

that is produced or distributed for sale to consumers, for their direct installation or use, as well as cellulose insulation that is produced or distributed for installation by professionals.

(2) The term *cellulose insulation* is defined in §1209.2(a) of the standard to mean cellulosic fiber, loose fill, thermal insulation that is suitable for blowing or pouring applications.

#### § 1209.32 Definitions.

In addition to the definitions set forth in section 3 of the act and in §1209.2 of the standard, the following definitions shall apply to this subpart:

*Private labeler* means an owner of a brand or trademark which is used on the label of cellulose insulation subject to the standard which bears a private label as defined in section 3(a)(7) of the act (15 U.S.C. 2052(a)(7)).

*Production interval* means a time span determined by the manufacturer, private labeler, or importer to be appropriate for conducting a test or series of tests on samples of the cellulose insulation being produced to demonstrate that the product meets the requirements of the standard. An appropriate production interval may vary from test to test. The time period for a production interval shall be short enough to ensure that if the samples selected for testing comply with the standard or a portion of the standard, the insulation produced during the period will meet the standard or the appropriate portion of the standard.

#### § 1209.33 Reasonable testing program.

(a) *General.* Section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)) requires each manufacturer, importer, or private labeler of a product which is subject to a consumer product safety standard to issue a certificate of compliance with the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. Because it is not practical to test each item subject to the standard, a reasonable testing program shall be used to support certificates of compliance for cellulose insulation.

(b) *Requirements of testing program.* A reasonable testing program for cellulose insulation is one which dem-

onstrates with reasonable certainty that insulation certified to comply with the standard will meet all requirements of the standard. Manufacturers, private labelers, and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program may include either the tests prescribed by the standard, or any other reasonable test procedures. However, a reasonable testing program cannot consist of tests which the party issuing the certificate of compliance knows (or through the exercise of reasonable diligence should know) will pass or accept insulation which will yield failing results when subjected to any of the tests in the standard. All reasonable testing programs shall consist of four elements:

(1) Qualification tests which must be performed on samples of the manufacturer's cellulose insulation to demonstrate that the product is capable of passing the tests prescribed by the standard.

(2) A description of the cellulose insulation which passed the qualification testing. This description is known as the "product specification."

(3) Production tests, which must be performed at appropriate production intervals as long as the cellulose insulation is being manufactured.

(4) Corrective action, which must be taken whenever samples of the cellulose insulation yield unacceptable or failing test results.

(c) *Commission testing.* The Commission will test for compliance with the standard by using the test procedures contained in the standard, and will base enforcement actions for violation of the standard on the results of such testing.

(d) *Testing by third parties.* At the option of the manufacturer, importer, or private labeler, some or all of the testing for the reasonable testing program may be performed by a commercial testing laboratory. However, the manufacturer, importer, or private labeler is responsible for ensuring that all testing used to support the certificate of compliance has been properly performed with passing or acceptable results and for maintaining all records of

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such tests in accordance with § 1209.38 below.

### § 1209.34 Qualification testing.

(a) *Requirement.* Before any manufacturer, importer, or private labeler begins distribution in commerce of cellulose insulation which is subject to the standard, samples of the insulation shall be tested for compliance with the standard. Manufacturers, importers, and private labelers shall determine the types of tests for qualification testing.

(b) *Timing, Sampling.* Any or all of the qualification testing required by this § 1209.34 may be performed before the effective date of the standard. Manufacturers, private labelers, or importers may select samples for qualification testing of a product in any manner they desire.

### § 1209.35 Product specification.

(a) *Requirement.* Before any manufacturer, importer, or private labeler distributes in commerce cellulose insulation which is subject to the standard, it shall ensure that the insulation is described in a written product specification.

(b) *Contents of Specification.* The product specification shall include the following information:

(1) A description of the equipment used to manufacture the insulation, including the model number and names of the equipment manufacturers, and details of any modification made to any item of equipment.

(2) A description of the cellulosic stock material used to manufacture the insulation, identifying the extent of impurities allowed.

(3) The formulation of the fire-retardant chemicals added, including their chemical constituents and their form (for example, granulated, powdered, or liquid); the amount of fire-retardant chemicals present in the finished insulation, expressed as a percentage of the total weight of chemicals and cellulosic stock; the average weight of chemicals per bag; and the name and address of each chemical supplier. Where the chemical composition or formula of a commercially premixed fire retardant is not known to the insulation manufacturer, the pre-

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mixed fire retardant may be described simply by the name and address of the supplier and its brand or trade name.

(4) A description of the tests which were used to qualify the product as well as the dates of performance and results and actual values, where applicable, of the tests.

(5) Any other information necessary to describe the insulation.

(c) *Distribution in Commerce.* After the qualification testing required by § 1209.34 has been completed with acceptable results and the product specification required by this § 1209.35 has been recorded, the cellulose insulation may be manufactured and distributed in commerce, subject to the provisions of § 1209.36.

(d) *New Product.* Whenever a manufacturer, private labeler, or importer makes any change to any item of equipment, cellulosic stock material, or formulation of a fire-retardant chemical, or any other factor which is likely to affect the ability of the cellulose insulation to meet the standard, that change will result in a new cellulose insulation product, requiring the preparation of a new product specification. The new product must be subjected to qualification tests and must yield passing or acceptable results.

### § 1209.36 Production testing.

(a) *General.* Manufacturers, private labelers, and importers shall test the cellulose insulation periodically as it is manufactured to demonstrate that the product being manufactured is substantially similar to the product which passed the qualification testing and to demonstrate that the product being manufactured meets the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to ensure that if the samples selected for testing meet the standard or a portion of the standard, the insulation produced during the interval will also meet the standard or the appropriate portion of the standard.

(c) *Test failure.* If any test yields failing results, production must cease and