

INSULATION FACTS #6



Labeling and Advertising of Home Insulation

Information from NAIMA

In this issue, we examine the Federal Trade Commission's Amended Trade Regulation Rules concerning labeling and advertising of home insulation.

The insulation industry—including manufacturers, wholesalers, distributors, retail dealers and insulation contractors—has obligations which it must meet both in distributing the Manufacturer's Fact Sheets and in its advertising.

As a service to NAIMA's members and their customers, this issue of Insulation Facts has been prepared to help wholesalers, distributors, retail dealers and insulation contractors be aware of and understand the FTC's reasoning for the Amended R-value Rule, which applies to home insulation materials produced and sold after Nov. 27, 2005.¹

The section of the Rule that applies to each group is given first in italics. Below each section are explanatory comments taken from the Federal Trade Commission.

FTC's Overview of the Rule

Insulation can be a very significant energy conservation measure. Its insulating capacity can be measured only by its R-value, which signifies the insulation's degree of resistance to the flow of heat. No other piece of informa-

tion can tell the consumer how the insulation is likely to perform as an insulator, and whether the cost of the insulation is justified. Yet the record demonstrates that the home insulation market has frequently failed to provide this crucial information to consumers.

In amending the Rule, the FTC confirmed that there remains a need for the R-value Rule to protect consumers against deceptive and misleading advertising claims: "the Commission issued the R-value Rule to prohibit, on an industry-wide basis, specific unfair or deceptive acts or practices."²

The primary purpose of the Rule, therefore, is to correct the failure of the home insulation marketplace to provide this essential pre-purchase information to the consumer. The information will give consumers an opportunity to compare relative insulating efficiencies, to select the product with the greatest efficiency and potential for energy savings, to make a cost-effective purchase and to consider the main variables limiting insulation effectiveness and realization of claimed energy savings.

The Rule mandates that specific R-value information for home insulation products be disclosed in certain ads and at the point of sale. The purpose of the R-value disclosure requirement for advertising is to prevent consumers from being misled by certain claims which have a bearing on insulating value. At the point of transaction, some

consumers will be able to get the requisite R-value information from the label on the insulation package. However, since the evidence shows that packages are often unavailable for inspection prior to purchase, no labeled information would be available to consumers in many instances. As a result, the Rule requires that a fact sheet be available to consumers for inspection before they make their purchase.

In general, the fact sheets and labels for each insulation product disclose the same basic kind of information about R-value. The fact sheet also gives consumers further information that has an important bearing on how they should assess their insulation needs and their likely fuel savings from insulation. The Commission believes that these additional disclosures are necessary to prevent deception and to allow consumers to make rational, well-informed choices in their insulation purchases.

The Rule also requires that R-value disclosures be accompanied by a brief explanation that R-value is a measure of insulating power; the higher the R-value, the greater the insulating power. Since the evidence shows that many consumers are unfamiliar with the concept, the Commission believes that an explanation of the term is needed to compensate for this market deficiency to ensure that consumers will benefit from the prescribed R-value information.

The other major provision of the Rule addresses energy savings and other promotional claims for home insulation products, including tax benefit and government certification claims. Claims that a product is certified or qualifies for a tax benefit are prohibited unless true. Since the amount of energy and money that can be saved by insulation is

affected by a number of factors unrelated to the performance of the insulation itself, the Rule provides that energy savings must be substantiated and accompanied by a short disclaimer that savings will depend on the consumers' particular circumstances.

The amended Rule automatically covers new types or forms of insulation marketed for use in the residential market, whether or not the Rule specifically refers to them: "The requirements of the R-value Rule apply to any material (unless specifically exempted) 'mainly used to slow down heat flow.'³ The fact that the Rule does not specifically mention a particular type of insulation does not exempt such products from the Rule coverage."⁴

1 Parties Covered

The Rule applies to home insulation manufacturers, professional installers, retailers who sell insulation to consumers for do-it-yourself installation, and new home sellers (including sellers of manufactured housing.) The Rule also applies to distributors, franchisers, utility companies, trade associations, and advertisers and advertising agencies. 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.⁵

2 The Retailer

Rule 460.14 How retailers must handle fact sheets

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display and let customers take copies of them. You can keep them in a binder at a counter or service desk and have a sign telling customers where the fact sheets are.

You need not make the fact sheets available to customers if you display insulation packages on the sales floor where your insulation customers are likely to notice them and each individual insulation package offered for sale contains all package label and fact sheet disclosures required by §460.12 and §460.13.

Where do you get fact sheets?

Fact sheets are available either directly from the insulation manufacturer or from your distributor or wholesaler.

FTC's Explanatory Comments

In the years since the Commission created the R-value Rule, the nature of retail sales to do-it-yourself consumers has changed. Retailers who sell insulation to do-it-yourself consumers were required to make the manufacturers' Fact Sheets available to consumers because insulation packages were so bulky they were not normally available on the retail sales floor, so the consumer would not see the disclosures on the package labels before purchase. Today, retailers typically sell home insulation directly from warehouse-type sales floors where consumers select the packages themselves. Therefore, the

Commission has amended the Rule to give individual retailers an option not to make fact sheets available to consumers if the retailer determines the package labels contain the information that would otherwise be in the fact sheets and the packages are displayed in a way that customers can obtain the required information prior to purchase. This amendment does not change the manufacturers' responsibility to prepare and disseminate fact sheets.⁶

3 The Installer

Rule 460.15 How installers must handle fact sheets

If you are an installer, you must have fact sheets for the insulation products you sell. Before customers agree to buy insulation from you, you must show them the fact sheet(s) for the type(s) of insulation they want. You can decide how to do this. For example, you can give each customer a copy of the fact sheet(s). Or, you can keep the fact sheets in a binder, and show customers the binder before they agree to buy.

Where do you get fact sheets?

Fact sheets are available either directly from the insulation manufacturer or from your distributor or wholesaler.

FTC's Explanatory Comments

The thrust of this requirement is simply that consumers must be given an opportunity to analyze the fact sheet information before they commit themselves to a purchase.

Rule 460.17 What installers must tell their customers

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness and R-value of the insulation you installed. For loose-fill, the receipt must show the coverage area, initial installed thickness, minimum settled thickness, R-value, and the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow and the R-value. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. Do not multiply the R-value for one inch by the number of inches you installed. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt, as long as you do not add up the coverage areas or R-values for different parts of the house.

FTC's Explanatory Comments

The receipt will inform customers of what was actually installed.

Unlike do-it-yourself consumers, these purchasers will never actually see a label stating the R-value, thickness and coverage achieved. Consumers who buy insulation through installers are, thus, in the same position as new home buyers. Without a requirement to disclose exactly what was installed, they cannot fully assess the energy efficiency of their houses. Disclosure of this information will provide them with an available reference if they consider the purchase of additional insulation in the future.

The information required to be conveyed by installers to their customers will help contractors to install appropriate amounts even if inconsistencies arise between the initial and settled thickness information. This other information (e.g. bag count) also provides installers, consumers, and inspectors an additional means to verify that the appropriate amount of material has been installed. It may also discourage unscrupulous installers from intentionally altering the blowing machine settings to "fluff" material (i.e. increase thickness at the expense of density and total R-value). Although initial installed thickness will provide important guidance to installers, they still will have to pay attention to area measurements and bag counts to ensure they install the correct thickness and amount.⁷

4 The New Home Seller

Rule 460.16 What new home sellers must tell new home buyers

If you are a new home seller, you must put the following information in every sales contract: the type, thickness and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

FTC's Explanatory Comments

"New homes" means new houses, condominiums, coopera-

tives, mobile homes, vacation dwellings or other residential housing units. Existing residential structures, which have been or will be retrofitted in preparation for resale, are considered “new houses” when they are sold by someone engaged in the business of the sale of housing units.

New home sellers do not have to display either insulation labels or fact sheets. The critical information needed by new home buyers is the type, thickness and R-value. Such a provision will ensure that the new home buyer is informed of these facts prior to the purchase decision. If no insulation is installed or to be installed, the facts should be disclosed.

Evidence demonstrates that many new home buyers are as interested in energy efficiency as retrofit purchases of insulation. Since a new home has no history of utility bills, however, the buyer is unable to evaluate the house's anticipated energy consumption pattern. In hearings, the Council of Better Business Bureaus pointed out that requiring this disclosure to new home buyers will encourage the installation of adequate insulation in homes.

About the exception to the rule: Suppose the buyer's contract stipulates an insulation that is not available at the time the builder is ready to purchase and another type must be substituted? The house seller would simply be required to provide the buyer with another fact sheet for the type of insulation that is actually installed. The buyer then is at least informed of relevant information about the insulation that will be installed, although it may be too late to bargain about the subject.

5 Retail, Contractor and New Home Seller Insulation Ads

Rule 460.18 Insulation ads

(a) *If your ad gives an R-value, you must give the type of insulation and the thickness needed to get that R-value. Also, add this statement explaining R-values: “The higher the R-value, the greater the insulating power.” Ask your seller for the fact sheet on R-values.*

(b) *If your ad gives a price, you must give the type of insulation, the R-value at a specific thickness, the statement explaining R-values in subsection (a) and the coverage area for that thickness. If you give the price per square foot, you do not have to give the coverage area.*

(c) *If your ad gives the thickness of your insulation, you must give its R-value at that thickness and the statement explaining R-values in subsection (a).*

(d) *If your ad compares one type of insulation to another, the comparison must be based on the same coverage areas.*

You must give the R-value at a specific thickness for each insulation and the statement explaining R-values in subsection (a). If you give the price of each insulation, you must also give the coverage area for the price and thickness shown. However, if you give the price per square foot, you do not have to give the coverage area.

(e) *The affirmative disclosure requirements in §460.18 do not apply to ads on television or radio.*

FTC's Explanatory Comments

Rule 460.18 applies only to ads and other promotional materials directed solely to con-

sumers, and which promote a specific insulation product.

In new home seller ads, the FTC allows advertisers to delete references to fact sheets found in 460.18 (a) and 460.19 (b).

Evidence concerning R-value disclosures indicates that there are several circumstances under which advertising disclosures are necessary. First, the evidence shows that thickness and R-value must always go hand-in-hand. A thickness disclosure is necessary before consumers can evaluate products with the same R-value, since different materials provide the same R-value at different thicknesses.

References to either of these product attributes, thickness or R-value, without mentioning the other, are unfair and deceptive to consumers.

Price claims standing alone are both unfair and deceptive. A very high R-value can be achieved at a very low price if, for that price, only a small area will be insulated. The Commission's Rule requires that price claims be accompanied by the R-value, thickness and coverage area at that price.

The requirement that comparisons be based on equal coverage areas is necessary to prevent unfair and deceptive comparisons.

6 Savings Claims

Rule 460.19 Savings claims

(a) *If you say or imply in your ads, labels or other promotional materials, that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim. For example, if you say that insulation can “slash” or “lower” fuel bills, or that insulation “saves money,”*

you must have a reasonable basis for the claim. Also, if you say that insulation can “cut fuel use in half” or “lower fuel bills by 30 percent,” you must have a reasonable basis for the claim.

(b) If you say or imply in your ads, labels or other promotional materials that insulation can cut fuel bills or fuel use, you must make this statement about savings: “Savings vary. Find out why in the seller’s fact sheet on R-values. Higher R-values mean greater insulating power.”

(c) If you say or imply that a combination of products can cut fuel bills or use, you must have a reasonable basis for the claim. You must make the statement about savings in subsection (b). Also, you must list the combination of products used. They may be two or more types of insulation; one or more types of insulation plus one or more other insulating products, like storm windows or siding; or insulation for two or more parts of the house, like the attic and walls. You must say how much of the savings came from each product or location. If you cannot give exact or approximate figures, you must give a ranking. For instance, if your ad says that insulation and storm doors combined cut fuel use by 50 percent, you must say which one saved more.

(d) If your ad or other promotional material is covered by section 460.18 (a), (b), (c) or (d), and also makes a savings claim, you must follow the rules in 460.19. However, you need not make the statement explaining R-value in 460.18 (a).

(e) Manufacturers are liable if they do not have a reasonable basis for their savings claims before the claim is made. If you are not a manufacturer, you

are liable only if you know or should know that the manufacturer does not have a reasonable basis for the claim.

(f) Keep records of all data on savings claims for at least three years. For the records showing proof for claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

(g) The affirmative disclosure requirements in §460.19 do not apply to ads on television or radio.

FTC’s Explanatory Comments

The “savings claim” provision is based on the conclusion that, to remedy the deception inherent in savings claims, consumers must be told that savings depend upon many factors and what those factors are. The Rule simply requires a brief statement that savings vary and a reference to the fact sheets for further information. A detailed enumeration of the factors that affect fuel savings is required in the fact sheets, where space limitations are not so serious a problem.

The Rule also requires the industry members to have a reasonable basis for savings claims. It is not possible to specify in the Rule precisely what would be an acceptable basis for such claims. Scientifically reliable measurements of fuel used in actual homes, or reliable computer models or methods of heat flow calculation, would meet the reasonable basis requirement imposed by the Rule. The language used in a savings claim will influence the level of substantiation required. An advertiser who claims that adding insulation will “slash fuel bills” or “cut fuel use in half” will be required to pro-

duce competent and reliable scientific proof that such high levels of savings will be achieved.

The record also indicates that some industry members claim that a combination of products, such as attic insulation and storm doors, will combine to reduce fuel use. It is not always possible to determine precisely how much of the savings is attributable to each product. As a result, the Rule requires that savings claims for more than one product disclose the combination of products used and how much of the savings come from each product. If the exact or approximate contributions of the product cannot be ascertained under available technologies, the advertiser may rank the products in order of their relative degrees of contribution. This disclosure, while imperfect, will at least apprise customers of the fact that not all of the products in the combination contributed equally to the savings achieved.

7 R-Value Per Inch Claims

Rule 460.20

R-value per inch claims

In labels, fact sheets, ads, or other promotional materials, do not give the R-value for one inch or the “R-value per inch” of your product. There are two exceptions: (1) You can do this if you suggest using your product at a one-inch thickness; (2) You can do this if actual test results prove that the R-value per inch of your product does not drop as it gets thicker.

You can list a range of R-values per inch. If you do, you must say exactly how much the R-value drops with greater thickness. You must also add this statement: “The

R-value per inch of this insulation varies with thickness. The thicker the insulation, the lower the R-value per inch.”

FTC's Explanatory Comments

Since the record demonstrates that R-values are not linear, ads, labels and other promotional materials that express a product's thermal resistance in terms of its R-value per inch deceive customers.

The Commission believes that references to the R-value for a one-inch thickness of the material will encourage consumers to think that it is appropriate to multiply this figure by the desired number of inches, as though the R-value per inch were constant.

8 Certification Claims

Rule 460.21 Government claims

Do not say or imply that a government agency uses, certifies, recommends or otherwise favors your product unless it is true. Do not say or imply that your insulation complies with a governmental standard or specification unless it is true.

FTC's Explanatory Comments

Ads on the record reveal that manufacturers sometimes deceptively associate their products with federal agencies. While an insulation material may meet federal procurement standards, no product is certified or recommended by the government for private use.

9 Tax Claims

Rule 460.22 Tax claims

Do not say or imply that your product qualifies for a tax benefit unless it is true.

10 Enforcement

Any regulation is subject to interpretation. This is NAIMA's interpretation of these critical issues. You should work with your own attorney to advise you of your responsibility under this rule.

Breaking any of these rules could be interpreted as an unfair and deceptive act or an unfair method of competition. The regulations provide for a possible fine of up to \$11,000 each time a rule is broken.⁸

11 Final Note

In the preamble to the amended R-value Rule, the FTC stated that “[h]ome insulation sellers should be aware that additional Commission rules or guidelines may also apply to them.” The FTC offered as examples that “Commission’s Guides for the Use of Environmental Marketing Claims,” the “Commission’s rules Concerning Disclosures of Written Consumer Product Warranty Terms and Conditions and the Pre-Sale Availability of Written Warranty Terms,” and section 5 of the FTC Act prohibiting unfair and deceptive ads or practices requiring that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated.⁹

References

1. 70 Fed. Reg. at 31, 257 (May 31, 2005).
2. *Ibid* at 31, 259.

3. *Ibid* at 31, 258.
4. *Ibid*.
5. 16 CFR § 460.3
6. 70 Fed. Reg. at 31, 271.
7. 70 Fed. Reg. at 31,267.
8. 16 CFR § 460.1
9. 70 Fed. Reg. at 31, 258

About NAIMA

NAIMA is the association of North American manufacturers of fiber glass, rock wool, and slag wool insulation products. NAIMA's role is to promote energy efficiency and environmental preservation through the use of fiber glass, rock wool, and slag wool insulation products and to encourage safe production and use of these insulation products.

For additional information on building insulation contact:

NAIMA
44 Canal Center Plaza, Suite 310
Alexandria, VA 22314
Tel: 703/684-0084
Fax: 703/684-0427
www.naima.org

NAIMA MEMBERS:

- CertainTeed Corp.
Valley Forge, PA
- Evanite Fiber Corp.
Corvallis, OR
- Fibrex Insulations, Inc.
Sarnia, Ontario
- Guardian Building Products
Albion, MI
- Isolatek International
Stanhope, NJ
- Johns Manville
Denver, CO
- Knauf Insulation
Shelbyville, IN
- Industrial Insulation Group, LLC
Brunswick, GA
- Owens Corning
Toledo, OH
- Rock Wool Manufacturing Co.
Leeds, AL
- Rolan Aislantes Minerales, S.A. de C.V.
D.F., México
- Roxul, Inc.
Milton, Ontario
- Sloss Industries Corp.
Birmingham, AL
- Thermafiber, Inc.
Wabash, IN
- USG Interiors, Inc.
Chicago, IL