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George Gonzalez,

Acting Manager, Rules and Regulations Group.

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FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084-AB15]

Energy Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) proposes updates to comparability ranges and sample labels for central air conditioners in the Energy Labeling Rule (“Rule”).

DATES: Comments must be received on or before August 2, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment, and file it online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail it to: Federal Trade Commission, Office of the Secretary, Suite CC-5610 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Energy Labeling Rule

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,¹ pursuant to the Energy Policy and Conservation Act of 1975 (“EPCA”).² The Rule requires energy labeling for

major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room and portable air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three main disclosures: Estimated annual energy cost, a product’s energy consumption or energy efficiency rating as determined by Department of Energy (“DOE”) test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule’s reporting requirements.³

II. Proposed Updated Ranges for Central Air Conditioners

The Commission proposes to update the comparability ranges for central air conditioners to ensure manufacturers have information available for the upcoming transition to new efficiency descriptors required by DOE. On February 12, 2021 (86 FR 9274), the Commission published conforming Rule amendments reflecting new DOE efficiency descriptors on central air conditioner labels to ensure the Rule’s consistency with DOE requirements, which become effective on January 1, 2023.⁴ In the February Rule, the Commission stated it would update ranges in appendices H and I, and the sample labels in appendix L, once new efficiency numbers became available. The Commission now proposes to amend the range tables (appendices H and I) and sample labels in the Rule (appendix L) using new information from the Air-Conditioning, Heating, &

Refrigeration Institute (AHRI) and DOE staff input.⁵ As the Commission stated in its February 2021 Rule (86 FR at 9279), manufacturers may begin using the new range information prior to January 1, 2023, in a manner consistent with DOE guidance once the FTC issues the final updates to appendices H and I.

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule’s existing information collection requirements through December 31, 2022 (OMB Control No. 3084-0069). The proposed amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. As explained elsewhere in this document, the proposed amendments merely update the Rule’s appendices to include revised comparability ranges and sample labels for central air conditioners based on more recent data. The proposed amendments do not significantly change the substance or frequency of the recordkeeping, disclosure, or reporting requirements. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the RFA (5 U.S.C. 605(b)), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

⁵ AHRI is a trade association representing central air conditioner manufacturers.

¹ 44 FR 66466 (Nov. 19, 1979).

² 42 U.S.C. 6294. EPCA also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

³ 16 CFR 305.10.

⁴ In 2017, DOE announced changes to the rating methods and associated efficiency descriptors for central air conditioners (e.g., from “Seasonal Energy Efficiency Ratio (SEER)” to “Seasonal Energy Efficiency Ratio 2 (SEER2)”). 82 FR 1786 (Jan. 6, 2017); and 82 FR 24211 (May 26, 2017).

V. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 2, 2021. Write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to

the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot

redact or remove it unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before August 2, 2021. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

VII. Other Matters

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Commission proposes to amend part 305 of title 16 of the Code of Federal Regulations as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)

- 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

- 2. Revise appendix H to part 305 to read as follows:

Appendix H to Part 305—Cooling Performance for Central Air Conditioners

Manufacturer’s rated cooling capacity (btu’s/hr)	Range of SEER2’s	
	Low	High
Single Package Units		
Central Air Conditioners (Cooling Only): All capacities	13.4	19
Heat Pumps (Cooling Function): All capacities	13.4	19
Split System Units		
Central Air Conditioner models allowed only in northern states (listed in § 305.20(g)(13)) (Cooling Only): All capacities	13.4	27
Central Air Conditioner models allowed in all states (Cooling Only):		
All capacities	13.8	27
Heat Pumps (Cooling Function): All capacities	14.3	42
Small-duct, high-velocity Systems	12	15

Manufacturer's rated cooling capacity (btu's/hr)	Range of SEER2's	
	Low	High
Space-Constrained Products		
Central Air Conditioners (Cooling Only): All capacities	11.7	13.7
Heat Pumps (Cooling Function): All capacities	11.9	13.8

■ 3. Revise appendix I to part 305 to read as follows:

Appendix I to Part 305—Heating Performance and Cost for Central Air Conditioners

Manufacturer's rated heating capacity (btu's/hr.)	Range of HSPF2's	
	Low	High
Single Package Units		
Heat Pumps (Heating Function): All capacities	6.7	8.4
Split System Units		
Heat Pumps (Heating Function): All capacities	7.5	14.6
Small-duct, high-velocity Systems	6.1	7.5
Space-Constrained Products		
Heat Pumps (Heating Function): All capacities	6.3	6.5

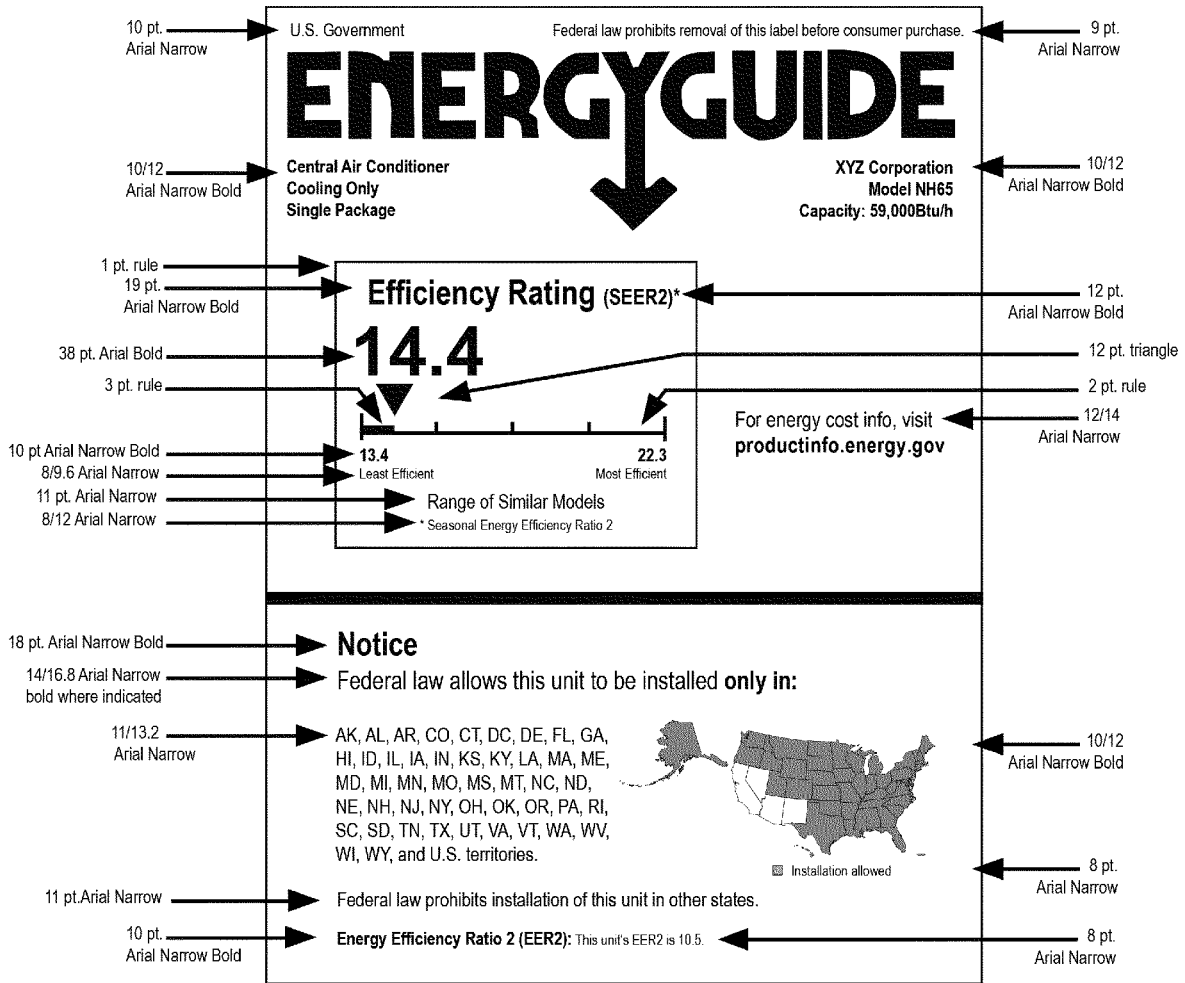
■ 4. Amend appendix L to part 305 by revising Prototype Label 3, Prototype

Label 4, Sample Label 7, and Sample Label 8 to read as follows:

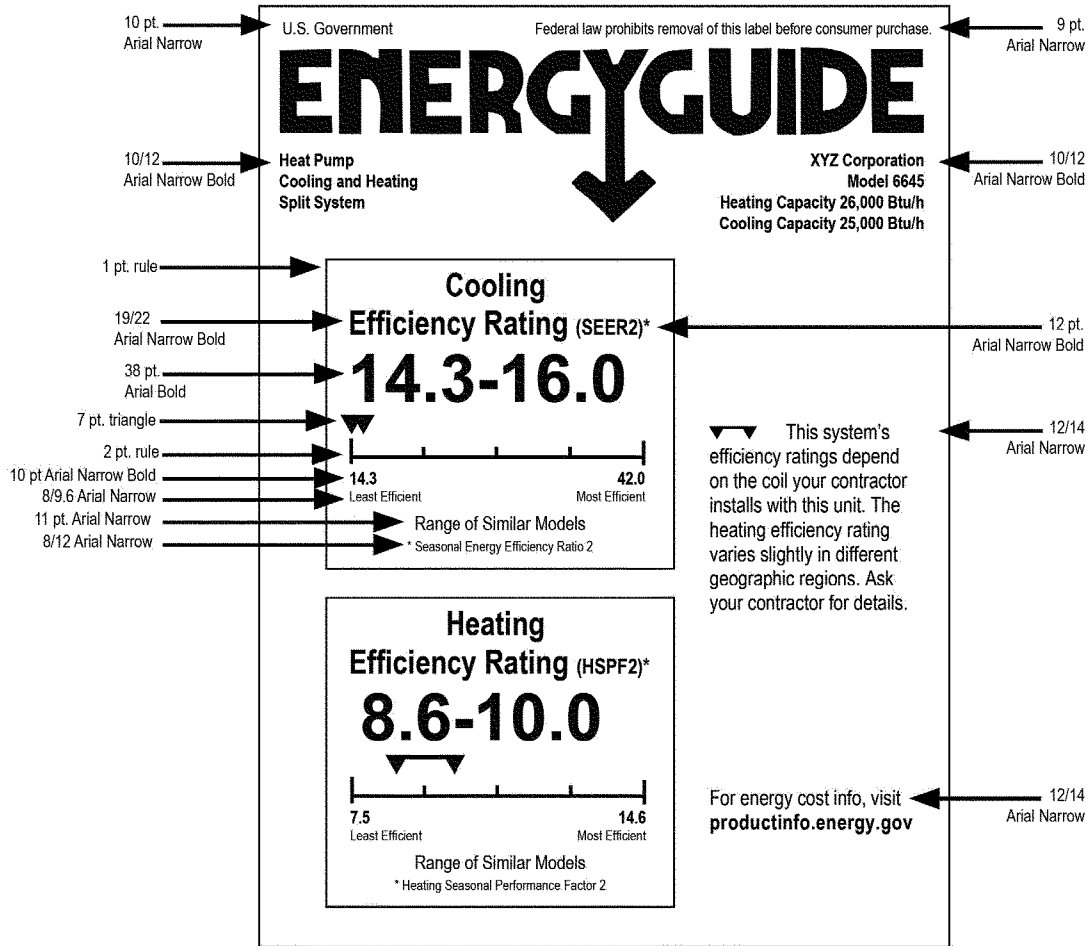
Appendix L to Part 305—Sample Labels

* * * * *

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Prototype Label 3 – Single-Package Central Air Conditioner



Prototype Label 4 – Split-system Heat Pump

* * * * *

U.S. Government Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model NH65

Efficiency Rating (SEER2)*

14.1

13.4 27.0
Least Efficient Most Efficient

Range of Similar Models
* Seasonal Energy Efficiency Ratio 2

For energy cost info, visit productinfo.energy.gov

* Your air conditioner's efficiency rating may be better depending on the coil your contractor installs.

Notice

Federal law allows this unit to be installed **only in:**

AK, CO, CT, ID, IL, IA, IN, KS, MA, ME, MI, MN, MO, MT, ND, NE, NH, NJ, NY, OH, OR, PA, RI, SD, UT, VT, WA, WV, WI, WY, and U.S. territories.

■ Installation allowed

Federal law prohibits installation of this unit in other states.

Energy Efficiency Ratio 2 (EER2): This unit's EER2 is 11.6.


Sample Label 7 – Split-system Central Air Conditioner

U.S. Government Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

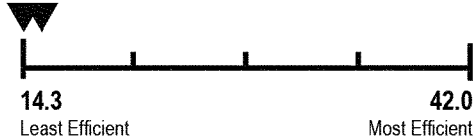
**Heat Pump
Cooling and Heating
Split System**

**XYZ Corporation
Model 6645
Heating Capacity 26,000 Btu/h
Cooling Capacity 25,000 Btu/h**



**Cooling
Efficiency Rating (SEER2)***

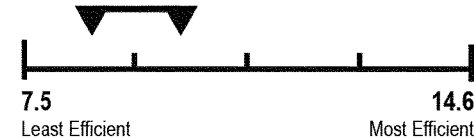
14.3-16.0



Range of Similar Models
* Seasonal Energy Efficiency Ratio 2

**Heating
Efficiency Rating (HSPF2)***

8.6-10.0



Range of Similar Models
* Heating Seasonal Performance Factor 2

▼▼ This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating varies slightly in different geographic regions. Ask your contractor for details.

For energy cost info, visit productinfo.energy.gov

Sample Label 8 – Split-system Heat Pump

BILLING CODE 6750-01-C

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By direction of the Commission.

April J. Tabor,
Secretary.

Note: The following statement will not appear in the Code of Federal Regulations.

**Dissenting Statement of Commissioner
Christine S. Wilson**

Today the Commission announces required changes to the Energy Labeling Rule but makes no other changes to the Rule. Since 2015, the Commission has sought comment on provisions of this Rule at least three times, and has made numerous amendments.¹ This

¹ See 81 FR 62861 (Sept. 12, 2016) (seeking comment on proposed amendments regarding

piecemeal approach has clarified the Rule's requirements—and I appreciate FTC staff's efforts to keep this Rule clear and current—but the Commission can and should do more. For the reasons described below, I dissent.

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

I have repeatedly urged the Commission² to seek comment on the more prescriptive aspects of this Rule. As I have noted in prior statements, the Rule includes highly prescriptive requirements detailing the trim size dimensions for labels, including the precise width (between 5¹/₄" and 5¹/₂") and length (between 7³/₈" and 7⁵/₈"); 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.³ For example, the label example attached to the Rule specifies not only the categories of information to be displayed, but also the precise font and point size in which that information is to be printed. For example, the cooling efficiency number must appear in 38 pt. Arial Narrow Bold. And while the phrase "US Government" at the top must be printed in 10 pt. Arial Narrow, the text next to it that reads "Federal law prohibits removal of this label before consumer purchase" must be printed in 9 pt. Arial Narrow. See Attachment 1 (Labeling Requirements).

The Energy Labeling Rule exemplifies the era in which it was created. The FTC promulgated the Rule in the 1970s, an era when the agency was engaged in prolific and highly prescriptive rulemaking.⁴ As I have

noted previously,⁵ no area of commerce was too straightforward or mundane to escape the Commission's notice:

- The Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars⁶ addressed failures to disclose "instruments having bulges on the tubes which simulate prismatic instruments are not prismatic instruments or do not contain complete prism systems" and provided detailed definitions of six types of binoculars and field glasses.

- The Trade Regulation Rule concerning Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies included a Commission conclusion that "the failure to disclose that skin irritation may result from body contact with glass fiber drapery and curtain fabrics, and clothing or other articles which have been washed with such glass fiber products or in containers previously used for washing such products when that container has not been cleansed of glass particles, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business from competitors whose products may be washed or handled without the resulting irritation."⁷

- The Guides for the Ladies' Handbag Industry addressed the use of the terms "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant;" representations that a product is colored,

Standard of Unfairness, 11 Akron Law Rev. 1 (1978) (explaining that the judicial reversals of FTC regulations resulted from a failure to establish an adequate legal basis for the regulations), available at: <https://ideaexchange.uakron.edu/akronlawreview/vol11/iss1/1/>.

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>; See 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.

³ See 16 CFR 305.13 and 305.20.

⁴ See, e.g., Timothy J. Muris, Paper: Will the FTC's Success Continue?, George Mason Law & Economics No. 18 (Sept. 24, 2018) (discussing the successes and failures of the FTC's enforcement efforts including the aggressive rulemaking activities in the 1970s), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254294; Timothy J. Muris, Rules Without Reason, AEI J. on Gov't and Society (Sept/Oct. 1982) (describing failed FTC rulemaking proceedings), available at: <https://www.cato.org/sites/cato.org/files/serials/files/regulation/1982/9/v6n5-4.pdf>; Teresa Schwartz, Regulating Unfair Practices Under The FTC Act: The Need For a Legal

⁵ See Concurring Statement of Commissioner Christine S. Wilson, Amplifier Rule (Dec. 17, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585038/csw_amplifier_rule_stmt_11192020.pdf; 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>.

⁶ 16 CFR 402, https://www.ftc.gov/sites/default/files/documents/federal_register_notices/trade-regulation-rule-concerning-deception-non-prismatic-and-partially-prismatic-instruments-being/950523non-prismatic.pdf.

⁷ 16 CFR 413.3(c), https://www.ftc.gov/sites/default/files/documents/federal_register_notices/trade-regulation-rule-deceptive-advertising-and-labeling-size-tablecloths-and-related-products-16/950523advertisingandlabelingasto.pdf.

finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner; and required disclosures to be made with respect to a product's composition.⁸

In March 2020, we sought comment on some of the more prescriptive provisions of the Energy Labeling Rule⁹ and received many interesting and thoughtful comments.¹⁰ Rather than act on these comments or proposals, though, the Commission chose to finalize only proposals necessary to conform to Department of Energy changes.¹¹ Again today, the Commission chooses to make minor changes necessary for conformity but fails to conduct a full review of the Rule to consider removing all dated and prescriptive provisions, and to consider the recent comments suggesting changes.

The Commission last conducted a full review of the Energy Labeling Rule in 2015. Under our 10-year regulatory review schedule, the next review is scheduled for 2025. Nothing, however, prevents the Commission from conducting this review now. I again urge the Commission to act on the comments we received last year, eliminate the more prescriptive aspects of the Rule, and maximize the positive impact of this Rule for consumers. If we are statutorily mandated to maintain this Rule, we should endeavor to make it beneficial for consumers and competition.

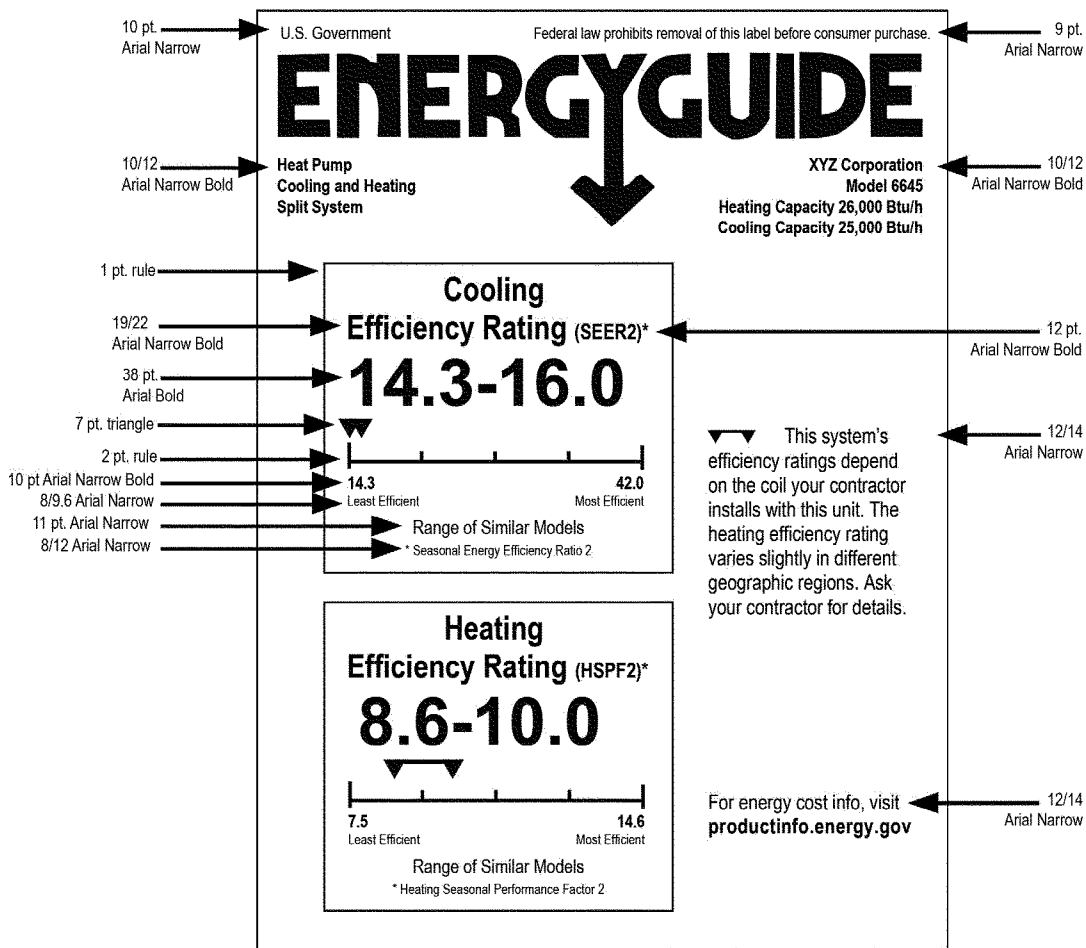
⁸ 16 CFR 247, https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-luggage-and-related-products-industry-guides-shoe-content-labeling-and-advertising-and-guides/950918luggageandrelatedproducts.pdf.

⁹ 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.pdf.

¹⁰ 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>.

¹¹ 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.

Attachment 1



[FR Doc. 2021-11498 Filed 6-1-21; 8:45 a.m.]

BILLING CODE 6750-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 121

[EPA-HQ-OW-2021-0302; FRL-10023-97-OW]

Notice of Intention To Reconsider and Revise the Clean Water Act Section 401 Certification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: In accordance with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Executive Order 13990), the U.S. Environmental Protection Agency (EPA) announces its intention to reconsider

and revise the Clean Water Act Section 401 Certification Rule. In addition, EPA will initiate a series of stakeholder outreach sessions and invite written feedback on how to revise the requirements for water quality certifications under the Clean Water Act. EPA intends to revise the Clean Water Act Section 401 Certification Rule in a manner that is well informed by stakeholder input on the rule's substantive and procedural components; is better aligned with the cooperative federalism principles that have been central to the effective implementation of the Clean Water Act; and is responsive to the national objectives outlined in President Biden's Executive Order 13990.

DATES: Written feedback must be received on or before August 2, 2021.

ADDRESSES: You may send written feedback, identified by Docket ID No.

EPA-HQ-OW-2021-0302, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting written feedback.

- *Email:* OW-Docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2021-0302 in the subject line of the message.

Instructions: All submissions received must include the Docket ID Number. Written feedback received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform.