

installers, and retailers in advertising and other promotional materials (including those on the Internet) that contain an R-value, price, thickness, or energy-saving claim, or compare one type of insulation to another. Manufacturers and other sellers must have a "reasonable basis" for any energy-saving claims they make.<sup>5</sup>

### III. Procedural History

#### A. The 1995 Initial Regulatory Review ("the 1995 Notice")

On April 6, 1995, as part of its ongoing regulatory review program, the Commission solicited public comments about the economic impact of and current need for the R-value Rule.<sup>6</sup> 60 FR 17492 (1995). At the same time, the Commission solicited comments on a petition ("Petition") from Ronald S. Graves, who at that time was a Research Staff Member, Materials Analysis Group, Martin Marietta Energy Systems, Inc. (which operated Oak Ridge National Laboratory ("ORNL") for the U.S. Department of Energy ("DOE")). The Petition requested that the Commission approve an additional (fifth) ASTM R-value test procedure as an optional test procedure for determining the R-value of home insulation under the Rule.

#### B. The 1996 Notice of Continuing Need and Technical Amendments ("the 1996 Notice")

Based on the comments in response to the 1995 Notice, the Commission determined that there was a continuing need for the Rule, published its determination to retain it, and adopted several technical, non-substantive amendments to support the use of the most current testing procedures

<sup>5</sup> Although the Rule does not specify how energy saving claims must be substantiated, the Commission explained that scientifically reliable measurements of fuel use in actual houses or reliable computer models or methods of heat flow calculations would meet the reasonable basis standard. 44 FR at 50233–34. Sellers other than manufacturers can rely on the manufacturer's claims unless they know or should know that the manufacturer does not have a reasonable basis for the claims.

<sup>6</sup> The Commission previously reviewed the Rule in 1985 under the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the economic impact of the Rule on small entities. Based on that review, the Commission determined that: there was a continuing need for the Rule; there was no basis to conclude that the Rule had a significant impact on a substantial number of small entities; there was no basis to conclude that the Rule should be amended to minimize its economic impact on small entities; the Rule did not generally overlap, duplicate, or conflict with other regulations; and technological, economic, and other changes had not affected the Rule in any way that would warrant amending the Rule. 50 FR 13246 (1985).

available and to streamline the Rule.<sup>7</sup> 61 FR 13659, at 13659–62, 13665 (March 28, 1996).

#### C. The 1999 Advance Notice of Proposed Rulemaking ("the ANPR")

In 1999, based on the comments received in response to the 1995 Notice (that were not otherwise addressed in the 1996 notice), the Commission published an Advance Notice of Proposed Rulemaking (64 FR 48024 (Sept. 1, 1999)). In the ANPR, the Commission proposed limited amendments that were designed to: clarify the Rule; make disclosure requirements consistent for competing types of loose-fill insulation products; require the most current procedures for preparing R-value test specimens and conducting R-value tests; delete disclosures for a type of insulation that no longer is sold; and reduce disclosure requirements for retailers. Regarding those issues, the Commission believed that there was sufficient information to propose amendments. The Commission also requested comments on whether to revise the Rule to: cover additional products; require the disclosure of in-use performance values (as opposed to laboratory tests that are conducted under static, uniform conditions); require the disclosure of the performance of building systems; adopt additional test specimen preparation requirements for specific types and forms of insulation products to account for various factors that affect R-values; adopt additional or updated testing requirements; and change the disclosure requirements for manufacturers' labels and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers. The comments filed in response to the ANPR are discussed in depth at section V of this document following the brief section-by-section description of the proposed amendments.

<sup>7</sup> These amendments: (1) revised section 460.5 of the Rule to allow the use of an additional ASTM test procedure as an optional, but not required, test procedure to determine the R-value of home insulation; (2) revised section 460.5 to require the use of current, updated versions of other ASTM R-value test methods cited in the Rule; (3) added an Appendix summarizing the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule; and (4) revised section 460.10 of the Rule to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and deleted the previous Appendix to the Rule because it merely repeated the text of 16 CFR 14.9.

### IV. Section-by-Section Description of Proposed Amendments

The following is a brief summary of the amendments the Commission is proposing for the R-value Rule in response to the comments received. These proposed changes are addressed in more detail in section V of this document. Section V also contains a detailed discussion of other issues raised in the 1999 ANPR that are not the subject of a proposed amendment.

#### Section 460.1 (What This regulation does)

The Commission proposes to amend the monetary penalty reference from \$10,000 to \$11,000 to reflect the current requirements of section 1.98 of the Commission's regulations. This is a technical, conforming change.

#### Section 460.5(a) (R-value Tests)

**Temperature Differential:** The Commission proposes to amend section 460.5, R-value Tests, to specify that tests conducted under section 460.5(a) must be done with a temperature differential of 50° F plus or minus 10° F in addition to the mean temperature requirement currently in the Rule [see section V.D.2.b. of this document].

**Update Test Procedure:** The Commission proposes to update the reference for ASTM C 739–91 to reflect the most recent version of the procedure (ASTM C 739–97). The reference to ASTM C 236–89 and ASTM C 976–90 would be eliminated and replaced with ASTM C 1363–97, "Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box Apparatus" [see section V.F. of this document].

#### Section 460.5(a)(1) (R-value Tests)

**Aging of Cellular Plastics:** Section 460.5(a)(1) would also be amended under the proposal to require the use of several recent ASTM test procedures to take into account the effects of aging on cellular plastics insulation. These test procedures include ASTM C 578–95, "Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation," ASTM C 1029–96, "Standard Specification for Spray-Applied Rigid Cellular Polyurethane Thermal Insulation," and ASTM C 591–94, "Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation" [see section V.C.1.a. of this document].

#### Section 460.5(a)(3) (R-value Tests)

**Loose-Fill Settling:** The Commission proposes to amend section 460.5(a)(3) to eliminate the reference to the GSA specifications for measuring the settling