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November 12, 1999

BY FEDERAL EXPRESS

Mr. Kent C. Howerton
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room 159
Washington, DC 20580

Re: Cellucrete Corporation – Celcore R. Value
Written Comments /16 CFR 460 R Valve
Our File No. 43190-96160

Dear Mr. Howerton:

The purpose of this letter, consistent with the directions provided in Federal Register, Vol. 64, No. 169 (September 1, 1999), is to provide written comments related to the proposed revision of the Trade Regulation Rule concerning the Labeling and Advertising of Home insulation (“R Value Rule”). This firm has been retained by Cellucrete Corporation, (“Cellucrete”) which conducts business in the state of Florida. These comments are submitted on Cellucrete’s behalf.

Cellucrete installs thermal insulation roofing systems in both residential and nonresidential buildings. Cellucrete has been in this business for approximately 15 years in south Florida. A major component of Cellucrete’s business is the installation of lightweight insulating concrete or cellular concrete roofing systems. Lightweight insulating concrete serves several primary functions, one of which is its insulating capabilities. Cellucrete consistently installs products which conform to the R-Value requirements of the R Value Rule.

In addition to the R Value Rule, in Florida, manufacturers of building materials are required to perform tests to determine the thermal values of these building materials, including lightweight insulating concrete. This requirement is found in the Energy Efficiency Code for Building Construction (“Florida Code”), which is adopted by the Florida Department of Community Affairs. Similar to the R Value Rule, the thermal values set forth in the Florida Code must be established by using uniform tests approved by the American Society for Testing Materials (“ASTM”). Indeed, many of the tests listed in the Florida Code are identical to those listed in the R Value Rule.

As an installer of insulation products that are required to be accurately labeled as to the R-Value, Cellucrete is extremely interested in providing comments regarding suggested changes to the R Value Rule. Cellucrete's comments are as follows:

A. Inclusion of Lightweight Insulating Concrete. Cellucrete has been advised by Federal Trade Commission ("FTC") staff that lightweight insulating concrete as a building material is not currently considered by the FTC to be covered by the scope of R Value Rule. Apparently, the basis for this conclusion is twofold. First the FTC cites the definition of "insulation" found at 16 CFR Part 460.2, which in relevant part provides:

Insulation is any product mainly used to slow down the flow of heat

FTC takes the position that, because lightweight insulating concrete has functions other than insulation, insulation is not its "main" function. Additionally, the FTC does not believe that lightweight insulating concrete is used in the residential market.

FTC's conclusion is too narrow and should be broadened. Lightweight insulating concrete has multiple functions when used in insulating roofs. However, the basic function of lightweight insulating concrete is to control fluctuations in building interior temperatures relative to changing exterior temperatures. Indeed, by reducing these interior temperature fluctuations, the comfort of the building inhabitants is improved and air-conditioning or heating costs can be controlled and minimized.

This is the same function served by more traditional forms of insulation. Indeed, a review of American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. ("ASHRAE"), Fundamental Handbook at Table 4, Typical Thermal Properties, includes cellular concrete as a common "building and insulating material." Moreover, when combined with the more traditional forms of insulation, lightweight insulating concrete clearly enhances the thermal insulating values of a building. Lightweight insulating concrete clearly serves to slow down the flow of heat. Consequently, this building material should be included within the scope of the rule.

Furthermore, insulating concrete is used for residential construction. Indeed, its use for residential application is growing and is the subject of increased marketing and advertising. With the increased advertising and marketing comes the need to insure that consumers are not misled. Indeed, the protection of the consumer is what the R Value Rule is promulgated to do. We believe that these protections should apply to the R Value representation of lightweight insulating concrete as well.

B. Expand the Scope to Include Nonresidential Situations. Noted experts in the thermal energy field (Dr. Yarbrough and Dr. Wilkes) have suggested extending the rule to cover

insulating products used in all buildings and not just residential applications. The primary reason given by these experts is that the extension of the rule would improve the energy efficiency of nonresidential buildings as it has residential buildings. Cellucrete concurs with the previous comments of Dr. Yarbrough and Dr. Wilkes and believes they should be reconsidered. The FTC, in response to these comments, however, has indicated that it does not propose extending the rule to nonresidential situations. Indeed, the FTC has determined that the protections afforded by the rule are unnecessary in nonresidential situations because more sophisticated consumers (i.e., architects or engineers) are making the actual purchasing decisions. The FTC also concluded that there has been no demonstration that manufacturers and sellers of commercial insulations are engaged in unfair or deceptive acts or practices that would justify expanding the rule. The FTC has allowed interested persons the opportunity to provide information which is contrary to this conclusion.

Contrary to FTC's conclusion, Cellucrete is aware of several situations where manufacturers and sellers of insulation products are misrepresenting the thermal performance of cellular concrete products. For example, in south Florida, a closed-cell, cellular insulating concrete product is being marketed, sold and installed by various contractors. The manufacturers of the product represent the product as having an R-Value that is higher than any other product in the market. (See attachment 1.) The installers of the product assert that equal insulation can be achieved using less product. Based on the installers' representations, commercial customers are accepting bids priced lower than the bids that can be offered by installers who utilize complying products. The involvement of architects and engineers has neither prevented nor provided protection from such misrepresentations.

In reality, the R-Value calculation represented by this manufacturer is based on a report prepared by Westinghouse titled "Lightweight Concrete Materials and Structural Systems for Water Tanks for Thermal Storage." (See attachment 2.) The methodologies used in the Westinghouse report do not conform to the ASTM tests found in the rule or the Florida Code. (See attachment 3.) We believe that, if the manufacturers' product was subjected to the appropriate ASTM approved tests, its R-Value would be similar to the market standard. Indeed, the installers of the product will not allow others to test the product using the approved ASTM standards.

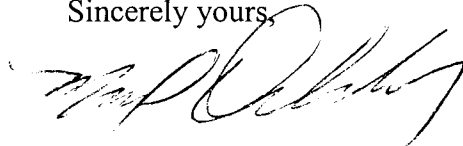
In addressing the ASTM concern, the manufacturer of the product represents that the Westinghouse testing methodologies are similar to ASTM. Based on this representation, installers are able to use the product despite the fact that it fails to meet any approved standard test. Unfortunately, neither the relevant county nor the state is actively enforcing the provisions of the Florida Code, which mirror the ASTM testing requirements of R Value Rule. Because of the lack of local enforcement, installers are able to submit lower prices for a product that purports to meet the required R-Value requirements but in fact does not. It is our belief that the use of insulating materials with R-Values not derived from approved ASTM tests will increase if

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they continue to be unchecked. This will happen, and indeed has happened, despite the fact that architects and engineers make the ultimate purchasing decision in the nonresidential market. The use of unapproved products is certainly not consistent with the overall purpose of R Value Rule, which is to ensure the provision of an energy efficient building. Accordingly, we believe that the R-Value rule should be extended to cover the use of insulating materials in the nonresidential market.

Thank you in advance for your consideration of these comments and please contact me if you need any additional information or have any concerns.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Donaldson", written in a cursive style.

Michael P. Donaldson

MDP:sjr:dm

cc: Mr. Jose E. Fernandez