosure (either lumens per watt or operating cost), and number of bulbs in the package (if more than one).[167] ACEEE's proposal, as outlined by the Commission in the NPR, would also apply equally to reflector and nonreflector general service incandescent lamps. In contrast, as discussed in the NPR, NEMA recommended that general service incandescent reflector lamps be subject to disclosure requirements that would be substantially different from those required for other general service incandescent lamps. Specifically, NEMA recommended requiring, for incandescent reflector lamps, the same disclosure it proposed for general service fluorescent lamps (*i.e.*, disclosure only of the encircled capital letter "E," as the Rule presently requires for fluorescent lamp ballasts, 16 CFR 305.11(d)). This would designate that the product meets the energy conservation standards established in EPCA.[168] NEMA suggested that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the products themselves.[169]

1. Disclosures on Packaging and in Catalogs

Fourteen of the participants commented on what type of disclosures the Commission should require for general service incandescent reflector lamps. Five comments supported limiting the required disclosures for these lamps to an encircled "E," as NEMA suggested.[170] Six supported a requirement to disclose the basic elements and efficiency index proposed by the Commission.[171] Three favored a requirement to disclose the encircled "E," but with additional limited disclosures.[172]

Those supporting an encircled "E" disclosure for general service incandescent reflector lamps argued that the minimum efficiency standards added to EPCA by EPA 92 for these lamps[173] would eliminate all but the efficient models,[174] leaving purchasers with little choice among the remaining models in terms of energy efficiency.[175] They also contended that, because the products are purchased for the specialized purpose of directing a focused beam of light onto an area or object, purchasers are primarily interested in the pattern (or spread) and the intensity of the beam.[176] NEMA and Philips, moreover, maintained that manufacturers are already disclosing the elements that are relevant to purchasers of these lamps—wattage, voltage, life, beam intensity and beam spread.[177] NEMA added that the Commission can rely on marketing pressures to compel manufacturers to continue making disclosures of pertinent lighting characteristics without a mandate.[178] These comments concluded that the Commission does not have to require most of the elements proposed for other general service incandescent lamps and compact fluorescent lamps for purchasers to be able to select a general service incandescent reflector lamp.

Three comments supporting disclosure of all the basic elements for general service incandescent reflector lamps did not agree that the EPCA standards would eliminate variation among the efficiencies of these products.[179] LBL contended that the

[162] LBL (Supp.), GG–22, 1, 4.

[163] Osram (Supp.), G–11, 2.

[164] Home Depot, GG–5, 2 (Tr.), 196.

[165] See Part IV.C.2.b, above.

[166] 58 FR at 60151.

[167] *Id.* at 60154–55.

[168] 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

[169] 58 FR at 60152–53.

[170] NEMA, G–3, 29, (Supp.), G–10, 28; IES, GG–6, 2; GE, G–2, 6, (Ans.), 1, 2; Philips, G–5, 2; Supreme (Supp.), G–13, 1.

[171] LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; OR DOE, GG–13, 2–7, 7–8; WA SEO, GG–18, 2; Angelo, G–1, 2. The basic elements are: Voltage (if other than 120), wattage, light output (expressed in lumens), laboratory life (in hours), and number of bulbs in the package (if more than one).

[172] Osram, G–4, 2, (Supp.), G–11, 4; ACEEE, GG–1, 3, (Supp.), GG–21, 2; LRC, GG–15, 3, (Tr.), 312.

[173] 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993).

[174] NEMA (Supp.), G–10, 28; Philips (Supp.), G–12, 2.

[175] Osram (Supp.), G–11, 3.

[176] GE, G–2, 3, 6, (Ans.), 2, 9, (Tr.), 301, 304; NEMA, G–3, 19–21, 30; Osram (Tr.), 295 ("When you purchase a reflector incandescent lamp, you are interested in how it concentrates the light on the particular object or task that you bought the lamp to illuminate. And that typically is characterized * * * in terms of beam spread and beam performance."); IES, GG–6, 2.

[177] NEMA, G–3, 29–30, (Supp.), G–10, 29; Philips, G–5, 2 (Philips limited its remarks to beam characteristics).

[178] NEMA, G–3, 31.

[179] Angelo (Supp.), G–8, 2 ("To presume, as NEMA does, that halogen PAR lamps, which already meet the standards, will simply capture the entire market, belittles the attempts of others to meet the efficiency standards with less expensive technology."); ACEEE (Supp.), GG–21, 2 ("* * * the "circle E" alone does not reflect the substantial variations in efficacy among incandescent reflector products that exceed [EPA 92] efficiency standards.") LBL (Supp.), GG–22, 3 ("While the minimum efficacy required by [EPA 92] for incandescent reflector lamps in effect mandates halogen reflector lamps or better, there are more

variation is actually likely to increase in the future.[180] The supporting comments generally stated that purchasers should be provided with information that will enable them to distinguish between the lamps that meet the standards and those that exceed them.[181] One comment also suggested requiring the disclosure of beam spread for these products.[182]

Some commentors changed their positions on this issue. Although initially opposing the NEMA recommendation (*i.e.*, for the encircled "E"), ACEEE later stated that publishing an encircled "E" on incandescent reflector lamp packaging would be acceptable as long as wattage, life, and lumens per watt were included in catalogs.[183] LRC originally supported the encircled "E" requirement alone, but, at the Workshop, added that its support was dependent on a requirement to include wattage and life disclosures (presumably on packages), with which NEMA agreed.[184] Osram supported the NEMA recommendation in its initial comment and, in its post-Workshop comment, continued to support an encircled "E" disclosure, along with an additional recommendation that beam performance information (in accordance with ANSI standards) and average life also be disclosed on packages.[185]

The Commission has determined to require disclosure of an encircled "E" on packages and in catalogs[186] for those general service incandescent reflector lamps that meet or exceed the minimum efficiency standards set by EPCA. But, to inform purchasers of the meaning and significance of this information, the Commission is requiring that a brief explanatory statement also appear on the packages for the lamps and in catalogs from which they can be ordered. Specifically, manufacturers must disclose clearly and conspicuously the encircled "E" on the principal display panel of packaging for these lamps. On the principal display panel or on another panel, manufacturers also must disclose clearly and conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." The encircled "E" and the explanatory statement must be linked by asterisks. In catalogs from which general service incandescent reflector lamps can be ordered by purchasers, manufacturers also must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service incandescent reflector lamp. On each page in such a catalog upon which the encircled "E" appears, manufacturers also must disclose, clearly and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

The Commission also has concluded, however, that the encircled "E" disclosure and explanatory statement alone will not provide purchasers of general service incandescent reflector lamps with enough information to select the most energy efficient products to fill their lighting needs. Several comments show that there will continue to be a range of choice among different general service incandescent reflector lamps with varying efficiencies after the DOE standards become effective.[187] Moreover, the record shows that some manufacturers generally already disclose some of several other factors for these lamps—design voltage, wattage, laboratory life, beam spread, and beam intensity.[188] One industry member, Angelo, suggested that it would work no hardship on sellers for the Commission to mandate the same disclosures as those proposed for general service incandescent lamps.[189]

The Commission has determined, therefore, to require that manufacturers of general service incandescent reflector lamps disclose, on packages and in catalogs, the following elements: design voltage (if other than 120), wattage, light output (expressed in average initial lumens),[190] average laboratory life (expressed in hours), the Advisory Disclosure and, on packages only, number of bulbs in package (if more than one).[191] For the reasons explained in Part IV.C.1.a, above, the disclosure of wattage, lumens, and life must be based on operation at 120 volts regardless of the lamp's design voltage. The format requirement for these disclosures will be the same as they are for general service incandescent lamps and compact fluorescent lamps. See §§ 305.11(e)(1)(A)–(D) and 305.14(d)(1) in "Text of Amendments," below.

2. Disclosures in Point-of-Sale Materials

Two comments addressed the issue of disclosures in point-of-sale materials for general service incandescent reflector lamps. ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.[192] LBL thought that efficacy (*i.e.*, efficiency) information should be included in point-of-sale materials for residential purchasers.[193]

The Commission has already discussed its position generally respecting required disclosures in point-of-sale materials in Part IV.C.7, above. The Commission's position is the same respecting point-of-sale materials for general service incandescent reflector lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. But, as for the other lamp products, if point-of-sale operating cost disclosures are voluntarily made, the assumptions used (cost of electricity, hours of use, *etc.*) must be disclosed.[194] See § 305.13(a)(2) in "Text of Amendments," below.

3. Vibration Service and Rough Service Reflector Lamps

Angelo raised a concern at the Workshop about a type of incandescent reflectorized lamp that is produced for use under conditions involving rough service or service in which they will be subjected to vibration, such as industrial or construction site use. These lamps are manufactured with more durable filaments to withstand such service, which also results in their having a significantly longer life. Angelo pointed out that these lamps appear to be excluded from the definition of "incandescent reflector lamp" in the

efficacious options on the market, such as halogen infrared and compact fluorescent reflector lamps. Future technology may bring even more lamps with higher efficiencies.").

[180] LBL (Supp.), GG–22, 3.

[181] Angelo, G–1, 2; ACEEE (Supp.), GG–21, 2; LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; WA SEO, GG–18, 2.

[182] WA SEO, GG–18, 3.

[183] ACEEE, GG–1, 3; (Supp.), GG–21, 4.

[184] LRC, GG–15, 3; (Tr.), 312.

[185] Osram, G–4, 2; (Supp.), G–11, 4.

[186] The record indicates that manufacturers of general service incandescent (reflector) lamps sell many of their products through catalogs, especially to commercial and industrial customers, and many commentors believed that disclosures should appear in catalogs. See, *e.g.*, NEMA, G–3, 29, 31, (Supp.), G–10, 29; Osram, G–4, 2; ACEEE, GG–1, 3–4, (Supp.), GG–21, 2; LBL (Supp.), GG–22, 3; OR DOE, GG–13, 9; WA SEO, GG–18, 4; Hubbell, GG–9, 1.

[187] Angelo (Supp.), G–8, 2; ACEEE (Supp.), GG–21, 2; LBL (Supp.), GG–22, 3.

[188] NEMA, G–3, 29–30, (Supp.), G–10, 29; Philips, G–5, 2; LRC (Tr.), 307.

[189] Angelo, G–1, 2.

[190] Because of the unique nature of the light output of general service incandescent (reflector) lamps, the amendments require that light output (in lumens) for these products be measured for only the beam spread of the lamp, as determined by industry standards.

[191] The reasons for the specific versions of these elements have already been discussed in Part IV.C.1.a–2.c, above. The Commission will not, therefore, repeat the discussion here.

[192] ACEEE, GG–1, 3–4.

[193] LBL (Supp.), GG–22, 3.

[194] See Part IV.C.2.b, above.

EPA 92 amendments to EPCA.[195] As such, they would not be required to meet the minimum efficiency standards or bear the disclosures required for other incandescent reflector lamps by the Rule.

Angelo contended that these products, many of which are imported, are significantly less efficient than incandescent reflector lamps that will have to meet the new minimum standards, but that they may be marketed to compete directly with these more efficient lamps at a reduced retail price.[196] According to Angelo, the price differential will lead residential consumers into purchasing them without realizing that they are receiving a much less efficient product for their money, and "cheap lamps will drive out good lamps at the consumer level."[197] Angelo's recommended solution is to require that manufacturers of rough and vibration service incandescent reflectorized lamps be required to disclose, on their packages, the fact that the lamps are for rough service and do not meet the federal minimum efficiency standards for other similar lamps designed for ordinary household use.[198] Angelo's concerns and proposed solution were shared by three other participants, including a company that produces rough and vibration service incandescent reflector lamps.[199]

EPCA defines "incandescent lamp," in part, as "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 between 30 and 199 watts, has an E26 medium 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* (emphasis supplied), that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(I) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(II) A high(er) wattage reflector lamp which has a rated wattage above 205 volts."[200]

* * * * *

EPCA defines "incandescent reflector lamp" as "a lamp described in subparagraph (C)(ii)."[201]

Based on the language of the statute, the Commission concludes that it does not have the authority to treat incandescent reflectorized lamps designed for rough or vibration service applications as "incandescent reflector lamps" under the labeling rules. As part of the process of developing test protocols for incandescent reflector lamps, DOE will define what is meant by "rough or vibration service applications" because such lamps will be excluded from the test protocols. Angelo speculated, however, that the definition DOE adopts for such lamps may allow manufacturers to make lamps that meet the DOE exclusionary definition, but then market them, not as rough or vibration service lamps, but simply as spot or flood lamps to compete with the incandescent reflector lamps that are subject to the minimum efficiency standards. The gist of Angelo's concern appears to be twofold. First, manufacturers of incandescent reflector lamps who must meet the DOE standards (and whose products, as a result, will likely cost more to manufacture) will be at a competitive disadvantage because rough or vibration service reflectorized lamps will have a significantly lower retail price. Second, consumers will not be aware that these less expensive lamps are significantly less efficient and will cost more to operate over time. EPCA authorizes DOE to add products to the list of products for which EPCA mandates minimum efficiency standards.[202] Therefore, if the exclusion of these lamps from coverage under the labeling rules as "incandescent reflector lamps" results in unfair competition, consumer confusion, or other problems, DOE can reconsider its definition of general service incandescent reflectorized lamps "for rough or vibration service." In the alternative, DOE can consider whether to add general service incandescent reflectorized lamps "for rough or vibration service" as a specific type of consumer product covered under EPCA to remedy the situation.

E. Disclosures for General Service Fluorescent Lamps

In the NPR, the Commission proposed requiring the disclosure of the same six factors for general service fluorescent lamps as it proposed for the other types of lamps.[203] Similarly, ACEEE's suggestions for disclosures did not distinguish between general service fluorescent lamps and other types of lamps. Instead, ACEEE suggested that the Commission prescribe different requirements based on the type of purchaser—residential or commercial—at which the disclosure was to be targeted.[204]

In contrast, NEMA suggested that, for the two types of lamps for which Congress established minimum efficiency standards in the EPA 92 amendments to EPCA—general service incandescent reflector lamps and general service fluorescent lamps—the Commission require the disclosure of only an encircled "E" on packages, in catalogs and etched on the product itself.[205] The encircled "E" would designate that the product meets the established energy conservation standards. In support of this recommendation, NEMA stated that interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards set by EPA 92 become effective (April 30, 1994, for some lamp products, and October 31, 1995, for other lamp products) will have a range of output of only plus or minus four percent.[206]

1. Disclosures for General Service Fluorescent Lamps Generally

Fifteen comments addressed the issue of what disclosures the Commission should require for general service fluorescent lamps. Seven recommended prescribing disclosure of the same elements for these lamps as were proposed by the Commission in the NPR.[207] Eight comments supported NEMA's recommendation that the

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[195] Angelo (Tr.), 310. See 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

[196] Angelo (Tr.), 310–11, 314–15, 315–16, (Supp.), G–8, 4.

[197] *Id.*

[198] Angelo (Tr.), 315–16, (Supp.), G–8, 4.

[199] Supreme (Tr.), 313, (Supp.), G–13, 1; Osram (Supp.), G–11, 4 ("This labeling should include that the product is designed for Rough Service (or Vibration Service) applications only, has a low light output and costs more to operate than similar products available in the marketplace."); ACEEE (Supp.), GG–21, 2 ("These products have an efficacy of 12 lumens per watt or less. Requiring disclosure of lumens per watt is the only way to inform consumers of the overwhelming energy penalty associated with purchasing these lamps and in essence to thwart these manufacturers' attempts to get around the [EPA 92] requirements.").

[200] 42 U.S.C.A. 6291(30)(C) (West Supp. 1993).

[201] 42 U.S.C.A. 6291(30)(F) (West Supp. 1993).

[202] 42 U.S.C. 6292(a)(19) (1988).

[203] 58 FR at 60154–55. These were: (1) Lumens; (2) watts; (3) design voltage (if other than 120); (4) average life (expressed in hours); (5) number of items in the package; and, (6) a supplemental disclosure (lumens per watt or operating cost).

[204] 58 FR at 60154.

[205] *Id.* at 60152–54. The minimum efficiency standards for these products are prescribed in section 325(i) of EPCA. 42 U.S.C. 6295(i) (West Supp. 1993).

[206] *Id.* at 60152.

[207] LBL, GG–7, 1; MN DPS, GG–9, 1–2; MO DNR, GG–10, 1; OR DOE, GG–13, 2–7, 7–8; US EPA, GG–17, 2; WA SEO, GG–18, 2–3.

Commission require disclosure only of the encircled "E."[208] ACEEE originally opposed limiting the disclosure of information for any lamps to the encircled "E," favoring instead the "basic disclosures" (without lumens-per-watt) for all types.[209] At the Workshop and in its post-Workshop comment, however, ACEEE appeared to have changed its views, and to accept the idea of limiting disclosures to the encircled "E" on packaging for general service fluorescent lamps as long as the other elements (or some of them) are disclosed in catalogs offering the lamps for sale.[210]

Most of the comments that recommended the same disclosures for all lamp types, including general service fluorescent lamps, did so on the basis that purchasers could thereby have enough information to choose among lamps that will most economically meet their lighting needs.[211] Some specifically opposed limiting the disclosure for these lamps to an encircled "E," most contending that this disclosure alone would not provide purchasers with sufficient information to compare competing lamps.[212] Some recommended additional disclosures, such as the effect of different ballasts on lamp operation or color/temperature disclosures.[213] Several favored the inclusion of operating cost information.[214]

The comments that recommended limiting disclosure requirements for general service fluorescent lamps to an encircled "E" on packages and in catalogs gave several reasons for their position. A principal reason was that the EPA 92 minimum efficiency standards will eliminate all but a few general service fluorescent lamps that are very similar in their energy efficiency characteristics. Those remaining on the market would not necessarily be interchangeable because such lamps are part of a lamp/ballast/fixture *system*. Accordingly, comparative disclosures for products that are not interchangeable are not necessary.

NEMA said that disclosure of lumens per watt for general service fluorescent lamps would not provide a meaningful basis for comparison because lumens-per-watt measurements will not vary significantly among comparable products after the EPA 92 standards take effect. NEMA contended that, after the energy efficiency standards take effect, remaining models of general service fluorescent lamps will differ in light output (for a given nominal wattage) by a very small percentage, if placed in the same lighting system. Only the color of light emitted due to different phosphors would vary, resulting in slight variations in measurements of light output.[215]

In its initial comment, LRC agreed with NEMA's position,[216] adding later in the Workshop that these lamps are a small part of the residential consumer market, and that any additional savings realized after the efficiency standards went into effect would be minor and would not justify labeling requirements.[217] GE stated that, because consumers do not consider replacing A-line bulbs with general service fluorescent lamps or A-line table lamps with overhead general service fluorescent lamp fixtures, labels disclosing the elements proposed in the NPR by the Commission would be useless on general service fluorescent lamps that meet the efficiency standards.[218] Osram concurred with NEMA's position:

> As explained at the Public Workshop, fluorescent lamps are one component of a system whose wattage, light output, and efficiency variations are wide, dependent on the ballast and fixture used, and on the ambient temperature. EPCA removes a number of fluorescent lamps from the marketplace, leaving within interchangeable types a smaller range of efficiency available to the consumer. Of the types that remain, choice is typically by color, either to match the remainder of an installation, or to accord with a consumers preference. Any choice will result in exactly the same energy consumption, since that is controlled by the system.[219]

ACEEE and LBL disagreed with the contention that choice among general service fluorescent lamps of different efficiencies will be eliminated by the EPA 92 minimum efficiency standards. LBL said that there was some interchangeability that could result in a 13% increase in efficacy.[220] It was not clear, however, how often the lamp substitutions described in the comment take place in actual practice.

The Commission finds that general service fluorescent lamps are unique among the products considered in this proceeding because they are a separate part of an integrated lighting system consisting of a lamp, an appropriate ballast, and a fixture, or luminaire, in which the lamp and ballast are installed. On balance, the Commission finds that the preponderance of evidence on the record has established that, because these lamps are part of a system, they are not interchangeable with other types of lamps, and are not readily interchangeable with other general service fluorescent lamps that do not match with the ballast and/or the luminaire in the system of which they are a part. Consequently, after the standards become effective, from an energy efficiency point of view, there will not be a meaningful choice among competing products that will fill the purchaser's lighting needs. The Commission concludes, therefore, that a requirement to disclose the basic elements (and/or a supplemental disclosure) on general service fluorescent lamp package labels will not assist purchasers of these products as contemplated by EPA 92.

The Commission instead has determined to require an encircled "E" on packages and in catalogs for general

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[208] Angelo, G–1, 1; GE, G–2, 5, (Ans.), 1, 2, (Tr.), 324; NEMA, G–3, 24, (Tr.), 316–317, (Supp.), G–10, 29; Philips, G–5, 3, (Supp.), G–12, 2; Osram (Supp.), G–11, 4; ETL, GG–2, 1–2; IES, GG–6, 2; LRC, GG–15, 3, (Tr.), 318.

[209] ACEEE, GG–1, 1, 3.

[210] ACEEE (Tr.), 328–29, (Supp.), GG–21, 2.

[211] See, *e.g.*, MN DPS, GG–9, 1–2.

[212] See MO DNR, GG–10, 1; US EPA, GG–17, 2; WA SEO, GG–18, 3.

[213] See LBL, GG–7, 1 (the effect of different ballasts); OR DOE, GG–13, 5–7 (operating temperature and color temperature); WA SEO, GG–18, 3 (color rendering index and correlated color temperature).

[214] See, *e.g.*, ACEEE, GG–1, 1; LBL, GG–7, 1; MO DNR, GG–10, 1.

[215] NEMA, G–3, 14–16 ("Once the system is set, replacement lamps are picked to match the old lamps and cannot be purchased to increase lamp or system efficiency."), 25–26, (Tr.), 321, (Supp.), G–10, 29–30.

[216] LRC, GG–15, 3.

[217] LRC (Tr.), 318.

[218] GE, G–2, 2, 3 ("Labels mandated by the Commission should only be required on products that are interchangeable and should only contain information that facilitates comparisons among those products."), 6 (contending that lumens, lumens per watt and other energy cost information of the type suggested by the Commission will not encourage energy efficient choices and that such disclosures could mislead consumers by suggesting that (1) fluorescent lamp performance is not dependent on ballasts and fixtures and (2) that all fluorescent lamp types are interchangeable). See GE's detailed explanation of the system-oriented nature of these lamps and how they will be affected by the EPA 92 minimum efficiency standards at Tr., 321–24 (the chart to which GE refers is found as Exhibit "G" to NEMA's supplemental comment (NEMA (Supp.), G–10, Exhibit "G.")).

[219] Osram (Supp.), G–11, 4.

[220] ACEEE (Supp.), GG–21, 2 ("There are also significant differences between general service fluorescent lamp products meeting the EPAct efficiency standards. For example, 32 watt T8 general service fluorescent lamps have an efficacy of about 91 lumens per watt, approximately 10% better than the 82 lumens per watt of 34 watt T12 cool white lamps."); LBL (Supp.), GG–21, 3 ("While these lamps are already regulated under the Energy Policy Act of 1992, there is a range of efficacy available even within each ballast type. While it is true that efficacy varies within a small range for T–12 lamps, T–10 lamps, which substitute for T–12s, have about 13 percent higher lamp efficacy than 34 W T–12s. It is possible that future technology developments will provide other options that widen the range of efficacy.")

service fluorescent lamps that meet or exceed the minimum efficiency standards set by EPCA. This disclosure will be useful to purchasers because it will assure them that the lamps so marked meet or exceed the federal minimum efficiency standards. To ensure that purchasers understand that the encircled "E" means that the products meet the minimum efficiency standards established by EPCA, the Commission also has determined to require that a brief explanatory statement appear on the packages for the lamps and in catalogs from which they can be ordered.[221] Specifically, the amendments now adopted require that on each package for general service fluorescent lamps, manufacturers must disclose conspicuously the encircled "E" on the principal display panel. The encircled "E" will be considered "conspicuous," in terms of size, if it appears at least as large as either the manufacturer's name or logo or another logo disclosed on the package, such as the "UL" or "ETL" logos, whichever is larger. On the principal display panel or on another panel, manufacturers also must disclose conspicuously the statement, "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.11(e)(2) in "Text of Amendments," below.

2. Disclosures for Products Without Individual Packaging

In the NPR, the Commission proposed two approaches for disclosures for those products (which are usually general service fluorescent lamps) manufacturers might choose to sell without individual packaging or without packaging other than bulk shipping cases.[222] Option One would have required manufacturers to label the products with disclosures on a hang tag or adhesive label attached to each unpackaged product; Option Two would have required manufacturers to include the required information on statements included in each shipping case, and would have required retailers to post the information at point of sale. In addition to these proposals, the Commission asked generally, in "Questions for Comment," whether it should require that labels be attached to individual unpackaged products.[223]

Four comments addressed this issue as it related to general service fluorescent lamps. NEMA and GE suggested that the Commission require that an encircled "E" be etched on the general service fluorescent lamps themselves.[224] Osram specifically opposed the labeling of individual products with stickers or hang tags.[225] OR DOE recommended against labels on individual lamps in favor of disclosures on the bulk packaging.[226]

EPCA mandates that the Commission's rules shall provide that the labeling shall indicate the information required by the Commission "on the packaging of the lamp."[227] The Commission, therefore, does not have authority under EPCA to require marking directly on lamp products. But, purchasers of general service fluorescent lamps that are not packaged should be informed that the products meet the minimum efficiency standards. The Commission has determined that proposed Option Two would not in many situations result in the required disclosure actually reaching purchasers because the statements enclosed in shipping cases could be lost and a separate requirement in the rules that retailers post them would be difficult to enforce.

The Commission recognizes that manufacturers regularly etch products with voltage, wattage, and other information, which is the disclosure method that NEMA and GE recommended for the encircled "E."[228] The Commission concludes that if the encircled "E" is permanently marked on the lamps, the objectives of EPA 92, as they apply to general service fluorescent lamps, can be achieved at a reduced compliance burden on those manufacturers who choose to sell lamps that bear no labels, whether packaging labels, hang tags or adhesive labels. Manufacturers need not etch on such products the explanatory statement otherwise required to accompany the encircled "E." On the product itself, the statement may be difficult to read and may not be used or needed by most consumers of these products (who primarily are more knowledgeable commercial purchasers). See § 305.11(e)(2)(B) in "Text of Amendments," below.

3. Catalogs

Eight comments recommended that whatever disclosures the Commission requires for general service fluorescent lamps appear in catalogs from which these products can be ordered for purchase.[229] There was no opposition to this recommendation. Therefore, these amendments require that, in addition to disclosing the encircled "E" on packaging, manufacturers must disclose clearly and conspicuously the encircled "E" in close proximity to each entry for a covered general service fluorescent lamp in catalogs from which the lamps can be ordered by purchasers.[230] On each catalog page upon which the encircled "E" appears, manufacturers also must disclose, prominently and conspicuously at least once, the statement: "(The encircled "E" logo, followed by:) means this bulb meets Federal minimum efficiency standards." See § 305.14(d)(1) in "Text of Amendments," below.

4. Point-of-Sale Printed Materials

Four comments addressed the issue of disclosures in point-of-sale materials for general service fluorescent lamps. GE suggested that the Commission may want retailers to make specific disclosures available in point-of-sale written materials, to the extent that such disclosures may be necessary to help consumers choose the most energy efficient products that meet their requirements.[231] ACEEE recommended that average annual operating cost and average lifetime indicators be included on both packaging and point-of-sale displays for sales to residential purchasers.[232] LBL stated that efficacy (efficiency) information should be included in point-of-sale materials for residential purchasers.[233] SCS

[221] Catalogs are discussed below in Part IV.E.3., below.

[222] 58 FR 60156. "Some lamp products, however, are not sold in individual packages. According to industry representatives, for example, general service fluorescent lamps frequently are shipped only in bulk containers, without individual lamp sleeves or packaging, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers." *Id.*

[223] *Id.* at 60159.

[224] NEMA, G–3, 24; GE, G–2 (Ans.), 8 ("The Commission should not require that individual lamps contain disclosures on any adhesive label hang tag or other kind of label. Such labels will add cost which does not result in any meaningful disclosure being made. GEL has suggested that general service fluorescent lamps be marked with the symbol "E" enclosed in a circle to indicate to purchasers that such lamps meet the energy efficiency requirements of the EPA–92. It is feasible to require limited amounts of information to be marked [etched] on products. The "E" enclosed with a circle is an example of such disclosure that fits easily on a product.").

[225] Osram (Supp.), G–11, 5.

[226] OR DOE, GG–13, 8.

[227] 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993).

[228] The Commission also notes that the labeling rules do not prohibit manufacturers from marking their products in this manner.

[229] GE, G–2, 5; NEMA, G–3, 24, 26–27, (Supp.), G–10, 30; Osram, G–4, 2, (Supp.), G–11, 4; Philips, G–5, 3; ACEEE, GG–1, 3–4, (Tr.), 328–329, (Supp.), GG–21, 2; OR DOE, GG–13, 9; SCS, GG–16, 4; WA SEO, GG–18, 4.

[230] This requirement also applies to general service incandescent reflector lamps.

[231] GE (Ans.), G–2, 8.

[232] ACEEE, GG–1, 3–4.

[233] LBL (Supp.), GG–22, 3.

contended that the best way to disclose both the energy index and operating cost information would be through voluntary point-of-sale materials prepared on a regional basis.[234]

The Commission has already discussed its position and its determination not to require disclosures in point-of-sale materials, in Part IV.C.7, above. The Commission's position is the same for point-of-sale materials for general service fluorescent lamps. Accordingly, the Commission is not requiring specific disclosures for these products at point of sale. As with the other lamp products covered by the labeling rules, however, manufacturers and other sellers must disclose the assumptions they use (cost of electricity, hours of use, *etc.*) if they voluntarily make point-of-sale operating cost disclosures.[235] See § 305.13(a)(2) in "Text of Amendments," below.

F. Other Issues

1. Request for Exemption for Products To Be Eliminated by EPCA's Energy Conservation Standards

EPCA's minimum efficiency standards for 4-foot medium bi-pin and 2-foot U-shaped general service fluorescent lamps and all incandescent reflector lamps will not become effective until October 31, 1995,[236] approximately six months after the labeling rules become effective. Because of the burdens new labeling requirements would impose, NEMA, GE and Osram requested an exemption under EPCA, 42 U.S.C.A. 6294(a)(2)(C)(ii) (West Supp. 1993), from the labeling requirements for lamp products that will be eliminated from the market on October 31, 1995.[237] This section states that if the Secretary of DOE determines that compliance with the minimum efficiency standards specified in EPCA for any lamp will result in the discontinuance of its manufacture, the Commission may exempt such lamp from the labeling rules. The exemption would be limited to those lamps that may no longer be manufactured after the minimum efficiency standards become effective. DOE has made this determination.[238] Hence, the Commission has the discretion to exempt these lamp products from the new labeling rules. Given that these products will be manufactured for only six months after the new labeling rules go into effect, it does not appear appropriate to require manufacturers to go to the expense of redesigning their labels. Accordingly, those general service fluorescent lamps and incandescent reflector lamps covered by the minimum efficiency standards that become effective on October 31, 1995, under 42 U.S.C.A. 6295(i)(1)(A) (West Supp. 1993), that do not meet those minimum efficiency standards are exempted from the labeling rules.[239]

2. "Gray Market" Problem

NEMA and Philips raised concerns about lamps legally produced for export (that do not comply with the EPCA minimum efficiency standards) being illegally imported back into the country (presumably still marked with the manufacturer's identification) for sale in a "gray" market by parties other than the manufacturers.[240] NEMA and Philips recommended that, to provide manufacturers with protection against enforcement actions for this domestic re-sale of these products, the Commission require that products that do not comply with the standards that are manufactured for export be marked indelibly with a symbol connoting that the product was produced exclusively for export.[241]

There is insufficient evidence on the record for the Commission to determine how serious this problem might be, and to prescribe a labeling or marking requirement. Manufacturers who are concerned about the issue, however, can protect themselves by marking their products in such a way that it is clear that they were manufactured for export.

3. Disclosures on Outer Shipping Containers

NEMA, Osram, and Philips recommended that the Commission require disclosure, on the outer shipping cartons of lamp products, of a symbol or statement indicating compliance with the minimum efficiency standards and labeling regulations mandated by EPCA.[242] During the discussion of this proposal at the Workshop, NEMA clarified that its recommendation was for a disclosure on the corrugated carton in which the manufacturer ships the products, and not the larger and sturdier shipping container that would be loaded on a ship and that could contain cartons of lamps on one occasion and cartons of other products on another.[243] While NEMA's and Philip's original proposals appeared to be limited to general service fluorescent lamps and general service incandescent reflector lamps, Osram said that the requirement should apply to "all [lamp] products covered by the Energy Policy Act."[244] Philips and NEMA pointed out that this requirement would facilitate inspection of foreign products by the U.S. Customs Service.[245] The record contains no evidence of opposition to this suggestion.

The Commission agrees that a statement such as the one suggested by NEMA and the other commentors would be helpful to the enforcement efforts of both the U.S. Customs Service and the Commission. Today's amendments, therefore, require that the following disclosure appear conspicuously at least once on the outer surface of all cartons in which lamp products covered by the Rule are shipped domestically or imported: "These lamps comply with Federal energy efficiency labeling requirements." See § 305.11(e)(4) in "Text of Amendments," below.

G. Substantiation of Disclosures

In the NPR, the Commission proposed requiring that manufacturers follow procedures to be specified in the final labeling rules to substantiate all required disclosures. It also proposed requiring that manufacturers comply with specific sampling procedures in selecting the product samples for the required substantiation testing. The substantiation and sampling procedure requirements are connected. The substantiation requirement is directed at ensuring that the disclosures are accurate and based on uniform standards. The sampling procedure requirement is directed at ensuring that the samples tested are representative of the product being produced.

For other products, the Rule requires that substantiation of energy efficiency ratings (and water usage rates) be based on the test procedures specified by

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[234] SCS, GG–16, 4–5.

[235] See Part IV.C.2.b, above.

[236] 42 U.S.C.A. 6295(i)(1)(A)-(B) (West Supp. 1993).

[237] NEMA, G–3, 10, 14–15, 44, (Supp.), G–10, 5 fn. *; Osram, G–4, 2. See GE, G–2, 10.

[238] Letter dated April 18, 1994, to Janet Steiger, Chairman, FTC, from Hazel R. O'Leary, Secretary, DOE.

[239] As of November 1, 1995, any manufacturer who continues to manufacture these lamps could be subject to action by DOE for selling lamps in violation of the minimum efficiency standards.

[240] Philips, G–5, 4; NEMA (Tr.), 326.

[241] Philips suggested an "X" etched on the product. Philips, G–5, 4.

[242] NEMA, G–3, 27, 32, (Tr.), 327–28; NEMA's suggestions in the NPR also recommended this requirement (58 FR at 60154); Philips, G–5, 3; Osram (Tr.), 328. Angelo agreed with this recommendation. Angelo (Tr.), 328. NEMA suggested a symbol, or a statement such as: "These lamps are tested and labeled in compliance with federal energy efficiency requirements." NEMA, G–3, 27, 32.

[243] See Tr., 327–28.

[244] Osram (Tr.), 328.

[245] Philips, G–5, 3; NEMA, G–3, 27, 32, (Tr.), 327.

EPCA or DOE.[246] For those products, § 305.6 of the Rule specifies that the sampling procedures adopted in the DOE test procedures must be used in selecting the product specimens to be tested.[247]

EPCA, as amended by EPA 92, requires DOE to issue test procedures to determine certain performance characteristics relating to the energy efficiency standards specified in EPCA for general service fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable IES or ANSI standards. 42 U.S.C.A. 6293(b)(6) (West Supp. 1993). EPCA authorizes, but does not require, DOE to issue test procedures for nonreflector general service incandescent lamps and medium screw base integrally ballasted compact fluorescent lamps. 42 U.S.C. 6293(b)(1)(B) (West Supp. 1993).

The Commission sought comments in the NPR regarding what test procedures would be acceptable to substantiate the required labeling disclosures, and what sampling procedures should be followed in selecting the lamps to be tested. The Commission stated that, when DOE issues testing and sampling procedures for any of the lamp products covered by the lamp labeling rules, the Commission would consider whether to adopt the DOE testing and sampling procedures as the necessary substantiation for the required labeling disclosures. DOE has not yet issued testing or sampling procedures for any of the lamp products covered by the labeling rules the Commission adopts today.

The labeling rules the Commission has adopted require manufacturers of all lamps covered by the labeling rules to have substantiation for all the required labeling disclosures. The Commission has determined, however, not to prescribe particular test methods or sampling procedures that must be used. Instead, the labeling rules specify that the required substantiation for medium base screw-in lamps is a reasonable basis consisting of competent and reliable scientific tests that substantiate the required disclosures.[248] For general service fluorescent lamps, the required substantiation is a reasonable basis consisting of competent and reliable scientific evidence that substantiates the claim made by the encircled "E," that the lamps meet the minimum energy efficiency standards established under EPCA.

To provide guidance to manufacturers about test procedures the Commission considers adequate to meet the reasonable basis standard, however, the labeling rules include specific examples of test procedures the Commission deems to be adequate (*i.e.*, "safe harbors"). Specifically, for light output and average laboratory life claims, the labeling rules state that the Commission will accept as a reasonable basis competent and reliable scientific tests conducted under particular IES test protocols.[249] The specific IES test protocols referenced in the labeling rules are recognized throughout the lamp industry as authoritative.[250] Further, for incandescent lamps, the current Light Bulb Rule's requirements are consistent with the IES test procedures.[251] If, in the future, DOE issues test procedures different from these IES protocols, or in addition to them, the Commission will consider testing performed according to the DOE procedures as meeting the reasonable basis standard. Further, if it appears necessary or appropriate, the Commission may initiate a proceeding to consider amending the labeling rules to require use of the DOE test procedures to ensure nationwide consistency.

The labeling rules, therefore, state that the Commission will accept as adequate substantiation light output and laboratory life claims based on competent and reliable scientific tests performed according to the following IES test procedures:

For measuring light output (in lumens): 0
- 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

Although the lamp industry generally uses these IES test procedures, when measuring the laboratory life of their lamps, industry members sometimes vary the IES methods to save time. For example, manufacturers might use accelerated tests, in which lamps being tested are operated at a much higher voltage than their design voltage.[252] Once the test lamps fail, their laboratory life at their design voltage is calculated mathematically. Industry members also might routinely measure laboratory life by operating test lamps continuously, rather than as specified in the IES methods.[253] Under the lamp labeling rules, such variations on the IES protocols will fall within the safe harbor if manufacturers can demonstrate that they produce results as accurate as those produced following the IES test methods. See § 305.5(b) in "Text of Amendments," below.

The above IES test procedures, however, do not include specifications governing the selection of the lamp specimens for testing. The Commission, therefore, has amended § 305.6 of the Rule to specify that manufacturers must use competent and reliable scientific sampling procedures for testing lamp products. The Rule also provides, as a safe harbor, the sampling procedures contained in Military Standard 105 Sampling Procedures and Tables for Inspection by Attributes. Mil-Std-105E is the sampling standard referenced in the federal specification cited by the Commission's existing Light Bulb Rule.[254] If DOE adopts a sampling standard of its own as part of its test procedures for lamps covered by the labeling rules, the Commission will deem use of that sampling standard as meeting the competent and reliable scientific standard. See § 305.6(b) in "Text of Amendments," below.

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[246] 16 CFR 305.5. The DOE test procedures for products already covered by the Rule are found at 10 CFR part 430, subpart B.

[247] 16 CFR 305.6. The DOE sampling procedures for products already covered by the Rule are found in 10 CFR 430, subpart B.

[248] For medium base screw-in lamps, the required disclosures are of the lamp's design voltage if other than 120 volts, average initial wattage, average initial light output, average laboratory life and the Advisory Disclosure. For general service incandescent reflector lamps, the disclosures must include the encircled "E" and the explanatory statement.

[249] It is not necessary to specify particular test procedures, or safe harbors, for the measurement of design voltage or wattage, because they are elementary measurements.

[250] Philips (Tr.), 91–92; GE (Tr.), 101–02. NEMA has recommended that DOE adopt these IES test procedures when it issues its test methods. NEMA, G–3, 49.

[251] 16 CFR 409.1 n. 1. The Light Bulb Rule states that, for lamps covered by that Rule, the "average initial wattage, average initial lumen and average laboratory life disclosures required by this section shall be in accordance with the requirements of interim Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W–L–00101 G and shall be based upon generally accepted and approved test methods and procedures." In 1977, that specification ceased being interim and is now known as Federal Specification, Lamp, Incandescent (Electric, Large, Tungsten-Filament) W–L–101H/GEN. This specification refers to pertinent ANSI test protocols, which are consistent with the IES protocols.

[252] Supreme (Tr.), 87–88; Philips, (Tr.), 90–91.

[253] Philips (Tr.), 91.

[254] 16 CFR 409.1 n. 1.

H. Other Requirements for All Lamp Products

1. Recordkeeping and Submission of Data

In the NPR, the Commission proposed requiring that manufacturers maintain records that substantiate each of the items the final rules require be disclosed. It also proposed requiring them to submit those records to the Commission within 30 days of a request. These requirements are imposed directly by EPCA, which requires manufacturers to keep on file, for a period specified in the Rule, the data from which the information included on the label and required by the labeling rules was derived. 42 U.S.C. 6296(b)(2) (1988).

One comment stated simply that the proposed requirements were acceptable.[255] Another recommended that the Commission not mandate recordkeeping requirements, but instead rely on the recordkeeping requirements imposed by DOE as part of its test procedures.[256] Two comments recommended that the manufacturer be given 60 days instead of 30 to produce the records.[257]

The current Rule requires that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to show a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labels and in catalogs are accurate. The recordkeeping requirement is necessary to enable the Commission to determine whether the required disclosures are substantiated and accurate. See 16 CFR 305.15(a).

DOE has not yet specified test procedures or recordkeeping requirements for any lamp products. The Commission, therefore, cannot determine at this time whether the recordkeeping requirements that DOE may specify in the future would be adequate to determine if the manufacturer's rule-required disclosures are substantiated and accurate. The Commission has, however, designed the recordkeeping requirement to minimize the burden it imposes by requiring that manufacturers maintain only those records that are sufficient to demonstrate the accuracy of the required labeling disclosures. After DOE issues test procedures and recordkeeping requirements for lamp products covered by the labeling rules, the Commission will consider whether the DOE recordkeeping requirements are sufficient to satisfy the recordkeeping requirement imposed by the labeling rules.

The final labeling rules also require that manufacturers submit the required records to the Commission within 30 days of a request. This requirement is statutory, imposed directly by EPCA. 42 U.S.C. 6296(b)(2) (1988). The Commission, however, will consider a request for a reasonable extension of this time period, based on a satisfactory showing of the burden imposed by the 30 days requirement on a particular manufacturer. See § 305.15(b) in "Text of Amendments," below.

2. Reporting

In the NPR, the Commission proposed requiring that lamp manufacturers submit annual reports, containing specific information, on or before March 1 each year. The Commission stated that this requirement would not become effective until after DOE has issued test procedures for specific lamp products. The proposed reporting requirements were based on EPCA, 42 U.S.C.A. 6296(b) (West Supp. 1993), which requires manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293 (West Supp. 1993), to supply the Commission annually with relevant information respecting energy consumption.

The Commission proposed requiring that each report contain the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results measured according to the DOE test procedures for the lamps' wattage, light output ratings and Energy Index and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index. This type of information is currently required for other categories of products covered by the Appliance Labeling Rule. To minimize the burdens imposed by this proposed reporting requirement, the Commission proposed accepting trade association directories and similar submissions in lieu of individual annual reports, as it does for other product categories.

One comment basically agreed with the proposed reporting requirements, but urged the Commission to minimize the burden of annual reporting.[258] Four commenters contended that the NPR underestimated both the number of affected models and the time required to prepare required reports for each model.[259] Three of these commenters stated that annual submissions are unnecessary and overly burdensome and recommended that the Commission develop a reporting procedure jointly with DOE.[260] One comment stated that manufacturers are prepared to report test reports for basic models of lamps if basic models are described in terms of performance rather than labels or brand names. This comment urged that reporting requirements be imposed only once with respect to any model with particular performance characteristics. It urged the Commission not to require date-coding, because manufacturers do not routinely label each lamp type with serial numbers or date codes and such a requirement would be very costly and disruptive to manufacturers of certain types of lamps.[261]

The reporting requirement in EPCA is concerned primarily with ensuring that the Commission has sufficient information to determine whether ranges of comparability for major appliances should be changed annually. Because the lamp labeling rules do not require disclosure of ranges of comparability, the Commission has determined that it does not need complete annual reports from lamp manufacturers. To minimize burdens imposed on manufacturers, therefore, the Commission is requiring that reports contain only the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE

[255] Panasonic, G–7, 2.

[256] NEMA, G–3, 28–29, 33, 43.

[257] NEMA, G–3, 51; Philips, G–5, 3.

[258] Panasonic, G–7, 2.

[259] GE, G–16, 1–2; Osram, G–15, 1–2; Philips, G–14, 1; NEMA, G–3, 28–29, 33, 43. The specific burden estimates contained in these comments are discussed in Part VI, below.

[260] Osram, G–4, 3, G–15, 1–2; Philips, G–5, 1, G–12, 4; NEMA, G–3, 28–29, 33, 43, 50.

[261] NEMA, G–3, 50 (manufacturers may produce many versions of lamps with common performance characteristics, differing only in brand name, distribution channels or packaging).

test procedure.[262] The reports will be due on March 1 of each year, coinciding with the due date for reports on fluorescent lamp ballasts, beginning March 1, 1996. Although reports must be submitted each year, to further minimize the burdens imposed by the reporting requirements, the Commission will accept subsequent annual reports that identify the reporting entity but provide only data about new, changed, or discontinued products, without repeating information on products that have not changed since the earlier report. In addition, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

Because DOE has not yet issued test procedures for any lamp products, however, the Commission is staying the reporting requirements pending DOE's issuance of test procedures. No reports will be due until after DOE issues test procedures for any of the lamps covered by the labeling rules. Once DOE has issued test procedures, the Commission will publish a notice announcing when the initial reports will be due. See §§ 305.8(a)(3) and 305.8(b) in "Text of Amendments," below.

3. Submission of Product Samples to Designated Laboratory

In the NPR, the Commission proposed requiring that manufacturers, upon request by the Commission, submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. The Commission proposed including this requirement in the labeling rules so that manufacturers would be aware of their duties and responsibilities under EPCA, which requires manufacturers to do this. Under EPCA, however, any charge levied by the laboratory for testing will be paid for by the Commission. 42 U.S.C. 6296(b)(3) (1988).

One comment agreed with the proposal, which allows the Commission to determine whether required disclosures are accurate, but urged that care be taken to minimize the expense of spot-check testing.[263] Two commenters stated that the tests should be performed in a NVLAP accredited laboratory.[264] One of these commenters added that the testing should be performed based on the procedures outlined in NIST Handbook 150–01.[265]

The current Rule repeats the standard specified in EPCA, *i.e.*, manufacturers, upon request by the Commission, must submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission.[266] Any charge levied by the laboratory for testing will be paid for by the Commission. The Commission has determined that this requirement is sufficient for lamp products and, therefore, is not amending the Rule in this regard. See 16 CFR 305.16.

V. Regulatory Flexibility Act

The Commission stated in the NPR that the provisions of the Regulatory Flexibility Act requiring a regulatory analysis were not applicable to the proposed amendments because they would not have "a significant economic impact on a substantial number of small entities." The Commission stated that it believed any economic cost imposed on small entities are primarily statutorily imposed and the proposed regulations would impose few, if any, independent additional costs.

None of the commentors specifically addressed the effect of the proposed labeling rules on small entities. Based on the discussion in Parts IV.H.1–2, above and VI, below, the Commission concludes that the information collection burdens imposed by the recordkeeping and reporting requirements of the final labeling rules on all entities within the affected industry will be *de minimis*, and therefore, will not have "a significant economic impact on a substantial number of small entities," for purposes of the Regulatory Flexibility Act.

VI. Paperwork Reduction Act

In the NPR, the Commission stated that the proposed amendments contained provisions that constitute "collection of information" as defined by the regulations of the Office of Management and Budget ("OMB"), 5 CFR 1320.7(c)(1)(1992), under the Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.* The NPR proposed requiring that manufacturers of lamp products covered by the labeling rules for which DOE has issued test procedures under section 323 of EPCA, 42 U.S.C.A. 6293 (West Supp. 1993), submit annual reports to the Commission. In addition, the NPR proposed that manufacturers of all lamp products covered by the labeling rules, whether or not DOE has issued test procedures for specific lamp products, maintain records that substantiate required disclosures. The Commission estimated in the NPR that approximately 50 manufacturers would be affected by the proposed lamp labeling requirements and that it would take each company fewer than five hours to comply with the proposed recordkeeping and reporting requirements, for a maximum of 250 hours.

The Commission sought comments on the extent of the paperwork burden in the NPR and in a separate request for comments under the PRA.[267] In the separate notice, the Commission stated that the estimated burden was small because manufacturers already maintain some of the required records in the normal course of business.[268] Records that are likely to be retained by industry members during the normal course of business are excluded from the "burden" for PRA purposes.[269]

One manufacturer agreed with the estimate of five hours per manufacturer.[270] Three manufacturers and a trade association, however, commented that the Commission had underestimated the number of hours it would take to process, format, check, and prepare the proposed reports for each model of lamp product.[271] Those three manufacturers stated that it would take from 41 to over 97 hours for them to prepare and file the proposed annual reports.[272] Two of these manufacturers and the trade association recommended that the FTC consider developing a reporting procedure jointly with DOE and that reports be required only once as opposed to once a year.[273]

The comments, however, did not appear to take into account that the Commission's estimate excluded some

[262] Lamps differing only in matters not relevant to the specified ratings (*i.e.*, color, brand name) may be grouped as a basic model.

[263] Panasonic, G–7, 2.

[264] Philips, G–5, 3, G–12, 3 (all testing should be performed in NVLAP accredited laboratory); NEMA, G–3, 49 (regulation should require compliance testing only at NVLAP certified laboratories).

[265] Philips, G–12, 3. *See* NIST Handbook 150–01, C–17.

[266] Although the labeling rules do not require the Commission to use NVLAP accredited laboratories, as suggested by some comments, the Commission will select labs for testing services that have appropriate credentials to conduct the required testing and will consider using labs accredited by NVLAP, when appropriate.

[267] 58 FR 60652.

[268] *Id.*

[269] See 5 CFR 1320.7(b)(1).

[270] Panasonic, G–7, 2.

[271] GE, G–16, 1–2; Osram, G–15, 1–2; Philips, G–14, 1; NEMA, G–3, 28–29, 33, 43.

[272] Philips, G–14, 1 (minimum of 41 hours); Osram, G–15, 1–2 (not less than 60 hours); GE, G–16, 1–2 (exceed 97 hours).

[273] Osram, G–4, 3, G–15, 1–2; Philips, G–5, 1, (Supp.), G–12, 4; NEMA, G–3, 28–29, 33, 43, 50.

hours because of the presumption that manufacturers would be maintaining some of the records in the normal course of business. Nevertheless, in response to these comments, the Commission has revised the recordkeeping and reporting requirements in the final labeling rules to minimize their burdens on manufacturers. Specifically, the final labeling rules require only that manufacturers maintain, for a period of two years after production of the specific lamp product has been terminated, records sufficient to demonstrate they have a reasonable basis consisting of competent and reliable scientific evidence that the required disclosures they make on labeling and in catalogs are accurate. The recordkeeping requirement is imposed directly by EPCA, which authorizes the Commission to specify the period for which the records must be kept. 42 U.S.C. 6296(b)(2) (1988). As previously stated, the two-year requirement is identical to the recordkeeping requirement for the other products covered by the Appliance Labeling Rule. In addition, the final rules require that manufacturers submit reports containing only basic information, and submit the information for each different lamp product only once.[274] Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. These could be catalogs with cover letters, industry directories, copies of reports to DOE or other federal or state regulatory authorities, or original reports, as long as the required information is included.

Because of the changes the Commission has made to the recordkeeping and reporting requirements, and taking into account the fact that many of these records are maintained in the normal course of business, the Commission has determined not to revise its burden estimate. While the initial effort involved in developing a report may, for some companies, take more than the original estimate of five hours per manufacturer, the Commission believes that the time involved in complying with the reporting and recordkeeping requirements, as those requirements have been modified, will nonetheless result in an average of five hours per manufacturer. In light of the revised information collection requirements in the final rules, OMB approved the Commission's request for clearance of the requirements under OMB Control Number 3084–0092.[275]

VII. Regulatory Review

In accordance with the Commission's ongoing regulatory review program, the Commission sought comments about the impact of the proposed requirements for manufacturers and other sellers of lamp products, and their costs and benefits. Based on the comments and discussion in Parts V and VI, above, the Commission concludes that the amended rule will not have a significant economic impact on parties covered by the labeling rules. The Commission has drafted the final labeling rules to minimize burdens imposed on all covered industry members.

VIII. Metric Measurement

In accordance with the Omnibus Trade and Competitiveness Act (OTCA), 15 U.S.C. 205, the Commission must consider metric measurements in addition to inch-pound measurements in measurement sensitive regulations.[276] Although the Commission sought comments from the public on this issue in the NPR, none was received. The Commission has concluded that the units of measurement the Commission is requiring in the labeling rules for lamp products comply with the requirements of the Metric Conversion Act. First, lumens, watts, and volts are metric derived units. Second, the metric terms (lumens, watts, and volts) that the Commission is requiring be disclosed should already be familiar to the consumers because they currently are used on packaging of lamp products.

IX. Discussion of Lamp Labeling Amendments Being Adopted

Each amendment the Commission is adopting today is described below.

A. Section 305.2—Definitions

This section contains definitions of twenty-two terms used in both EPCA and the Rule. The Commission is amending it to add (as twelve new subsections) eleven definitions of terms that EPCA uses for the three categories of lamp products that EPA 92 added to EPCA and a new definition for a term ("consumer product") that the amended Rule uses when requiring disclosure of energy consumption data in lamp labeling. The Commission is also revising two existing definitions ("consumer appliance product" and "covered product") to clarify how the Rule's disclosure requirements apply to lamps. Lastly, the Commission is amending this section to group together all the definitions that are pertinent to lamps and placing them immediately following the two existing definitions relating to fluorescent lamp ballasts. The three definitions relating to plumbing products disclosures that had previously been designated (r) and (u)–(v) are now designated (dd) through (ff).

B. Section 305.3—Description of Covered Products To Which This Part Applies

This section lists the fourteen categories of appliances now covered by EPCA and the Rule. The Commission is amending it to add (as three new subsections) the descriptions taken from section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993), for the three categories of lamps (*i.e.*, fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps) that EPA 92 added to EPCA.

C. Section 305.4—Prohibited Acts

This section makes it unlawful to distribute in commerce any covered product not marked and/or labeled and advertised as prescribed by the Rule. Failing to maintain and make available certain records and product samples as prescribed by the Rule is also prohibited. The Commission is amending subsection (e), which identifies the various effective dates of the Rule for the different categories of covered products, to establish the effective date of the Rule for covered lamp products. EPA 92 directed the Commission to prescribe, by April 25, 1994, labeling rules for lamp products and provided that such rules shall apply to those covered lamp products manufactured after the 12-month period beginning on the date of publication of the rules in final form. The effective date for these lamp labeling rule

[274] The final rules require manufacturers to submit an initial report containing the following information: (1) Name and address of manufacturer; (2) all trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) test results for the wattage and light output ratings of each lamp model or type and, in addition, for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE test procedure. In subsequent years, manufacturers will be required only to submit reports containing data about new, changed or discontinued lamp products. Further, the Commission will accept manufacturers' reports in any format that contains the necessary information. The reporting requirement will not become effective until after DOE issues test procedures for specific lamp products. The Commission will publish a notice at a later date, after DOE has issued test procedures, announcing when the initial reports and subsequent annual reports will be due.

[275] Notice of Office of Management and Budget Action dated April 1, 1994.

[276] See also Executive Order 12770 ("Metric Usage in Federal Government Programs").

amendments is therefore twelve months following publication of this Notice.

D. Section 305.5—Determinations of Estimated Annual Energy Cost and Energy Efficiency Rating and of Water Use Rate

This section specifies what test procedures are to be used for measuring the water use and energy consumption and efficiency of the various categories of products covered by the Rule. The Commission is adding to this section a new subsection for covered lamps specifying that manufacturers and private labelers of covered lamps must, for any representation of the design voltage, wattage, light output or life of any covered medium base compact fluorescent lamp or general service incandescent lamp, including any incandescent reflector lamp, or for any representation made by the encircled "E" that any covered general service fluorescent or incandescent reflector lamp is in compliance with a minimum energy efficiency standard, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests that substantiate the representation. The new subsection also states that for establishing the light output and life ratings of covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, the Commission will accept as a reasonable basis the results of competent and reliable scientific tests conducted pursuant to certain IES testing protocols that substantiate those ratings.

E. Section 305.6—Sampling

This section specifies that any representation with respect to or based upon a measure or measures of energy consumption shall be based on certain DOE approved sampling procedures. Inasmuch as DOE has not yet adopted sampling procedures for the covered lamp products, the Commission is adding to this section a new subsection for covered lamps specifying that any representation of design voltage, wattage, light output or life, or any representation made by the encircled "E" that a lamp is in compliance with a minimum energy efficiency standard, shall be based upon testing using competent and reliable scientific sampling procedures. The new subsection also states that the Commission will accept sampling conducted in accordance with "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as competent and reliable scientific sampling procedures.

F. Section 305.8—Submission of Data

This section requires manufacturers of covered products to submit to the Commission, in the form of annual reports, certain information about their products. Section 326(b)(1) of EPCA, 42 U.S.C. 6296(b)(1), requires manufacturers to notify the Commission of all their existing product model numbers within 60 days after a rule covering them takes effect and all their future product model numbers prior to commencement of production. Section 326(b)(4) of EPCA, 42 U.S.C. 6296(b)(4), requires manufacturers to supply annually to the Commission, at times to be specified by the Commission, relevant data respecting their products' energy consumption. The Commission is amending § 305.8 of the Rule to require manufacturers of covered lamp products for which DOE has issued test procedures under EPCA to submit to the Commission by March 1, 1996, and annually thereafter, reports disclosing each company's name and address and the trade names, the model numbers, and the energy consumption data (*i.e.*, for all covered lamps for which DOE has issued test procedures, the test results for the lamps' light output in lumens and energy usage in watts and, in addition, for all covered fluorescent lamps, the test results for the lamps' color rendering index) for each of its covered lamp products. This reporting requirement is, however, being stayed pending DOE's adoption of test procedures for these products. Manufacturers of covered lamp products are not being required to submit any more information than manufacturers of other products covered by the Rule.

G. Section 305.11—Labeling For Covered Products

This section contains five subsections specifying labeling requirements for the Rule's covered products.[277] The Commission is amending this provision by adding a new subsection to address the labeling requirements that EPA 92 has directed the Commission to issue for lamps. This new subsection is designated (e) and placed immediately after the existing subsection (d) that pertains to fluorescent lamp ballasts. The subsection that pertains to plumbing products, which was subsection (e), is being redesignated (f).

The new subsection (e) specifies the information that must be disclosed on the labels of the three categories of lamps that EPA 92 has added to EPCA and consists of three subsections. Subsection (e)(1)(A) states that all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps (*i.e.*, all covered lamps other than general service fluorescent lamps) must disclose clearly and conspicuously on their labels' principal display panel the following information:

(1) The number of lamps included in the package, if more than one;

(2) The design voltage of each lamp included in the package, if other than 120 volts;

(3) The light output of each lamp included in the package, expressed in average initial lumens;

(4) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage; and

(5) The life of each lamp included in the package, expressed in hours.

Subsection (e)(1)(B) specifies that the light output, energy usage, and life ratings of any covered compact fluorescent and general service incandescent lamp must appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings must be disclosed in terms of "lumens," "watts," and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts," and "hours" each appearing in the same type style and size. The words "light output," "energy used," and "life" must precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts," and "hours," except that the letters of the words "lumens," "watts," and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used," and "life."

Subsection (e)(1)(C) specifies that a lamp's light output, energy usage, and life are to be measured at 120 volts, regardless of the lamps' design voltage. If a lamp's design voltage is other than 120 volts, the lamp's required disclosures of light output, energy usage, and life must in each instance be followed by the phrase "at 120 volts." The rule amendment allows, but does not require, labels for lamps with design voltages other than 120 volts also to disclose the lamps' light output, energy usage, and life at the design voltage

[277] The first subsection applies to all the covered products heretofore included in the Rule except fluorescent lamp ballasts, showerheads, faucets, water closets and urinals; the second concerns only furnaces and central air conditioners; the third only central air conditioners; the fourth only fluorescent lamp ballasts; and the fifth only showerheads, faucets, water closets and urinals.

(*e.g.*, "Light Output 1710 Lumens at 125 volts").

Subsection (e)(1)(D) specifies that for all covered general service incandescent reflector lamps the required disclosures of light output are to be given for the lamps' beam spread and followed clearly and conspicuously by the phrase "at beam spread."

Subsection (e)(1)(E) specifies that, for all covered compact fluorescent lamps, the required disclosures of light output shall be measured at a base-up position, but provides that, if the manufacturer or private labeler has reason to believe any lamp's light output at a base-down position would be more than 5% different, the label must also disclose the lamp's light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the lamp's light output might be more than 5% less.

Subsection (e)(1)(F) requires that for all covered compact fluorescent lamps and general service incandescent lamps, including incandescent reflector lamps, there shall be clearly and conspicuously disclosed on the principal display panel the following Advisory Disclosure statement:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

Subsection (e)(1)(G) specifies that, for any covered general service incandescent lamp that operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1) (A)–(C) and (F) of this section of the Rule, the lamp's energy usage in watts and light output in lumens at each of the lamp's levels of light output and the lamp's life in hours at the filament that fails first.

Subsection (e)(2) states that all covered general service fluorescent lamps and incandescent reflector lamps shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*(The encircled "E") means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, that asterisk shall be followed by a clear and conspicuous disclosure of the following:

*See (side, top, back) panel for details.

Subsection (e)(2)(A), for purposes of this section of the Rule, states that on labels of general service fluorescent lamps the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

Subsection (e)(2)(B) states that manufacturers and private labelers who would otherwise not put labels on covered general service fluorescent lamps may, instead of labeling such lamps with the encircled "E" and the statement described in paragraph (e)(2)(A), meet the disclosure requirement of that paragraph by permanently marking such lamps clearly and conspicuously with the encircled "E."

Subsection (e)(3) states that, if energy operating cost claims are made in the labeling of any covered lamp, that representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based.

Subsection (e)(4) states that all cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps, including incandescent reflector lamps, are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

H. Section 305.13—Promotional Material Displayed or Distributed at Point of Sale

This section has two subsections, the first of which requires all promotional materials for all covered products (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) that are displayed at the point of sale to disclose clearly and conspicuously the following statement: "Before purchasing this appliance, read important energy cost and efficiency information available from your retailer," and the second of which requires all promotional materials for all covered showerheads, faucets, water closets and urinals to disclose clearly and conspicuously the product's water flow rate.

The Commission is amending this section to add a third subsection specifying that, if in such promotional materials any energy operating cost claims are made for any covered lamp product, the representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This new subsection is designated (b) and the former subsection (b), which concerns plumbing products, is redesignated (c).

I. Section 305.14—Catalogs

This section has four subsections, the first two of which concern required disclosures in catalogs from which any covered product (other than fluorescent lamp ballasts, showerheads, faucets, water closets and urinals) may be purchased, the third of which concerns such required disclosures for fluorescent lamp ballasts, and the fourth of which concerns such required disclosures for showerheads, faucets, water closets and urinals.

The Commission is amending this section to add a fifth subsection requiring all such catalog advertising for covered lamps to bear the same disclosures that § 305.11(e) of the Rule requires in the lamps' labeling, except for the number of items contained in the package, and specifying that, if in such catalog advertising any energy operating cost claims are made for any covered lamp product, the representation must in connection therewith clearly and conspicuously disclose the assumptions (*e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use) upon which they are based. This subsection provides that, for catalogs not distributed to consumers for making purchases for personal use or consumption by individuals, the light output, energy usage and life disclosures need not comply with the format provisions of § 305.11(e)(1)(B), but must only be disclosed clearly and conspicuously. This new subsection is designated (d) and the former subsection (d) pertaining to plumbing products is redesignated (e).

J. Section 305.15—Test Data Records

This section requires manufacturers and private labelers, upon notification by the Commission or its designated representative to provide, within 30 days notice, the underlying test data from which the estimated annual energy cost or energy efficiency rating for each basic model was derived. The Commission is amending this section to require that manufacturers and private labelers of lamps provide the Commission upon request with the underlying test data from which the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index, for each basic model or lamp type, was derived.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Text of Amendments

For the reasons set out in the preamble, 16 CFR part 305 is amended as follows:

PART 305—RULE CONCERNING DISCLOSURES OF INFORMATION ABOUT ENERGY CONSUMPTION AND WATER USE FOR CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT

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

Authority: 42 U.S.C. 6294.

2. Section 305.2 is amended by revising paragraphs (n) through (v) and by adding paragraphs (w) through (hh) to read as follows:

§ 305.2 Definitions.

* * * * *

(n) *Consumer product* means any article (other than an automobile, as "automobile" is defined in section 2001(1) of Title 15 (section 501(1) of the Motor Vehicle Information and Cost Savings Act) of a type—

(1) Which in operation consumes, or is designed to consume, energy or, with respect to showerheads, faucets, water closets, and urinals, water; and

(2) Which, to any significant extent, is distributed in commerce for personal use or consumption by individuals; without regard to whether such article or such type is in fact distributed in commerce for personal use or consumption by an individual, except that such term includes fluorescent lamp ballasts, general service fluorescent lamps, medium base compact fluorescent lamps, general service incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals distributed in commerce for personal or commercial use or consumption.

(o) *Consumer appliance product* means any of the following consumer products, excluding those products designed solely for use in recreational vehicles and other mobile equipment:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alternating current electricity, excluding—

(i) Any type designed to be used without doors; and

(ii) Any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Dishwashers.

(3) Water heaters.

(4) Room air conditioners.

(5) Clothes washers.

(6) Clothes dryers.

(7) Central air conditioners and central air conditioning heat pumps.

(8) Furnaces.

(9) Direct heating equipment.

(10) Pool heaters.

(11) Kitchen ranges and ovens.

(12) Television sets.

(13) Fluorescent lamp ballasts.

(14) General service fluorescent lamps.

(15) Medium base compact fluorescent lamps.

(16) General service incandescent lamps, including incandescent reflector lamps.

(17) Showerheads.

(18) Faucets.

(19) Water closets.

(20) Urinals.

(21) Any other type of consumer product which the Department of Energy classifies as a covered product under section 322(b) of the Act (42 U.S.C. 6292).

(p) *Covered product* means any consumer product or consumer appliance product described in § 305.3 of the Rule.

(q) *Luminaire* means a complete lighting unit consisting of a fluorescent lamp or lamps, together with parts designed to distribute the light, to position and protect such lamps, and to connect such lamps to the power supply through the ballast.

(r) *Ballast efficacy factor* means the relative light output divided by the power input of a fluorescent lamp ballast, as measured under test conditions specified in American National Standards Institute standard C82.2–1984, or as may be prescribed by the Secretary of Energy.

(s) *Bulb shape* means the shape of the lamp, especially the glass portion.

(t) *Base* for lamps means the portion of the lamp which screws into the socket.

(u) *Color rendering index* or *CRI* for lamps means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(v) *Correlated color temperature* for lamps means the absolute temperature of a blackbody whose chromaticity most nearly resembles that of the light source.

(w) *Lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(x) *Wattage* for lamps means the total electrical power consumed by a lamp in watts, after an initial seasoning period and including, for fluorescent lamps, arc watts plus cathode watts.

(y) *Light output* for lamps means the total luminous flux (power) of a lamp in lumens.

(z) *Life* and *lifetime* for lamps mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group.

(aa) *Lamp efficacy* means the light output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(bb) *Average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(cc) *IES* means the Illuminating Engineering Society of North America and, as used herein, is the prefix for test procedures adopted by IES.

(dd) *ASME* means the American Society of Mechanical Engineers and, as used herein, is the prefix for national standards and codes adopted by ASME.

(ee) *ANSI* means the American National Standards Institute and, as used herein, is the prefix for national standards and codes adopted by ANSI.

(ff) *Water use* means the quantity of water flowing through a showerhead, faucet, water closet, or urinal at point of use, determined in accordance with test procedures under section 323 of the Act, 42 U.S.C. 6293.

(gg) *Flushometer valve* means a valve attached to a pressured water supply pipe and so designed that, when actuated, it opens the line for direct flow into the fixture at a rate and quantity to operate properly the fixture, and then gradually closes to provide trap reseal in the fixture in order to avoid water hammer. The pipe to which this device is connected is in itself of sufficient size that, when opened, will allow the device to deliver water at a sufficient rate of flow for flushing purposes.

(hh) *Flow restricting or controlling spout end device* means an aerator used in a faucet.

3. Section 305.3 is amended by revising paragraphs (k) through (n) and by adding paragraphs (o) through (q) to read as follows:

§ 305.3 Description of covered products to which this part applies.

* * * * *

(k) *Fluorescent lamp:* (1) Means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet

energy generated by the mercury discharge into light, including only the following:

(i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more;

(ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more;

(iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements; and

(iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985; but

(2) *Fluorescent lamp* does not mean any lamp excluded by the Department of Energy, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service fluorescent lamp* means a fluorescent lamp which can be used to satisfy the majority of fluorescent applications, but does not mean any lamp designed and marketed for the following nongeneral lighting applications:

(i) Fluorescent lamps designed to promote plant growth;

(ii) Fluorescent lamps specifically designed for cold temperature installations;

(iii) Colored fluorescent lamps;

(iv) Impact-resistant fluorescent lamps;

(v) Reflectorized or aperture lamps;

(vi) Fluorescent lamps designed for use in reprographic equipment;

(vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and

(viii) Lamps with a color rendering index of 82 or greater.

(l) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

(m) *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 between 30 and 199 watts, has an E26 medium 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, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(A) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(B) A high(er) wattage reflector lamp which has a rated wattage above 205 watts;

(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); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for:

(i) Traffic signal, or street lighting service;

(ii) Airway, airport, aircraft, or other aviation service;

(iii) Marine or marine signal service;

(iv) Photo, projection, sound reproduction, or film viewer service;

(v) Stage, studio, or television service;

(vi) Mill, saw mill, or other industrial process service;

(vii) Mine service;

(viii) Headlight, locomotive, street railway, or other transportation service;

(ix) Heating service;

(x) Code beacon, marine signal, lighthouse, reprographic, or other communication service;

(xi) Medical or dental service;

(xii) Microscope, map, microfilm, or other specialized equipment service;

(xiii) Swimming pool or other underwater service;

(xiv) Decorative or showcase service;

(xv) Producing colored light;

(xvi) Shatter resistance which has an external protective coating; or

(xvii) Appliance service; and

(4) *Incandescent reflector lamp* means a lamp described in paragraph (m)(1)(ii) of this section; and

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

(n) *Showerhead* means any showerhead (including a handheld showerhead), except a safety shower showerhead.

(o) *Faucet* means a lavatory faucet, kitchen faucet, metering faucet, or replacement aerator for a lavatory or kitchen faucet.

(p) *Water closet* means a plumbing fixture having a water-containing receptor which receives liquid and solid body waste and, upon actuation, conveys the waste through an exposed integral trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

(q) *Urinal* means a plumbing fixture which receives only liquid body waste and, on demand, conveys the waste through a trap seal into a gravity drainage system, except such term does not include fixtures designed for installation in prisons.

4. Section 305.4 is amended by revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 305.4 Prohibited acts.

* * * * *

(e) * * *

(2) Any covered product, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, if the manufacture of the product was completed prior to May 19, 1980. Any central air conditioner or any pulse combustion or condensing furnace if its manufacture was completed prior to June 7, 1988. Any fluorescent lamp ballast if its

manufacture was completed prior to January 1, 1990. Any fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including any incandescent reflector lamp), if its manufacture was completed prior to May 15, 1995. Any showerhead, faucet, water closet or urinal if its manufacture was completed prior to October 24, 1994.

(3) Any catalog or point-of-sale printed material pertaining to any covered products, other than central air conditioners, pulse combustion and condensing furnaces, fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets, and urinals, that were distributed prior to May 19, 1980, and any catalog or point-of-sale printed material pertaining to any central air conditioners and pulse combustion and condensing furnaces that were distributed prior to June 7, 1988, and any catalog or point-of-sale printed material pertaining to any fluorescent lamp ballasts that were distributed prior to June 23, 1989, and any catalog or point-of-sale printed material pertaining to fluorescent lamps, medium base compact fluorescent lamps, or incandescent lamps (including incandescent reflector lamps), that were distributed prior to May 15, 1995, and any catalog or point-of-sale printed material pertaining to any showerheads, faucets, water closets and urinals that were distributed prior to October 24, 1994, except that if representations respecting the energy consumption or energy efficiency or water use of any covered product or other consumer appliance product or cost of energy consumed or water used by such product are included, they are subject to the requirements of paragraph (d) of this section.

* * * * *

5. Section 305.5 is revised to read as follows:

§ 305.5 Determinations of estimated annual energy cost and energy efficiency rating and of water use rate.

(a) Procedures for determining the estimated annual energy costs, the energy efficiency ratings, and the power and efficacy factors of covered products are those found in 10 CFR part 430, subpart B, in the following sections:

(1) Refrigerators and refrigerator-freezers—430.22(a).

(2) Freezers—§ 430.22(b).

(3) Dishwashers—§ 430.22(c).

(4) Water heaters—§ 430.22(e).

(5) Room air conditioners—§ 430.22(f).

(6) Clothes washers—§ 430.22(j).

(7) Central air conditioners and heat pumps—§ 430.22(m).

(8) Furnaces—§ 430.22(n).

(9) Fluorescent lamp ballasts—§ 430.22(q).

(b) Manufacturers and private labelers of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), must, for any representation of the design voltage, wattage, light output or life 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 medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), the Commission will accept as a reasonable basis competent and reliable 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

(c) Procedures for determining the water use rates of covered products are those found in the following standards:

(1) Showerheads and faucets—ASME A112.18.1M–1989, Plumbing Fixture Fittings. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.18.1M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

(2) Water closets and urinals—ASME A112.19.2M–1990, Vitreous China Plumbing Fixtures. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASME A112.19.2M may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017, or may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the Office of the Federal Register, suite 700, 800 North Capitol Street, NW., Washington, DC.

6. Section 305.6 is revised to read as follows:

§ 305.6 Sampling.

(a) For any covered product (except fluorescent lamps, medium base compact fluorescent lamps, and incandescent lamps, including incandescent reflector lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into § 305.5 shall be based upon the sampling procedures set forth in § 430.23 of 10 CFR part 430, subpart B.

(b) For any covered product that is a medium base compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), any representation of design voltage, wattage, light output or life and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled "E" that such lamp is in compliance with an applicable standard established by section 325 of the Act shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept "Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes" as such a sampling procedure.

7. Section 305.8 is amended by revising paragraphs (a) and (b) to read as follows:

§ 305.8 Submission of data.

(a) (1) Each manufacturer of a covered product, except manufacturers of fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets or urinals, shall submit annually to the Commission a report listing the kilowatt-hour use per year (for refrigerators, refrigerator-freezers and freezers), the energy factor (for clothes

washers, dishwashers and water heaters) or the energy efficiency rating (for room air conditioners, central air conditioners, heat pumps and furnaces) for each basic model in current production, determined according to § 305.5 and statistically verified according to § 305.6. The report must also list, for each basic model in current production: The model number; the total energy consumption, determined in accordance with § 305.5, used to calculate the kilowatt-hour per year, energy factor, or energy efficiency rating; the number of tests performed; and its capacity, determined in accordance with § 305.7. For those models that use more than one energy source or more than one cycle, each separate amount of energy consumption, or energy cost, measured in accordance with § 305.5, shall be listed in the report. Appendix J of this part illustrates a suggested reporting format. Starting serial numbers or other numbers identifying the date of manufacture of covered products shall be submitted whenever a new basic model is introduced in the market.

(2) Each manufacturer of a covered fluorescent lamp ballast shall submit annually to the Commission a report for each basic model of fluorescent lamp ballast in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the fluorescent lamp ballast is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) Nominal input voltage and frequency;

(vi) Ballast efficacy factor; and

(vii) Type (F40T12, F96T12 or F96T12HO) and number of lamp or lamps with which the fluorescent lamp ballast is designed to be used.

(3) Each manufacturer of a covered product that is a fluorescent lamp, medium base compact fluorescent lamp, or incandescent lamp (including an incandescent reflector lamp), shall submit annually to the Commission a report for each lamp type in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the lamp is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each lamp type); and

(v) For all covered lamps, the test results for the lamp's wattage and light output ratings and, in addition, for all covered fluorescent lamps, the test results for the lamp's color rendering index.

(4) Each manufacturer of a covered showerhead, faucet, water closet or urinal shall submit annually to the Commission a report for each basic model of such products in current production. The report shall contain the following information:

(i) Name and address of manufacturer;

(ii) All trade names under which the product is marketed;

(iii) Model number;

(iv) Starting serial number, date code or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model);

(v) The product's water use, expressed in gallons and liters per flush (gpf/Lpf) or gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) as determined in accordance with § 305.5.

(b) All data required by § 305.8(a) except serial numbers, shall be submitted to the Commission annually, on or before the following dates:

Products	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerator-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	May 1.
Furnaces	May 1.
Clothes washers	Mar. 1.
Fluorescent lamp ballasts	Mar. 1.
Fluorescent lamps	Mar. 1. [Stayed]
Medium Base Compact Fluorescent Lamps.	Mar. 1. [Stayed]
Incandescent Lamps, incl. Reflector Lamps.	Mar. 1. [Stayed]
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Urinals	Mar. 1.

All revisions to such data (both additions to and deletions from the preceding data) shall be submitted to the Commission as part of the next annual report period. Serial number reports for new covered products are due sixty days after the annual effective mandatory labeling date for each product.

* * * * *

8. Section 305.11 is amended by revising the heading of paragraph (a), by revising paragraph (e), and by adding paragraph (f) to read as follows:

§ 305.11 Labeling for covered products.

(a) *Labels for covered products other than fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps (including incandescent reflector lamps), showerheads, faucets, water closets and urinals—.* * * *

* * * * *

(e) *Lamps.* (1) (i) Any covered product that is a compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(A) The number of lamps included in the package, if more than one;

(B) The design voltage of each lamp included in the package, if other than 120 volts;

(C) The light output of each lamp included in the package, expressed in average initial lumens;

(D) The electrical power consumed (energy used) by each lamp included in the package, expressed in average initial wattage;

(E) The life of each lamp included in the package, expressed in hours.

(ii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an incandescent reflector lamp), shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The light output, energy usage and life ratings shall be disclosed in terms of "lumens," "watts" and "hours" respectively, with the lumens, watts and hours rating numbers each appearing in the same type style and size and with the words "lumens," "watts" and "hours" each appearing in the same type style and size. The words "light output," "energy used" and "life" shall precede and have the same conspicuousness as both the rating numbers and the words "lumens," "watts" and "hours," except that the letters of the words "lumens," "watts" and "hours" shall be approximately 50% of the sizes of those used for the words "light output," "energy used" and "life" respectively.

(iii) The light output, energy usage and life ratings of any covered product that is a medium base compact fluorescent lamp or general service incandescent lamp (including an

incandescent reflector lamp), shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is other than 120 volts, the disclosures of the wattage, light output and life ratings shall in each instance be followed by the phrase "at 120 volts." Labels for lamps with design voltages other than 120 volts also may disclose the lamps' wattage, light output and life at the designed voltage (*e.g.*, "Light Output 1710 Lumens at 125 volts").

(iv) For any covered product that is an incandescent reflector lamp, the required disclosure of light output shall be given for the lamp's beam spread and be followed clearly and conspicuously by the phrase "at beam spread."

(v) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(vi) For any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), there shall be clearly and conspicuously disclosed on the principal display panel the following statement:

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

(vii) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the principal display panel shall disclose clearly and conspicuously, in the manner required by paragraph (e)(1) (i)–(iii) and (vi) of this section of the Rule, the lamp's wattage and light output at each of the lamp's levels of light output and the lamp's life measured on the basis of the filament that fails first.

(2) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter "E" printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled "E"] means this bulb meets Federal minimum efficiency standards.

If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

*See [Back, Top, Side] panel for details.

(i) For purposes of this section of the Rule, the encircled capital letter "E" shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed "conspicuous," in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the "UL" or "ETL" logos, whichever is larger.

(ii) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled "E" and with the statement described in paragraph (e)(2) of this section of the Rule, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled "E."

(3) Any manufacturer or private labeler who makes any representation on a label of any covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(4) Any cartons in which any covered products that are general service fluorescent lamps, medium base compact fluorescent lamps, or general service incandescent lamps (including incandescent reflector lamps), are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

(f) *Plumbing fixtures—(1) Showerheads and faucets.* Showerheads and faucets shall be marked and labeled as follows:

(i) Each showerhead and flow restricting or controlling spout end device shall bear a permanent legible marking indicating the flow rate, expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Except where impractical due to the size of the fitting, each flow rate disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each showerhead and faucet shall bear a permanent legible marking to identify the manufacturer. This marking shall be the trade name, trademark, or other mark known to identify the manufacturer. Such marking shall be located where it can be seen after installation.

(iii) Each showerhead and faucet shall be marked "A112.18.1M" to demonstrate compliance with the applicable ASME standard. The marking shall be by means of either a permanent mark on the product, a label on the product, or a tag attached to the product.

(iv) The package for each showerhead and faucet shall disclose the manufacturer's name and the model number.

(v) The package or any label attached to the package for each showerhead or faucet shall contain at least the following: "A112.18.1M" and the flow rate expressed in gallons per minute (gpm) or gallons per cycle (gpc), and the flow rate value shall be the actual flow rate or the maximum flow rate specified by the standards established in subsection (j) of section 325 of the Act, 42 U.S.C. 6295(j). Each flow rate disclosure shall also be given in liters per minute (Lpm) or liters per cycle (Lpc).

(2) *Water closets and urinals.* Water closets and urinals shall be marked and labeled as follows:

(i) Each such fixture (and flushometer valve associated with such fixture) shall bear a permanent legible marking indicating the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Except where impractical due to the size of the fixture, each flow rate disclosure shall also be given in liters per flush (Lpf). For purposes of this section, the marking indicating the flow rate will be deemed "legible," in terms of placement, if it is located in close proximity to the manufacturer's identification marking.

(ii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked with the manufacturer's name or trademark or, in the case of private

labeling, the name or registered trademark of the customer for whom the unit was manufactured. This mark shall be legible, readily identified, and applied so as to be permanent. The mark shall be located so as to be visible after the fixture is installed, except for fixtures built into or for a counter or cabinet.

(iii) Each water closet (and each component of the water closet if the fixture is comprised of two or more components) and urinal shall be marked at a location determined by the manufacturer with the designation "ASME A112.19.2M" to signify compliance with the applicable standard. This mark need not be permanent, but shall be visible after installation.

(iv) The package, and any labeling attached to the package, for each water closet and urinal shall disclose the flow rate, expressed in gallons per flush (gpf), and the water use value shall be the actual water use or the maximum water use specified by the standards established in subsection (k) of section 325 of the Act, 42 U.S.C. 6295(k). Each flow rate disclosure shall also be given in liters per flush (Lpf).

(v) With respect to any gravity tank-type white 2-piece toilet offered for sale or sold before January 1, 1997, which has a water use greater than 1.6 gallons per flush (gpf), any printed matter distributed or displayed in connection with such product (including packaging and point-of-sale material, catalog material, and print advertising) shall include, in a conspicuous manner, the words "For Commercial Use Only."

(3) *Annual operating cost claims for covered plumbing products.* Until such time as the Commission has prescribed a format and manner of display for labels conveying estimated annual operating costs of covered showerheads, faucets, water closets, and urinals or ranges of estimated annual operating costs for the types or classes of such plumbing products, the Act prohibits manufacturers from making such representations on the labels of such covered products. 42 U.S.C. 6294(c)(8). If, before the Commission has prescribed such a format and manner of display for labels of such products, a manufacturer elects to provide for any such product a label conveying such a claim, it shall submit the proposed claim to the Commission so that a format and manner of display for a label may be prescribed.

9. Section 305.13 is amended by revising paragraph (a) to read as follows:

§ 305.13 Promotional materials displayed or distributed at point of sale.

(a) (1) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets, and urinals) shall clearly and conspicuously include in such printed material the following required disclosure:

Before purchasing this appliance, read important energy cost and efficiency information available from your retailer.

(2) Any manufacturer, distributer, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), and who makes any representation in such promotional material regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use.

(3) Any manufacturer, distributor, retailer, or private labeler who prepares printed material for display or distribution at point of sale concerning a covered showerhead, faucet, water closet, or urinal shall clearly and conspicuously include in such printed material the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

* * * * *

10. Section 305.14 is amended by revising paragraph (a) introductory text, by revising paragraph (d), and by adding paragraph (e), to read as follows:

§ 305.14 Catalogs.

(a) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product (except fluorescent lamp ballasts, fluorescent lamps, medium base compact fluorescent lamps, incandescent lamps including incandescent reflector lamps, showerheads, faucets, water closets or urinals) shall include in such catalog, on each page that lists the covered product, the following information required to be disclosed on the label:

* * * * *

(d) (1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a compact fluorescent lamp or a general service incandescent lamp (including an incandescent reflector lamp), all the information concerning that lamp, except for the number of units in the package, required by § 305.11(e)(1) of this Rule to be disclosed on the lamp's label; *provided, however,* that, for a catalog not distributed to consumers for making purchases for personal use or consumption by individuals, the disclosures need not comply with the format provisions of § 305.11 (e)(1)(ii) of this Rule, but must be clear and conspicuous; and (ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.11(e)(2) of this Rule to be disclosed on the lamp's label according to the following format:

(A) The encircled "E" shall appear with each lamp entry; and

(B) The accompanying statement shall appear at least once on the page.

(2) Any manufacturer, distributer, retailer, or private labeler who advertises a covered product that is a general service fluorescent lamp, medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp), in a catalog who makes any representation in such catalog regarding the cost of operation of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, e.g., purchase price, unit cost of electricity, hours of use, patterns of use.

(e) Any manufacturer, distributor, retailer, or private labeler who advertises a covered showerhead, faucet, water closet or urinal in a catalog, from which it may be purchased, shall include in such catalog, on each page that lists the covered product, the product's water use, expressed in gallons and liters per minute (gpm/Lpm) or per cycle (gpc/Lpc) or gallons and liters per flush (gpf/Lpf) as specified in § 305.11(e).

11. Section 305.15 is amended by revising paragraph (b) to read as follows:

§ 305.15 Test data records.

* * * * *

(b) Upon notification by the Commission or its designated representative, a manufacturer or private labeler shall provide, within 30 days of the date of such request, the underlying test data from which the water use or energy consumption rate, the estimated annual cost of using each basic model, or the light output, energy usage and life ratings and, for fluorescent lamps, the color rendering index for each basic model or lamp type was derived.

* * * * *

12. Further, appendix K to part 305 of 16 CFR is amended by the addition of six Illustrations at the end, as follows:

* * * * *

BILLING CODE 6750-01-P

Lamp Packaging Disclosures

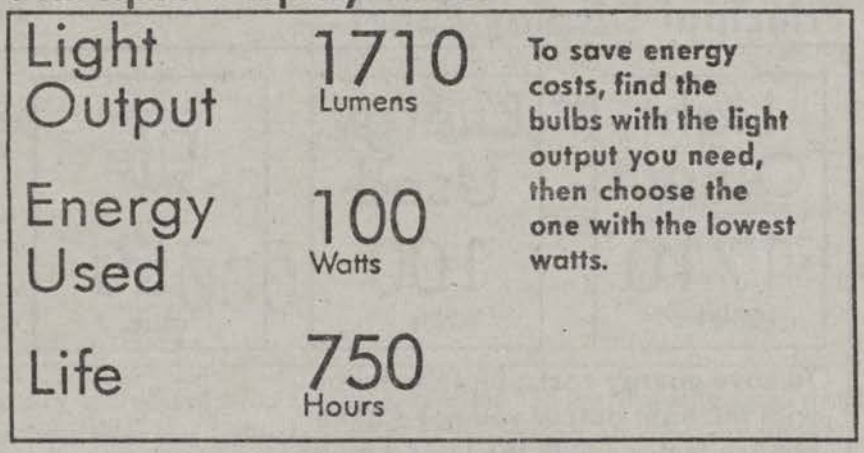
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

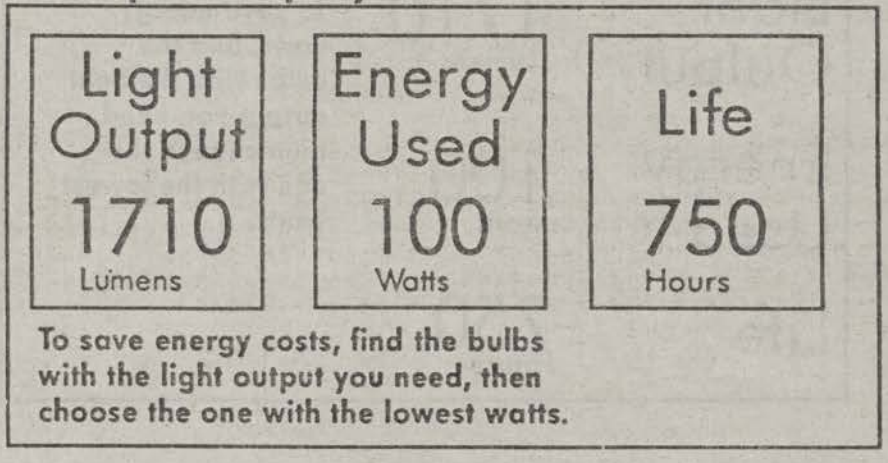
Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," and "hours" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel



Incandescent (non-reflector) Lamp Illustration

Lamp Packaging Disclosures

Specifications

- All required disclosures must be clear and conspicuous.
- The words "light output" must appear first in order, followed by the lumens number. The word "lumens" must be close to either "light output" or the lumens number.
- The words "energy used" must appear second in order, followed by the wattage number. The word "watts" must be close to either "energy used" or the wattage number.
- The word "life" must appear third in order, followed by the life in hours number. The word "hours" must be close to either "life" or the life in hours number.
- The numbers for light output, energy used, and life must be of equal size and in the same typestyle.
- The words "light output," "energy used," and "life" must be of equal size and in the same typestyle.
- The words "lumens," "watts," "hours," and "at beam spread" must be of equal size and in the same typestyle, but only approximately 50 percent of the size of the words "light output," "energy used," and "life."

Illustration

Note: This illustrates the elements and relative sizes of the required disclosures.

Principal Display Panel

Light Output
at beam spread
985
Lumens

Energy Used
75
Watts

Life
2,000
Hours

To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.

(E*)

* (E) means this bulb meets Federal minimum efficiency standards.

The explanatory statement next to the encircled "E" on the principal display panel above could be disclosed (clearly and conspicuously) on another panel, provided asterisks and the words "See [Back, Top, Side] panel for details" are used.

Incandescent Reflector Lamp Illustration

Lamp Packaging Disclosures

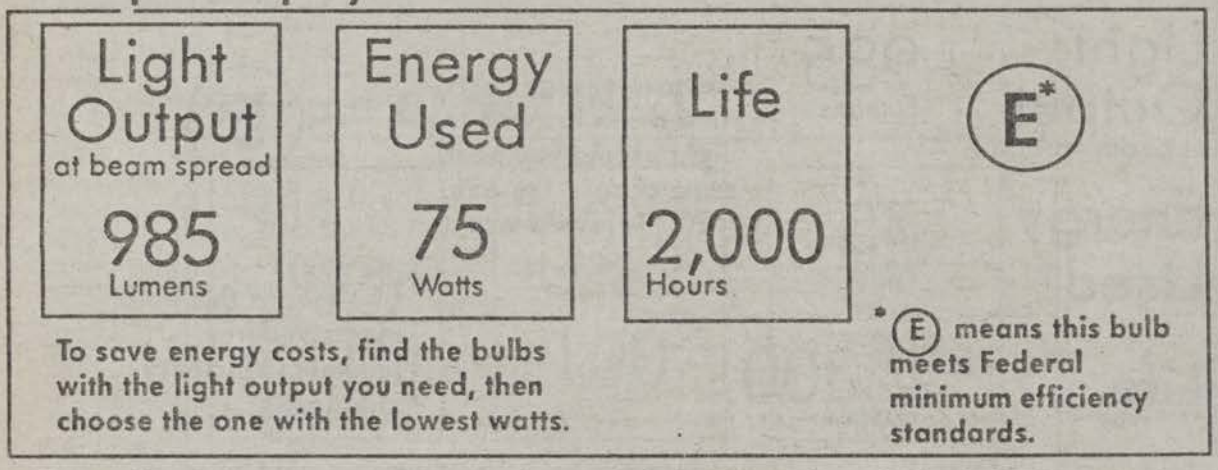
Specifications

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Principal Display Panel



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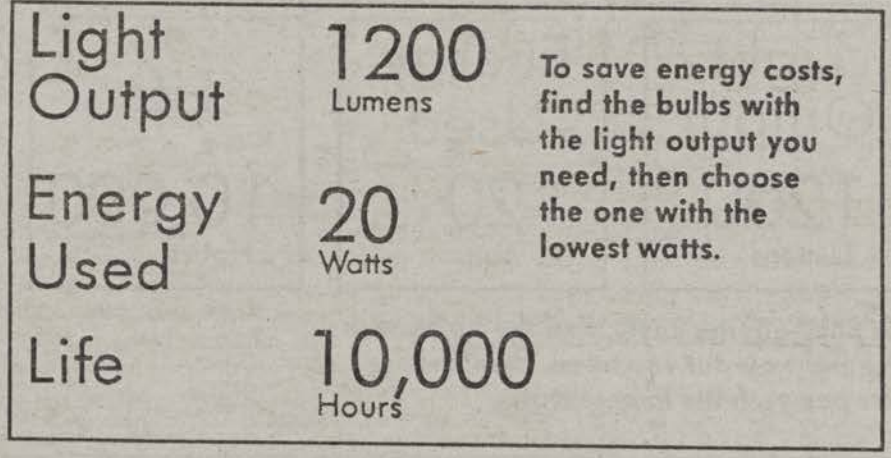
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Illustration

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Principal Display Panel



Compact Fluorescent Lamp Illustration

Lamp Packaging Disclosures

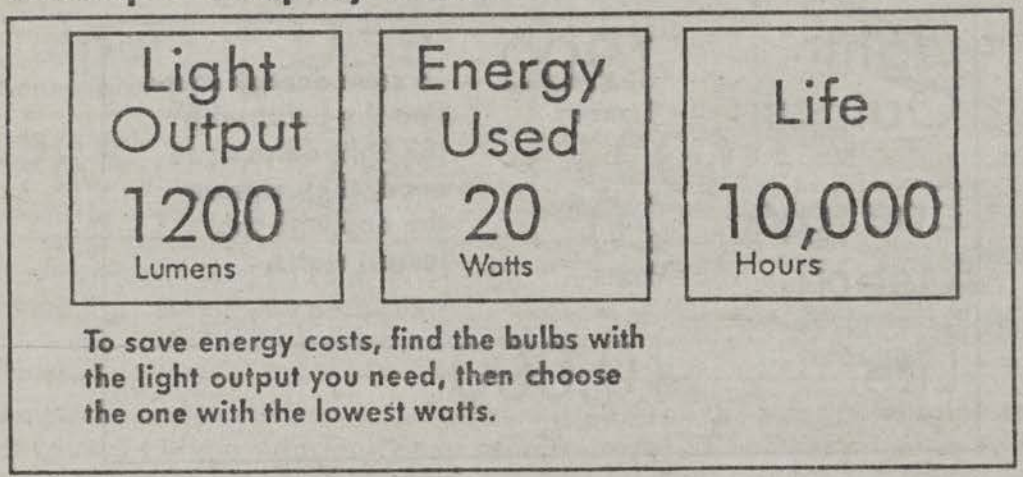
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Illustration

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Principal Display Panel



Compact Fluorescent Lamp Illustration

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By direction of the Commission.

Donald S. Clark,

Secretary.

Separate Statement of Commissioner Mary L. Azcuenaga Concurring in Part and Dissenting in Part

Amendments to the Appliance Labeling Rule to Include Lamps, Matter No. R611004

The Energy Policy and Conservation Act of 1975 ("EPCA"), as amended by the Energy Policy Act ("EPA 92"), imposes a number of regulatory requirements on "covered products" and provides a list clearly defining which products are covered products. The only lamp products on this list are "general service fluorescent lamps and incandescent reflector lamps." 42 U.S.C. 6292(a)(14). There is no indication in the legislative history that Congress intended that any other lamp products be considered covered products.

In issuing this rule, the Commission treats medium base compact fluorescent lamps and general service incandescent lamps as covered products. If Congress intended to have these products treated as covered products, it could have included them on the list of covered products. Alternatively, Congress could have given the Commission the authority to add products to the list of covered products under certain conditions, like the authority it has conferred on the Department of Energy. 42 U.S.C. 6292(a)(19). Because Congress neither defined these lamp products as covered products nor gave the Commission the authority to define them as covered products, these lamp products, in my view, cannot be treated as covered products under the rule amendments.

I dissent from the rule to the extent that it treats medium base compact fluorescent lamps and general service incandescent lamps as covered products.

[FR Doc. 94–11234 Filed 5–12–94; 8:45 am]

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