

#### 4. Disclosures by Retailers

##### Background

Section 460.14 of the Rule requires retailers who sell insulation to do-it-yourself consumers to make the manufacturers' fact sheets available to consumers before purchase in any manner the retailer chooses, as long as consumers are likely to notice the fact sheets. The ANPR explained that the purpose of this requirement is to ensure that consumers have the information about home insulation they need to make cost-based purchasing decisions. When the Commission promulgated the Rule, bulky insulation packages were not normally available on the retail sales floor, so the consumer would not see the disclosures on labels before purchase. In addition, the fact sheets contain information about energy savings and other factors the consumer should consider when purchasing home insulation that is required on labels. 64 FR at 48048.

The ANPR solicited comments on whether the Rule should be amended to excuse retailers from making separate fact sheets available at the point of purchase *if* all the required fact sheet disclosures are made on the insulation package *and if* the insulation packages are available on the sales floor for the consumer to inspect before purchase. *Id.*

##### Comments

PIMA opposed the Commission's proposal. It indicated that retailers should continue to supply fact sheets or at least make them available to consumers at point of purchase. PIMA maintained that it is inappropriate as well as burdensome to require retailers to determine whether the labels adequately disclose information. PIMA asserted that retailers often open bundles or packages in order to sell individual boards, and packaging labels may be missing or damaged.<sup>107</sup>

NAIMA supported an amendment that would relieve retailers of responsibility to provide fact sheets when the same information is on the bag label. NAIMA recommended that the Commission add a provision requiring manufacturers to supply retailers with relevant fact sheets providing the facts omitted from the label in cases in which the labels lack the data required on fact sheets. NAIMA cautioned that, if such a requirement is not in the Rule, some manufacturers may see profit in limiting the amount of information disclosed to their customers.<sup>108</sup>

##### Discussion

In the years since the Commission promulgated the Rule, the nature of retail sales to do-it-yourself home insulation consumers has changed. Today, retailers often sell home insulation directly from warehouse-type sales floors where consumers select the packages of insulation they want. Therefore, the R-value and related information on the packages is available to consumers before purchase. In response to questions from retailers, the Commission's staff has advised informally that retailers need not make separate fact sheets available at the point of purchase *if* all the required fact sheet disclosures are made on the insulation package *and if* the insulation packages are available on the sales floor for the consumer to inspect prior to purchase. As it did in the ANPR, the Commission proposes to amend the Rule to codify this option. The Commission does not believe, as PIMA asserts, that this would impose an additional burden on retailers. The Commission believes that, to the contrary, this amendment would provide retailers with an additional option for ensuring that the appropriate information is available to consumers. In exercising this option, the retailers would have to ensure the labels contain the information provided on the fact sheets. If a retailer does not want to take the time to perform such a comparison, however, it can always use the fact sheets as provided now by the Rule. Retailers could exercise this option only if the package labels are in fact displayed in a way that customers can obtain the required information. As PIMA suggests, if package labels are discarded or damaged due to practices of the retailer, then the retailer would not be able to use this alternative and would have to make the fact sheets available to consumers. The Commission seeks comments on this proposal.

##### *F. Amendments to Update References to ASTM Standards*

In addition to the substantive amendments discussed herein, the Commission also proposes to amend certain provisions of the Rule in order to update those referenced ASTM Standards that have been reviewed and updated since the Rule was last amended in 1996. In section 460.5(a), the Commission proposes to update references to: ASTM C 177–85, “Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Guarded-Hot-Plate Apparatus” (to C

177–97); ASTM C 518–91, “Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus” (to C 518–98); ASTM C 1045–90, “Standard Practice for Calculating Thermal Transmission Properties Under Steady-State Conditions” (to C 1045–97); and ASTM C 1114–95, “Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus” (to C 1114–98), to reflect the most recent versions of those standards. In 460.5(a)(2), the Commission proposes to update the reference to ASTM C 739–91, “Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation” (to C 739–97). Further, the Commission proposes to add a reference to ASTM C 1363–97, “Standard Test Method for the Thermal Performance of Building Assemblies by Means of a Hot Box,” in place of ASTM C 236–89 (Reapproved 1993), “Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box,” and ASTM C 976–90, “Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box” in section 460.5(a) and, as discussed earlier, section 460.5(d)(1). The Commission also proposes to add new paragraph (e) in section 460.5 to consolidate information regarding incorporation by reference approvals by the Office of the **Federal Register**.

#### VI. Rulemaking Procedures

The Commission finds that the public interest will be served by using expedited procedures in this proceeding. Using expedited procedures will support the Commission's goals of clarifying existing regulations, when necessary, and eliminating obsolete or unnecessary regulation without an undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views and arguments on whether the Commission should amend the Rule. The Commission, therefore, has determined, pursuant to 16 CFR 1.20, to use the procedures set forth in this document. These procedures include: (1) publishing this Notice of Proposed Rulemaking; (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing (such as workshop), if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a notice published in the **Federal Register**.

<sup>107</sup> PIMA (3), p. 8.

<sup>108</sup> NAIMA (9), p. 29.