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Federal Trade Commission  
Office of the Secretary  
Constitution Center  
400 7<sup>th</sup> Street SW, 5<sup>th</sup> Floor  
Suite 5610 Annex B  
Washington, DC 20024

Re: 16 CFR part 460 – R-value Rule Review  
File No. R811001  
Labeling and Advertising of Home Insulation – Notice of Proposed Rulemaking

Dear Mr. Clark:

In response to the above-referenced Notice of Proposed Rulemaking, these comments are submitted on behalf of the EPS Industry Alliance (herein referred to as “EPS-IA”). EPS-IA is the North American trade association representing member companies engaged in the production and promotion of expanded polystyrene building insulation and construction products.

The Notice of Proposed Rulemaking requests input on several topics. These comments will respond to the issues set forth below:

- Criticism raised about ASTM C1303 and CAN/ULC S770.
- The adverse impacts from continued absence of a specific FTC-mandated aging test.
- Whether the Rule should identify ASTM C1303 and CAN/ULC S770 as a safe harbor.

#### **THE R-VALUE RULE’S BASIS**

The Commission first issued the R-value Rule in response to, among other things, exaggerated R-value disclosures that failed to account for material factors such as aging that reduce thermal performance. This proposed rule fails, again, by refusing to identify ASTM C1303 and CAN/ULC S770 as the safe harbor test method to reflect the effect of aging on foam insulation’s R-value.

#### **FTC’S REFUSAL TO ADOPT ASTM C1303 WILL ALLOW CONTINUED DECEPTIVE LABELING PRACTICES**

The Rule properly requires that tests for thermal resistance of polyurethane, polyisocyanurate, and extruded polystyrene be conducted on samples that fully reflect the effect of aging on the product’s R-value. However, by continuing to refuse to incorporate the widely accepted ASTM C1303 test method, the FTC is failing to fulfill its mission to prevent deception in the marketing of home insulation products.

Section 460.5 of the proposed rule identifies the requirements for truthful labeling and identifies specific ASTM test methods to assure compliance for the vast majority of insulation products with the exception of the aging effect on extruded polystyrene, polyisocyanurate and polyurethane and the settling effect on mineral wool and cellulose.

Despite the FTC’s assertion that, “the record demonstrates that significant disagreements remain about various aspects of ASTM C1303,” the record demonstrates that there is very little opposition to this standard test method. As shown in Dow and Owen’s Corning commercial product literature, attached hereto, the lack of a mandated aging test virtually assures the XPS industry will publish aged R-value figures that are

deceptive. The spray polyurethane industry has hypothesized that some physical attributes of the material may function in a way that ASTM C1303 does not address but otherwise recognizes ASTM C1303 as a viable aging test method for other foam plastics.

Such conjecture and self-serving opposition is not sufficient to overcome the weight of evidence from Oak Ridge National Laboratories and the American Society for Testing and Materials that ASTM C1303 is the test method for determining long term thermal resistance of §460.5(1) materials.

The fact that representatives of the insulation material that, under current practice, does not test samples that fully reflect the effect of aging, should not be characterized as significant disagreement. Two things that are significant are the XPS Industry's opposition to testing samples that fully reflect the effects of aging and their inability to deny that in a matter of a few years, the material provides significantly less R-value than claimed on the R-value label.

Consumers of home insulation have neither the knowledge nor the ability to determine if the material labelled with a certain R-value at purchase retains that R-value at 1, 5 or 10 years. For protection of the consumer and to avoid deceptive labeling, the FTC should adopt ASTM C1303 as the test method for determining R-value of unfaced rigid foam insulations with blowing agents other than air or pentane.

In addition to the general request for input, the Commission has requested comment to address certain specific topics as set out below:

#### **ADVERSE IMPACTS ASSOCIATED WITH THE PROPOSED REMOVAL OF THE REFERENCE TO THE GSA STANDARD**

The EPS-IA supports removal of the GSA standard. Removal of the obsolete standard will not have any adverse impacts. Historic inclusion of the reference does indicate that the Commission recognizes the value of identifying a specific test method to provide manufacturers and the public with a clear understanding of how to comply with the Rule.

#### **IMPACTS FROM THE CONTINUED ABSENCE OF A SPECIFIC FTC-MANDATED AGING TEST**

Continued absence of a specific FTC-mandated aging test will result in deceptive labeling and overstatement of R-value to consumers. Those consumers will not be in a position to protect themselves from false claims or have access to accurate information regarding the R-value, and hence potential energy savings, from products marketed as home insulation. A requirement without a clear path to compliance will have a negative impact and negates any effectiveness the Rule would otherwise offer.

#### **THE IDENTITY AND RELIABILITY OF ANY OTHER TESTS TO COMPLY WITH THE RULE'S AGING REQUIREMENT**

No other test methods for R-value aging exist. Although there may be some inter-industry discussion regarding refinement and continued development, there is no other test method in existence. Adopting ASTM C1303 supports the purpose and intent of the R-value Rule. Without a mandated aging test, the Rule may as well remain silent on the negative impact of aging on thermal resistance.

The EPS Industry Alliance appreciates the opportunity to submit these comments.

Sincerely,

Walter A. Reiter, III  
EPS Industry Alliance  
Deputy Director

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