

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 2, 1996.

Issued in Fort Worth, Texas, on March 20, 1996.

Daniel P. Salvano,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 96-7494 Filed 3-27-96; 8:45 am]

BILLING CODE 4910-13-U

## FEDERAL TRADE COMMISSION

### 16 CFR Part 460

#### Trade Regulation Rule: Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Final rule.

**SUMMARY:** The Federal Trade Commission (the "Commission" or "FTC") announces it is retaining its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation ("R-value Rule" or "Rule") and adopting non-substantive amendments to the Rule. The Commission amends section 460.5(a) of the R-value Rule to allow use of the R-value test procedure in American Society of Testing and Materials ("ASTM") standard test method C 1114-95. The Commission also amends sections 460.5(a), 460.5(a)(2), 460.5(b), and 460.5(d)(1) to specify revised versions of additional ASTM standards that are required for determining the R-value of home insulation. Further, the Commission amends the Rule to add a summary of the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule. Last, the Commission adopts a non-substantive amendment to revise section 460.10 to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and to delete the current Appendix to the Rule, which merely repeats the text of 16 CFR 14.9.

**EFFECTIVE DATE:** The amendments are effective on April 29, 1996. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kent C. Howerton, Attorney, Federal Trade

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#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

On April 6, 1995, as part of its oversight responsibilities and its program to review all current Commission rules and guides periodically, the Commission solicited public comments about the economic impact of and current need for the R-value Rule, 60 FR 17492 (1995).<sup>1</sup> At the same time, the Commission solicited comments on a petition ("Petition") requesting the Commission to approve an additional (fifth) ASTM R-value test procedure as an optional, but not required, test procedure for determining the R-value of home insulation under the Rule.

The Commission received 42 comments in response to the April 6, 1995 notice.<sup>2</sup> The commenters included

<sup>1</sup>The Commission reviewed the Rule in 1985 under the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the economic impact of the Rule on small entities. Based on that review, the Commission determined that: There was a continuing need for the Rule; there was no basis to conclude that the Rule had a significant impact on a substantial number of small entities; there was no basis to conclude that the Rule should be amended to minimize its economic impact on small entities; the Rule did not generally overlap, duplicate, or conflict with other regulations; and technological, economic, and other changes had not affected the Rule in any way that would warrant amending the Rule. 50 FR 13246 (1985).

<sup>2</sup>Plymouth Foam Products ("Plymouth"), comment number #01; Advanced Foil Systems ("AFS"), #02; W.H. Porter, Inc. ("Porter"), #03; Benchmark Foam, Inc. ("Benchmark"), #04; Big Sky Insulations, Inc. ("Big Sky"), #05; Rock Wool Manufacturing Co. ("Rock Wool Mfg./1"), #06; Rose E. Kettering ("Kettering"), #07; Matt Anderson ("Anderson"), #08; Marilyn Raeth ("Raeth"), #09; James A. McGarry ("McGarry"), #10; Structural Insulated Panel Association ("SIPA"), #11; Tierra Consulting Group ("Tierra"), #12; EPS Molders Association ("EPSMA"), #13; Western Insulfoam, Division of Premier Industries, Inc. ("Western"), #14; Fi-Foil Co., Inc. ("Fi-Foil/Nowman"), #15; Regal Industries, Inc. ("Regal"), #16; Insulation Contractors Association of America ("ICAA/1"), #17; England & Associates ("England"), #18; Cellulose Insulation Manufacturers Association ("CIMA"), #19; GreenStone Industries ("Greenstone/Tranmer"), #20; Styropor Business, BASF Corporation ("BASF"), #21; Hamilton Mfg., Inc. ("Hamilton"), #22; Energy Control, Inc. ("ECT"), #23; North American Insulation Manufacturers Association ("NAIMA"), #24; The Celotex Corporation ("Celotex"), #25; Tennessee Technological University, ("TN Tech"), #26; Superior Aluminum Insulation Inc. ("Superior"), #27; Oak Ridge National Laboratory ("ORNL/Yarborough"), #28; Oak Ridge National Laboratory ("ORNL/Wilkes"), #29; Polyisocyanurate Insulation Manufacturers Association ("PIMA"), #30; Midwest Roofing Contractors Association ("MRCA"), #31; GreenStone Industries ("GreenStone/Smith"), #32; Insulspan, Inc. ("Insulspan"), #33; Clayville Insulation ("Clayville"), #34; Tascon, Inc. ("Tascon"), #35; FischerSips Inc. ("FischerSips"), #36; Dow Chemical Canada Inc. ("Dow/Canada"), #37; AFM Corporation ("AFM"), #38; Rock Wool

the following parties: Manufacturers of cellular plastics, cellulose, mineral fiber, and reflective insulation products; manufacturers of structural insulated panels; trade associations comprised of manufacturers of insulation products and structural insulated panels, professional installers, and roofing contractors; independent technical consultants to industry; a government contractor; and individual consumers. Specific issues addressed by the commenters are described below in Parts III through VI.

##### II. Requirements of the R-Value Rule

The Commission promulgated the R-value Rule under section 18 of the FTC Act, 15 U.S.C. 57a, on August 27, 1979.<sup>3</sup> The Rule became effective on September 29, 1980, 45 FR 54702 (1980).

The R-value Rule covers home insulation products. The Rule defines "insulation" as any product mainly used to slow down heat flow, for example through a house's exterior walls, attic, floors over crawl spaces, or basement. It defines "home insulation" as insulation used in old or new houses, condominiums, cooperatives, apartments, modular homes, and mobile homes. The Rule does not cover insulation products sold for use in commercial or industrial buildings, such as offices or factories. It does not apply to other products with insulating characteristics, such as storm windows or doors.

The Rule applies to home insulation manufacturers, professional installers, retailers, and new home sellers (including sellers of manufactured or mobile homes). It also applies to testing laboratories that conduct R-value tests for home insulation manufacturers or other sellers who use the test results as the basis for making R-value claims about home insulation products.

The Rule requires that those who manufacture or sell thermal insulation products for use in residential structures disclose specific information about the thermal performance of the insulation at

Manufacturing Co. ("Rock Wool Mfg./2"), #39; Insulation Contractors Association of America ("ICAA/2"), #40; Corbond Corp. ("Corbond"), #41; Fi-Foil Co., Inc. ("Fi-Foil/Lippy"), #42. The April 6, 1995 notice is filed as document number B172394. The comments submitted in response to the that notice are filed as document numbers B17239400001, B17239400002, etc. In today's notice, the comments are cited as #01, #02, etc. The Commission's staff added an additional letter from the Petitioner, R. S. Graves, R & D Services, Inc. This letter, cited as Graves, #43, was not filed as a comment in response to the April 6, 1995 notice, but instead, as a response to a request for clarification from the Commission's staff. See Part V and note 64, *infra*.

<sup>3</sup>Final trade regulation rule ("Statement of Basis and Purpose" or "SBP"), 44 FR 50218 (1979).

the point of sale (on product labels, manufacturers' fact sheets, and receipts or contracts to purchasers from professional installers and new home sellers), and in advertising and other promotional materials that contain certain claims. Thermal performance is described by the product's R-value, which varies among insulation types and forms and among specific products of the same type and form.<sup>4</sup> "R-value" is the recognized numerical measure of the ability of an insulation product to restrict the flow of heat and, therefore, to reduce energy costs. The higher the R-value, the better the product's insulating ability. The major reason consumers purchase thermal insulation is to reduce energy expenditures to heat and cool their homes. The Rule requires sellers to have adequate substantiation for these R-value disclosures and for any energy savings claims they make.

The R-value Rule is designed to enable consumers to compare the thermal performance of competing home insulation products when they make purchasing decisions. To accomplish this purpose, the Rule requires sellers (including insulation manufacturers, professional installers, new home sellers, and retailers who sell insulation to consumers) to disclose the insulation product's R-value and related information, based on uniform standards. This information enables consumers to evaluate how well a particular insulation product is likely to perform, to determine whether the cost of the insulation is justified, and to make meaningful cost-benefit purchase decisions among competing products.

### III. Regulatory Review

The Commission has determined, as part of its oversight responsibilities, to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. In the April 6, 1995 notice, the Commission solicited comments on, among other things, the economic impact of and the continuing need for the R-value Rule, possible conflict between the Rule and

state, local, or other federal laws or regulations, and the effect on the Rule of any technological, economic, or other industry changes. The Commission also solicited comments on whether the Rule should be revised to require the use of different test procedures or standards than those currently specified, and whether there are insulation products for which the Rule does not sufficiently address product-specific issues relating to testing or preparation of test specimens.

#### A. Need for the Rule, Benefits, Costs, and Other Burdens

##### 1. Current Need for the Rule

Thirty-one comments specifically addressed the current need for the Rule. Thirty comments stated that there is a continuing need for the Rule and supported keeping it in place.<sup>5</sup> Only one commenter, Benchmark, implied that the Rule was not needed, stating that the costs of complying with the Rule far outweigh the benefits it confers.<sup>6</sup>

<sup>5</sup> AFS, #02 (must stay in place, keep regulations that work); Porter, #03 (continue and strengthen); Rock Wool Mfg./1, #06 (provides basic guidelines by which consumers better assured of receiving full value); Kettering, #07 (R-values must be maintained or consumer has no guideline and inferior products will be passed off on the public); Anderson, #08, at 2-3 (labeling ensures consumers can easily select products with the R-value they want); Raeth, #09 (eliminating Rule would be a great disservice to consumers, consumers would not know the value of what purchasing); McGarry, #10 (do not eliminate or weaken, uses label information to compare when purchasing); SIPA, #11, at 1 (retain); Tierra, #12, at 1-2 (serves useful public purpose); Western, #14, at 1; Fi-Foil/Nowman, #15, at 1 (serves useful purpose); Regal, #16, at 1 (retain); ICAA/1, #17, at 1 (necessary); England, #18, at 1 (need stronger today than ever); CIMA, #19, at 1 (valuable protection for consuming public); Greenstone/Tranmer, #20, at 1 (critical to consumers; centralized labeling requirements necessary to maintain consistency in products, avoid costly production costs resulting from rules differing from region to region, and encourage development of advanced products); BASF, #21, at 1 (urges be retained); Hamilton, #22, at 1 (still needed in today's market); ECI, #23 (good Rule that should be continued); NAIMA, #24, at 1 (should be maintained, market place would be chaotic in its absence); Celotex, #25, at 1 (continuing need), at 7 (supports the Rule); TN Tech, #26, at 1 (extremely important to industry and consuming public); ORNL/Wilkes, #29, at 1 (supports keeping, Commission to be commended for promulgating and enforcing the Rule); PIMA, #30, at 2 (continuing need), at 9 (vigorously supports retaining and enforcing Rule and applauds FTC for its efforts in this regard); Greenstone/Smith, #32, at 1 (provides a viable means of creating broader consumer awareness of insulation value and maintaining even playing field, without Rule sellers would take advantage of naive consumers); Insulspan, #33, at 1 (retain); Clayville, #34, at 3 (still needed to keep a level playing field); FischerSips, #36, at 1 (retain); Fi-Foil/Lippy, #42 (should be continued to enable general public to evaluate insulation products). See also, Rock Wool Mfg./1, #06 (fully supports ICAA's submittal).

<sup>6</sup> Benchmark, #04.

Benchmark did not explain how it reached this conclusion.

Based on the comments, the Commission determines that there is a continuing need for the Rule.

##### 2. Benefits and Costs to Purchasers

Twenty-four comments described the benefits the Rule confers on purchasers.<sup>7</sup> In summary, the comments described the major benefits of the Rule to consumers as:

- Increasing consumer awareness of the benefits of insulation;<sup>8</sup>
- Giving consumers the basic thermal performance information they need to compare insulation products and select those with the R-value they want,<sup>9</sup> at little or no cost;<sup>10</sup>
- Giving consumers R-value information in a uniform manner that facilitates easy comparison of competing products;<sup>11</sup>
- Helping ensure that R-value claims are substantiated so consumers receive what they are promised;<sup>12</sup>
- Helping consumers save energy (and heating and cooling costs) by preventing misrepresentations about R-values of insulation products,<sup>13</sup> and by setting standards for the proper installation of insulation products;<sup>14</sup>
- Saving consumers money by eliminating sales and marketing practices that lead them to overinsulate or underinsulate;<sup>15</sup>
- Improving the quality<sup>16</sup> and consistency<sup>17</sup> of home insulation, encouraging the development of advanced products,<sup>18</sup> and preventing the sale of inferior products;<sup>19</sup> and

<sup>7</sup> Porter, #03; Rock Wool Mfg./1, #06; Anderson, #08, at 2-3; McGarry, #10; Tierra, #12, at 1-2; Western, #14, at 1; Fi-Foil/Nowman, #15, at 1; ICAA/1, #17, at 1; England, #18, at 1; CIMA, #19, at 1; Greenstone/Tranmer, #20, at 1; Hamilton, #22, at 1; TN Tech, #26, at 1; ORNL/Wilkes, #29, at 1-2; PIMA, #30, at 2-3, 9; Greenstone/Smith, #32, at 1; Clayville, #34, at 1; Celotex, #35, at 1; Fi-Foil/Lippy, #42. See also, Rock Wool Mfg./1, #06; Kettering, #07; Raeth, #09; ECI, #23; NAIMA, #24, at 1.

<sup>8</sup> ORNL/Wilkes, #29, at 1; Greenstone/Smith, #32, at 1.

<sup>9</sup> Anderson, #08, at 2-3; McGarry, #10; Greenstone/Tranmer, #20, at 1; PIMA, #30, at 2-3; Fi-Foil/Lippy, #42. See Raeth, #09; ECI, #23.

<sup>10</sup> ICAA/1, #17, at 1. See also Rock Wool Mfg./1, #06.

<sup>11</sup> Tierra, #12, at 1-2; Fi-Foil/Nowman, #15, at 1; England, #18, at 1; PIMA, #30, at 3; Celotex, #35, at 1.

<sup>12</sup> Porter, #03; Tierra, #12, at 1-2; England, #18, at 1; Hamilton, #22, at 1. See Kettering, #07; Raeth, #09; ECI, #23; NAIMA, #24, at 1.

<sup>13</sup> Porter, #03. See Rock Wool Mfg./1, #06.

<sup>14</sup> See Rock Wool Mfg./1, #06.

<sup>15</sup> CIMA, #19, at 1.

<sup>16</sup> TN Tech, #26, at 1.

<sup>17</sup> Greenstone/Tranmer, #20, at 1.

<sup>18</sup> Id.

<sup>19</sup> See Kettering, #07.

<sup>4</sup> "Type" refers to the material from which the insulation is made, e.g., fiberglass or cellulose. "Form" refers to the physical form of the product, e.g., batts, loose-fill, or rigid boardstock. Most home insulation products are "mass" insulations, which restrict the flow of heat through the product's mass. "Reflective" insulations (which also are covered by the Rule), on the other hand, restrict heat flow by reflecting back radiant heat and must be installed facing an air space.

- Reducing the rate of depletion of our nation's limited energy resources by helping consumers conserve energy expenditures.<sup>20</sup>

In addition to the benefits described above, Greenstone/Smith explained that utility companies have embraced the Rule and developed their own energy savings programs that depend on the Rule to protect consumers from fraudulent acts.<sup>21</sup> Greenstone/Smith also stated that state departments of consumer affairs have used the Rule as a model in writing their laws, which has led to state enforcement actions that generated publicity and educated consumers. Greenstone/Smith further stated that consumers would be in a user-beware condition without the Rule and that sellers would lower their ethical boundaries and take advantage of naive consumers.<sup>22</sup>

Sixteen commenters addressed the costs the Rule imposes on purchasers. Fifteen of these commenters stated that they did not believe the Rule imposes significant costs on purchasers.<sup>23</sup> Only one, Benchmark, stated that the costs imposed by the Rule outweigh the Rule's benefits.<sup>24</sup> In brief, the commenters other than Benchmark expressed the following views concerning costs the Rule imposes on consumers:

- no cost;<sup>25</sup>
- Minimal or insignificant cost,<sup>26</sup> or small cost when spread over volume of production;<sup>27</sup>
- Very small cost imposed is offset by improved product quality and the benefit-to-cost ratio is very large;<sup>28</sup>
- Any cost already has been born by manufacturers and is embedded in product pricing;<sup>29</sup>
- Required testing should already have been done so the only additional cost is the Fact Sheet, which can be produced at minimal expense;<sup>30</sup>

- Possibly has imposed cost, but not nearly the waste of money that would have occurred without the Rule;<sup>31</sup> and
- Has saved consumers on cost.<sup>32</sup>

Based on the comments, the Commission determines that the Rule provides substantial benefits to consumers, while imposing no significant costs on them.

### 3. Benefits and Burdens or Costs to Firms

Ten comments addressed the benefits provided to firms covered by the Rule.<sup>33</sup> According to the comments, the Rule benefits firms by:

- Creating a level playing field through standardized guidelines for labeling, testing, and evaluation, which promote legitimate competition and make it easier for honest manufacturers to compete;<sup>34</sup>
- Providing a more even market place in which it is easier for industry to attempt to regulate itself;<sup>35</sup>
- Enhancing competition by enabling suppliers to convey truthfully and meaningfully the insulation properties of their products;<sup>36</sup> and
- Providing guidelines for product testing and evaluation and creating confidence in the residential buyer's mind.<sup>37</sup>

As pointed out in Part III.A.2, above, Greenstone/Smith stated that individual utility companies have developed energy savings programs that depend on the Rule to protect consumers from fraudulent acts.<sup>38</sup> According to the commenter, by encouraging consumers to insulate homes, these programs benefit firms by generating an ever-increasing demand for products covered by the Rule.

Fourteen comments addressed the burdens or costs imposed on firms covered by the Rule. Eleven of these stated that the Rule had not imposed any significant costs on firms.<sup>39</sup> Tierra

stated merely that any costs due to the Rule already were imbedded in the pricing of the products.<sup>40</sup> Fi-Foil/Nowman stated that the Rule had a substantial economic impact on industry members originally because it required redesigning and reprinting packaging and promotional materials to meet the labeling requirements, but that these costs already had been borne by manufacturers.<sup>41</sup> Benchmark stated that the costs imposed by the Rule outweigh its benefits.<sup>42</sup>

Based on the comments, the Commission determines that the Rule benefits firms by creating a level playing field that promotes competition, by providing a market place in which industry can more easily regulate itself, by providing guidelines to industry for product testing and evaluation, and by creating consumer confidence. The Commission also determines that the Rule does not impose significant ongoing costs on firms.

### B. Other Federal, State, or Local Laws or Regulations

Nine comments addressed the existence of other federal, state, or local laws or regulations. None of the commenters was aware of any conflicts with other federal, state, or local laws or regulations.<sup>43</sup> England stated that the Rule strengthens other federal, state, and local laws and regulations.<sup>44</sup> Celotex and PIMA explained that the Rule is a consumer protection regulation, which does not address issues such as building energy conservation standards that are regulated elsewhere at the federal, state, and local levels.<sup>45</sup> Greenstone/Smith stated that the Rule has been precedent-setting rather than conflicting, and that

requirements are based on existing industry and government standards); Greenstone/Tranmer, #20, at 3 (does not impose large financial burden); Hamilton, #22, at 1 (do not think it has imposed additional costs); Celotex, #25, at 2 (no significant burdens or costs since R-value data is necessary for marketing, quality control, and research purposes); PIMA, #30, at 4 (no significant burdens or costs, benefits clearly outweigh any burdens or costs), at 9 (does not impose significant burden or cost); Greenstone/Smith, #32, at 1 (required testing should already have been done when Commission issued Rule and no additional tests were required, only additional cost was Fact Sheet which could be produced at minimal expense to manufacturer); Clayville, #34, at 1 (doesn't believe the Rule has imposed any excessive costs on manufacturers or contractors).

<sup>40</sup> Tierra, #12, at 2.

<sup>41</sup> Fi-Foil/Nowman, #15, at 1.

<sup>42</sup> Benchmark, #04.

<sup>43</sup> Rock Wool Mfg./1, #06; Tierra, #12, at 3; Western, #14, at 3; England, #18, at 2; CIMA, #19, at 2; Greenstone/Tranmer, #20, at 4; Celotex, #25, at 2; PIMA, #30, at 5; Greenstone/Smith, #32, at 1.

<sup>44</sup> England, #18, at 2.

<sup>45</sup> Celotex, #25, at 2; PIMA, #30, at 5.

<sup>20</sup> ORNL/Wilkes, #29, at 1.

<sup>21</sup> Greenstone/Smith, #32, at 1.

<sup>22</sup> *Id.* See also NAIMA, #24, at 1; ORNL/Wilkes, #29, at 2.

<sup>23</sup> Rock Wool Mfg./1, #06; Tierra, #12, at 2; Western, #14, at 1; Fi-Foil/Nowman, #15, at 1; ICAA/1, #17, at 1; England, #18, at 1; CIMA, #19, at 1; Greenstone/Tranmer, #20, at 2; Hamilton, #22, at 1; Celotex, #25, at 1; TN Tech, #26, at 1; ORNL/Wilkes, #29, at 2-3; PIMA, #30, at 3, 9; Greenstone/Smith, #32, at 1; Clayville, #34, at 1.

<sup>24</sup> Benchmark, #04.

<sup>25</sup> Rock Wool Mfg./1, #06; ICAA/1, #17, at 1; CIMA, #19, at 1; Hamilton, #22, at 1.

<sup>26</sup> Celotex, #25, at 1; TN Tech, #26, at 1; PIMA, #30, at 3, 9; Clayville, #34, at 1.

<sup>27</sup> Greenstone/Tranmer, #20, at 2; ORNL/Wilkes, #29, at 2-3.

<sup>28</sup> TN Tech, #26, at 1. See Greenstone/Tranmer, #20, at 2.

<sup>29</sup> Tierra, #12, at 2; Fi-Foil/Nowman, #15, at 1.

<sup>30</sup> Greenstone/Smith, #32, at 1.

<sup>31</sup> Western, #14, at 1.

<sup>32</sup> England, #18, at 1.

<sup>33</sup> Porter, #03; Tierra, #12, at 1-2; Western, #14, at 1, *but see*, at 2; England, #18, at 2; Greenstone/Tranmer, #20, at 3; Celotex, #25, at 2; PIMA, #30, at 2, 4, 9; Greenstone/Smith, #32, at 1; Clayville, #34, at 1, 3. See NAIMA, #24, at 1.

<sup>34</sup> Porter, #03; Tierra, #12, at 1-2; Western, #14, at 1, *but see*, at 2 (not much benefit for Western); Greenstone/Tranmer, #20, at 3; Celotex, #25, at 2; Clayville, #34, at 3. See also NAIMA, #24, at 1 (marketplace would be chaotic in its absence).

<sup>35</sup> England, #18, at 2.

<sup>36</sup> PIMA, #30, at 2.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> Greenstone/Smith, #32, at 1.

<sup>39</sup> Rock Wool Mfg./1, #06 (not aware of any significant added cost); Western, #14, at 2 (for it \$0); ICAA/1, #17, at 1 (no significant cost burden); England, #18, at 2 (none, because what Rule requires should be done anyway); CIMA, #19, at 2 (few incremental costs of compliance since

utility companies have embraced the Rule's requirements and developed energy-saving programs that depend on the Rule to protect consumers from fraudulent acts.<sup>46</sup>

Based on the comments, the Commission determines that there is no reason to believe that the Rule conflicts with other federal, state, or local laws or regulations.

#### IV. Adoption of Current ASTM Standards

The Rule currently requires that the R-value of each home insulation product be determined based on tests conducted according to ASTM C 177-85, C 236-87, C 518-85, or C 976-82.<sup>47</sup> It requires that R-values based upon heat flux measurements under C 177-85 or C 518-85 be reported in accordance with ASTM standard practice C 1045-85. It also requires that, for loose-fill cellulose, the tests be conducted at the settled density determined under ASTM C 739-88 ("Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation").<sup>48</sup>

Four comments discussed which versions of specified ASTM test procedures or other standards should be required by the Rule. Celotex and PIMA recommended that the Commission revise the Rule to require the use of current versions of required ASTM standards that are incorporated into the Rule. Specifically, they recommended that the Commission amend the Rule to require use of the following versions of ASTM standards: ASTM C 177-85 (1993), ASTM C 236-89 (1993), ASTM C 518-91, ASTM C 976-90, ASTM C 1045-90.<sup>49</sup> NAIMA recommended that the Commission revise section 460.5(a)(2) to require settled density testing of loose-fill cellulose according to C 739-91.<sup>50</sup> No comments opposed adoption of these current versions of the ASTM standards.

NAIMA pointed out that an alternative to referencing current

versions of ASTM standards would be to omit the specific version and rely on the language in section 460.7 of the Rule, 16 CFR 460.7.<sup>51</sup> Section 460.7 provides that updated, final ASTM test methods automatically replace the old ones in the Rule 90 days after publication by ASTM. Greenstone/Smith agreed with this approach.<sup>52</sup>

ASTM was organized in 1898. A not-for-profit organization, it is one of the largest voluntary standards-development organizations in the world. ASTM's members (approximately 36,000 worldwide) include producers, users, ultimate consumers, and those having a general interest (including government and academia). Through 132 standards-writing committees, ASTM publishes more than 9,500 standards each year. Membership in ASTM is open to all interested parties concerned with the fields in which ASTM is active.<sup>53</sup> ASTM standards are developed through a consensus-type process and are used voluntarily. They become legally binding only when a government body references them in regulations, or when they are cited in a contract. ASTM standards are subject to revision at any time by the responsible technical committee and must be reviewed every five years, and if not revised, either reapproved or withdrawn.<sup>54</sup> ASTM's C-16 Committee on Thermal Insulation is the standards-writing committee responsible for virtually all of the ASTM standards referenced in the R-value Rule.

Section 460.7 of the Rule provides for automatic incorporation into the Rule of revisions to these ASTM test procedures. As part of this automatic incorporation, the Commission originally cited in the Rule only the basic test procedures and other standards, not the specific version of each then in effect. Under section 460.7, when ASTM changed a test procedure required by the Rule, the new version automatically replaced the old one in the Rule 90 days after ASTM first published the change.<sup>55</sup> In 1990, the Commission amended the Rule to specify the version of each ASTM test procedure that would be required in the future. 55 FR 10053 (1990). The Commission explained that, because it

previously had taken no action to consider any of the revisions to the required test procedures that ASTM had adopted since the Commission promulgated the Rule, the Commission in effect had adopted the revised procedures. *Id.* at 10054.

The Office of the Federal Register ("OFR") specifies additional procedures that federal agencies must follow when they promulgate rules requiring the use of private standards that are not printed in full in the Code of Federal Regulations ("CFR") (i.e., when they incorporate private standards by reference). Section 51.1(f) of OFR's regulations states that incorporation by reference is limited to the edition of the publication that is approved by the Director of the Federal Register. 1 CFR 51.1(f). Section 51.9 of OFR's regulations requires that each "incorporation by reference" in a federal rule specifically identify the standard to be incorporated, including the title, date, edition, author, publisher, and identification number of the publication. 1 CFR 51.9.

Under Federal Register requirements, therefore, the Commission does not have discretion to require compliance generally with the "latest" or "current" version of ASTM test procedures or other standards. If ASTM adopts and publishes revised test procedures or other standards required by the Rule, however, the Commission may update its incorporation by reference of these standards by obtaining permission for the incorporation by reference from the Director of the Federal Register and publishing an amendment to the Rule that requires the use of the revised standard in the future.

ASTM standards C 177-85, C 236-87, C 518-85, C 976-82, C 1045-85, and C 739-88, which currently are specified in the Rule, have been revised by ASTM since the Commission adopted those versions of the standards in 1990.<sup>56</sup> Because the Commission has taken no action to consider any of the revised standards adopted by ASTM, and has received no petitions to consider them, section 460.7 of the Rule has authorized, but not required, use of the revised ASTM standards for compliance with the Rule.

Based on the comments and the text of the revised versions of the ASTM standards recommended by the commenters, the Commission believes that these revisions to the versions of the standards currently required by the Rule have been primarily technical changes or editorial comments, and not significant, substantive revisions. The

<sup>46</sup> Greenstone/Smith, #32, at 1.

<sup>47</sup> In citations of ASTM standards, the letter and first series of numbers refer to the basic standard; the number following the hyphen refers to the version of the standard (denoting the year in which the version was adopted and published by ASTM).

<sup>48</sup> This section discusses only the comments that recommended the Commission revise the Rule concerning specific ASTM test procedures and other standards that currently are required by the Rule. It does not discuss the comments that recommended the Commission adopt additional or different ASTM or other test procedures or standards that are not currently required by the Rule. See Part VI, *infra*.

<sup>49</sup> Celotex, #25, at 3; PIMA, #30, at 5. Both comments stated that the 1993 revisions to C 177-85 and C 236-89 (the year 1993 is indicated in parentheses in the standards) were editorial only.

<sup>50</sup> NAIMA, #24, at 2.

<sup>51</sup> *Id.* at 7.

<sup>52</sup> Greenstone/Smith, #32, at 3.

<sup>53</sup> 1995 Annual Book of ASTM Standards, Section 4, Volume 04.06 (Thermal Insulation; Environmental Acoustics), at iii.

<sup>54</sup> *Id.* at iv.

<sup>55</sup> Under section 460.7, the Commission's staff or a person affected by the change can petition the Commission during the 90-day period not to adopt the change or to reopen the rulemaking proceeding to consider it further.

<sup>56</sup> 55 FR 10053 (1990).

Commission, therefore, amends the Rule to require use of the revised, current versions of these standards that are published in volume 04.06, section 4, of the 1995 Annual Book of ASTM Standards. Because the revisions appear to be technical changes or editorial comments, not significant, substantive revisions, the Commission determines that these amendments are non-substantive under section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B).

The amendments require that all future tests by manufacturers or others to substantiate R-value claims for home insulation products be based on the revised standards. Manufacturers or others whose home insulation products have not changed can continue to rely on tests conducted according to the versions of the standards that were required by the Rule at the time the tests were conducted. Under section 460.7 of the Rule, in the future 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 section 460.5 of the Rule, 16 CFR 460.5.

#### V. Proposed Non-Substantive Amendment to Allow Use of an Additional ASTM R-value Test Procedure

In the April 6, 1995 notice, the Commission also solicited comments on the Petition from Ronald S. Graves, Research Staff Member, Materials Analysis Group, at Martin Marietta Energy Systems, Inc.<sup>57</sup> The Petition requested that the Commission include an additional (fifth) ASTM R-value test procedure ("ASTM C 1114-92—Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus"), as an approved test method for complying with section 460.5(a) of the R-value Rule, 16 CFR 460.5(a). This test method is under the jurisdiction of ASTM Committee C-16 on Thermal Measurements (the ASTM Committee responsible for the other R-value test procedures required by the R-value

Rule), and is the direct responsibility of ASTM Subcommittee C16.30 on Thermal Measurements. Mr. Graves is the Chairman of the Thin Heater Task Group within C16.30 that meets semiannually to maintain and keep ASTM C 1114 current.

Based on the documentation submitted with the Petition, the Commission stated its belief that the accuracy of the ASTM C 1114-92 test procedure compared favorably to that of other ASTM R-value test procedures the Commission has adopted under the R-value Rule.<sup>58</sup> The Commission, therefore, stated that it was considering adopting a non-substantive amendment to section 460.5(a) of the Rule to include ASTM C 1114-92 as an optional, but not required, test procedure for determining the R-value of home insulation. Because the proposed amendment would not impose any new obligations upon parties covered by the Rule, or lessen the protections afforded consumers by the Rule, the Commission stated that the proposed change appeared to be non-substantive under section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B). For these reasons, the Commission stated that it did not have to solicit public comment or follow the rulemaking proceedings that would be required for a substantive amendment to the Rule. On the other hand, because the Commission was soliciting comments as part of its regulatory review of the Rule, as a matter of discretion the Commission determined to solicit comments on the Petition at the same time.

Twelve comments addressed the proposed adoption of ASTM C 1114-92 as an optional R-value test procedure. Nine comments recommended that the Commission adopt the test procedure or said that they had no objections.<sup>59</sup> Of these, Regal stated that the adoption of the test procedure was "appropriate." Celotex and PIMA stated that the test procedure has shown excellent correlation to the R-value test procedures currently required by the Rule. ORNL/Wilkes stated that the test procedure is a test method that has proven minimal uncertainty, high reproducibility, and broad applicability to a variety of existing and advanced insulation materials.

Three comments expressed reservations about the proposed

adoption of ASTM C 1114-92. Rock Wool Mfg./1 agreed that the Commission's proposal to adopt the test procedure would be appropriate, if the Commission is assured that the results are comparable with other required tests.<sup>60</sup> Western stated that adding C 1114-92 may help reduce burdens or costs imposed by the Rule,<sup>61</sup> but later responded specifically to the issue of adopting the test procedure with "no comment."<sup>62</sup> MRCA expressed concern that the test procedure would replace ASTM tests C 177 and C 518, that only two pieces of equipment currently are available to conduct the C 1114 test, that available test equipment is proprietary, and that more labs should use the equipment to obtain comparable test results before the FTC accepts the procedure.<sup>63</sup>

The Commission has determined to adopt a non-substantive amendment to allow use of ASTM C 1114-95 as an optional, but not required, test method for determining the R-value of home insulation under section 460.5(a) of the R-value Rule.<sup>64</sup> Based on the data submitted with the Petition and the comments, the Commission believes that the accuracy of the ASTM C 1114-95 test procedure compares favorably with the other ASTM R-value test procedures the Commission has adopted under the R-value Rule. Because the amendment imposes no new obligations upon parties covered by the Rule (but merely recognizes the use of an optional R-value test procedure), and because the accuracy of the test procedure compares favorably to the test procedures already required by the Rule, the Commission has determined that this amendment is non-substantive under section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B).

#### VI. Other Issues

In addition to the subjects discussed above, the comments raised numerous other issues relating to the Rule. For example:

- Whether the scope of the Rule should be expanded to cover insulation sold for use in the commercial market, the thermal efficiency of building systems (such as insulation used in structural panels), or new products

<sup>57</sup> 60 FR at 17493-94. Martin Marietta Energy Systems, Inc., operates Oak Ridge National Laboratory ("ORNL") as a contractor for the U.S. Department of Energy. The Petition, plus attachments, has been placed on the public record of the R-value Rule, File No. R811001, and can be inspected at the Commission's Public Reference Room, Room 130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC.

<sup>58</sup> The Commission noted that C 1114-92 had been adopted as an official ASTM standard and, therefore, it appeared that the industry recognized it as an accurate and appropriate test procedure.

<sup>59</sup> Tierra, #12, at 1-3; Fi-Foil/Nowman, #15, at 1; Regal, #16, at 1; England, #18, at 4; Hamilton, #22, at 3; Celotex, #25, at 6; PIMA, #30, at 8; Fi-Foil/Lippy, #42; ORNL/Wilkes, #29, at 2.

<sup>60</sup> Rock Wool Mfg./1, #06.  
<sup>61</sup> Western, #14, at 2.  
<sup>62</sup> *Id.*, at 3.  
<sup>63</sup> MRCA, #31, at 1-2.  
<sup>64</sup> ASTM published revised version C 1114-95 of the standard in August 1995, after the comment period ended. According to the petitioner, the revised version contains merely technical, housekeeping changes. The Commission, therefore, considers the documentation in support of the Petition and the comments to apply to revised version C 1114-95. Graves, #43.

(such as cellulose batts, cotton batts, cotton loose-fill, stabilized cellulose);

- Whether the Rule should require different or new procedures or specify additional requirements for preparing test specimens for certain types of insulation products (such as aging cellular plastics insulations, determining the long-term density of loose-fill mineral fiber insulations);
- Whether the Rule should take into consideration additional factors that can affect the thermal performance of specific products in actual use (such as temperature differences, the effect of convection during winter conditions); and

- Whether the Rule should impose additional requirements on manufacturers or installers to help consumers ensure that the requisite amount of insulation has been installed in their homes.

Adopting the commenters' recommendations to cover, for example, additional products and to create new Rule requirements would require substantive amendments under section 18(d)(2)(B) of the FTC Act, 15 U.S.C. 57a(d)(2)(B). In addition, some of the comments suggested requiring the use of specific proposed ASTM test procedures when ASTM adopts them as final procedures. Because these test procedures are not yet final ASTM standards, it is premature for the Commission to consider requiring that they be used to determine the R-values of home insulation products.

The Commission is continuing to review the issues raised by the comments and the most efficient and effective methods of dealing with them, which may not necessarily include further rulemaking. For example, the Commission could bring enforcement actions against specific companies whose practices are not covered by the Rule, but who are engaging in unfair or deceptive acts or practices under section 5 of the FTC Act, 15 U.S.C. 45. Another option might be for the Commission to provide affected industry members informal guidance instead of adopting substantive amendments to the Rule. The Commission will address these other issues in other notices or forums.

## VII. Exemptions

Section 18(g)(2) of the FTC Act, 15 U.S.C. 57a(g)(2), authorizes the Commission to exempt a person or class of persons from all or part of a trade regulation rule if the Commission finds that application of the rule is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates. Since the R-value Rule became effective, the Commission, in

response to petitions from industry representatives, has granted exemptions from specific requirements of the Rule to certain classes of sellers. The Commission granted these exemptions after soliciting public comment.

Although the Commission published the exemptions in the Federal Register, the exemptions are not cited in the text of the Rule in the Code of Federal Regulations. To assist industry members in understanding their responsibilities under the Rule, the Commission has determined to amend the Rule to include a summary of the exemptions as an Appendix to the Rule. These non-substantive amendments do not alter the requirements of the Rule. They merely summarize the previously-granted exemptions as an Appendix to the Rule for easier reference. Industry members should review the decisions published in the Federal Register where the Commission granted the exemptions for a more complete description of the scope of the exemptions. The summaries in the Appendix include the citations to those decisions.

### A. Manufacturers of Perlite Insulation

The Commission granted the first exemption in response to a petition from a trade association representing manufacturers of perlite insulation products, 46 FR 22179 (1981). The petitioner requested that the Commission exempt manufacturers of perlite insulation from sections 460.12(b)(2) and 460.13(c)(1) of the Rule, 16 CFR 460.12(b)(2), 460.13(c)(1), which require that they disclose on labels and fact sheets the minimum weight per square foot of perlite insulation products that is necessary to achieve a specific R-value.

The Rule's label and fact sheet disclosure requirements were based on the fact that, for most insulation products, as the density increases, the R-value per unit of thickness increases. The Rule, therefore, requires that sellers of loose-fill insulations, including perlite, disclose the minimum weight per square foot that is required to achieve the density and thickness necessary for the claimed total R-value. Unlike other insulation products, however, as the density of most perlite insulation increases, the R-value per unit of thickness decreases. Thus, if these perlite insulations are installed at densities greater than the thicknesses and weights per square foot listed on their labels and fact sheets, the consumer may not receive the claimed R-values. The petitioner requested that the label and fact sheet disclosure requirements be changed to require

disclosure of maximum weight per square foot.

The Commission exempted manufacturers of perlite insulation products that have an inverse relationship between R-value and density or weight per square foot from the requirements in sections 460.12(b)(2) and 460.13(c)(1) of the Rule that they disclose minimum weight per square foot for R-values listed on labels and fact sheets. The exemption is conditioned upon the alternative disclosure in labels and fact sheets of the maximum weight per square foot for each R-value listed. All other requirements of the Rule apply to sellers of these perlite home insulation products.

### B. Manufacturers of Rigid, Flat-Roof Insulation

The Commission granted the second exemption in response to petitions filed by four manufacturers of rigid, flat-roof insulation products and two trade associations representing such manufacturers, 46 FR 22180 (1981). One of the trade associations and all four manufacturers requested an exemption from all requirements of the Rule for rigid, flat-roof insulation products that are used in flat, built-up roofs. The other trade association limited its request to an exemption from the labeling requirements of section 460.12 of the Rule, 16 CFR 460.12.

The petitioners stated that more than 95 percent of the rigid, flat-roof insulation boards sold were used in commercial or industrial buildings and, therefore, were not covered by the Rule. They acknowledged, however, that some of the products were used in multi-family residential buildings, such as flat-roof apartments or condominium buildings. The petitioners stated that manufacturers have no way of knowing which products would be used in residential applications. If manufacturers were required to label all products for residential use according to the Rule, they would be required to assume the unnecessary expense of labeling every package of insulation even though only a small percentage would be used in residential applications. Furthermore, since these products were used primarily in large, multi-family, flat-roof buildings, petitioners asserted that the labeling information was unnecessary because the product generally would be selected by an architect or another professional, not the ultimate consumer.

The Commission exempted manufacturers of rigid, flat-roof insulation products that are used in flat, built-up roofs from the requirement in

section 460.12 that all insulation products that might be used in residential buildings be labeled with required R-value information. All other requirements of the Rule apply to sellers of these products.

### C. New Home Sellers

The Commission granted the third exemption in response to a petition filed by a trade association representing new home sellers, 48 FR 31192 (1983). The petitioner requested that new home sellers be exempted from certain requirements of sections 460.18 and 460.19 of the Rule, 16 CFR 460.18, 460.19. Section 460.18 requires that advertisements and other promotional materials that make certain claims about a home insulation product include specific disclosures. Section 460.19 requires that ads and other promotional materials that claim home insulation can cut fuel bills or fuel use ("energy savings claims") include specific disclosures, and that advertisers have a reasonable basis for the claims and maintain records substantiating the claims.

The Commission determined that certain disclosures in new home advertisements and other promotional materials, which would have been required by the Rule, were not necessary to prevent the unfair or deceptive acts or practices to which the Rule relates. The Commission, therefore, exempted new home sellers from:

(1) The requirement, under section 460.18(a), that they disclose the type and thickness of the insulation when they make a representation about the R-value of the insulation in a new home;

(2) the requirement that they disclose the R-value explanatory statement under section 460.18(a) or the savings explanatory statement under section 460.19(b), conditioned upon the new home seller alternatively disclosing the appropriate explanatory statement in the sales contract along with the disclosures required by section 460.16, 16 CFR 460.16;<sup>65</sup>

(3) the requirement that they make the disclosures specified in section 460.19(c) if they claim that insulation, along with other products in a new home, will cut fuel bills or fuel use; and

(4) the requirement that they include the reference to fact sheets when they must disclose the R-value explanatory statement or the savings claim explanatory statement

<sup>65</sup> Under section 460.19(d), ads or other promotional materials that otherwise would require both the R-value explanatory statement under section 460.18(a) and the savings claim explanatory statement under section 460.19(b) need only contain the savings claim explanatory statement. This option applies under the exemption to new home sellers who choose to make the explanatory statement in the sales contract instead of in the ad or other promotional material.

under sections 460.18(a) or 460.19(b), respectively.

These exemptions also apply to home insulation sellers other than new home sellers (such as home insulation manufacturers) when they participate with a new home seller to advertise and promote the sale of new homes, provided that the primary thrust of the advertisement or other promotional material is the promotion of new homes, and not the promotion of the insulation product. All other requirements of the Rule, including the section 460.19 substantiation and recordkeeping requirements for energy savings claims made in ads and other promotional materials, apply to new home sellers and those who participate with a new home seller to advertise and promote the sale of new homes or home insulation products.

### VIII. Summary of Commission's Determinations

For the reasons set forth in this notice, the Commission:<sup>66</sup> (1) retains the R-value Rule; (2) adopts a non-substantive amendment to section 460.5(a) of the Rule to allow the use of ASTM C 1114-95 as an optional, but not required, test procedure to determine the R-value of home insulation; (3) adopts non-substantive amendments to sections 460.5(a), 460.5(a)(2), 460.5(b), and 460.5(d)(1) of the Rule to require the use of ASTM C 177-85 (1993), ASTM C 236-89 (1993), ASTM C 518-91, ASTM C 976-90, ASTM C 1045-90, and ASTM C 739-91 to determine the R-value of home insulation; (4) adopts a non-substantive amendment to add an Appendix to the Rule, summarizing the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule; and (5) adopts a non-substantive amendment to revise section 460.10 to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and to delete the current Appendix to the Rule, which merely repeats the text of 16 CFR 14.9.

### List of Subjects in 16 CFR Part 460

Advertising, Incorporation by reference, Insulation, Labeling, Trade practices.

<sup>66</sup> In addition to the amendments described in the text of this notice, the Commission also adopts a non-substantive amendment to section 460.10 and removes the current Appendix ("Enforcement Policy Statement for Foreign Language Advertising"). Section 460.10 previously required compliance with the disclosure requirements described in the Appendix. The Appendix simply reprinted 16 CFR 14.9. Amended section 460.10 refers directly to 16 CFR 14.9, eliminating unnecessary duplication.

### Text of Amendments

Accordingly, the Commission amends 16 CFR Part 460 to read as follows:

### PART 460—[AMENDED]

1. The authority citation for Part 460 is amended to read as follows:

Authority: 15 U.S.C. 41 *et seq.*

2. In section 460.5, the introductory text, paragraph (a) introductory text, paragraphs (a)(2) and (b), paragraph (d) introductory text and paragraph (d)(1) are revised to read as follows:

### § 460.5 R-value tests.

R-value measures resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM). The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C 177-85 (Reapproved 1993), "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus;" ASTM C 236-89 (Reapproved 1993), "Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box;" ASTM C 518-91, "Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus;" ASTM C 976-90, "Standard Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box;" or ASTM C 1114-95, "Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus." The tests must be done at a mean temperature of 75° Fahrenheit. The tests must be done on the insulation material alone (excluding any airspace). R-values ("thermal resistance") based upon heat flux measurements according to ASTM C 177-85 (Reapproved 1993) or ASTM C 518-91 must be reported only in accordance with the requirements and restrictions of ASTM C 1045-90, "Standard Practice for Calculating Thermal Transmission Properties from Steady-State Heat Flux Measurements." These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the test procedures and standard practice may be obtained from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

Copies may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, Sixth Street and Pennsylvania Ave., NW, Washington, DC, or at the Office of the Federal Register, 800 North Capital St., NW, suite 700, Washington, DC.

(1) \* \* \*

(2) For loose-fill cellulose, the tests must be done at the settled density determined under paragraph 8 of ASTM C 739-91, "Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation." This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the test procedure may be obtained from the American Society of Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, Sixth Street and Pennsylvania Ave., NW, Washington, DC, or at the Office of the Federal Register, 800 North Capital St., NW, suite 700, Washington, DC.

\* \* \* \* \*

(b) Aluminum foil systems with more than one sheet must be tested with ASTM C 236-89 (Reapproved 1993) or ASTM C 976-90, which are incorporated by reference in paragraph (a) of this section. The tests must be done at a mean temperature of 75° Fahrenheit, with a temperature differential of 30° Fahrenheit.

\* \* \* \* \*

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in paragraph (a) of this section. You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C 236-89 (Reapproved 1993) or ASTM C 976-90, which are incorporated by reference in paragraph (a) of this section. If you do this, you must follow the rules in paragraph (a) of this section on temperature, aging and settled density.

\* \* \* \* \*

3. Section 460.10 is revised to read as follows:

**§ 460.10 How statements must be made.**

All statements called for by this regulation must be made clearly and conspicuously. Among other things, you must follow the Commission's enforcement policy statement for clear and conspicuous disclosures in foreign

language advertising and sales materials, 16 CFR 14.9.

4. The "Appendix to Part 460—Enforcement Policy Statement for Foreign Language Advertising" is removed.

5. A new Appendix is added, to read as follows:

**Appendix to Part 460—Exemptions**

Section 18(g)(2) of the Federal Trade Commission Act, 15 U.S.C. 57a(g)(2), authorizes the Commission to exempt a person or class of persons from all or part of a trade regulation rule if the Commission finds that application of the rule is not necessary to prevent the unfair or deceptive acts or practices to which the rule relates. In response to petitions from industry representatives, the Commission has granted exemptions from specific requirements of 16 CFR Part 460 to certain classes of sellers. Some of these exemptions are conditioned upon the performance of alternative actions. The exemptions are limited to specific sections of Part 460. All other requirements of Part 460 apply to these sellers. The exemptions are summarized below. For an explanation of the scope and application of the exemptions, see the formal Commission decisions in the Federal Register cited at the end of each exemption.

(a) Manufacturers of perlite insulation products that have an inverse relationship between R-value and density or weight per square foot are exempted from the requirements in sections 460.12(b)(2) and 460.13(c)(1) that they disclose minimum weight per square foot for R-values listed on labels and fact sheets. This exemption is conditioned upon the alternative disclosure in labels and fact sheets of the maximum weight per square foot for each R-value required to be listed. 46 FR 22179 (1981).

(b) Manufacturers of rigid, flat-roof insulation products used in flat, built-up roofs are exempted from the requirements in section 460.12 that they label these home insulation products. 46 FR 22180 (1981).

(c) New home sellers are exempted from:

(1) the requirement in section 460.18(a) that they disclose the type and thickness of the insulation when they make a representation in an advertisement or other promotional material about the R-value of the insulation in a new home;

(2) the requirement that they disclose in an advertisement or other promotional material the R-value explanatory statement specified in section 460.18(a) or the savings explanatory statement specified in section 460.19(b), conditioned upon the new home sellers alternatively disclosing the appropriate explanatory statement in the sales contract along with the disclosures required by section 460.16;

(3) the requirement that they make the disclosures specified in section 460.19(c) if they claim that insulation, along with other products in a new home, will cut fuel bills or fuel use; and

(4) the requirement that they include the reference to fact sheets when they must disclose the R-value explanatory statement or the savings claim explanatory statement

under sections 460.18(a) or 460.19(b), respectively.

The exemptions for new home sellers also apply to home insulation sellers other than new home sellers when they participate with a new home seller to advertise and promote the sale of new homes, provided that the primary thrust of the advertisement or other promotional material is the promotion of new homes, and not the promotion of the insulation product. 48 FR 31192 (1983).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96-7528 Filed 3-27-96; 8:45 am]

BILLING CODE 6750-01-P

**16 CFR Parts 801 and 802**

**Premerger Notification; Reporting and Waiting Period Requirements**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends the premerger notification rules that require the parties to certain mergers or acquisitions to file reports with the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation.

These amendments consist of five rules that define or create exemptions to the requirements imposed by the Hart-Scott-Rodino Act. These rules clarify the types of transactions that are in the ordinary course of business of the parties to the transaction and are exempt under section 7A(c)(1) of the Hart-Scott-Rodino Act. They also provide several new exemptions under section 7A(d)(2)(B) for certain types of acquisitions of realty and carbon-based mineral reserves that are not likely to violate the antitrust laws. These rules are designed to reduce the compliance burden on the business community by eliminating the application of the notification and waiting requirements to a significant number of transactions that are unlikely to violate the antitrust laws. They will also allow the enforcement agencies to focus their resources more effectively on those transactions that present the potential for competitive harm.

**EFFECTIVE DATE:** April 29, 1996.