which it is contended that there exists a genuine issue to be heard. All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party. The presiding officer shall permit the opposing party an opportunity to respond in writing to new facts and arguments presented in any supporting statements which were not presented in the papers of the moving party. Any such response shall be served within such time limits as the presiding officer may establish and shall address only the new facts and arguments presented in the supporting statement. No further supporting statements or responses thereto shall be entertained.

* * * * *

(Sec. 161(p), Pub. L. 83–703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93–438, 88 Stat. 1243, Pub. L. 94–79, 89 Stat. 413 (42 U.S.C. 5841))

Dated at Washington, D.C. this 9th day of October, 1980.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 80-32543 Filed 10-16-80; 8:45 am]

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FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Staff compliance guidelines.

SUMMARY: The Staff of the Federal Trade Commission publishes its Staff Compliance Guidelines. The staff is publishing these guidelines to provide assistance to industry members regarding areas in which the staff believes that guidance should prove most helpful to industry members. The views expressed in the guidelines are those of the staff only; they have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the home insulation trade regulation rule.

DATES: Effective date: October 17, 1980. Written comments regarding the Staff Compliance Guidelines will be accepted until November 17, 1980.

ADDRESS: Written comments should be addressed to the Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, D.C. 20580. All comments should be captioned: "Comment on Staff Compliance Guidelines—Home Insulation Rule, F.T.C. File 215–59."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, 202–724–1514, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION:

Note.—The following Guidelines will not appear in the Code of Federal Regulations.

Staff Compliance Guidelines

I. Introduction

The Federal Trade Commission's Trade Regulation Rule on Labeling and Advertising of Home Insulation (16 CFR Part 460) took effect on September 29, 1980.[1] The Commission's staff recognizes that it has a responsibility to provide industry members who are attempting to comply with the Rule with as much guidance as possible. To meet this responsibility, the staff is publishing these compliance guidelines. Although the guidelines do not amend or modify the Rule in any way, they should provide assistance to industry members. These guidelines will serve as enforcement criteria for the staff in assessing compliance with the Rule. Although the staff views these guidelines as final, it will accept written comments until November 17, 1980. If the staff believes it is appropriate to revise any portion of the guidelines based on the comments received, it will publish revised staff compliance guidelines in the **Federal Register.**

The guidelines cover those areas in which guidance should prove most helpful to industry members. If further compliance questions arise, they will be handled informally by the staff or, if appropriate, by the Commission, as provided for in Sections 1.1 through 1.4 of the Commission's Rules of Practice.[2]

II. When the Rule Takes Effect

The provisions of the Rule apply to home insulation materials produced and sold after September 29, 1980. However, the staff realizes that some insulation retailers and installers will have back stocks of materials, existing at the time of the Rule's effective date, which are not labeled in accordance with § 460.12 of the Rule. Enforcement action will not be recommended against retailers or installers who deplete such back stocks. On the other hand, packages that are not labeled in accordance with the requirements of § 460.12 of the Rule should not be accepted for resale to consumers after September 29, 1980. Similarly, all insulation sold by manufacturers after September 29, 1980 must be labeled in accordance with § 460.12 of the Rule. A manufacturer who delivers improperly labeled materials after this date will be in violation of the Rule, and the product should not be sold to consumers by the retailer or installer.

All advertisements for home insulation, other than those on television, must also comply with the requirements of §§ 460.18 and 460.19 of the Rule as of September 29, 1980. The staff recognizes that some non-complying ads may already be prepared and scheduled for publication and, if so, they will have to have been revised by September 29 unless unusual circumstances make this impossible. The staff notes that industry members have known since August of 1979 that the Commission was very likely to make effective the disclosure requirements for home insulation ads found in the Rule. In addition, the staff considers the advertising disclosures to be essential features of the Rule, and believes that even temporary exceptions from those requirements would frustrate the purposes of the Rule. The Commission has postponed the disclosure requirements for television advertisements pending completion of further rulemaking proceedings.

III. Coverage of the Rule

The Rule applies to the promotion and sale of thermal insulation products. It does not apply to other products with insulating characteristics, such as storm windows and doors, caulking, weatherstripping, insulated residential siding, or draperies.

The Rule applies to insulation sold for use in all types of residential structures, including old or new houses, condominiums, cooperatives, apartments, modular homes and mobile homes. It does not apply to insulation sold for use in commercial or industrial structures.

The Rule also requires disclosure of R-values and related information in sales of "new homes." The term "new homes" includes new houses, apartments, condominiums, cooperatives, modular homes and mobile homes.[3] It includes

[1] 45 FR 54702 (1980). The Rule and its Statement of Basis and Purpose were promulgated and published on August 27, 1979. 44 FR 50218 (1979).

[2] 16 CFR Part 1.1–1.4.

[3] The Commission has received petitions from three trade associations requesting that mobile homes be exempted from part or all of the requirements of the Rule. The Commission has temporarily stayed the effect of § 460.16 of the Rule, insofar as it requires sellers of mobile homes to

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old residential structures, such as condominium conversions, only when they are sold by someone who is engaged in the business of selling such property and insulation has been added as part of the conversion or other preparation for resale. It includes residential structures whether they are purchased as primary places of residence or for other purposes such as vacation homes. It does not include residences sold by private owners who have resided in the dwellings, and who are not otherwise engaged in selling such property.

IV. The R-Value Testing Requirements

Under § 460.5(a) of the Rule, all insulation products, except aluminum foil, sold in the residential market must be tested for R-value under either ASTM C–177, ASTM C–236, or ASTM C–518. If the "calibrated hot box" becomes an ASTM standard test method, it can also be used. The tests must be conducted at a mean temperature of 75 degrees Fahrenheit on the insulation material alone (excluding any air spaces).

Because of the nature of the products, there are specific additional requirements concerning the testing of aluminum foil, mass insulations with foil facings, polyurethane, polyisocyanurate, extruded polystyrene, and loose-fill insulations. These specific requirements and the required thickness for testing all insulation products are discussed in detail in this Section of the Guidelines.

A. Sample Thickness

Section 460.6 of the Rule, as it was published on August 27, 1979, would have required that all mass insulation materials be tested at representative thicknesses. This requirement would mean that such tests would have to be performed at a thickness at which the R-value per inch will vary no more than plus or minus 2% with increases in thickness. However, R-values for smaller thicknesses could be based on tests conducted on those thicknesses.

After the Commission issued the rule in August, 1979, new evidence was presented to the Commission which made it clear that a significant controversy existed regarding the essentially technical questions of the effects of thin-sample testing on R-value measurement and the present feasibility of a "representative thickness" testing requirement until calibration materials are available from the National Bureau of Standards (NBS). The Commission has temporarily stayed the effective date of the representative thickness testing requirement.[4] When thick calibration samples become available from NBS, scheduled to be in January, 1981, the Commission will be able to determine an effective date for the representative thickness testing requirement. The staff recognizes the industry's legitimate need for a reasonable amount of time following the development of these materials for the industry to bring itself into compliance with the rule's representative thickness testing requirement. The staff therefore intends to recommend that the Commission use its discretion to make the representative thickness testing requirement effective only after a reasonable period of time and to consult with interested parties on what period of time would be appropriate before any final decision is made.

Until the Commission makes the representative thickness testing requirement effective, staff will accept as satisfactory compliance testing of samples of mass insulation performed either at representative thicknesses or at 1.5 inches, as recommended by NBS.[5] For thicknesses of less than 1.5 inches, testing may be conducted at 1.5 inches or at the full thickness of the insulation.

After the Commission makes the representative thickness testing requirement in § 460.6 effective, the representative thickness of each insulation product will have to be determined. Under §§ 460.5(a) and 460.6 of the Rule, if the tested R-value per inch does not drop by more than two percent when the thickness of the test sample is increased, then the representative thickness has been achieved. If the material is produced at a thickness greater than the representative thickness, the R-values at these greater thicknesses may be extrapolated from the tested R-value per inch at the representative thickness. Similarly, the R-value per unit at the representative thickness may be extrapolated back to provide R-values at lower thicknesses, or the manufacturer may perform separate tests at those thicknesses. In any event, upward extrapolation of R-values based on tests of thin samples will not be permitted unless the manufacturer can produce test results which demonstrate that the product does not suffer from the thickness effect.

B. Reflective Foil Insulation and Foil Faced Insulation

Section 460.5(b) of the Rule requires that aluminum foil insulation systems with multiple sheets of reflective foil which are separated by air spaces, also called multi-panel foil insulation systems, be tested in accordance with ASTM C–236. The tests must be conducted at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit, and under the conditions which will be present in the recommended installations.

Section 460.5(c) of the Rule requires that the R-value of single sheet reflective foil insulation, installed in conjunction with an air space, be determined by first testing the emissivity of the foil insulation under ASTM E–408, or a comparable test procedure. The R-value of the foil insulation and its air space may then be derived from the appropriate table in the latest edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' Handbook and Product Directory Fundamentals (hereinafter cited as "ASHRAE Handbook"),[6] based upon the tested emissivity of the foil, and upon the position and size of the air space it faces and the direction of heat flow in the manufacturer's recommended installation. The R-value derived from the table in the ASHRAE Handbook must be that for a mean temperature of 50 degrees Fahrenheit with a temperature differential of 30 degrees Fahrenheit. During the period of time since the Commission promulgated the rule, it has been brought to the staff's attention that use of the ASHRAE Handbook table method to determine the R-value of single sheet reflective foil insulations is only appropriate if the air space configuration and conditions found in actual installation meet the configuration and conditions specified in that table. Therefore, staff urges manufacturers of single sheet reflective foil insulation products which will not be installed according to the air space configuration and conditions listed in

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make disclosures to purchasers in sales contracts, pending a final decision by the Commission on the exemption petitions. The Commission denied the requests of the trade associations for a stay of other portions of the Rule which may apply to sellers of mobile homes.

[4] 45 FR at 54702–06. The Commission did not stay the prohibitions against making per inch R-value claims, because it believed that such claims would perpetuate the consumer's belief that R-values are linear, and thus would interfere with the effectiveness of the Rule after the stay of the representative thickness testing requirement is lifted *Id.* at 54704.

[5] NBS made this recommendation in a proposed Enforcement Bulletin it submitted to the Commission. Letter of November 19, 1979, to Michael Pertschuk, Chairman, Federal Trade Commission, from Ernest Ambler, Director, National Bureau of Standards, with attached proposed Enforcement Bulletin, FTC File No. 215–59, Document No. W–35.

[6] E.g., ASHRAE Handbook & Product Directory 1977 Fundamentals, at 22.12–22.13 (Table 2, Thermal Resistances of Plane Air Spaces), FTC File No. 215–59, Document No. H–170e.

the ASHRAE table to determine R-values by testing their products in accordance with ASTM C–236. The test should be conducted under the air space configuration and conditions which will be present when the product is installed according to the manufacturer's recommendations. For consistency, the test should be conducted at a mean temperature of 75 degrees Fahrenheit, with a temperature differential of 30 degrees Fahrenheit. The staff will not recommend enforcement action against those manufacturers who determine the R-values of their single sheet reflection foil insulation products according to tests conducted in accordance with ASTM C–236, in this manner. However, the staff may recommend further action by the Commission, such as an amendment proceeding, if necessary, if it appears that consumers are being mislead because sellers are basing R-value claims on the ASHRAE table for installations which do not meet the table's specifications.

The requirements for determining the R-values of mass insulations with reflective foil facings recognize that foil-faced insulation can be installed with or without an air space facing the foil. Section 460.5(d) of the Rule requires that the R-value of the mass insulation alone be determined according to one of the ASTM R-value test procedures cited in § 460.5(a). If the foil-faced insulation can also be used with an air space directly facing the foil, the insulation may also have a "system" R-Value, that is, both the mass insulation and the foil facing with the air space may contribute to the total R-value of the foil-faced product. Under § 460.5(d)(1) of the Rule, this system R-value may be determined according to ASTM C–236 by testing the faced insulation product under the air space configuration and conditions which will be present when the product is installed as recommended by the seller.

As an alternative, under § 460.5(d)(2), if the faced product may be installed, in normal construction[7] with the air space facing the foil and under the configuration and conditions specified in the ASHRAE Handbook table,[8] the R-value of the foil-faced insulation system may be determined by adding the tested R-value of the mass insulation to the appropriate R-value of the foil facing which is next to the air space, according to the ASHRAE table. Use of the ASHRAE table to determine the R-value of the foil-faced system is only appropriate if the air space configuration and conditions found in normal construction in the installation recommended by the Manufacturer meet the configuration and conditions specified in that table. Lastly, to use this method, the emissivity of the reflective foil facing must be determined by tests conducted under ASTM E–408, or a comparable test procedure, after the foil has been laminated or otherwise attached to the mass insulation.

C. Loose-Fill Testing at Settled Density

Section 460.5(a) of the Rule requires that both cellulose and mineral wool loose-fill insulations be tested for R-value at their settled densities. This requirement is necessary so that the R-values represented accurately reflect the performance of these insulations after settling has occurred.

For cellulose insulation, § 460.5(a)(2) requires that the settled density be determined according to the settled density test procedure required by General Services Administration (GSA) Specification HH–I–515D. The Commission has issued a formal opinion that the Rule requires use of the settled density test procedure which was required by Specification HH–I–515D on August 27, 1979, the date on which the Commission promulgated the Rule. That test procedure includes temperature and humidity cycling and is sometimes referred to as the Canadian drop test. Alternatively, the Commission has stated that it will permit the use of the settled density test procedure currently required by Specification HH–I–515D, commonly known as the cyclone shaker test.

Section 460.5(a)(3) likewise requires that loose-fill mineral wool insulation be tested for R-value at a density that fully reflects the effect of settling. However, because a single test procedure for accurately determining the settled density of loose-fill mineral wool insulation has not yet been generally accepted, the Rule does not specify the test procedure to be used. Studies are currently under way to develop such a test procedure. When a specific test procedure is developed and included in the GSA specification for loose-fill mineral wool insulation, manufacturers must use that test procedure. In the meantime, each manufacturer of loose-fill mineral wool insulation has the burden of ensuring that the method it uses to determine the settled density of its product is reasonable. Until GSA adopts a settled density test procedure for loose-fill mineral wool insulation, Commission staff will consider test methods used to determine the settled density of loose-fill mineral wool insulation on a case by case basis.

D. Aging of Cellular Plastics

Section 460.5(a)(1) of the Rule requires that R-value tests for certain cellular plastics insulation materials be performed on test samples that have been aged in accordance with GSA Specification HH–I–530A or another reliable aging procedure. The materials which normally are subject to this aging phenomenon are extruded polystyrene, polyurethane, and polyisocyanurate. The GSA Specification requires that test samples be aged for 90 days at 140 degrees Fahrenheit dry heat, in the form of intended use. While the staff believes that this procedure will produce R-values that reflect the material's performance over time, it has been suggested that the procedure might severely distort the qualities of some cellular plastics products. To account for this possibility, the Rule permits manufacturers to employ reliable alternative procedures of their own choosing that will produce R-values reflective of a fully aged cellular plastics product.

At present, the staff is unaware of a widely accepted alternative procedure for aging of these materials. As a result, compliance with the other "reliable" procedure alternative in the Rule will be assessed on a case-by-case basis. This assessment will be guided in part by other federal or state regulations in this area, but aging procedures suggested by individual manufacturers will also be considered. For example, a manufacturer who already has test samples which have been aged for several years and are now stable will be in compliance with the Rule, if the aging procedure was fair and reliable.

[7] In the Context, staff means that applications of a given product achieve the conditions specified in the table in the ASHRAE handbook in a significant proportion of applications in construction of residential housing.

[8] There are some obvious examples of applications of foil-faced insulation which will not create the type of airspaces described in the table in the ASHRAE Handbook, *i.e.*, "air spaces of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space." ASHRAE Handbook (1977), *supra* note 6. Two examples of constructions which do not meet these conditions follow. In the first example, foil-faced board stock is attached over the external siding of an existing house, with the foil facing outward. Residential siding is installed over the foil-faced board stock, creating a bevel-shaped air space between the foil facing and the siding. In the second example, an external brick veneer is installed to the outside of the external walls of a house. In laying the brick, a finger-sized air space is left between the brick and the internal portion of the wall so that the brick can be laid. The inner face of the air space is the foil facing of foil-faced board stock. Mortar oozes into the air space from between the bricks. Weep holes are left at the bottom of the wall for ventilation. Neither of these applications of foil-faced mass insulations creates an air space which meets the conditions specified in the ASHRAE Handbook table.

Regardless of the aging procedure used by the manufacturer, the tolerance provision discussed below will be applied by the staff. In other words, if the marketed product's R-value, when independently tested by the Commission, is more than 10 percent below the labeled R-value, the manufacturer will have violated the Rule, possibly because a faulty aging procedure was used. Thus, industry members who do not have complete confidence in their aging procedures or in the consistency of their production processes should consider whether their products will pass the tolerance test found in the Rule.

V. The Tolerance and Rounding Provisions

Section 460.8 of the Rule states that the actual R-value of any insulation sold to consumers cannot be more than 10 percent below the R-value shown on a label, fact sheet, ad, or other promotional material for the product. This 10 percent tolerance is designed to take the place of detailed quality control standards in the Rule. It does not give industry members a license to raise their R-values above levels determined through R-value testing. Rather, the testing sections impose two separate bases for potential liability. First, industry members will be liable if their stated R-values do not reflect the results of tests performed in accordance with the Rule. Second, if the Commission tests the manufacturer's product, the tested R-value must be within 10 percent of the R-value represented to consumers. If the product is not within this 10 percent tolerance, the manufacturer may be liable even if the stated R-value accurately reflects the manufacturer's test results. In that event, failure to pass the tolerance test indicates that the manufacturer's quality control procedures are insufficient to provide consumers with a reasonable assurance that they are receiving the represented R-value.

The tolerance provision also interacts with the requirement in § 460.11 of the Rule that R-values below 10 must be rounded to the nearest tenth, and that R-values of 10 or more may be rounded to the nearest whole number. This permissive rounding to the nearest whole number, however, will not exempt manufacturers from the Rule's 10 percent maximum tolerance. In other words, while a tested R-value of 12.5 could be rounded to 13, such rounding will consume a portion of the 10 percent tolerance allowed by the Rule. Under these circumstances, the manufacturer may wish to label the product with an R-value of 12.5, or even round the number down to 12, in order to benefit fully from the 10 percent tolerance allowed under the Rule.

VI. Point-of-Sale Disclosures

The Rule requires that R-values and related information concerning home insulation products be disclosed on product labels and on fact sheets available to the consumer at the point of purchase. Since §§ 460.12 and 460.13 of the Rule clearly specify the information that must be included on labels and fact sheets for each type and form of home insulation, those requirements are not repeated in these guidelines. However, this Section of the guidelines discusses some specific requirements about which staff has received inquiries from industry members or other interested parties.

A. Labels and Fact Sheets

1. Loose-Fill Insulations

a. *"Maximum net coverage area."* Sections 460.12(b) (2) and (3) and 460.13(c)(1) of the Rule require that the coverage charts on labels and fact sheets of all loose-fill insulations disclose the "maximum net coverage area" for the bag to obtain the represented R-value. The disclosure required is of the net area which the insulation contained in the bag will cover. For purposes of making the disclosure required by the rule, manufacturers may not consider joist areas or other construction features of a real or an imaginary house in determining the coverage area on labels and fact sheets, since these features vary from one house to another. Only the net coverage area will allow consumers to make cost comparisons between competing products.

On the other hand, the Rule does not prohibit manufacturers or installers from including on labels or other promotional materials, for illustration only to assist the consumer in computing net coverage area, information about the gross coverage area for the bag in specific applications. In such a case, the conditions presumed in any specific examples must clearly and conspicuously be disclosed in connection with the examples. However, since this information is different than that required in the coverage chart by the rule, it may not be described in the fact sheets.

b. *"Minimum thickness" and "minimum weight per square foot."* Sections 460.12(b) (2) and (3) and 460.13(c)(1) of the Rule require that labels and fact sheets for all loose-fill insulations state both "minimum thickness" and "minimum weight per square foot" for each R-value listed. However, all loose-fill insulations which settle may have thicknesses and densities which vary between the time of installation and the time at which the products have reached their settled densities. In fact, environmental conditions and the particular blowing machine used to install the product may result in a particular product having different thicknesses and weights per square foot immediately following installations under different conditions. In view of all these factors, the material information for consumers, and for the staff in enforcing the Rule, is the minimum thickness and minimum weight per square foot required for the represented R-value after all settling has taken place. It is only that thickness and that weight per square foot which will give the consumer the R-value purchased. The consumer can be assured of receiving the proper amount of insulation by comparing the number of bags installed to the settled density coverage area information appearing on the labels and fact sheets.

The Commission's staff recognizes that manufacturers may wish to provide further information regarding the thickness to be expected at the time of installation so that consumers have an additional and immediate measure to ensure that the proper amount of insulation has been installed. Therefore, manufacturers may disclose on labels the average thickness or a range of thicknesses to be expected at the time of installation. Of course, the manufacturer must have data which support the additional thickness(es) disclosed, such as valid studies of installed thicknesses under varying conditions. To ensure that the additional disclosure may not be used to mislead the consumer, the manufacturer should include an explanation that the additional information is provided for the consumer's guidance only, that the installed thickness will vary depending upon conditions at the time of installation, and that to obtain a specific R-value the insulation should not be applied over a larger area than that stated on the coverage chart. Since this additional information is different than that required in the coverage chart by the Rule, it may not be described in the fact sheets.

c. *Bags per 1,000 square feet for mineral wool.* When it issued the final rule, the Commission attempted to ensure that its requirements were consistent with requirements of other federal agencies. For example, the General Services Administration (GSA) has issued specifications for types of

thermal insulation products that may be purchased by the federal government or in connection with programs operated by the federal government. The GSA specifications require that specific R-value coverage chart information be included on labels. Therefore, for consistency the Commission adopted the coverage chart information required by the GSA specifications for loose-fill mineral wool and cellulose insulations.

At the time the Commission issued the rule, the GSA specification for loose-fill mineral wool insulation required that the coverage chart on the label contain a column disclosing the number of square feet the bag will cover for each total R-value listed on the label. It did not require that the label contain a column disclosing the number of bags required to cover one-thousand (1,000) square feet, although the GSA specification for loose-fill cellulose required both columns. GSA has revised its loose-fill mineral wool insulation specification to require the addition of a column disclosing the number of bags per one-thousand square feet of coverage area which are required to obtain the referenced R-value.

Under these circumstances, staff urges all manufacturers of mineral wool and other loose-fill insulations besides cellulose to add the column disclosing the number of bags per one-thousand (1,000) square feet to the coverage charts on labels and fact sheets. The disclosure is relevant to the coverage chart specifically required by § 460.12(b)(2) of the rule and is, in fact, merely a different way of stating information which that Section already requires to be disclosed on labels and fact sheets. The addition of the column also will make all other loose-fill insulation labels more consistent with those required by the Rule for cellulose.

2. Single Sheet Reflective Foil and Foil-Faced Insulations

The Rule allows manufacturers to use ASHRAE tables to determine the R-value of single sheet foil insulations. However, the ASHRAE values should be used only if normal applications,[9] and the applications recommended by the manufacturer, meet the conditions pertaining to the values which are specified in the ASHRAE Handbook, and if those conditions are clearly and conspicuously disclosed in the conjunction with references to R-values determined in that manner in labels, fact sheets and advertisements. For installations which do not meet the conditions specified in the ASHRAE Handbook,[10] manufacturers should determine the R-value based on tests conducted on the product under ASTM C–236 under the conditions in which it normally will be installed, and which the manufacturer recommends. In this situation too, the conditions necessary to obtain the R-value must be clearly and conspicuously disclosed in connection with the R-value claim.

The Rule recognizes that mass insulation materials with reflective facings can have two different R-values, depending on the manner of installation. If a faced product is installed without the benefit of an adjacent airspace, it has what can be termed its "material R-value." This is simply the R-value of the mass insulation material, as tested in accordance with the Rule. However, if the same faced product is installed in conjunction with an airspace, it may have what is called a "system R-value."

Sections 460.12(b) (5) and (6) and 460.13(c)(2) of the Rule require that the material R-value be disclosed on labels and fact sheets, and, under certain circumstances, in advertisements. Sections 460.12(b)(6) and 460.13(c)(2) allow the additional disclosure of the system R-value. However, since the system R-value will depend on a number of factors, such as the thickness and configuration of the air space and the direction of heat flow, the conditions under which the stated system R-value can be attained must be clearly and conspicuously disclosed in conjunction with any system R-value claim.

A mere description of this disclosure, such as "system R-value of 6.2," will not comply with the Rule. Similarly, the mere notation that the system R-value is "as per ASTM C236" or "as per ASHRAE Handbook" will not suffice. Rather, the Rule requires that the manufacturer specifically disclose the thickness of the airspace and the specific installation conditions and configuration necessary to obtain the system R-value.

3. Urea-Based Foam Insulations

Sections 460.13(d) and 460.18(e) of the Rule provide that when manufacturers of urea-based foam products make R-value claims, they have the option of disclosing that their products shrink or of reducing their R-value claims to account for shrinkage. If the latter option is selected, the specified disclosure otherwise required by the Rule may be omitted. Installers of urea-based foam products must, of course, follow the option of the manufacturer: if the manufacturer declines to reduce the product's R-value to account for shrinkage, then R-value claims by the installer must be accompanied by the disclosure in § 460.18(e) of the Rule.

Manufacturers who elect to lower the product's R-value to account for shrinkage must have "reliable scientific proof of the extent of shrinkage * * * and of its effect on R-value." In assessing whether the manufacture's substantiation constitutes "reliable scientific proof," the staff will be guided primarily by regulations of other government agencies which have developed expertise in this area. For present purposes, a manufacturer in compliance with the HUD Use of Material Bulletin No. 74 will be in compliance with this Rule. The staff also will monitor carefully the ongoing activities of the Department of Energy in the area of urea-based foam shrinkage. Finally, the staff will review individualized shrinkage data developed by a manufacturer for compliance with the "reliable scientific proof" standard. However, such individualized data will be carefully scrutinized in light of the above guides, particularly if the manufacturer contends that it shows an unusually small R-value reduction attributable to shrinkage. Thus, extensive testing by the manufacturer may be required, and idealized testing conditions or assumptions behind any calculations are to be avoided.

B. Availability of Fact Sheets

Section 460.13 of the Rule requires installation manufacturers to provide retailers and installers with fact sheets for their products. Sections 460.14 and 460.15 require retailers and installers to make the fact sheets available to consumers prior to purchase. The fact sheet requirements do not apply to new home sellers.

The Rule does not specify how many fact sheets the manufacturer must provide to retailers and installers. For example, if the retailer elects to use a binder or similar system, only one copy of each fact sheet may be needed. Retailers who wish to provide individual fact sheets to their customs will need a larger supply. In any event, the duties of the manufacturer on the one hand, and of the retailer or installer on the other, are independent. If the manufacturer does not supply any fact sheets, or if the ones supplied do not meet the requirements of the Rule, the manufacturer will have violated the Rule. In such a case, the retailer or installer should halt sales of the product until acceptable fact sheets are

[9] *Supra*, note 7.

[10] *Supra*, note 6.

provided.[11] If the manufacturer refuses to send out the fact sheets as required, the retailer or installer should immediately report this fact to the Commission staff.

As noted above, the Rule requires that retailers and installers make the fact sheets available to customers. Individual copies may be provided, or a binder or similar system may be used with consumers reading the sheets prior to purchase. With respect to installers, § 460.15 of the Rule is more exact: before customers agree to buy insulation, they must be shown the appropriate fact sheets and given an opportunity to read them. Thus, installers have a duty to bring the fact sheets to the customer's attention. Retailers, on the other hand, may often find it difficult to tell whether a consumer is simply browsing in the store or is considering an insulation purchase. As a result, the Commissioin has decided to let retailers select their own method for making fact sheets available, as long as customers "are likely to notice them." Retailers should pay especially close attention to the latter requirement. For example, if the store has a central counter or display area for insulation, the fact sheet display or a large, readable sign should be conspicuously placed in this location. If the store has neither of these, the fact sheet display or sign should be conspicuously placed at a location likely to be visited by an insulation customer, such as the home weatherization or improvement section. On the other hand, if the store has aisles or other locations at which home insulation is readily accessible to customers, it would be appropriate to place signs, indicating where the fact sheets are kept, at strategic places in each aisle or other location. As this last example suggests, more than one sign or display may be necessary, depending on the store.

C. Loose-Fill Insulation Disclosures by Installers

Section 460.17 of the Rule requires that installers give their customers a signed and dated contract, or a receipt, for the insulation they install. For loose-fill insulations, the contract or receipt must show the coverage area, thickness, and R-value of the insulation installed. Consistent with the requirements for labels, this information must be based on the settled density of the product, not its blown density, and upon the net coverage area of the insulation. Installers should use the data on the settled density coverage charts on the manufacturer's bag labels to make these disclosures.

If desired, installers may additionally disclose the average thickness or a range of thicknesses to be expected at the time of installation. The installer must have a reasonable basis to support the additional thickness(es) disclosed, such as valid studies of installed thicknesses under varying conditions. If the manufacturer has provided this additional information to the installer, the installer may rely on that information unless the installer knows or should know that the manufacturer does not have a reasonable basis for the additional information. To ensure that the additional disclosure will not mislead the consumer, the installer should include an explanation that the additional information is provided for the consumer's guidance only, that the installed thickness will vary depending upon conditions at the time of installation, and that to obtain a specific R-value the insulation should not be applied over a larger area than that stated on the settled density coverage chart on the label.

Installers may also disclose, for illustration only to assist the consumer in understanding the net coverage area disclosure, accurate information about the gross coverage area for the bag in specific applications, taking into consideration joist areas and other construction features. In such a case, the conditions presumed in any specific examples must clearly and conspicuously be disclosed in connection with the examples. As an alternative, the installer could use accurate measurements and computations based on the consumer's house to compare the gross coverage area in the consumer's house to the net coverage area of the insulation. To ensure that any additional disclosure will not mislead the consumer, the installer should include an explanation that the additional information is provided for the consumer's guidance only.

D. Disclosures by New Home Sellers

Section 460.16 of the Rule requires new home sellers merely to disclose the type, thickness and R-value [12] of the insulation installed, or to be installed, in each part of the dwelling. If no insulation is installed, or to be installed, that fact should be disclosed. The disclosures must be made in the sales contract. They can be made in a separate document if the document is incorporated into the contract by reference, and if the buyer has an opportunity to review the insulation-related disclosures at the time the contract is signed.[13] New home sellers do not have to display either insulation labels or fact sheets. In the case of multi-unit buildings, the disclosures are required only for the buyer's unit, although additional information is not prohibited by the rule.

Under the Rule, "new homes" means new houses, condominiums, cooperatives, mobile homes,[14] vacation dwellings, or other residential housing units. Previously existing residential structures, such as houses or condominiums, are "new homes" under the rule when they are sold by someone who is engaged in the business of selling such property and insulation has been added, or will be added, as a part of a conversion or other renovation in preparation for resale. However, sellers of these structures need not disclose R-value information about insulation already present in the structures before any renovation or conversion preparations began because they cannot be expected to have that information available.

On the other hand, the rule does not apply to sales of old houses, condominiums, cooperatives, mobile homes, vacation dwellings, or other residential housing units which have not been retrofitted with insulation as part of major renovation in preparation for sale. Since sellers of those types of structures cannot necessarily be expected to have available R-value information about insulation already present in the structures, a disclosure only that no insulation has been added would give the consumer little useful information.

Lastly, the rule does not apply to the sale of a house or other residential housing unit by an individual who merely is selling a previous residence, and who is otherwise not engaged in the sale of housing units.

VII. Disclosures in Advertisements and Other Promotional Materials

A. Advertising Audience

Section 460.18 of the Rule requires that specific R-value related information

[11] However, under § 460.8 of the Rule, retailers and installers can rely on the R-value data provided by the insulation manufacturer, unless they know or should know that the data is false or not based on the proper tests.

[12] Under § 460.8 of the Rule, a new home seller can rely on the R-value data provided by the insulation manufacturer, unless the new home seller knows or should know that the data is false or not based on the proper tests.

[13] By requiring that the disclosures be made in the sales contract, the Commission merely intended to require that the information be disclosed, and the sales contract provides the most convenient and appropriate vehicle for the disclosure. The Commission made no judgment concerning potential state law remedies for nondisclosure or inaccurate disclosure of R-values. 44 FR at 50232.

[14] *Supra*, note 3.

be disclosed in advertisements or other promotional materials which make certain representations. Section 460.19 of the Rule specifies requirements for ads or other promotional materials which claim or imply that insulation, or a combination of insulation products, or of insulation products and other insulating products, such as storm windows, can cut fuel bills or fuel use. The disclosure requirements in those sections apply only to advertisements and other promotional materials which will be, or may be, seen or read by consumers. Those disclosure requirements do not apply to ads or other promotional materials which are distributed solely to members of the insulation industry or to technical persons, such as architects or other professionals.

B. Nature of Advertisements

The disclosure requirements of § 460.18 of the Rule apply only to advertisements or other promotional materials which promote a specific insulation product. These disclosures are not required in advertisements or other promotional materials which merely promote insulation as an energy conservation practice without promoting a specific manufacturer, installer insulation product.

Section 460.19 requires that specific disclosures be made in connection with claims in advertisements or other promotional materials that savings can result from installation of insulation, or of insulation in connection with other products. Those disclosures are not required for savings claims made by an advertiser who is not engaged in selling insulation, or in the promotion of home insulation sales, a specific type or brand name of insulation, or a specific insulation installer.

C. Single Sheet Reflective Foil and Foil-Faced Insulations

As discussed in Sections IV.B. and VI.A.2, *supra*, the R-value of single sheet reflective foil insulation and the system R-value of foil-faced insulation which is installed with an air space facing the foil will depend upon the thickness and configuration of the air space and the direction of heat flow. Whenever an advertisement claims an R-value for single sheet reflective foil insulation or a system R-value for foil-faced insulation which is installed with an air space facing the foil, those conditions necessary to obtain the R-value must be clearly and conspicuously disclosed in conjunction with the claimed R-value.

D. Disclosures by New Home Sellers

The disclosure requirements of §§ 460.18 and 460.19 apply to advertisements or other promotional materials used by new home sellers which make claims about the insulation in the new homes, or that the insulation installed in the new homes can cut fuel bills or fuel use. However, since the Rule does not require that manufacturers furnish new home sellers with the fact sheets required by § 460.13 of the Rule, or that new home sellers make those fact sheets available to consumers, staff believes that it would be appropriate for advertisers to delete the reference to fact sheets from the disclosures required by §§ 460.18(a) and 460.19(b). Thus, the disclosure required by § 460.18(a) would be: "The higher the R-value, the greater the insulating power." The disclosure required by § 460.19(b) would be: "Savings vary Higher R-values mean greater insulating power."

VIII. Savings Claim Substantiation

The final area in which industry members may need guidance concerns substantiation for savings claims. Because savings vary from consumer to consumer, and because some consumers will save little or nothing through the installation of insulation, § 460.19(b) of the Rule requires that all specific and general savings claims include a disclosure pointing out that savings vary. Further, § 460.19(a) of the Rule requires that all savings claims must be founded on a "reasonable basis." This substantiation requirement applies not only to advertisements and other promotional materials which refer to a specific dollar amount or percentage of savings, but also to those which state in general terms that insulation can lower fuel bills or fuel use. Under this substantiation requirement, the method used to substantiate the savings claim must relate the R-value of the product being promoted, in the application represented, to the total heat flow resistance of a building wall, ceiling, or floor in the represented application.

A. Specific Savings Claims

Claims that insulation can reduce fuel bills by a specific dollar amount of percentage ordinarily will bear a heavy burden of substantiation. Generally, three kinds of substantiation will be acceptable in this area: (1) Actual tests of houses; (2) computer models which predict savings; and (3) standard engineering calculations which predict savings.

Although they are not specifically required by the Rule, tests of actual houses can generate very good substantiation for savings claims. Staff is aware of manufacturers who have the resources to conduct this type of substantiation and who have engaged in such testing. However, such tests must be carefully controlled. For example, two test houses, identical in all details of construction, exposed to identical weather elements and facing in the same direction, could be built near each other. For example, one house might be left uninsulated, while the second house might have a specified amount of attic insulation. To control for the influence of personal living habits, both houses would have to be unoccupied and have identical simulated occupancy conditions. Heating usage and bills can then be fairly compared between the two houses for a specified period of time, and a percentage of fuel use reduction due to the presence of the attic insulation can be determined. While this example is somewhat simplistic and given only for illustrative purposes, careful scientifically valid concurrent testing of this type would be acceptable substantiation for a specific savings claim under the Rule.

There are also a number of computer models currently in use which simulate the type of actual testing described above. While the reliability of these computer models should continue to improve with time and experience, not all computer models are necessarily accurate nor do they employ the same algorithms for producing results. For example, a model which fails to account for such factors as air infiltration, the geographic location of the theoretical house, or the presence of other construction features which can affect energy consumption should not be used to substantiate a savings claim.

Finally, standard engineering calculations for heat flow may constitute a reasonable basis for specific savings claims. For example, calculation procedures may be developed employing the principles given in Chapters 22, 23, and 25 of the ASHRAE Handbook.[15] Once again, such calculations should be used only if they take into account the various related factors that can influence fuel use and savings.

These examples of substantiation methods are given for illustration only. Specific methods used to substantiate savings claims will have to be evaluated on a case by case basis.

Available evidence demonstrates that the savings achieved by any individual consumer are attributable to a host of circumstances unique to that consumer.

[15] "ASHRAE Handook & Product Directory 1977 Fundamentals," *supra*, note 4 at Chapters 22, 23, 25.

As a result, tests or calculations which are used to substantiate claimed savings must control these variables to the greatest extent possible. An example of failure to control individual factors and, thus, of unacceptable substantiation, would be a testimonial by an individual consumer of the savings achieved after insulation was installed in his or her home. In this case, the amount of savings could easily have been influenced by purposeful or inadvertent changes in the living habits of the occupants. Thus, testimonials or similar comparisons of occupied houses before and after the addition of insulation are inherently unreliable, and do not constitute a reasonable basis for any claimed savings.

B. General Savings Claims

General savings claims, like specific savings claims, must be founded on a reasonable basis. Staff believes that all general savings claims imply that the level of savings is more than *de minimus*. However, the level of substantiation required for a general savings claim will sometimes be less than that required for a specific savings claim, depending upon the nature of the claim being made. For example, a claim such as "reduce fuel bills" may be substantiated on the basis of government studies or reports that conclude that adding insulation can result in significant savings for many consumers.

On the other hand, general savings claims which suggest significant savings may require substantiation of the type required for specific savings claims. For example, an ad which states that insulation can "slash fuel bills" clearly implies that substantial savings can be achieved. Thus, advertisers who make general savings claims should choose the language of the claim with care, if they wish to avoid the burden of substantiation associated with specific savings claims.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32517 Filed 10-16-80; 8:45 am]

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16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Partial Stay for Mobile Home

AGENCY: Federal Trade Commission.

ACTION: Notice of temporary partial stay of trade regulation rule insofar as it applies to sales of mobile homes.

SUMMARY: The Federal Trade Commission has temporarily stayed § 460.16 of its trade regulation rule on labeling and advertising of home insulation insofar as it applies to mobile home sellers, pending a final decision by the Commission on petitions for exemptions filed by three trade associations representing mobile home manufacturers and retailers. The Commission has denied the associations' requests to stay other portions of the Rule. The temporary partial stay is effective immediately.

EFFECTIVE DATE: September 29, 1980.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney (202) 724-1515, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Three trade associations—the National Manufactured Housing Federation, Inc., the Manufactured Housing Institute, Inc. and the Indiana Manufactured Housing Association, Inc.—have filed petitions on behalf of mobile home manufacturers and retailers requesting exemptions from the Commission's trade regulation rule on labeling and advertising of home insulation ("the Rule"). The Rule went into effect September 29, 1980. Pending the Commission's final determination on their respective petitions for exemptions, the three petitioners requested that the rule be stayed as to the mobile home industry.

All three petitioners requested that the mobile home industry be exempted from § 460.16 of the Rule. Section 460.16 requires "new home" sellers, including mobile home sellers, to disclose in the sales contract the type, thickness and R-value of any insulation installed in each part of the home. The petitioners asserted that the rule is unnecessary as to mobile homes because construction standards issued by the Department of Housing and Urban Development effectively achieve the same result. Petitioners also argued that R-value information is not appropriate as a tool for comparison shopping in the mobile home area because nearly all such homes have identical insulation due to certain design characteristics.

The Commission has not yet made an initial decision on the merits of the exemption petitions. When an initial decision is made, it will be published in the **Federal Register**, and written public comments will be accepted in accordance with § 1.16 the Commission's Rules of Practice. However, upon review of the petitions for a stay, and weighing the likelihood of success on the merits, the harm to the petitioners, and the public interest, the Commission has determined that a temporary stay of Section 460.16 of the Rule insofar as it applies to mobile home industry members, pending the Commission's decision on the petition, is appropriate. The Commission has denied the request of the petitioners to stay all other portions of the Rule insofar as they apply to the mobile home industry.

Copies of the petitions for stays and exemption from the rule, and the Commission's response, have been placed on the public record of this proceeding.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-32513 Filed 10-16-80; 8:45 am]

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16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Technical Amendments

AGENCY: Federal Trade Commission.

ACTION: Technical amendment to rule.

SUMMARY: The Commission is publishing a technical amendment to its trade regulation rule on labeling and advertising of home insulation. The amendment is effective immediately. The technical amendment would permit manufacturers of home insulation to include on the fact sheets required by § 460.13 any disclosures which are required by federal laws or regulations to be made on the fact sheet. The amendment corrects a drafting error which would have made it a violation of the rule to include such required disclosures on the fact sheets.

DATES: Although the technical amendment is effective October 17, 1980 the Commission will receive public comment on the amendment until December 16, 1980.

ADDRESSES: Send comments to Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be captioned "Comment—Technical Amendment to Home Insulation Rule."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Division of Energy and Product Information, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 724-1514.