

FEDERAL TRADE COMMISSION

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**COMMENTS ON FTC'S PROPOSED RULE CONCERNING
"16 CFR PART 460 – LABELING AND
ADVERTISING OF HOME INSULATION"
68 FED. REG. 41,872 (JULY 15, 2003)**

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**SUBMITTED BY THE
NORTH AMERICAN INSULATION MANUFACTURERS ASSOCIATION
(NAIMA)**

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INTRODUCTION

The North American Insulation Manufacturers Association (“NAIMA”) presents the following comments in response to the Federal Trade Commission’s (“FTC” or “the Commission”) Notice of Proposed Rule Making on Labeling and Advertising of Home Insulation, 68 Fed. Reg. 41,872 (July 15, 2003). NAIMA is a trade association of North American manufacturers of fiber glass wool, slag wool and rock wool insulation products. NAIMA’s major purpose is to promote energy efficiency and environmental preservation through the safe production and use of its insulation products.

These comments are filed on behalf of NAIMA and its member companies, including fiber glass manufacturing members (CertainTeed Corporation, Evanite Fiber Corporation, Johns Manville, Knauf Fiber Glass, and Owens Corning) and rock and slag wool (mineral wool) manufacturing members (Fibrex Insulations, Inc.; Isolatek International; Rock Wool Manufacturing; Roxul, Inc./Roxul (West) Inc.; Sloss Industries Corp.; Thermafiber, Inc., and USG Interiors Inc.). All of these companies will be subject to the requirements of the proposal, and, therefore, NAIMA and its members have a particular interest in the outcome of the FTC’s rulemaking process. NAIMA greatly appreciates the FTC affording the Association and its member companies the opportunity to collaborate in the development of a practical and useful Final Rule.

INSULATION PROVIDES ENERGY SAVINGS, ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS

NAIMA appreciates the Commission’s consistent acknowledgement of insulation’s role in making “American homes more energy efficient and less costly to heat and cool.” The energy savings gained through installed insulation products also reduces the consumption of fossil fuels used to heat and cool buildings. In turn, reduction of fossil fuel consumption decreases the

volume of air pollutants released into the atmosphere. Consider the pollution reductions and health benefits identified in two recent studies from Harvard University School of Public Health:

- If all new U.S. homes were insulated to meet the 2000 International Energy Conservation Code, the energy saved and pollution emissions avoided over a ten year¹ period are as follows:
 - Energy saved would be 3×10^{14} BTU;
 - Reduction of 1,000 tons of PM_{2.5};
 - Reduction of 30,000 tons of NO_x;
 - Reduction of 40,000 tons of SO₂;
 - 60 fewer premature deaths;
 - 2,000 fewer asthma attacks;
 - 30,000 fewer restricted activity workdays, which deliver an economic benefit, too.²

- If existing U.S. homes were retrofitted with insulation to meet the 2000 International Energy Conservation Code, the annual energy savings and pollution reduction would be as follows:
 - Energy saved would be 8×10^{14} BTU;
 - Reduction of 31,000 tons of PM_{2.5};
 - Reduction of 100,000 fewer tons of NO_x;
 - Reduction of 190,000 fewer tons of SO₂;
 - 240 fewer premature deaths;
 - 6,500 fewer asthma attacks;
 - 110,000 fewer restricted activity workdays, which deliver an economic benefit, too.

As further validation of energy savings and environmental benefits derived from insulation products, NAIMA attaches two peer-reviewed articles that summarize the Harvard studies (TAB 1).

THE NOTICE OF PROPOSED RULEMAKING

NAIMA believes the Commission's proposal will significantly expand the scope and effectiveness of the R-value Rule. NAIMA supports the Commission's recommendations and amendments, except where noted below, and applauds the Commission's efforts to bolster the protection afforded consumers.

Many of the issues addressed by NAIMA in the Advanced Notice of Proposed Rulemaking ("ANPR") have been satisfactorily resolved by the Commission in the Notice of Proposed Rulemaking ("NPR"). Therefore, NAIMA limits its comments on the NPR to only those issues which the Commission has specifically requested responses or to those issues that NAIMA believes need further modification. To preserve NAIMA's position on those issues identified in the ANPR and incorporated into the NPR as amendments, without request for comments,

¹ Harvard states that 1.2 million new homes are built annually in the United States.

² Levy, Nishioka, and Spengler, pp. 4-18.

NAIMA attaches and incorporates as part of its NPR comments the Association's November 15, 1999 Comments on the FTC's Trade Regulation Rule for Labeling and Advertising of Home Insulation, 64 Fed. Reg. 48,024 (September 1, 1999) (TAB 2).

While NAIMA enthusiastically supports the Commission's proposed amendments strengthening the R-value Rule, the Association and its members strongly advocate vigorous enforcement of the new R-value Rule. Without vigilant enforcement of the Rule in an equitable manner that applies the strictures of this law to all insulation manufacturers, regardless of size or dominance in the market place, the Rule loses its intended empowerment to consumers and fosters, rather than prevents, misinformation and confusion. Therefore, NAIMA urges the Commission to rigorously monitor compliance with this newly revised Rule as the most prudent means to restore consumer confidence in insulation claims and create a fair and level playing field for the insulation industry.

SECTION BY SECTION RESPONSE TO FTC'S PROPOSED AMENDMENTS

16 C.F.R. § 460.1 – Penalty Increase

The Commission proposes to amend the monetary penalty from \$10,000 to \$11,000. Since this proposed amendment is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990,³ NAIMA does not offer comment on a measure dictated by another federal statute.

16 C.F.R. § 460.5(a) – R-value Tests

As recommended by NAIMA in the ANPR, the Commission proposes to amend the Rule to require tests be conducted with a temperature differential of 50° F plus or minus 10° F. NAIMA endorses the Commission's proposal, which is consistent with ASTM Standard Practice C 1058, "Selecting Temperatures for Evaluating and Reporting Thermal Properties of Thermal Insulation." NAIMA believes the Commission's approach of updating references to the most recent ASTM test procedures and eliminating other ASTM procedures no longer valid is an appropriate method for achieving its objective. NAIMA also agrees with the Commission that the current standard of 75° F is the most appropriate mean temperature for comparison purposes. The Commission's temperature proposals are consistent with industry practice.

16 C.F.R. § 460.5(a)(1) – R-value Tests

NAIMA supports the Commission's proposal to incorporate into the Rule aging methods already employed by industry such as ASTM C 578, C 1029, and C 591-94. This amendment reflects testing improvements that will provide consumers with the most accurate and up-to-date information. NAIMA endorses the Commission's suggestion of maintaining the current 180-day value. These ASTM standards are sufficiently developed to justify incorporation of the standard into the R-value Rule.

³ As amended by the Debt Collection Improvement Act of 1996.

NAIMA notes that the GSA Specification HH-I-530A is no longer available. If copies of the specification are not available, it would be inappropriate to accept it as a standard for testing R-values.

16 C.F.R. § 460.5(a)(2)(3) – R-value Tests

NAIMA supports the Commission’s proposed amendment to eliminate any reference to the GSA procedure because it is no longer applicable. NAIMA does not believe it would be appropriate to apply the C 739-97 test procedure to mineral fiber insulation because that particular test method has been designed specifically for testing cellulose insulation products. See ORNL/TM-10414, Oak Ridge National Lab, “Thickness and Density Measurements for Attic Loose-fill Thermal Insulations in Eight Cities,” by Yarbrough, Graves, McElroy (August 1987), p. 26. NAIMA and its members are currently working with ASTM to develop a standard guide for determining blown density of pneumatically applied loose-fill mineral fiber thermal insulation. When this standard is finalized, it should be incorporated into the R-value Rule as the appropriate standard for testing loose-fill mineral insulation.

16 C.F.R. § 460.5(a)(4) – R-value Tests

NAIMA agrees with the Commission’s proposal that self-supported spray-applied cellulose must be tested at the settled density determined pursuant to ASTM C 1149-97, “Standard Specification for Self-Supported Spray Applied Cellulose Thermal Insulation.” NAIMA urges, however, the Commission to expand the proposed amendment to more fully address the impact of wet cellulose on settling. NAIMA provided test results in its comments on the ANPR that showed the potential problem that can develop if the insulation fails to dry in a timely fashion. These studies are again attached with supplemental information made available since 1999. In light of a serious variable threatening to degrade the settled density of the cellulose insulation, NAIMA strongly recommends that the R-value Rule require each cellulose manufacturer to provide consumers and customers with reliable drying guidelines since drying directly impacts R-value and settled density. The studies attached hereto (TAB 3) further demonstrate the need for established drying times for cellulose insulation. These studies also suggest different drying times for different climates. NAIMA recommends that the Commission adopt these drying times and incorporate them into the R-value Rule.

16 C.F.R. § 460.5(a)(5) – R-value Tests

NAIMA supports the Commission’s proposal to require the initial installed thickness to be determined pursuant to ASTM C 1374-97, “Determination of Installed Thickness of Pneumatically Applied Loose-Fill Building Insulation.” NAIMA notes that R-values specified in the proposed regulation do not include some of the more standard R-values for loose fill insulation. NAIMA suggests that R-30, 38, and 49 be added to the list.

16 C.F.R. § 460.5(b) and (c) – R-value Tests

NAIMA supports the Commission’s proposed amendment to require that single sheet systems of aluminum foil be tested under ASTM C 1371-98 and aluminum foil systems with more than one

sheet, and single sheet systems of aluminum foil that are intended for application that do not meet the conditions specified in the tables in the most recent edition of the ASHRAE Handbook, must be tested under ASTM C 1363-97, “Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus” in a test panel constructed according to ASTM C 1224-99 and under test conditions specified in ASTM 1224-99. NAIMA also supports the Commission’s amendment that would mandate that R-value results of those tests, one must use the formula specified in ASTM C 1224-99.

16 C.F.R. § 460.5(d) – R-value Tests

NAIMA supports the Commission’s proposed amendment to require insulation with foil facing and air space manufacturers to test its product’s thermal performance by conducting ASTM C 1363 “Standard Test Method for the Thermal Performance of Building Assemblies” by Means of a Hot Box Apparatus.

16 C.F.R. § 460.5(e) – R-value Tests

NAIMA supports the Commission’s proposed amendment to a new paragraph that would consolidate information on incorporation by reference of various standards that would become part of the R-value Rule.

16 C.F.R. § 460.8 – R-value Tolerances for Manufacturers

NAIMA suggests that section 460.8 be specifically revised as follows: “If you are a manufacturer of home insulation, the mean R-value of ~~sampled specimens of a production lot of insulation you sell~~ any insulation product you sell must meet or exceed the R-value shown in a label, fact sheet, ad or other promotional material for that insulation. ~~A production lot for the purposes of this section means a definite quantity of the product manufactured under uniform conditions of production.~~ Sampled specimens must meet statistical tests to ensure the mean R-value meets or exceeds the labeled R-value. No individual specimen of the insulation you sell can have an R-value more than 10 percent below the R-value shown in a label, fact sheet, ad or other promotional material for that insulation. If you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.”

NAIMA’s original comment on R-value tolerances encouraged FTC to clarify the intent of the Rule that products are designed to meet 100 percent of labeled R-value, not only the 90 percent tolerance level. Specific language was offered that correlated with the requirements in ASTM Standards covering the majority of home insulation products, namely C 665 (mineral fiber blanket), C 764 (mineral fiber loose-fill), and C 739 (cellulosic fiber). These three standards include the specific statistical-based requirement that the mean of four randomly selected samples shall not be more than 5 percent below the listed R-value. Upon review of FTC’s new proposed language, we would like to offer a new amendment that harmonizes with this approach.

FTC’s new proposed language includes the helpful clarification that the mean R-value of products must meet or exceed the labeled R-value. This is the way most manufacturers currently

interpret the Rule, but the clarification will remove any doubt. However the proposed language dealing with specimens and production lots would add new points of confusion, rather than clarifying the tolerance requirements as intended. The size of a production lot and the number of specimens in a sample are critical factors that have been left undefined, and these actually should vary with differences in manufacturing variation among product types and manufacturing processes. Rather than attempting to address this complexity within the Rule, it is preferable to establish a general standard.

We are particularly concerned that a strict interpretation of FTC's proposed language would necessitate product design changes that would make most insulation more expensive for consumers. This would occur because, to assure that samples would meet 100 percent of R-value, the manufacturing process must be adjusted to produce products with mean R-value more than the labeled R-value so that normal variation would not result in specific samples failing the criteria. Currently employed statistical analysis methods like t-tests and control charts allow manufacturers to analyze tests on samples to ensure that a product as a whole is correctly designed at the labeled R-value.

NAIMA's suggested revision to FTC's proposed wording maintains the FTC's proposed structure but addresses our stated concerns. The proposed specific criteria on samples has been replaced by the general requirement for manufacturers to use valid statistical tests on their manufacturing process to ensure their product meets 100 percent labeled R-value on average. This removes the potential for manufacturers to make inappropriate assumptions about lot size, sample size or sampling frequency. Each manufacturer must use the well-known and accepted statistical techniques to analyze their process variation for the product as a whole. The general reference to statistical methods is applicable to all insulation products and processes. This language would clarify and solidify the current Rule, without effecting a re-design of products toward more expensive designs. We continue to support the existing 90 percent R-value lower limit for individual specimens to provide additional consumer protection regarding products with large manufacturing variation.

16 C.F.R. § 460.12 – (Labels)

NAIMA endorses the Commission's proposed amendment that would delete "mineral fiber" from section 460.12(b)(1)&(4) to clarify that the coverage chart disclosure requirement applies to all types of batts and blanket insulation, not only mineral fiber batts and blankets. NAIMA appreciates the Commission's deletion of this antiquated reference that no longer reflects the marketplace.

NAIMA supports the Commission's requirement that all manufacturers of loose fill insulation products label their products (bag label) with minimum settled thickness, initial installed thickness, maximum coverage area, number of bags per 1,000 square feet, and minimum weight per square foot for specific R-values appearing on the bag label. NAIMA also supports the Commission's proposed requirement that labels state the minimum net weight of the insulation in the package.

NAIMA opposes the Commission’s proposed amendment that would require labels to also contain appropriate blowing machine settings necessary to achieve the initial installed thickness listed on the product label. Such a requirement is unfairly burdensome on manufacturers, and it is cost prohibitive. The number and variety of blowing machine brands and types within in a brand name are too numerous to expect manufacturers to run tests on each machine to ascertain the setting needed to achieve the advertised R-value. Even if the number of available blowing machine types were small and therefore manageable for testing, the recommended settings would not account for older and malfunctioning machines not operating at their intended level of performance. Machine setting also would vary by region to accommodate for climate conditions such as humidity. Moreover, the machine settings are equally subject to installer error as any other approach. Therefore, the cost and burden to manufacturers does not justify the negligible and uncertain possibility of benefit to consumers. The other disclosures required of manufacturers for loose fill insulation provide sufficient tools for the consumer to protect himself against “cheating.”

16 C.F.R. § 460.13 – (Fact Sheets)

NAIMA supports the Commission’s proposal to delete the obsolete reference to urea-based foam insulation given its cessation of production. NAIMA and its member companies do not know of any UF insulation products still being sold or of any insulation products that may be subject to the shrinkage issue relevant to UF insulations, but if UF insulation products are sold again, NAIMA believes the Commission should reinstate the disclosure requirements. Such a disclosure requirement should apply only to urea-based foam and not other foam insulation products.

16 C.F.R. § 460.14 – (How retailers must handle fact sheets)

NAIMA supports the Commission’s proposed amendment to alleviate responsibility placed upon retailers to provide fact sheets when the very same information may be found on the bag label. The Commission should include in its amendment a provision dictating that where labels lack data required on fact sheets, manufacturers shall supply retailers with the relevant fact sheets providing the facts omitted from the label. If such a duty does not appear in the Rule with plain and unambiguous language, some manufacturers may see profit in limiting the amount of information disclosed to their customers.

16 C.F.R. § 460.18 – (Insulation ads) and 16 C.F.R. § 460.19 – (Savings Claims)

NAIMA supports the Commission’s proposed amendment to eliminate current disclosure requirements for radio ads. “The lengthy disclosures required by sections 460.18 and 460.19 are more burdensome for radio because the disclosures must necessarily displace significant portions of the ad and hence the advertiser’s cost.” NAIMA also supports the Commission’s decision to continue its requirement for disclosures on fact sheets, labels, and print ads.

NAIMA supports the Commission’s proposal to delete the obsolete reference to urea-based foam insulation given its cessation of production. NAIMA and its member companies do not know of any UF insulation products still being sold or of any insulation products that may be subject to

the shrinkage issue relevant to UF insulations; however, if UF insulation products are sold again NAIMA believes the Commission should reinstate the disclosure requirements. Such a disclosure requirement should apply only to urea-based foam and not other foam insulation products.

16 C.F.R. § 460.23(a) – (Other laws, rules, and orders)

NAIMA supports the Commission's proposed correction of a typographical error.