

with the Standard for the product, fabric or related material which is the subject of an initial guaranty. The program of reasonable and representative tests required by this §1610.37 may include tests performed before the effective date of this section, and may include tests performed by persons or firms outside of the territories of the United States or other than the one issuing the initial guaranty. The number of tests and the frequency of testing shall be left to the discretion of the person or firm issuing the initial guaranty.

(3) In the case of an initial guaranty of a fabric or related material, a program of reasonable and representative tests may consist of one or more tests of the particular fabric or related material which is the subject of the guaranty, or of a fabric or related material of the same "class" of fabrics or related materials as the one which is the subject of the guaranty. For purposes of this §1610.37, the term class means a category of fabrics or related materials having general constructional or finished characteristics, sometimes in association with a particular fiber, and covered by a class or type description generally recognized in the trade.

§ 1610.38 Maintenance of records by those furnishing guaranties.

(a) Any person or firm issuing an initial guaranty of a product, fabric, or related material which is subject to the Standard for the Flammability of Clothing Textiles (the Standard, 16 CFR part 1610) shall keep and maintain a record of the test or tests relied upon to support that guaranty. The records to be maintained shall show:

(1) The style or range number, fiber composition, construction and finish type of each textile fabric or related material covered by an initial guaranty; or the identification, fiber composition, construction and finish type of each textile fabric (including those with a nitrocellulose fiber, finish or coating), and of each related material, used or contained in a product of wearing apparel covered by an initial guaranty.

(2) The results of the actual test or tests made of the textile fabric or related material covered by an initial

guaranty; or of any fabric or related material used in the product of wearing apparel covered by an initial guaranty.

(3) When the person or firm issuing an initial guaranty has conducted the test or tests relied upon to support that guaranty, that person or firm shall also include with the information required by paragraphs (a) (1) and (2) of this section, a sample of each fabric or related material which has been tested.

(b) Persons furnishing guaranties based upon class tests shall maintain records showing:

(1) Identification of the class test.

(2) Fiber composition, construction and finish type of the fabrics, or the fabrics used or contained in articles of wearing apparel so guaranteed.

(3) A swatch of each class of fabrics guaranteed.

(c) Persons furnishing guaranties based upon guaranties received by them shall maintain records showing the guaranty received and identification of the fabrics or fabrics contained in articles of wearing apparel guaranteed in turn by them.

(d) The records referred to in this section shall be preserved for a period of 3 years from the date the tests were performed, or in the case of paragraph (c) of this section from the date the guaranties were furnished.

(e) Any person furnishing a guaranty under section 8(a) of the Act who neglects or refuses to maintain and preserve the records prescribed in this section shall be deemed to have furnished a false guaranty under the provisions of section 8(b) of the Act.

§ 1610.39 Shipments under section 11(c) of the Act.

(a) The invoice or other paper relating to the shipment or delivery for shipment in commerce of articles of wearing apparel or textile fabrics for the purpose of finishing or processing to render them not so highly flammable as to be dangerous when worn by individuals, shall contain a statement disclosing such purpose.

(b) An article of wearing apparel or textile fabric shall not be deemed to fall within the provisions of section 11(c) of the Act as being shipped or delivered for shipment in commerce for the purpose of finishing or processing

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to render such article of wearing apparel or textile fabric not so highly flammable under section 4 of the Act, as to be dangerous when worn by individuals, unless the shipment or delivery for shipment in commerce of such article of wearing apparel or textile fabric is made directly to the person engaged in the business of processing or finishing textile products for the prearranged purpose of having such article of apparel or textile fabric processed or finished to render it not so highly flammable under section 4 of the Act, as to be dangerous when worn by individuals, and any person shipping or delivering for shipment the article of wearing apparel or fabric in commerce for such purpose maintains records which establish that the textile fabric or article of wearing apparel has been shipped for appropriate flammability treatment, and that such treatment has been completed, as well as records to show the disposition of such textile fabric or article of wearing apparel subsequent to the completion of such treatment.

(c) The importation of textile fabrics or articles of wearing apparel may be considered as incidental to a transaction involving shipment or delivery for shipment for the purpose of rendering such textile fabrics or articles of wearing apparel not so highly flammable under the provisions of section 4 of the Act, as to be dangerous when worn by individuals, if:

(1) The importer maintains records which establish that: (i) The imported textile fabrics or articles of wearing apparel have been shipped for appropriate flammability treatment, and

(ii) Such treatment has been completed, as well as records to show the disposition of such textile fabrics or articles of wearing apparel subsequent to the completion of such treatment.

(2) The importer, at the time of importation, executes and furnishes to the U.S. Customs and Border Protection an affidavit stating: These fabrics (or articles of wearing apparel) are dangerously flammable under the provisions of section 4 of the Act, and will not be sold or used in their present condition but will be processed or finished by the undersigned or by a duly authorized agent so as to render them

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not so highly flammable under the provisions of section 4 of the Flammable Fabrics Act, as to be dangerously flammable when worn by individuals. The importer agrees to maintain the records required by 16 CFR 1610.39(c)(1).

(3) The importer, if requested to do so by the U.S. Customs and Border Protection, furnishes an adequate specific-performance bond conditioned upon the complete discharge of the obligations assumed in paragraphs (c)(1) and (2) of this section.

(d) The purpose of section 11(c) of the Act is only to permit articles of wearing apparel or textile fabrics which are dangerously flammable to be shipped or delivered for shipment in commerce for the purpose of treatment or processing to render them not dangerously flammable. Section 11(c) of the Act does not in any other respect limit the force and effect of sections 3, 6, 7, and 9 of the Act. In particular, section 11(c) of the Act does not authorize the sale or offering for sale of any article of wearing apparel or textile fabric which is in fact dangerously flammable at the time of sale or offering for sale, even though the seller intends to ship the article for treatment prior to delivery to the purchaser or has already done so. Moreover, under section 3 of the Act a person is liable for a subsequent sale or offering for sale if, despite the purported completion of treatment to render it not dangerously flammable, the article in fact remains dangerously flammable.

§ 1610.40 Use of alternate apparatus, procedures, or criteria for tests for guaranty purposes.

(a) Section 8(a) of the Act provides that no person shall be subject to criminal prosecution under section 7 of the Act (15 U.S.C. 1196) for a violation of section 3 of the Act (15 U.S.C. 1192) if that person establishes a guaranty received in good faith which meets all requirements set forth in section 8 of the Act. One of those requirements is that the guaranty must be based upon "reasonable and representative tests" in accordance with the applicable standard.

(b) Subpart A of this part 1610 prescribes apparatus and procedures for testing fabrics and garments subject to its provisions. See §§1610.5 & 1610.6.