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(f) *Multilayer fabric and wearing apparel with a film or coating on the uncovered or exposed surface.* Plastic film or plastic-coated fabric used, or intended for use, as the outer layer of disposable diapers is exempt from the requirements of the standard, provided that a full thickness of the assembled article passes the test in the standard otherwise applicable to the outer fabric or film when the flame is applied to the exposed or uncovered surface. (15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b))

NOTE: An interpretation to § 302.6(c) issued by the Federal Trade Commission, 30 FR 16106, Dec. 28, 1965, provides as follows:

"§ 1611.36(c) does not exclude products from the act on the sole basis of the size, description or designation of such product.

"If, because of construction, design, color, type of fabric, or any other factor, a piece of cloth of a finished type or any other product of a finished type appears to be likely to be used as a covering for the head, neck, face, shoulders, or any part thereof, or otherwise appears likely to be used as an article of clothing, garment, or costume, such product is not a handkerchief and constitutes an article of wearing apparel as defined in and subject to the provisions of the Flammable Fabrics Act, irrespective of its size, or its description or designation as a handkerchief or any other term."

(Secs. 4, 5, 67 Stat. 112, 113, as amended, 68 Stat. 770, 81 Stat. 571, 90 Stat. 515 (15 U.S.C. 1193, 1194); sec. 30(b), 86 Stat. 1207 (15 U.S.C. 2079(b))

[40 FR 59898, Dec. 30, 1975, as amended at 50 FR 7763, Feb. 26, 1985]

§ 1611.37 Reasonable and representative tests under section 8 of the Act.

EXPLANATION: Section 8 of the Act, among other things, provides that no person shall be subject to prosecution under section 7 of the Act for a violation of section 3 of the Act if such person establishes a guaranty received in good faith signed by and containing the name and address of the person by whom the wearing apparel or fabric guaranteed was manufactured or from whom it was received, to the effect that reasonable and representative tests made under the procedures provided in section 4(a) of the Act show that the fabric covered by the guaranty, or used, or contained in the wearing apparel, is not, under the provisions of section 4(a) of the Act, so highly flammable as to be dangerous when worn by individuals.

While one establishing a guaranty received in good faith would not be subject to criminal prosecution under section 7 of the Act, he, or the merchandise involved, would nev-

ertheless, remain subject to the administrative processes of the Consumer Product Safety Commission under section 5 of the Act, as well as the injunction and condemnation procedures under section 6 of the Act.

The furnishing of guaranties is not mandatory under the Act. The purpose of this rule is to establish minimum requirements for the reasonable and representative tests on which guaranties may be based.

(a) The following shall constitute reasonable and representative tests, as that term is used in section 8 of the Act, for those textile fabrics which by reason of their composition, construction, finish type or weight may be tested upon a class basis. The word "class" as used in this section means a category of textile fabrics having certain general constructional or finished characteristics, sometimes in association with a particular fiber, and covered by a class or type description generally recognized by the trade. In certain instances the use of class tests is restricted by this section to a particular textile fabric of the same fiber composition, construction and finish type. The results of such class tests may be used by any person as a basis for furnishing guaranties under section 8 of the Act on all textile fabrics of the same class.

(1) *Plain surface textile fabrics weighing two ounces or more per square yard.* (i) One test of any plain surface textile fabric weighing two ounces or more per square yard, exclusive of metallic ornamentation, or one test of any fabric in a particular class of such fabrics, shall suffice for any such fabric or class of fabrics.

(2) *Plain surface textile fabrics weighing less than two ounces per square yard.* (i) When, on the initial test of any plain surface textile fabric weighing less than two ounces per square yard, such fabric exhibits a burning time of 3.5 seconds or more, such test may suffice for any fabric of the same fiber composition, construction and finish type. This class of fabric shall be tested at least once at intervals of not more than three months thereafter while in production. If, after four consecutive interval production tests have been made, none of such test results show the flame spread to have been less than 4.5 seconds, no further tests of such class of fabric need be made.

(ii) When, on the initial test of any plain surface textile fabric weighing less than two ounces per square yard, none of the specimens ignite, such initial test may suffice for any fabric of the same fiber composition, construction and finish type.

(iii) When, on the initial test of any plain surface textile fabric weighing less than two ounces per square yard, such fabric ignites but the flame is extinguished before the stop cord is burned, such test may suffice for any fabric of the same fiber composition, construction and finish type. This class of fabric shall be tested at least once at intervals of not more than one year thereafter while in production.

(3) *Certain raised fiber surface textile fabrics.* (i) When a test of any raised fiber surface textile fabric which has a dense cut pile of uniform short length or looped yarns, does not exhibit a surface flash and does not ignite, such test shall suffice for any such fabric having a dense cut pile of the same length or the same looped yarns and of the same fiber composition, construction and finish type. Examples of the types of fabrics referred to are velvet, velveteens, velours, and corduroys.

(ii) One test of any raised fiber surface textile fabric, the raised fiber surface of which consists of not less than ninety percentum (90%) protein fiber, or one test of any fabric in a particular class of such fabrics, shall suffice for any such fabric or class of fabrics.

(iii) When, on the initial test of any raised surface textile fabric which has a surface composed of looped yarns, such fabric exhibits a burning time in excess of 12 seconds, such test may suffice for any such fabric having the same looped yarns and of the same fiber composition, construction and finish type. An example of the type of fabric referred to is "terry cloth".

(b) Raised fiber surface textile fabrics: When, on the initial test of a raised fiber surface textile fabric, such fabric:

(1)(i) Falls within Class 2 as provided in §1610.3(a)(2)(i), the fabric shall be tested at least once at intervals of not more than one month while in production, or if the production exceeds 50,000 yards per month, the fabric shall be

tested thereafter every 50,000 yards or fraction thereof.

(ii) If, after two such intervals, production tests have been made, the test results do not show the flame spread to have been less than 4 seconds, with the base fabric ignited or fused, the fabric shall be tested at least once at intervals of not more than three months while in production, or if the production exceeds 100,000 yards per three months, the fabric shall be tested thereafter every 100,000 yards or fraction thereof.

(2) Has a flame spread in excess of 7 seconds with the base fabric ignited or fused, the fabric shall be tested at least once at intervals of not more than six months thereafter while in production.

(3) Has a surface flash, but the base fabric does not ignite nor fuse, the fabric shall be tested at least once at intervals of not more than six months thereafter while in production.

(4) Does not have a surface flash and does not ignite, the initial test shall suffice.

(c) When, on initial test a film or a textile fabric with a nitro-cellulose fiber, finish or coating, does not exhibit a burning rate in excess of 1.2 inches per second, one test each year thereafter while in production shall be deemed reasonable and representative tests for such film or textile fabric.

(d) Reasonable and representative tests of fabrics and fabrics contained in articles of wearing apparel, subject to the act, produced prior to the effective date of the act, and which have not been tested under the applicable requirements of paragraphs (a), (b), or (c) of this section, shall be an initial test for each class of such fabrics, and such tests shall be applicable to all fabrics having the same fiber composition, construction and finish type.

(e) In the case of articles of wearing apparel which are not made from fabrics but directly from yarns, the fabrics contained in such articles of wearing apparel shall be tested by the testing requirements provided in paragraphs (a) and (b) of this section.

(f) Where fabrics or fabrics contained in articles of wearing apparel have not been tested when in production by the applicable testing requirements provided in paragraphs (a), (b) or (c) of

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this section, one test of each such fabrics shall be made every 10,000 yards or fraction thereof, or of the fabric contained in one of every 5,000 of such articles of wearing apparel or fraction thereof, and these shall be deemed reasonable and representative tests of such fabrics.

(g) In the case of textile fabrics or textile fabrics contained in articles of wearing apparel having an appliqued, overstitched, or embroidered type of design of a loop, pile, nap, or tufted construction, tests shall be conducted according to paragraph (b) of this section on each type of applique, over-stitch, or embroidery.

(h) If tests of any textile fabric made subsequent to the initial test show a burning time of another category, then such fabric shall be tested thereafter under the testing requirements of such changed time.

(i) The application of this section, insofar as it relates to the testing of plain surface textile fabrics or such fabrics contained in articles of wearing apparel weighing two ounces or more per square yard, shall be limited to fabrics made of fibers in use or capable of being used as of May 31, 1954. Such fabrics weighing two ounces or more per square yard made in whole or in part of fibers developed and used subsequent to May 31, 1954, shall be tested in accordance with the testing requirements set out in paragraph (a)(2) of this section.

§ 1611.38 Maintenance of records by those furnishing guaranties.

(a) In order to properly administer and enforce section 8 of the act relating to guaranties, it is required that any person furnishing either a separate or continuing guaranty who has made the tests prescribed by the act and regulations shall keep and maintain records of such tests. The records to be maintained shall show:

(1) The style or range number, fiber composition, construction and finish type of each textile fabric and each textile fabric (including those with a nitro-cellulose fiber, finish or coating) used or contained in an article of wearing apparel covered by the guaranty, including a swatch of the fabric tested.

(2) The stock or formula number, color, thickness and general descrip-

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tion of each film or film used in an article of wearing apparel covered by the guaranty, including a sample of the film tested.

(3) The results of the actual tests made on the textile fabric and film or the fabric and film used or contained in an article of wearing apparel.

(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:

(1) The guaranty received and identification of the fabrics or fabrics contained in articles of wearing apparel guaranteed in turn by them.

(2) [Reserved]

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

§ 1611.39 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 to render such article of wearing apparel or textile fabric not so highly