

Most of these came from industry members, trade associations or consultants, with three comments from federal governmental agencies (one from the Department of Energy and two from its contractor, Oak Ridge National Laboratory).

A. Disclosing Thermal Performance of Additional Products

1. Residential Pipe and Duct Insulations Background

In the ANPR, the Commission asked whether it should amend the Rule to cover residential pipe and duct insulations. Currently, the Rule does not cover these types of insulations, but does cover duct wrap. See section 460.2. The Commission stated that unless interested parties have information that sellers are misrepresenting the thermal performance of these products to consumers, it would not propose extending the Rule to cover them.

Comments

DOE stated that flexible duct, which includes an integral insulation jacket and does not require a separate duct wrap, has become much more common in residential applications since the Rule's inception. DOE maintained that this type of duct is often marked with an "Average R-value" rating, although, according to DOE, the basis for this rating is unclear. DOE also pointed out that the Council of American Building Officials ("CABO") Model Energy Code ("MEC") and many state codes require an R-value rating for duct insulation. DOE concluded that, although there may be no evidence that the R-value of duct insulation is being misrepresented, consumers and inspectors nevertheless need these R-values to be stated in a uniform manner. DOE acknowledged that it is unclear how the R-value on

duct insulation (duct wrap or flex duct) should actually be reported to the consumer.⁹

NAIMA supported revising the Rule to cover the newer forms of duct insulation that are now sold to consumers in retail stores and building supply outlets. It contended that duct insulations—rigid air ducts, flexible air ducts, and radiant "bubble packs"—are promoted through use of R-value claims and that requiring these products to comply with the Rule may be achieved with little additional burden upon the Commission. NAIMA recommended that the Commission require testing of duct insulations, including radiant "bubble packs," under ASTM C 1363 because it would benefit retail consumers. If all claims were judged by the same method, consumers would have greater confidence in R-value performance and protection against fraudulent claims.¹⁰

NAIMA agreed that the Commission should not apply the Rule to pipe insulations because: (1) pipe products are not readily available at retail stores, so consumers do not require protection; (2) the nature of pipe insulation makes required disclosures of R-value difficult—for example, R-values for pipe insulations vary with every gradation of pipe size; (3) the assignment of pipe R-values is based on technical principles so complex and complicated that the average consumer could not begin to comprehend the nuances differentiating the R-value of one pipe insulation from another; and, (4) pipe insulation is not marketed in terms of thermal performance. NAIMA maintained, moreover, that it was not aware of any misrepresentations of R-values for pipe insulation in the marketplace.¹¹ Without elaboration, Elastizell opposed any change to the Rule in this regard.¹²

Discussion

As explained in the ANPR, the Commission excluded pipe insulation from the original Rule's coverage based on uncontroverted evidence that it was used primarily to prevent moisture condensation on low temperature pipes, rather than energy conservation; that R-value was not a reliable basis for comparing the performance of pipe insulations; and that pipe insulations were not commonly advertised in terms of energy-savings potential. Similarly, it

excluded duct insulations other than duct wrap because only duct wrap was used extensively in the residential setting. The Commission explained that, since the original proceeding, the staff had reviewed consumer advertising for these products and found no information to indicate that these facts have changed. The Commission concluded that, unless interested parties presented information that sellers are misrepresenting the thermal performance of these products to consumers, the Commission would not propose extending the Rule to cover them. 64 FR at 48027.

Although DOE and NAIMA maintained that the use of flexible duct insulation has become much more common in residential applications than it was when the Rule originally was promulgated, no commenters indicated that sellers are misrepresenting the thermal performance of pipe or duct insulation products to consumers. In addition, although DOE raised doubt concerning the basis for the labeled R-value of these products, NAIMA indicated that its members base their thermal performance claims for all residential rigid and flexible duct products on ASTM test methods referenced in the Commission's Rule. The Commission recognizes that including these products under the Rule may provide some benefit to consumers. Absent evidence of widespread deception, however, it is difficult to conclude that such benefits would be significant enough to support a change to the Rule. Accordingly, the Commission is not proposing amendments on this issue but seeks additional comment including any additional information on industry practice for testing and labeling these products and the costs new FTC testing and labeling requirements would impose in this area.

2. Non-residential Insulations

Background

In the ANPR, the Commission indicated that it did not plan to extend the Rule to cover sales to the commercial market. The Commission did, however, request information about whether sellers in this market are misrepresenting the thermal performance of insulation products or are engaging in other unfair or deceptive practices.

Comments

The Commission received ten comments regarding the extension of the R-value Rule to insulation products used in commercial buildings. PIMA,

International Paper ("Uniwood"), (11); ConsultMort, Inc. ("ConsultMORT"), (12); AFM Corporation ("AFM"), (13); Advanced Foil Systems, Inc. ("AFS"), (14); Carlton Fields for Cellulcrete Corporation ("Cellulcrete"), (15); Tenneco Building Products ("Tenneco"), (16); Therese K. Stovall for Oak Ridge National Laboratory ("ORNL-1"), (17); The Polyurethane Foam Alliance ("SPFA"), (18); The Reflective Insulation Manufacturers Association ("RIMA"), (19); Dan Reicher, Assistant Secretary for Energy Efficiency and Renewable Energy, for the United States Department of Energy ("DOE"), (20); Therese K. Stovall for Oak Ridge National Laboratory ("ORNL-2"), (21). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments are organized under the Labeling and Advertising of Home Insulation Rule ("The R-value Rule"), Matter No. R811001, under the category: "ANPR Comments, R-value Rule, 16 CFR Part 460."

⁹ DOE (20), p. 2; DOE also recommended that the FTC consider the issue of competitive advantage of installations using duct wrap (which must show an R-value) vs. flex duct (with integral insulation that is not covered by the Rule).

¹⁰ NAIMA (9), pp. 6–7, Appendices 8–10.

¹¹ *Id.* p. 7.

¹² Elastizell (10), p. 1.