

Dissenting Statement of Commissioner Christine S. Wilson
Energy Labeling Rule
Matter No. R611004
October 22, 2019

I dissent from the Commission's decision to issue a Federal Register Notice (FRN) announcing changes to the Energy Labeling Rule. When the Commission published a Notice of Proposed Rulemaking (NPRM) in December 2018 first proposing these changes to the Energy Labeling Rule, I also dissented.¹ I noted at that time my appreciation for staff's efforts to undertake a review of this Rule to improve its organization and clarity. Given the highly prescriptive requirements in this Rule, though, I expressed my preference that the Commission use this opportunity to rethink its approach to the scope and detail of this Rule's requirements.

The Commission chose to seek comment on limited changes intended to improve the Rule's organization, remove obsolete references, and eliminate unnecessary cross-references. The comments we received support these changes and the staff has recommended that the Commission issue a FRN implementing them. I do not doubt that these changes will improve the clarity of the Rule.

I cannot, however, vote to approve the issuance of this Rule in its current form, as I believe it goes far beyond our statutory mandate to issue a rule governing the energy labeling of appliances.² I continue to believe it is unnecessary for the Rule to prescribe the weight of the paper (58 pounds per 500 sheets) a manufacturer must use when printing the EnergyGuide label and the minimum peel capacity of the adhesive to be used to affix the label to the appliance. I believe that the Commission can provide guidance on labeling requirements without dictating such minutiae. Freeing businesses from unnecessarily prescriptive requirements benefits consumers. In my prior dissent I noted the dramatic changes that occurred when the airline industry was freed from highly prescriptive government regulations. The Commission should have approached the review of this Rule using the same principle – to leave firms room to experiment within the bounds set by applicable law.

While I take no position on their comments, I note that two of the associations that commented on the Commission's NPRM indicated areas where a reconsideration of some of the Rule's requirements could benefit businesses and consumers. The Association of Home Appliance (AHAM) Manufacturers requested that the Commission revisit the requirement that an adhesive label must be used in labeling of clothes washers, suggesting that a hangtag might be more visible to consumers.³ The Air-Conditioning, Heating, and Refrigeration Institute (AHRI) urged the Commission to consider the elimination of physical labels on central air conditioners, heat pumps,

¹ Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>

² Energy Policy and Conservation Act, 42 U.S.C. 6295.

³ See Comment Submitted by the Association of Home Appliance Manufacturers (Feb. 19, 2019), <https://www.ftc.gov/policy/public-comments/2019/02/19/comment-00016>.

and furnaces explaining that the labels “impose unnecessary costs on manufacturers” and, given the circumstances under which consumers typically purchase these items, provide little utility to the purchase decision.⁴

The Commission has a laudable practice of conducting regular reviews of our Rules and Guides on a ten-year schedule. According to the schedule announced earlier this year, the Energy Labeling Rule is scheduled for a full review in 2025.⁵ I urge the Commission to move up the review of this Rule. The Commission has forsaken some of the invasive regulatory zeal that earned it the sobriquet of the “second most powerful legislature in Washington,”⁶ but avoiding new mistakes is not sufficient. The Commission should consider the AHAM and AHRI suggestions and conduct a comprehensive review of this Rule with a deregulatory mindset.

⁴ See Comment Submitted by the Air Conditioning, Heating, and Refrigeration Institute (Apr. 15, 2019), <https://www.regulations.gov/document?D=FTC-2019-0015-0007>.

⁵ Modified Ten-Year Regulatory Review Schedule and Intent to Request Public Comments (May 2, 2019), <https://www.ftc.gov/policy/federal-register-notices/16-cfr-chapter-i-modified-ten-year-regulatory-review-schedule-0>

⁶ See, e.g., J. Howard Beales III & Timothy J. Muris, FTC Consumer Protection at 100: 1970s Redux or Protecting Markets to Protect Consumers?, 83 Geo. Wash. L. Rev. 2157, 2159 (2015) (quoting Jean Carper, The Backlash at the FTC, Wash. Post, Feb. 6, 1977, at C1).