

**Supporting Statement
Trade Regulation Rule
Labeling and Advertising of Home Insulation
16 C.F.R. Part 460
(Control Number: 3084-0109)**

(1) Necessity for Collecting the Information

In 1979, the Federal Trade Commission (“Commission”) issued a trade regulation rule concerning the Labeling and Advertising of Home Insulation (the “Rule” or “R-value Rule”), 16 C.F.R. Part 460. The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation product is its resistance to the flow of heat. Consumers can use this information to determine how well a product is likely to perform as an insulator, and to compare the product’s cost-efficiency with other products to determine whether the cost of the insulation is justified.

The rulemaking record revealed that consumers were unable to make cost-effective insulation purchases because industry members were failing to disclose R-value information. 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 consumers and to enable them to make cost-effective purchasing decisions. In addition, the Rule operates to ensure that promotional claims for home insulation products contain accurate information that describes the product in a fair and non-deceptive manner.

To accomplish these goals, the major provisions of the Rule require that:

- Manufacturers and their testing laboratories determine R-values of home insulation products based on the results of specific, standardized test procedures (16 C.F.R. §§ 460.5, 460.6).
- Manufacturers disclose R-values and related information on labels and fact sheets made available to consumers at the point-of-sale (16 C.F.R. §§ 460.12, 460.13).
- Professional installers, retailers, and new home sellers make point-of-sale disclosures of R-values and related information to consumers prior to sale (16 C.F.R. §§ 460.14, 460.15, 460.16, 460.17).
- Manufacturers, professional installers, and retailers disclose R-values and related information in advertisements and other promotional materials that make claims about a home insulation product’s R-value, thickness or price (16 C.F.R. § 460.18).
- Manufacturers, professional installers, retailers, and new home sellers have substantiation for energy savings claims they make about home insulation products, and include specific disclosures in advertisements and other promotional materials that make energy savings claims for home insulation products (16 C.F.R. § 460.19).

The Rule requires home insulation manufacturers and their testing laboratories to maintain records concerning the tests conducted to determine the R-value of each insulation product (16 C.F.R. § 460.9). The required records are used to substantiate that the test procedures have been properly conducted and that correct R-values and related information is disclosed in product labels, fact sheets and certain advertisements and other promotional materials. Manufacturers and testing laboratories must maintain these records for at least three years after making the last claim based on the tests. Non-manufacturers may rely on the data given to them by manufacturers, unless the non-manufacturers know or should know that the information is false or not based on the proper tests (16 C.F.R. § 460.9).

Also, sellers who make representations concerning fuel or monetary savings associated with home insulation must maintain records that substantiate savings claims (16 C.F.R. § 460.19). Sellers who are non-manufacturers may rely on the manufacturer's claims, unless the non-manufacturers know or should know that the manufacturers do not have a reasonable basis for the claims. Non-manufacturers need only keep records showing the manufacturer's claims (Id.). Records of all data savings claims must be kept for at least three years after the last claim is made based on those records (Id.).

(2) Use of the Information

The primary purpose of the Rule's disclosure requirements is to provide material prepurchase information about home insulation products so that consumers can compare competing products and make cost-effective purchasing decisions about home insulation products. The information that must be kept under the Rule's recordkeeping requirements is used by the Commission, or by persons authorized by the Commission, for enforcement purposes and to ensure the accuracy of R-values, related information, and energy or fuel savings claims. The information is requested only on a case-by-case or spot-check basis.

(3) Consideration to Use Improved Information Technology to Reduce Burden

Notwithstanding the Rule's package labeling (§ 460.12) and fact sheet requirements (§ 460.13-460.15), the disclosures required by the Rule are format-neutral and do not limit the use of available information technology to reduce the burdens of a home insulation contract, receipt, advertisement, or promotional material, if it properly provides or contains the required disclosures or signature (see §§ 460.18-460.22). Likewise, the Rule's recordkeeping provisions (§§ 460.9, 460.19) do not limit the use of available technology to maintain required records. In these ways, the Rule is consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note.

(4) Efforts to Identify Duplication

The third-party disclosure requirements and recordkeeping requirements do not duplicate any other information collection requirements. The FTC staff is not aware of any duplicative state requirements.

(5) Efforts to Minimize Burden on Small Organizations

The Rule's testing, recordkeeping and third-party disclosure requirements are designed to impose only minimum burden on sellers, whether they are large or small. There is no requirement that R-value tests be conducted at specific intervals, and the Rule requires disclosure information to be updated only if there is a change in the characteristics of the product(s). Also, the Rule requires disclosures in advertisements and promotional materials only if these materials contain certain claims. The Rule does not mandate any particular form of substantiation for voluntary energy savings claims, and sellers may rely on substantiation developed by others, including home insulation manufacturers.

(6) Consequences of Conducting the Collection Less Frequently

Not applicable. The information collection requirements of the Rule involve substantiation and disclosure of important product information to consumers prior to purchase. To require less than this would defeat the purpose of the Rule.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in the Rule is consistent with all applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

The Commission has been in contact with interested industry members and associations since the Rule became effective in 1980. Representatives of the home insulation industry (including manufacturers, professional installers, new home sellers, and retailers) have informed the Commission that the information collection burdens imposed by the Rule are minimal. The Commission also sought comment on the Rule pursuant to its systematic rule review program. In 2005, the Commission completed the review proceeding and adopted a limited number of rule amendments designed to clarify the Rule, make disclosure requirements consistent for competing types of loose-fill insulation products and batt and blanket insulation products, require the most current procedures for preparing R-value test specimens and conducting R-value tests, require initial installed thickness information for loose-fill insulations, eliminate disclosure requirements for radio ads and provide retailers with a method that would allow them to forgo the burden of making fact sheets available to consumers. See 70 Fed. Reg. 31,258 (May 31, 2005). As the Commission explained in detail when it issued the rule amendments, the net effect of the rule changes did not increase burden under the Paperwork Reduction Act. *Id.* at 31,274.

In ensuing years, the Commission has sought public comment to pursue renewed OMB clearance for the Rule under the Paperwork Reduction Act ("PRA"), including, most recently, this past August. See 76 Fed. Reg. 50,218 (August 12, 2011). No comments were received. The Commission is providing a second opportunity for public comment on its burden analysis as required by 5 CFR Part 1320.

(9) Payments and Gifts to Respondents

Not applicable.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

Not applicable. To the extent that information covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Section 21 of the FTC Act, 15 U.S.C. 57b-2, will apply.

(12) Estimated Annual Hours and Labor Cost Burden

Estimated annual hours burden: 126,827 hours.

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheets, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,615 installers who sell home insulation; (3) 125,000 new home builders/sellers of site-built homes and approximately 5,500 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. Based on past industry input, staff estimates that the test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. Their total annual testing burden is therefore approximately 30 hours.

Staff further estimates that most manufacturers require an average of approximately 20 hours per year regarding third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours [(144 manufacturers x 20 hours) + (6 manufacturers x 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary to comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers x 1 hour).

Installers are required to show the manufacturers' insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 2,000,000

retrofit insulations (an industry source's estimate) are installed by approximately 1,615 installers per year, and, thus, the related annual burden total is approximately 66,667 hours (2,000,000 sales transactions x 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,615 hours per year. In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal -- approximately 5 minutes per year per installer -- for a total of approximately 134 hours.

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than 30 seconds per sales transaction is required to comply with this requirement, for a total annual burden of approximately 4,871 hours (an estimated 586,900 new home sales¹ x 30 seconds). New home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the 30 seconds covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

¹Based on U.S. census data for 2010. See <http://www.census.gov/const/startsan.pdf>. Figures for new housing starts show a continuing decline from 2005 through 2010. See *id.*

To summarize, staff estimates that the Rule imposes a total of 126,827 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturers; 134 recordkeeping and 68,282 disclosure hours for installers; 4,871 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. The estimated total annual burden is 126,827 hours.

Estimated labor cost burden: \$2,517,036 (solely related to labor costs)

The total annual labor cost for the Rule's information collection requirements is \$2,517,036, derived as follows: \$780 for testing, based on 30 hours for manufacturers (30 hours x \$26 per hour for skilled technical personnel); \$3,976 for manufacturers' and installers' compliance with the Rule's recordkeeping requirements, based on 284 hours (284 hours x \$14 per hour for clerical personnel); \$47,040 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours x \$14 per hour for clerical personnel); and \$2,465,240 for disclosure compliance by installers, new home sellers, and retailers (123,262 hours x \$20 per hour for sales persons).

(13) Estimate of Capital or Other Non-Labor Costs

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. Because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

(14) Estimate of Cost to Federal Government

Staff estimates that the cost to the FTC to carry out enforcement plans, monitor compliance, provide industry guidance, answer inquiries from consumers, and continue ongoing industry and consumer education programs will be about 1/4 of an attorney work year, which is approximately \$35,000-40,000, including fringe benefits.

(15) Adjustments

The FTC is requesting a total burden estimate of 126,827 hours, a slight upward adjustment of 10,037 hours. This slight increase is because there are more estimated retrofit installations now (approximately 2 million as opposed to 1.5 million in 2008) which is offset in part by lower new home sales (approximately 600,000 new home sales as opposed to 1.3 million new home sales in 2008). Each retrofit installation takes an average of 2 minutes each while each disclosure related to a new home sale takes approximately 30 seconds each.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.