

Concurring Statement of Commissioner Christine S. Wilson
Energy Labeling Rule
March 20, 2020

I support the Commission's decision to issue a Federal Register Notice seeking comment on the Energy Labeling Rule. The Notice seeks comment on proposed requirements for the EnergyGuide labels for portable air conditioners and proposes conforming amendments to reflect upcoming Department of Energy changes to efficiency descriptors for central air conditioners. In addition, the Notice seeks comment on the more highly detailed and prescriptive aspects of the Rule. In a prior request for comment on this Rule, I questioned whether these prescriptive requirements were necessary and encouraged the Commission to rethink its approach to the scope and detail of these requirements.¹ I am pleased that the Commission is seeking comment on this issue.

Specifically, this Notice seeks comment on whether a more flexible approach to labeling obligations would provide sufficient guidance to businesses while simultaneously fulfilling the Commission's mandate under the statute.² The current requirements are highly prescriptive. For example, the Rule specifies the trim size dimensions for labels, including the precise width and length (e.g. width 5 ¼ to 5 ½ inches (13.34 cm. to 13.97 cm.)); the number of picas for the copy set (between 27 and 29); the type style and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets (25" x 38") or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch. These highly prescriptive requirements depart significantly from the approach employed by other Commission Rules and Guides that contain labeling requirements. For example, the Rules and Regulations Under the Textile Fiber Products Identification Act provide simply that the "label shall be conspicuous and shall be of such durability as to remain attached to the product and its package throughout any distribution, sale, resale and until sold and delivered to the ultimate consumer."³ The Commission's Guides for Select Leather and Imitation Leather Products similarly require that the label "should be affixed so as to remain on or attached to the product until received by the consumer purchaser."⁴

While I have great faith in markets to produce the best results for consumers, the prerequisite of healthy competition are sometimes absent. In limited situations, regulations can help address market failures. But for regulations to succeed in restoring market forces, they must eliminate the market failure in the most narrow and targeted manner possible. Regulatory "fixes" that extend beyond simply correcting the problem may upset the balance of forces in the rest of the market and, ultimately, may harm consumers.⁵ That is why I share the President's goal of eliminating unnecessary and burdensome regulatory requirements.⁶

¹ See 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 16 C.F.R. Part 303.15.

⁴ 16 C.F.R. Part 24.2(g).

⁵ See, e.g., Howard Beales et al., The Regulatory Transparency Project of the Federalist Society, The Proper Role of Rules in a Gloriously Unruly Economy, Aug. 28, 2019, <https://regproject.org/wp->

The Trump administration has called for agencies to carefully review regulations. I am proud that the FTC has had a long tradition of proactively reviewing our rules to ensure our regulatory program protects consumers while seeking to avoid the unnecessary imposition of costs on businesses.⁷ In the last few years, the FTC has repealed or streamlined significantly a number of Rules and Guides. For example, the FTC recently repealed the Picture Tube Rule, which the Commission determined was no longer necessary to prevent deceptive claims regarding the size of television screens.⁸ The FTC also revised the Jewelry Guides, removing outdated provisions as well as lifting restrictions on the marketing of gold-content products.⁹ Just last year, the FTC rescinded the Nursery Guides, rules governing the sale of outdoor plants, because they had outlived their utility for consumers and industry.¹⁰

I applaud the FTC's regular, systematic review of all of its rules and guides on a rotating basis. When the Commission conducts a review of a Rule or Guide, we regularly ask if the regulation is still necessary. We ask about the costs and benefits to businesses and consumers; conflicts with state, local, federal or international laws; whether consumer perceptions have changed; and the effect, if any, that changes in relevant technological, economic or environmental conditions have had on Rules and Guides. This process lends transparency to the Commission's regulatory review. The Commission is receptive and responsive to the comments, often making regulatory revisions to address changing market forces.

Freeing businesses from unnecessarily prescriptive requirements benefits consumers. Although the Commission long ago abandoned some of the most egregious instances of invasive regulatory zeal that earned it the sobriquet of the "second most powerful legislature in Washington,"¹¹ forswearing new mistakes is not enough. Accordingly, I am pleased to see the Agency reviewing the more prescriptive aspects of this Rule and am committed to an ongoing practice of identifying opportunities to streamline our regulations by updating, modifying, or eliminating outdated, burdensome, or unnecessary provisions.

[content/uploads/RegulatoryProcess-The-Role-of-Rules.pdf](#) (discussing large unintended consequences of burdensome regulations).

⁶ Executive Order 13,771, 82 Fed. Reg. 9339 (Feb. 3, 2017) (imposing a rule that for every new regulation created, two must be eliminated).

⁷ In the 1990s, the Commission rescinded 24 Guides (addressing, *e.g.*, fallout shelters, the decorative wall paneling industry, and the dog and cat food industry) and 13 trade rules, including those concerning the misuse of "automatic" or terms of similar import as descriptive of household electric sewing machines; deceptive advertising and labeling as to size of tablecloths and related products; and the Frosted Cocktail Glass Rule.

⁸ <https://www.govinfo.gov/content/pkg/FR-2018-10-09/pdf/2018-21803.pdf>

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https://www.ftc.gov/system/files/documents/public_statements/1393857/g71001_jewelry_guides_statement_of_basis_and_purpose_final_8-8-18.pdf.

¹⁰ <https://www.ftc.gov/news-events/press-releases/2019/06/ftc-approves-proposal-rescinding-nursery-guides>

¹¹ 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).