

Dissenting Statement of Commissioner Christine S. Wilson
Notice of Proposed Rulemaking to Energy Labeling Rule

May 11, 2022

Today the Commission announces proposed required updates to the compatibility ranges in the Energy Labeling Rule. Since 2015, the Commission has sought comment on provisions of this Rule on several occasions, and has made numerous amendments to the Rule.¹ On each occasion, I have urged the Commission to seek comment on the more prescriptive aspects of this Rule. My concerns about the highly prescriptive nature of this Rule are detailed in my prior dissents.²

In March 2020, we sought comment on some of the more prescriptive provisions of the Energy Labeling Rule³ and received many interesting and thoughtful comments.⁴ Rather than act on these comments or proposals, though, the Commission chose to finalize only proposals necessary to conform to Department of Energy changes.⁵

¹ See 81 Fed. Reg. 62861 (Sept. 12, 2016) (seeking comment on proposed amendments regarding portable air conditioners, ceiling fans, and electric water heaters); 84 Fed. Reg. 9261 (Mar. 14, 2019) (proposing amendments to organize the Rule's product descriptions); 85 Fed. Reg. 20218 (Apr. 10, 2020) (seeking comment on proposed amendments regarding central and portable air conditioners).

² See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Amendments to the Energy Labeling Rule (Oct. 6, 2021), https://www.ftc.gov/system/files/documents/public_statements/1597166/commission_wilson_dissenting_statement_energy_labeling_rule_2021-10-04_final.pdf.

³ See Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020), https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling_rule.pdf.

⁴ See, e.g., Air-Conditioning, Heating and Refrigeration Institute (AHRI) Comment (#33-09), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0009>; Association of Home Appliance Manufacturers (AHAM) Comment (#33-04), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0004>; Goodman Manufacturing Comment (#33-08), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0008>.

⁵ See Dissenting Statement of Commissioner Christine S. Wilson on Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf.

Today, we again make necessary changes to the Rule but fail to take the opportunity to revisit the Rule's highly prescriptive requirements. I acknowledge that the FTC is required to publish an Energy Labeling Rule, that manufacturers are required to post an Energy Label on their products and that consumers likely benefit from some uniformity of information in these labels. But it is unnecessary for our labeling guidance to include highly prescriptive requirements that detail the trim size dimensions for labels, including the precise width (between 5 1/4" to 5 1/2") and length (between 7 3/8" and 7 5/8"); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.⁶

The Notice we issue today includes 13 pages of prototype labels, complete with the array of requirements described above. For example, Prototype Label 10 for Vertical Rectangular Television Labels specifies not only the categories of information to be displayed, but also the precise font and size in which that information is to be printed. The Estimated Yearly Energy Cost must appear in 12/14.4 Arial Narrow Bold. And while the phrase "US Government" at the top of the label must be printed in 7/9 pt Arial Narrow, "visit [ftc.gov/energy](https://www.ftc.gov/energy)" at the bottom must be printed in 8 pt Arial Narrow. As I have indicated on previous occasions, we could identify the categories of information to be disclosed clearly and conspicuously, and then allow companies to create appropriate labels.

Once again, I urge the Commission to act on the comments we received in 2020, eliminate the more prescriptive aspects of the Rule, and maximize the positive impact of this Rule for consumers. As long as we are statutorily mandated to maintain this Rule, we should endeavor to make it beneficial for consumers and competition.

Regrettably, the Commission once again has chosen to forego this route, instead making only minor changes to the Rule necessary for conformity. Accordingly, I dissent.

⁶ See e.g., 16 C.F.R. §§ 305.13, 305.20 (specifying such requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters, room air conditioners, and pool heaters (305.13) and for central air conditioners, heat pumps, and furnaces (305.20)).