

December 17, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex N)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

RE: Comments on Proposed Rule 16 C.F.R. Part 305 [RIN 3084-AB03] Appliance Labeling Rule

To Whom It May Concern:

The Northeast Waste Management Officials' Association (NEWMOA), Interstate Education and Reduction Clearinghouse (IMERC) Committee on Product Labeling is providing the comments below on the proposed federal rule 16 C.F.R Part 305 [RIN 3084-AB03] Appliance Labeling Rule as published in the Federal Register Vol. 74, No. 216, November 10, 2009 (74 FR 57950). We commend the Federal Trade Commission for bringing forth this important rulemaking, and we support many of the proposals.

The IMERC Product Labeling Committee members (state environmental agencies in Connecticut, Louisiana, Maine, Massachusetts, Minnesota, New York, Rhode Island, Vermont, and Washington) prohibit the sale of certain mercury-added products unless they have a label indicating the product contains mercury and addressing proper disposal and/or recycling of that product. The states that require mercury-added product labeling meet regularly as the IMERC Product Labeling Committee to discuss issues related to implementing their product labeling legislation.

In October 2009, we provided the U.S. EPA CFL Workgroup with a background paper and a list of state labeling regulations summarizing the states' labeling requirements for compact fluorescent lamps (CFLs), and we are attaching a copy of each document. This background paper and list of labeling regulations should aid the Federal Trade Commission in your review process regarding inconsistencies between the proposed rule and existing states' product labeling laws. In addition, the paper provides lessons learned and discusses other product labeling issues that we recommend be considered as part of your rulemaking.

The IMERC member states' comments below are based on our comparison of the labeling requirements in this FTC proposed rule and our states' laws.

General comment:

We note that the proposed rule does not discuss the issue of state pre-emption, and we therefore assume that this federal rule would not pre-empt state product labeling laws.

We also firmly believe that federal pre-emption of state product labeling laws should not be allowed.

Section IV Proposed Rule Changes, B. Proposed Package Labeling, 1. Front and Rear Panel Format pg. 57954:

“The Commission seeks comment on whether the rule should require a front and back label format as proposed. The Commission also seeks comment on whether the Lighting Facts label will fit on existing packages and whether the FTC needs to specify an alternative format for packages that are too small for the proposed label.”

COMMENT ON PACKAGE LABELING: The IMERC states would like to document for the record that the IMERC Product Labeling Committee Member States have existing laws covering alternative labels for product and packaging labels as described on page three of the attached background paper. **The IMERC states recommend that any “alternative format” be at least as informative as the proposed label by clearly stating that the CFL contains mercury and should be disposed and/or recycled according to all federal, state, and local laws.**

Section XIII Proposed Rule Language

16 C.F.R. Part 305 – Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required under the Energy Policy and Conservation Act (“Appliance Labeling Rule”)

§305.15 Labeling for lighting products (b)(4)(ii)(F), pg. 57966:

“The minimum font sizes and line thicknesses as illustrated in Prototype Labels 6 and 7 to Appendix L. No information on the Lighting Facts label shall be in type smaller than 6 point font.”

COMMENT ON PACKAGE LABELING: The IMERC states have reviewed and ruled on the issue of font size in many product labeling requests, and several states have statutory requirements for font sizes 10 point font or larger. Some states would consider any font less than 10 point font to be an alternative and would require the manufacturer to submit an alternative plan to explain the reason for the smaller font. The IMERC states have found that any font size less than 8 to 10 point font is not legible to the average consumer. **Therefore, we recommend that the rule require that the type be no smaller than 10 point font.**

§305.15 Labeling for lighting products (b)(5)(ii), pg. 57966:

“For general service lamps containing mercury, the following statement: “Contains mercury, See epa.gov/bulbrecycling or 1-800-XXX-XXXX.””

COMMENT ON PRODUCT (BULB) LABELING: The IMERC states agree with the proposed rule labeling statement above, however the FTC rule does not clearly state a minimum font size for the product label. The IMERC states recommend the same font size for the bulb that we recommend for the packaging, i.e., 10 point font or larger. Any alternative labels should be at least as informative as the label above, i.e., state that the

lamp contains mercury and discuss disposal and/or recycling requirements for these lamps. While in the past, the IMERC states have allowed for the chemical symbol Hg in a circle for some lamps, the states have received much feedback from consumers noting that they had no idea what the Hg symbol meant. This shows that the "Hg" label is ineffective in communicating that the label contains mercury. **We recommend that the symbol "Hg" alone not be allowed and any alternative clearly state "mercury".**

Background on NEWMOA and IMERC:

The Northeast Waste Management Officials' Association (NEWMOA) is a nonprofit, nonpartisan interstate association that has a membership composed of the hazardous waste, solid waste, waste site cleanup, and pollution prevention program directors for the environmental agencies in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont. NEWMOA was established by the Governors of the New England states as an official regional organization to coordinate interstate hazardous and solid waste, pollution prevention, and waste site cleanup activities, and was formally recognized by the U.S. Environmental Protection Agency (EPA) in 1986. NEWMOA's mission is to develop and sustain an effective partnership of states that helps achieve a clean, healthy, and sustainable environment by exploring, developing, promoting, and implementing environmentally sound solutions for:

- Reducing materials use and preventing pollution and waste,
- Properly reusing and recycling discarded materials that have value,
- Safely managing solid and hazardous wastes, and
- Remediating contaminated sites.

The group fulfills this mission by providing a variety of support services that:

- facilitate communication and cooperation among member states, between the states and the U.S. EPA, and between the states and other stakeholders;
- provide research on and evaluation of emerging issues, best practices, and data to help state programs maximize efficiency and effectiveness; and
- facilitate development of regional approaches to solving critical environmental problems.

IMERC is a program of NEWMOA. In 2001, NEWMOA launched the Interstate Mercury Education and Reduction Clearinghouse to provide:

- ongoing technical and programmatic assistance to states that have enacted mercury education and reduction legislation
- a single point of contact for industry and the public for information on mercury-added products and member states' mercury education and reduction programs

The IMERC state members include California, Connecticut, Illinois, Louisiana, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Rhode Island, Vermont, and Washington.

The IMERC Product Labeling Committee would like to thank the FTC for this opportunity to comment on this worthwhile rulemaking.

Sincerely,

A handwritten signature in cursive script, appearing to read "Enid J. Mitnik".

Enid J. Mitnik
Maine Department of Environmental Protection
IMERC Chair

Enclosures (2):
IMERC Labeling Background Paper
IMERC State Labeling Regulations

cc:

Robert Hannon, Connecticut Department of Environmental Protection
Chris Piehler, Louisiana Department of Environmental Quality
Sarah Weinstein, Massachusetts Department of Environmental Protection
John Gilkeson, Minnesota Pollution Control Agency
Peter Pettit, New York Department of Environmental Conservation
Beverly Migliore, Rhode Island Department of Environmental Management
Gary Gulka, Vermont Department of Environmental Conservation
Maria Victoria-Peeler, Washington Department of Ecology
Ellie McCann, U.S. Environmental Protection Agency,
Office of Pollution Prevention and Toxics