



**[Billing Code: 6750-01S]**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 460**

**RIN 3084-AB40**

**Labeling and Advertising of Home Insulation**

**AGENCY:** Federal Trade Commission (“FTC” or “Commission”).

**ACTION:** Advance notice of proposed rulemaking; request for public comment.

**SUMMARY:** As part of the Commission’s systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC’s “Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation” (the “R-value Rule” or “Rule”).

**DATES:** Comments must be received on or before June 6, 2016.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: “16 CFR Part 460 – R-value Rule Review, File No. R811001” on your comment, and file your comment online at <https://ftcpublishcommentworks.com/ftc/rvaluerule> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “16 CFR Part 460 – R-value Rule Review, Matter No. R811001” 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 B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade

Commission, Office of the Secretary, Constitution Center, 400 7<sup>th</sup> Street, SW, 5<sup>th</sup> Floor, Suite 5610 (Annex B), 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. Background**

Thermal insulation is an important energy-savings product that reduces consumers' heating and cooling costs and increases their home energy efficiency. The Commission promulgated the R-value Rule, found at 16 CFR part 460 ("the current Rule" or "the current R-value Rule"), in 1979 to address the failure of the home insulation marketplace to provide essential pre-purchase information to consumers, primarily an insulation product's "R-value."<sup>1</sup> An insulation product's "R-value" rates the product's ability to restrict heat flow and, therefore, reduce energy costs. The higher the R-value, the better the product's insulating ability. R-value ratings vary among different types and forms of home insulations and even among products of the same type and form.

The FTC's current R-value Rule provides substantiation and disclosure requirements for insulation products used in the residential market and prohibits certain claims unless they are true. Specifically, the current Rule requires insulation sellers to disclose the insulation product's R-value and related information for their products based on uniform, industry-adopted test

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<sup>1</sup> The Commission promulgated the current R-value Rule pursuant to section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a. The current Rule became effective on

procedures.<sup>2</sup> This information enables consumers to evaluate the performance and cost effectiveness of competing insulation products.

#### **A. Products Covered**

The R-value Rule covers all “home insulation products.” Under the current Rule, the term “insulation” includes any product “mainly used to slow down heat flow” from, for example, a heated interior through exterior walls to the outside.<sup>3</sup> The current Rule covers most types or forms of insulation marketed for use in residential structures, whether or not the Rule specifically refers to such insulation.<sup>4</sup> It does not cover insulation sold for use in commercial (including industrial) buildings. In addition, it generally does not apply to non-insulation products with insulating characteristics, such as storm windows or storm doors.

Home insulation falls into two basic categories: “mass” and “reflective.” Mass insulations reduce heat transfer by conduction (through the insulation’s mass), convection (air movement within, and through, the air spaces inside the insulation), and radiation. Reflective

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September 30, 1980. *See* 44 FR 50218 (Aug. 27, 1979).

<sup>2</sup> Additional Commission rules or guides may also apply to home insulation sellers. For example, the Commission’s rules concerning Disclosure of Written Consumer Product Warranty Terms and Conditions, and the Pre-sale Availability of Written Warranty Terms, 16 CFR parts 701 and 702, specify warranty requirements; and the Commission’s Guides for the Use of Environmental Marketing Claims, 16 CFR part 260, address the application of section 5 of the FTC Act, 15 U.S.C. 45, to environmental advertising and marketing claims (*e.g.*, recycled material claims). Further, section 5 declares that unfair or deceptive acts or practices are unlawful, and requires that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated. *See Deception Policy Statement*, appended to *Cliffdale Assoc., Inc.*, 103 FTC 110, 174 (1984); and *FTC Policy Statement on Unfairness*, appended to *International Harvester Co.*, 104 F.T.C. 949 (1984); and *Policy Statement Regarding Advertising Substantiation*, 49 FR 30999 (Aug. 2, 1984), reprinted in *Thompson Medical Co.*, 104 F.T.C. 839 (1984).

<sup>3</sup> *See* 16 CFR 460.2.

<sup>4</sup> 16 CFR part 460 does not cover pipe insulation or any type of duct insulation except for duct

insulations (primarily aluminum foils) reduce heat transfer when installed facing an airspace. Within these basic categories, home insulation is sold in various types or materials (*e.g.*, fiberglass, cellulose, polyurethane, aluminum foil) and forms (*e.g.*, batt, dry-applied loose-fill, spray-applied, board stock, multi-sheet reflective).

### **B. Covered Parties**

The current Rule applies to home insulation manufacturers, professional installers, retailers who sell insulation to consumers for do-it-yourself installation, and new home sellers, including sellers of manufactured housing. It also applies to testing laboratories that conduct R-value tests for home insulation manufacturers or other sellers who base their R-value claims on these test results.

### **C. The Rule's Basis**

The Commission first issued the current R-value Rule in response to a variety of unfair or deceptive acts or practices in the insulation industry. Specifically, the Commission found that many sellers: (1) failed to disclose R-values, impeding informed purchasing decisions and misleading consumers who based their purchases on price or thickness alone; (2) exaggerated R-value disclosures and often failed to account for material factors (*e.g.*, aging, settling) that reduce thermal performance; (3) failed to inform consumers about R-value's meaning and importance; (4) exaggerated fuel bill savings and often did not disclose that savings vary depending on consumers' particular circumstances; or (5) falsely claimed that consumers' insulation purchases would qualify for tax credits, or that products had been "certified" or "favored" by Federal

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wrap.

agencies.<sup>5</sup>

#### **D. The Rule's Requirements**

The current Rule requires manufacturers and others who sell home insulation to disclose R-value and related information (*e.g.*, thickness, coverage area per package) on package labels and manufacturers' fact sheets. R-value disclosures must be derived from tests conducted according to one of four specified American Society of Testing and Materials ("ASTM") test procedures that measure thermal performance under "steady-state" (*i.e.*, static) conditions.<sup>6</sup> For mass insulations, the required tests include ASTM C-177, C-236, C-518, and C-976.<sup>7</sup> Industry members must conduct tests for mass insulation products on the insulation material alone (excluding any airspace) at a mean temperature of 75° F. The current Rule requires testing for reflective insulation products according to either ASTM C 236-89 (1993) or ASTM C 976-90, which generate R-values for insulation systems (such as those that include one or more air spaces).<sup>8</sup> The current Rule's R-value tests account for certain factors that can affect insulation's thermal performance. For example, the current Rule's R-value tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation account for aging, and the required tests

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<sup>5</sup> 44 FR at 50222-24 (Aug. 27, 1979).

<sup>6</sup> The current Rule incorporates by reference ASTM's test procedures, which ASTM reviews and revises periodically. Under § 460.7 of the Rule, the Commission will accept, but not require, the use of a revised version of any of these standards 90 days after ASTM adopts and publishes the revision. The Commission may, however, reopen the rulemaking proceeding during the 90-day period, or at any later time, to consider whether it should require use of the revised procedure or reject it under § 460.5.

<sup>7</sup> 44 FR 50218, at 50226, n. 189.

<sup>8</sup> The R-value of a single-sheet reflective insulation product must be tested under ASTM E408 or another test method that provides comparable results.

for loose-fill insulation products reflect the effect of settling on R-values.<sup>9</sup>

The current Rule also requires specific disclosures on manufacturer product labels and fact sheets, installer receipts, and new home seller contracts. For example, insulation labels must display, among other things, the product's R-value and the statement "R means resistance to heat flow. The higher the R-value, the greater the insulating power."<sup>10</sup> The current Rule also requires that certain affirmative disclosures appear in advertising and other promotional materials (including those on the Internet) that contain an R-value, price, thickness, or energy-saving claim, or compare one type of insulation to another. For example, if an advertisement contains an R-value, it must disclose the type of insulation being sold and the thickness needed to get that R-value, as well as the statement: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values." In addition, if an advertisement contains an energy saving claim, it must disclose: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."<sup>11</sup>

## **II. Regulatory Review Program**

The Commission reviews its rules and guides periodically to seek information about their costs and benefits, regulatory and economic impact, and general effectiveness in protecting consumers and helping industry avoid deceptive claims. These reviews assist the Commission in

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<sup>9</sup> 44 FR at 50219-20, 50227-28 (Aug. 27, 1979).

<sup>10</sup> 16 CFR 460.12(c).

<sup>11</sup> The current Rule requires manufacturers and other sellers to have a "reasonable basis" for any energy-saving claims they make. 16 CFR 460.19. Although the current Rule does not specify how they must substantiate such claims, the Commission explained when issuing the Rule that scientifically reliable measurements of fuel use in actual houses, or reliable computer models or methods of heat flow calculations, would meet the reasonable basis standard. 44 FR at 50233-34 (Aug. 27, 1979). Sellers other than manufacturers can rely on the manufacturer's claims unless

identifying rules and guides that warrant modification or rescission. As part of its last review in 2005, the Commission issued several amendments to update and improve the Rule.<sup>12</sup>

With this document, the Commission initiates a new review. The Commission solicits comments on, among other things, the economic impact of, and the continuing need for, the R-value Rule; the Rule's benefits to consumers; and the burdens it places on industry members subject to the requirements, including small businesses.

### **III. Issues for Comments**

To aid commenters in submitting information, the Commission has prepared the following specific questions related to the R-value Rule. The Commission seeks comments on these and any other issues related to the Rule's current requirements. In their replies, commenters should provide any available evidence that supports their position.

#### **A. General Regulatory Review Questions**

- (1) *Need*: Is there a continuing need for the Rule? Why or why not?
- (2) *Benefits and Costs to Consumers*: What benefits has the Rule provided to consumers, and does the Rule impose any significant costs on consumers?
- (3) *Benefits and Costs to Industry Members*: What benefits, if any, has the Rule provided to businesses, and does the Rule impose any significant costs, including costs of compliance, on businesses, including small businesses?
- (4) *Recommended Changes*: What modifications, if any, should the Commission make to the Rule to increase its benefits or reduce its costs? How would these modifications affect the costs

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they know, or should know, that the manufacturer lacks a reasonable basis for the claims.

<sup>12</sup> 70 FR 31258 (May 31, 2005).

and benefits of the Rule for consumers? How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(5) *Impact on Information*: What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(6) *Compliance*: Provide any evidence concerning the degree of industry compliance with the Rule. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(7) *Unnecessary Provisions*: Provide any evidence concerning whether any of the Rule's provisions are no longer necessary. Explain why these provisions are unnecessary.

(8) *Additional Unfair or Deceptive Practices*: What potentially unfair or deceptive practices, not covered by the Rule, related to insulation products are occurring in the marketplace? Are such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception studies, or consumer complaints, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury. With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(9) *Product Coverage*: Should the Commission broaden the Rule to include products not currently covered? Provide any evidence that supports your position. What potentially unfair or deceptive practices related to products not covered by the Rule are occurring in the marketplace? Are such practices prevalent in the market? If so, please describe such practices, including their impact on consumers. Provide any evidence, such as empirical data, consumer perception

studies, or consumer complaints, that demonstrates the extent of such practices. Provide any evidence that demonstrates whether such practices cause consumer injury.

(10) *Technological or Economic Changes*: What modifications, if any, should be made to the Rule to account for current or impending changes in technology or economic conditions? How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(11) *Conflicts With Other Requirements*: Does the Rule overlap or conflict with other Federal, State, or local laws or regulations? If so, how? Provide any evidence that supports your position. With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not? Are there any Rule changes necessary to help state law enforcement agencies combat deceptive practices in the insulation market? Provide any evidence concerning whether the Rule has assisted in promoting national consistency with respect to the advertising of insulation products.

## **B. Specific Questions Related to the R-Value Rule**

(1) *Aging of Cellular Plastics*: Should the Commission update the required test procedures for the aging of cellular plastic insulations under 460.5(a)(1) to ensure consistency among R-value claims and to otherwise prevent deception? Specifically, should the Commission amend the Rule to require ASTM 1303 (“Standard Test Method for Predicting Long-Term Thermal Resistance of Closed-Cell Foam Insulation”) or a different test? If so, to which products should this test apply?<sup>13</sup>

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<sup>13</sup> Certain types of cellular plastics insulations (*e.g.*, polyurethane, polyisocyanurate, and extruded polystyrene boardstock insulations) contain a gas other than normal air in the product’s

(2) *Affirmative Disclosures*: Should the Commission consider changing, adding, or removing affirmative disclosures required by the Rule for labeling and advertising related to mass insulation, reflective insulation, or radiant barriers?

(3) *Foam Insulation*: Given the significant increase in the use of foam insulation products since the last Rule review, should the Commission consider any Rule changes to help prevent deception in the marketing of such products, or reduce unnecessary burdens on sellers?

(4) *Testing Requirements*: Should the Commission consider any changes to the testing provisions in the Rule? Such potential changes include, but are not limited to, test updates, the addition of new or existing tests not currently referenced in the Rule, or changes to other testing-related requirement such as the Rule’s “tolerance” provision (§ 460.8).<sup>14</sup> Are there any tests currently referenced in the Rule that should be removed?

### **III. Comment Submissions**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 6, 2016. Write “16 CFR Part 460 – R-value Rule Review, File No. R811001” on your comment. Your comment – including your name and your

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voids (*i.e.*, small spaces or bubbles throughout the material). Such gas gives the product an initial R-value that is higher than it would have if the voids contained normal air. However, the R-value for these insulations decreases over time as the gas escapes the material and is replaced by normal air.

The current Rule addresses this aging process by requiring that R-value tests be performed on specimens that “fully reflect the effect of aging on the product’s R-value.” Section 460.5(a)(1) of the Rule accepts the use of the “accelerated aging” procedure in General Services Administration (“GSA”) Purchase Specification HH-I-530A (which was in effect at the time the Commission promulgated the Rule) as a permissible “safe harbor” procedure, but also allows manufacturers to use “another reliable procedure.”

<sup>14</sup> The tolerance provision (§ 460.8) states that no individual specimen of the insulation an industry member sells can have an R-value more than 10% below the R-value shown on the

state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone'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 that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed 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). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security

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product's label.

screening. As a result, we encourage you to submit your comments online, or send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/r-valuereview>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “16 CFR Part 460 – R-value Rule Review, File No. R811001” 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 B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7<sup>th</sup> Street, SW, 5<sup>th</sup> Floor, Suite 5610 (Annex B), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this ANPR and the news release describing it. The FTC Act and other laws that 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 that it receives on or before June 6, 2016. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

By direction of the Commission.

Donald S. Clark  
Secretary.

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