

new products, as a part of its systematic review of all current Commission regulations and guides. In addition, the Commission proposes adopting a non-substantive amendment to the Rule that would allow use of an additional test procedure to determine the R-value of home insulation products. The Commission also solicits comments concerning the proposed non-substantive amendment.

II. Background

The Commission promulgated the R-value Rule under Section 18 of the FTC Act in 1979. The Rule became effective on September 30, 1980. Among other things, the Rule requires that manufacturers disclosed the R-value ("thermal performance") of each one insulation product, based on tests conducted according to one of four specified American Society of Testing and Materials ("ASTM") test procedures.¹ When the Commission promulgated the Rule, it determined that ASTM R-value test procedures C-177, C-236, and C-518 were highly accurate and reproducible steady-state methods for determining the R-values of home insulation products. 44 FR 50218, at 50226 note 189. In the original Rule, the Commission stated that it also would accept the use of C-976 once it was adopted as an ASTM test procedure. ASTM adopted C-976 in 1982. The Rule, therefore, now officially recognizes tests using any of these four test procedures.

The Commission conducted a review of the rule under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, in 1984. During the review, the Commission solicited comments on whether the Rule had had a significant economic impact (costs and benefits) on a substantial number of small businesses, whether there was a continuing need for the Rule, and what changes, if any, should be made to the Rule to minimize the economic effect on small entities. 49 FR 22104 (1984). Based upon the comments submitted, the Commission determined that it had no basis to conclude that the R-value Rule had a significant economic impact upon a substantial number of small entities. The Commission determined not to amend the Rule following the Regulatory Flexibility Act review. 50 FR 13246, at 13247 (1985).

¹ The test procedures are ASTM C-177 and ASTM C-518 (which use hot and cold "plates" to determine R-values for homogeneous "mass" insulation products, like fiberglass batts and loose-fill cellulose), and ASTM C-236 and ASTM C-976 (which use "hot boxes" to determine R-values for heterogeneous insulation systems, like multi-panel aluminum foil products and insulation systems).

Since the Rule was promulgated, the Commission has brought 12 actions to enforce its provisions.² The Commission also has granted three partial or conditional exemptions relating to specific provisions, issued one Advisory Opinion allowing use of an alternative testing procedure, and adopted three non-substantive amendments (one that allowed manufactures to add to their insulation fact sheets specific information required by other government agencies; a second, in response to an industry request, that adopted a revised settled density test procedure for loose-fill cellulose insulation; and a third that adopted revised versions of the ASTM R-value test procedures).

III. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying rules and guides that warrant modification or rescission.

At this time, therefore, the Commission solicits comments on, among other things, the economic impact of and the continuing need for the R-value Rule, possible conflict between the Rule and state, local or other federal laws, and the effect on the Rule of any technological, economic, or other industry changes. No Commission determination on the need for or the substance of the Rule should be inferred from this request for comments.

IV. Non-Substantive Amendment

The Commission has received a petition from Mr. Ronald S. Graves, Research Staff Member, Materials Analysis Group, at Martin Marietta Energy Systems, Inc. ("Petition").³ The petition requests that the Commission include an additional (fifth) ASTM R-value test procedure ("ASTM Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus," ASTM C-1114-92), as an approved test method for compliance with Section 460.5(a) of the R-value Rule.⁴ The test method is

² The Commission has brought seven civil penalty actions against manufacturers, one against a testing laboratory, and three against retailers. It also has brought one consumer redress action against a professional installer.

³ Martin Marietta Energy Systems, Inc., operates Oak Ridge National Laboratory ("ORNL") as a contractor for the U.S. Department of Energy.

⁴ The Petition, plus attachments, have been placed on the public record of the R-value Rule and

under the jurisdiction of ASTM Committee C-16 on Thermal Measurements (which is the Committee responsible for the other R-value test procedures required by the R-value Rule), and is the direct responsibility of Subcommittee C16.30 on Thermal Measurements. Mr. Graves is the Chairman of the Thin Heater Task Group within C16.30 that meets semiannually to maintain and keep C-1114 current.

According to the Petition, tests conducted in 1983 and 1990 on two standard reference materials ("SRMs") obtained from the National Institute of Standards and Technology show apparent thermal conductivity values for the SRMs to be within the most probable uncertainty of ± 1.2 percent between 25 °C (77 °F) and 50 °C (132 °F). The Petition states that results with single-sided heat flow up or down and double-sided heat flow agreed to ± 0.2 percent. It asserts that these test results at ORNL⁵ demonstrate that ASTM C-1114-92 is an appropriate test procedure for obtaining accurate apparent thermal conductivity values on insulation products.

The accuracy of the ASTM C-1114-92 test procedure, therefore, appears to rate favorably compared to the accuracy of the other ASTM R-value test procedures the Commission has adopted under the R-value Rule. Evidence in the original rulemaking proceeding demonstrated that, if properly performed: (1) Measurements under C-177 could achieve results within ± 2 percent of the specimen's actual thermal value, and a precision of one percent or better is normally attained; (2) measurements under C-518 should come within at least ± 5 percent of absolute accuracy, with a reproducibility rate of ± 2 percent; and (3) measurements under C-236 can measure thermal resistance values within ± 2 percent of absolute accuracy. See 44 FR 50218, at 50226 note 189.

Thus, the Commission is considering adopting a non-substantive amendment to § 460.5 of the Rule, 16 CFR 460.5(a), to include ASTM C-1114-92 as an optional, but not required, test procedure for determining the R-values of home insulation products. Because the amendment would not impose any new obligations upon parties covered by the Rule (but merely would recognize the use of an additional, optional, R-value test procedure), and because the apparent accuracy of the test procedure

can be inspected at the Commission's Public Reference Room, room 130, Sixth and Pennsylvania Ave., NW, Washington, DC.

⁵ The testing apparatus used at ORNL is referred to as the Unguarded Thin Heater Apparatus ("UTHA").