(g) *Applications of other regulations.* (1) The term "indefinite employee" as used in the following includes an emergency-indefinite employee: Section 316.801, Part 351, and Subpart G of Part 550 of this chapter.

(2) The selection procedures of part 333 of this chapter apply to emergency-indefinite employees appointed outside the register under paragraph (b) of this section.

(3) Despite the provisions in § 831.201(a)(11) of this chapter, an employee serving under an emergency-indefinite appointment under authority of this section is excluded from retirement coverage, except as provided in paragraph (b) of § 831.201 of this chapter.

(h) *Promotion, demotion, or reassignment.* An agency may promote, demote, or reassign an emergency-indefinite employee to any position for which it is making emergency-indefinite appointments.

[FR Doc. 83-13445 Filed 5-19-83; 8:45 am]
BILLING CODE 6325-01-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

Requirements for Licensee Actions Regarding the Disposition of Spent Fuel Upon Expiration of the Reactors' Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has determined, in a separate proceeding known as the "Waste Confidence" rulemaking proceeding that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007–2009. However, the Commission recognizes that there are circumstances under which spent fuel generated prior to that time may remain at reactor sites after the expiration of reactor operating licenses. Some reactor operating licenses will expire or the permanent shutdown of some reactors could occur prior to the 2007–2009 period. Also, since there are not expected to be any safety or environmental problems which would create a need to move fuel offsite, there is some possibility that an election of onsite spent fuel storage after reactor operating license operation may be appropriate. The Commission has considered the safety and environmental impacts of such extended spent fuel storage in the "Waste Confidence" proceeding and for the reasons discussed therein and highlighted below, finds that extended storage for up to 30 years after the expiration of an operating license will result in no significant safety or environmental impacts. The Commission believes there is reasonable assurance that no later than 30 years after the expiration date of the operating license for any commercial power reactor, sufficient repository capacity will have been made available to dispose of all commercial high-level radioactive waste and spent fuel in existence. Thus there is no reasonable probability that spent fuel will unavoidably remain at a reactor site at the end of that 30-year period. Accordingly, the Commission hereby proposes a rule providing that the environmental and safety implications of spent fuel storage after the termination of reactor operating licenses need not be considered further in Commission proceedings for the issuance of an operating license or licensee amendment for a nuclear power plant, despite some probability that such storage may be elected or necessary. The proposed rule also applies to proceedings for licensing spent fuel storage in independent spent fuel storage installations under Part 72, since the same safety and environmental considerations apply as for storage in reactor basins.

The Commission hereby proposes a rule whereby in proceedings for licensing of facilities at which spent fuel will be stored, or proceedings for licensing the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonable foreseeable safety and environmental impacts of spent fuel storage for the period of the license or amendment applied for but will not require consideration of the safety and environmental impacts of storage of spent fuel beyond the expiration of the license or amendment applied for. However, the Commission's proposed rule would require reactor licensees to submit their plans for NRC review and approval 5 years before their operating licenses expire on specifically how spent fuel at these sites will be managed.

Accordingly, the Commission hereby proposes amendments to the Code of Federal Regulations which define procedures to be followed by the licensee to ensure the continued safe management of spent fuel beyond the expiration date of reactor operating licenses and which address the environmental aspects of extended spent fuel storage past the expiration of reactor operating licenses or license for storage in an independent spent fuel storage installation. The amendments are set forth here to complement and complete the Commission findings resulting from the Waste Confidence rulemaking proceeding.

DATES: Comments should be filed with the Commission's Secretary not later than July 5, 1983. Comments received after this date will be considered if it is practicable to do so, but assurance of consideration cannot be given except as to comments received on or before that date.

ADDRESSES: Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Attn.: Docketing and Service Branch.

Hand deliver comments to: Room 1121, 1717 H St., N.W., Washington, D.C. between 8:15 a.m. and 5:00 p.m.

Examine comments received at: The NRC Public Document Room, 1717 H St., N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634–3295.

SUPPLEMENTARY INFORMATION:

Background

By a Notice of Proposed Rulemaking dated October 18, 1979, 44 FR 61372 (October 25, 1979), the Nuclear Regulatory Commission ("Commission" or "NRC") began a generic rulemaking proceeding "to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of." This proceeding became known as the "Waste Confidence" rulemaking proceeding, and was conducted partially in response to a remand by the United States Court of Appeals for the D.C. Circuit. *State of Minnesota* v. *NRC*, 602 F.2d 412 (1979). *State of Minnesota* involved a challenge to license amendments to permit the expansion of spent fuel pool storage capacities at two nuclear powerplants. It was contended that uncertainty regarding ultimate disposal of commercial nuclear wastes required the Commission to consider the safety and environmental implications of storing spent fuel in the pools for an indefinite period following expiration of the plants' operating licenses. The Commission had excluded consideration of such long-term on-site storage from the license amendment proceedings, relying on its earlier finding that safe

permanent disposal of reactor wastes would be available when needed.

The Court of Appeals agreed with the Commission that, in accordance with the "rule of reason" implicit in the National Environmental Policy Act (NEPA), impacts of extended on-side storage of spent fuel need not be considered in licensing proceedings unless such storage was reasonably foreseeable and not merely a theoretical possibility. The Court held, however, that the Commission's statement of reasonable confidence in the timely availability of waste disposal solutions was "not the product of a rulemaking record devoted expressly to considering the question" and furthermore did not address the particular problem whether disposal solutions would be available before the expiration of plant operating licenses. *Id.* at 417. Accordingly, the D.C. Circuit remanded to the Commission for determination "whether there is reasonable assurance that an off-site storage solution will be available by the years 2007–09, the expiration of the plants operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the site beyond those dates." *Id.* at 418. The Court noted that "the breadth of the questions involved and the fact that the ultimate determination can never rise above a prediction suggest that the determination may be a kind of legislative judgment for which rulemaking would suffice." *Id.* at 417. The Court agreed that the Commission "may proceed in these matters by generic determinations." *Id.* at 419. *Accord, Potomac Alliance* v. *NRC*, 682 F.2d 1030 (D.C. Cir. 1982).

Amendment to Part 51

The Commission announced the conclusions it reached in the Waste Confidence rulemaking proceeding. The Commission found that there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by 2007–09. However, some reactor operating licenses may expire without being renewed or some reactors may be permanently shut down prior to this period. Since independent spent fuel storage installations have not yet been extensively developed, there is then a probability that some onsite spent fuel storage after license expiration may be necessary or appropriate. In addition, the Commission also realizes that some spent fuel may be stored in existing or new storage installations for some period beyond 2007–2009. The Commission hereby proposes a rule providing that the environmental and safety implications of such storage after the termination of reactor operating licenses need not be considered in Commission proceedings related to issuance or amendment of a reactor operating license. This rule has the effect of continuing the Commission's practice, employed in the proceedings reviewed in *State of Minnesota*, of limiting considerations of safety and environmental impacts of spent fuel storage in licensing proceedings to the period of the license in question and not requiring the NRC staff or the applicant to address the impacts of extended storage past expiration of the license applied for. The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment. For the reasons discussed in the Waste Confidence decision, the Commission believes there is reasonable assurance that adequate disposal facilities will become available during this 30-year period. Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission had determined that storage impacts will be insignificant. The same safety and environmental considerations apply to fuel storage installations licensed under Part 72 as for storage in reactor basins. Accordingly, in licensing actions involving (a) the storage of spent fuel in new or existing facilities, or (b) the expansion of storage capacity at existing facilities, the NRC will continue to require consideration of reasonably foreseeable safety and environmental impacts of spent fuel storage only for the period of the license applied for. The amendment to 10 CFR Part 51 confirms that the environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or facility license or amendment applied for need not be addressed in any environmental report, impact statement, impact assessment, safety analysis report, or other analysis prepared in connection with the reactor operating license or amendment to the operating license, or initial license for an independent spent fuel storage installation, or amendment thereto.

The Commission's conclusions with respect to safety and environmental impacts of extended storage beyond expiration of current operating licenses are supported by the record in NRC's waste confidence proceeding and by NRC's experience in more than 80 individual safety and environmental evaluations conducted in storage licensing proceedings. The record of the Waste Confidence proceeding indicates that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of the spent fuel cladding against corrosive mechanisms and the absence of any conditions that would provide a driving force for dispersal of radioactive material. The non-radiological environmental impacts associated with site preparation and construction of storage facilities are and will continue to be considered by the NRC at the time applications are received to construct these facilities, which are licensed under NRC's regulations in either 10 CFR Part 50 for reactors or 10 CFR Part 72 for independent spent fuel storage installations. There are no significant additional non-radiological consequences which could adversely affect the environment for storage past the expiration of operating licenses at reactors and independent spent fuel storage installations.

The amendment to Part 51 published here consists of two parts: paragraph (e)(1) and paragraph (e)(2). Paragraph (e)(1) is a restatement of a final generic Commission determination based on the Waste Confidence rulemaking proceeding, while paragraph (e)(2) establishes the procedures for implementing that generic determination in individual licensing cases. The Commission requests public comment on paragraph (e)(2).

Amendment to Part 50

The Commission is also proposing an amendment to 10 CFR Part 50 as set forth here, concerning the management of spent fuel from nuclear power reactors whose operating licenses may expire prior to the availability of a repository. The procedures established by this amendment are intended to confirm that there will be adequate lead time for whatever actions may be needed at individual reactor sites to assure that the management of spent fuel following the expiration of the reactor operating license will be accomplished in a safe and environmentally acceptable manner.

The Commission proposes that Part 50, § 50.54 be amended to establish requirements that the licensee for an operating nuclear power reactor shall no later than 5 years prior to expiration of the reactor operating license submit

plans for NRC review and approval of the actions which the licensee proposes for management of all irradiated fuel at the reactor upon expiration of its operating license. No specific course of action is required of the licensee by the NRC. Licensee actions could include, but are not necessarily limited to, continued storage of spent fuel in the reactor spent fuel storage basin; storage in an independent spent fuel storage installation (refer to 10 CFR § 72.3(m)) located at the reactor site or at another site; transshipment to and storage of the fuel at another operating reactor site in that reactor's basin; reprocessing of the fuel if it appears that licensed reprocessing facilities will be available; or disposal of the fuel in a repository. The proposed actions must be consistent with NRC requirements for licensed possession of irradiated or spent fuel (as defined in §72.3(v)) and must be capable of being authorized by the NRC and implemented by the licensee on a timely basis. The licensee's plans must specify how the financial costs of extended storage or other disposition of spent fuel will be funded. Further, the licensee's plans must describe the proposed disposition of all irradiated fuel from the reactor. The licensee shall notify the NRC of any significant changes to these plans; changes are not precluded provided that the licensee maintains the capability to manage the spent fuel safely.

The Commission notes that extended storage of spent fuel at a reactor beyond the expiration date of the operating license will require an amendment to the Part 50 license to cover possession only of the reactor and spent fuel under the requisite provisions of Parts 30, 50 and 70, or an athorization pursuant to Part 72, "Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation" (ISFSI). This rulemaking does not alter the requirements and provisions of Part 72 with respect to environmental considerations (§ 72.20), nor provisions of Part 51 (§ 51.5(a)(10) and §51.5(b)(4)(iv)) with respect to the performance of environmental assessments of the impacts of spent fuel storage in an independent spent fuel storage installation or extended storage in a reactor spent fuel pool. This means that the NRC staff will continue to perform environmental reviews before issuing a license under 10 CFR Part 72 or an amendment for extend storage under 10 CFR Part 50. Notice of the receipt of a license application for storage of spent fuel pursuant to Part 72 will be published in the **Federal Register.**

Related Commission Actions

On March 13, 1978, an Advance Notice of Proposed Rulemaking was published by NRC in the **Federal Register** (43 FR 10370) that indicated that the NRC was reevaluating its decommissioning policy and considering amending its regulations to provide more specific guidance on decommissioning of nuclear facilities. In January 1981, NRC published a "Draft Generic Environmental Impact Statement on Decommissioning Nuclear Facilities" (NUREG-0586). Proposed amendments to 10 CFR Parts 30, 40, 50, 70, and 72 are being prepared by the NRC staff for Commission consideration. The proposed amendments for decommissioning would allow unrestricted use of a reactor or independent spent fuel storage installation site and would permit termination of the license. However, the storage of irradiated fuel either in a reactor basin or in an independent spent fuel storage installation would require restricted access and management of the storage facility to protect public health and safety. Thus, any continued storage of spent fuel beyond expiration of an operating license would be licensed under either Parts 50 or 72 and could preclude final decommissioning of the site.

Amendments

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, Section 301 of Public Law 96-295, and Section 553 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Parts 50 and 51 of Title 10, Chapter 1, of the Code of Federal Regulations is contemplated.

The Commission requests public comment on the proposed new paragraph, 10 CFR 50.54(x), to be added to 10 CFR Part 50. The Commission also requests public comment on the proposed new paragraph 10 CFR 51.5(e)(2), to be added to 10 CFR Part 51. The Commission does not request comment on the proposed paragraph, 10 CFR 51.5(e)(1), which restates a conclusion of the Commission's "Waste Confidence" proceeding.

List of Subjects

10 CFR Part 50

Administrative practice and procedure, Antitrust, Classified information, Emergency medical services, Fire prevention, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. In § 50.34 immediately following paragraph (w), a new paragraph (x) is added to read as follows:

§ 50.54 Conditions of licenses.

Whether stated therein or not, the following shall be deemed conditions in every license issued.

* * * * *

(x) For operating nuclear power reactors, the licensee shall, no later than 5 year before expiration of the reactor operating license, submit written notification to the Commission for its review and approval of the program by which the licensee intends to manage and provide funding for the management of all irradiated fuel at the reactor upon expiration of the reactor operating license until ultimate disposal of the spent fuel in a repository. The licensee must demonstrate to NRC that the elected actions will be consistent with NRC requirements for licensed possession of irradiated nuclear fuel and that the actions will be implemented on a timely basis. Where implementation of such actions require NRC authorizations, the licensee shall verify in the notification that submittals for such actions have been made to NRC and shall identify them. A copy of the notification shall be retained by the licensee as a record until expiration of the reactor operating license. The licensee shall notify the NRC of any significant changes in the proposed waste management program as described in the initial notification.

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

1. The authority citation for Part 51 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); secs. 201, as amended, 202, 88 Stat. 1242 as amended, 1244 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853, 854, as amended (42 U.S.C. 4332, 4334, 4335).

2. In § 51.5 immediately following paragraph (d)(4) a new paragraph (e) is added to read as follows:

§ 51.5 Actions requiring preparation of environmental impact statements, negative declarations, environmental impact appraisals; actions excluded.

* * * * *

(e)(1) The Commission has made a generic determination that no significant environmental impacts will result from the storage of spent fuel for up to 30 years or more beyond the expiration of reactor operating licenses in onsite reactor facility storage pools or independent spent fuel storage installations located at reactor or away-from-reactor sites. Further, the Commission believes there is reasonable assurance that one or more mined geologic repositories for commercial high-level radioactive waste and spent fuel will be available by the years 2007–09, and that sufficient repository capacity will be available within 30 years beyond expiration of any reactor operating license to dispose of commercial high-level radioactive waste and spent fuel originating in such reactor and generated up to that time.

(2) Accordingly, the environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations for the period following expiration of the reactor or storage installation license applied for need not be addressed in any environmental report, impact statement, impact assessment, safety analysis report, or other analysis prepared in connection with a reactor operating license or amendment to the operating license or initial license for an independent spent fuel storage installation, or amendment thereto. This rule does not alter any pre-existing regulatory requirements for consideration in licensing proceedings of safety or environmental consequences of spent fuel storage for the term of the license or amendment applied for.

Dated at Washington, D.C. this 16th day of May 1983.

For the Commission.[1]

Samuel J. Chilk,

Secretary of the Commission.

Commissioner Gilinsky's Separate Views Regarding Proposed Amendments to 10 CFR Parts 50 and 51 (Waste Confidence Proceeding)

May 13, 1983.

The current generation of nuclear power plants was licensed on the assumption that spent fuel would be retained on site for a brief period, prior to being sent away for reprocessing. It has now become obvious that the spent fuel will, in fact, be kept on-site for an extended period of time, in many cases beyond the operating life of the plants.

The Commission apparently recognizes that its past assumptions on the disposition of spent fuel no longer hold true but is doing nothing about this beyond making a broad finding that extended on-site storage is acceptable from the point of view of safety. While I agree that there is no obstacle in principle to extended on-site storage, I think it is clear that each power reactor site will have to be examined in detail. The rule proposed by the Commission puts off addressing the practical aspects of this problem for many years, and in some cases, decades.

In the case of new reactors which are applying for operating licenses, the rule should require the utility to show that there will be no impediment to storing on-site the spent fuel which will be generated during the plant's useful life. In view of the uncertainties about the availability of off-site disposal capacity, the Commission should, in addition, require a showing that there is no impediment to continuing such storage for some reasonable period of time after the likely end of operation. The utilities should also be required to commit themselves formally to financing on-site fuel storage until the fuel can be moved off-site. In the case of reactors which are already in operation, the utilities should be asked to make similar showings within a few years.

[1] Commissioner Gilinsky dissented from this action and his separate views are attached.

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BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR PART 423

Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Final amendments to trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final amendment to 16 CFR Part 423, which is retitled Care Labeling of Textile Wearing Apparel and Certain Piece Goods, as amended. The trade regulation rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to provide labels for their products which disclose information for cleaning and care of the product. The rule is intended to assist consumers in making informed purchase decisions concerning the care characteristics of competing products, and to enable consumers and cleaners to avoid product damage caused by the use of improper cleaning procedures.

This notice contains the Statement of Basis and Purpose for the amendments to the Rule and the text of the Rule as amended.

EFFECTIVE DATE: These amendments to the Rule are being submitted to the Congress for review in accordance with Section 21 of the Federal Trade Commission Improvements Act of 1980, 15 U.S.C. 57a–1. Under that section, a rule becomes effective unless both Houses of Congress disapprove the rule within 90 calendar days of continuous session after the rule is submitted. Because computation of the 90 day period is not possible in advance (see section 21(g) of the Improvements Act), the Commission cannot specify an effective date for this Rule. The Commission intends that it become effective 90 days after the conclusion of congressional review and will publish a further notice of effective date in the **Federal Register** as soon as possible thereafter.

ADDRESS: Requests for copies of the Rule and Statement of Basis and Purpose should be sent to Public Reference Branch, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Earl Johnson, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580, (202) 376–2891.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction
  A. Overview of the amended rule
  B. Background of this proceeding
II. Basis for amended rule
  A. Existing care labeling practices
    1. Introduction
    2. Improper labeling
      a. Insufficient care labeling
      b. Inconsistent care labeling
      c. Inaccurate care labeling
  B. Unfair and deceptive acts and practices—§ 423.5
    1. Introduction
    2. Legal Basis of the current rule
    3. Legal Basis of the amended rule
    4. Reasonable basis requirement
  C. Remedial requirements—§§ 423.2, .6–.8
    1. Introduction
    2. Section 423.6—Textile Wearing Apparel
      a. Section 423.6(a)—Attachment of labels
      b. Section 423.6(b)(1)—Washing instructions
        (1) Washing method and temperature description
        (2) Drying instructions
        (3) Ironing instructions
        (4) Bleaching instructions
        (5) Warnings

c. Section 423.6(b)(2)—Drycleaning instructions
d. Section 423.6(c)—Reasonable basis
3. Section 423.7—Certain piece goods
4. Section 423.8—Exemptions
5. Section 423.2—Terminology
Other rule provisions
1. Section 423.1—Definitions
2. Section 423.3—What this regulation does
3. Section 423.4—Who is covered
4. Section 423.9—Conflict with flammability standards
5. Section 423.10—Stayed or invalid parts
III. Impact of amended rule upon small business and consumers
A. Introduction
b. Impact of amended rule on small business
1. Costs
2. Benefits
C. Impact of amended rule on consumers
1. Costs
2. Benefits
IV. Other alternatives considered
A. Extension of the current rule to other products
B. Alternative care labeling
V. Other matters
A. Statement as to prevalence
B. Effective date

Statement of Basis and Purpose

I. Introduction

A. *Overview of the Amended Rule*

The current care labeling rule, adopted in 1971, reflects the Commission's determination that it is unfair and deceptive to sell textile clothing without providing basic care information to consumers.[1] The Commission found that absent such care information, consumers suffer substantial economic injury by being unable to shop for clothing on the basis of care characteristics, and by using improper care procedures that damage clothing. Consequently, the care labeling rule mandates disclosures which "fully inform the purchasers how to effect such regular care and maintenance as is necessary to the ordinary use and enjoyment of the article." [2]

In the time since the rule was issued, clothing care labels have become commonplace, and consumers, as well as professional cleaners, have come to rely upon them routinely as aids in making economical purchase decisions and avoiding improper care procedures. Nevertheless, the current rule has not been as effective as it could be because it does not clearly state what information should be on care labels. As a result some labels are incomplete, inconsistent, or inaccurate. The lack of clarity also poses an obstacle to the enforcement of the rule.

The amended rule is being adopted by the Commission in order to clarify existing obligations under the current rule by identifying in greater detail the washing or drycleaning information which should be included on care labels. The amended rule requires manufacturers and importers to attach a permanent care label to all textile wearing apparel covered by the rule. Manufacturers [3] of certain piece goods must provide the same care information as that for textile wearing apparel on the end of each bolt or roll of fabric. This information must fully disclose either washing or drycleaning instructions. If washing instructions are given, the label must also disclose a drying procedure and, in some circumstances, bleaching and ironing care. If drycleaning instructions are given, the appropriate solvent(s) must be disclosed if all solvents cannot be used. Use of standardized terminology is urged for all care instructions.

B. *Background of This Proceeding*

The Commission promulgated the current rule on December 16, 1971, giving it an effective date of July 3, 1972.[4] The current rule prohibits the unfair or deceptive practice of failing to attach a label to finished textile products "which clearly discloses instructions for the care and maintenance of such article." [5] The note to the current rule specifically defines instructions which are not unfair or deceptive. They are instructions which:

1. Fully inform the purchaser how to effect such regular care and maintenance as is necessary to the ordinary use and enjoyment of the article, *e.g.*, washing, drying, ironing, bleaching, drycleaning and any other procedures regularly used to maintain or care for a particular article;

2. Warn the purchaser as to any regular care and maintenance procedures which may usually be considered as applying to such article but which, in fact, if applied, would substantially diminish the ordinary use and enjoyment of such article;

3. Are provided in such a manner that they will remain legible for the useful life of the article;

4. Are made readily accessible to the user.[6]

The current rule does not, however, clearly define under what circumstances particular care procedures (*e.g.*, ironing or bleaching) must be included, or explain what actual wording on a label would "clearly disclose" care instructions. Instead, the rule leaves the task of determining the content and wording of care labels almost entirely to manufacturers.[7]

After the current rule was promulgated, Commission staff received numerous requests from manufacturers seeking clarification of the rule's provisions. Staff also received consumer complaints about the care information on products. Accordingly, on April 3, 1974, the Commission issued a Request for Comment to help evaluate the extent of compliance with the current rule and the possible need for extensions of the rule.[8] After analyzing over 9,000 reponses, the staff recommended proposed amendments to extend the current rule's product coverage and to make more specific its instructions about the content of care labels.[9]

On January 26, 1976, the Commission published a proposed amended rule in the **Fedral Register** and requested comment.[10] The Commission also appointed a Presiding Officer. Drawing on the responses to the January 26, 1976 notice, the Presiding Officer published designated issues[11] pursuant to Section 1.13(d) of the Commission's Rules of Practice. Hearings were held in Washington, D.C. beginning November 8, 1976, for two weeks and in Los Angeles, California beginning January 10, 1977, for one week.[12] The record

[1] Trade Regulation Rule Relating to the Case Labeling of Textile Wearing Apparel, 16 CFR 423 (1982) (hereinafter referred to as the "current rule").

[2] 16 CFR 423.1 (Note) (1982).

[3] As used in this Statement of Basis and Purpose, the term "manufacturers" includes importers who would be covered by the amended rule.

[4] 36 FR 32883 (1971).

[5] 16 CFR 423.1(a) (1982).

[6] 16 CFR 423.1 (Note) (1982).

[7] Four examples of care labels accompany the text of the current rule. However, these examples do not provide manufacturers with generally applicable guidance as to the content or working of care labels.

[8] Notice of Opportunity to Submit Written Comments and Data Regarding Specific Questions Related to the Care Labeling Rule, 39 FR 12036 (1974).

[9] Report on Request for Comment on Care Labeling Rule (June, 1975) (hereinafter cited as Comment Report); *see* rulemaking record volume 215-22-1-22 at pages 1-62.

[10] 41 FR 3747 (1976). The comments received were placed in the rulemaking record at volumes 215-22-1-17, 18, 19 and 20. Hereinafter, references to this portion of the record will be "R." followed by the last two digits of the volume numbers (*e.g.*, R. 17, R. 18).

[11] Final Notice of Proposed Trade Regulation Rulemaking Proceeding and Public Hearings, 41 FR 35863 (1976).

[12] Designated group representatives were appointed by the Commission to participate at those hearings and allowed cross-examination and other rights in accordance with Magnuson-Moss rulemaking procedures, 15 U.S.C. 57a. Transcripts of the procedings and exhibits received during the proceedings were placed in the rulemaking record at volumes 215-22-1-24. Hereinafter, references to the transcript will be "Tr." followed by the page number and references to exhibits will be "HX"

remained open for rebuttal of oral testimony until March 1, 1977.[13] After reviewing the record, the Presiding Officer published a report in July 1977 containing his findings and conclusions and recommending that the Commission promulgate a revised rule.[14] A staff report analyzing the record and making recommendations was published in May 1978.[15]

After a public comment period on these two reports, the Commission held an oral presentation during which representatives of major interested parties to this proceeding directly presented their views to the Commissioners.[16] The Commission thereafter held a mark-up session at which it approved in substance an amended care labeling rule. In January 1981, the Commission published its proposed final amended rule for technical comments.[17] Finally, in June 1982, after reviewing the rulemaking record as a whole, the Commission found there was sufficient evidence to support the amendments that clarify the requirements of the current rule. However, the Commission did not extend coverage of the rule to other products.

II. Basis for Amended Rule

A. *Existing Care Labeling Practices*

1. *Introduction.* The Commission is adopting an amended care labeling rule better to address the unfair and deceptive practices prohibited by the current rule. When the current rule was issued in 1971, evidence before the Commission showed that manufacturers of textile products were not providing consumers with care labels, despite voluntary programs encouraging them to do so.[18] The evidence also showed that it was almost impossible for consumers, absent such care labels, to knows what specific care techniques to use when cleaning fabrics given vast array of fibers, constructions, and finishes available.[19]

To correct the problems demonstrated by the record before it, the Commission adopted the current rule, requiring manufacturers to attach permanent care labels to textile products. From the record in this proceeding it appears that adoption of the current rule has, in fact, helped reduce the unfair and deceptive practices which the current rule prohibits. In particular, the record suggests that most textile products now have care labels attached to them.[20]

However, the Commission also decided in 1971 not to specify in detail what information should be provided on care labels. The evidence in this proceeding suggests that greater specificity is appropriate. The rulemaking record shows that some existing care labels provide inadequate care instructions.[21] It further suggests that one cause of this problem is the failure of the current rule clearly to spell out what care information labels should contain. There are three specific problems that appear traceable to the inadequacies of the current rule and are the basis for adopting an amended rule. These are: (1) insufficient care labeling; (2) inconsistent care labeling by different manufacturers; and (3) inaccurate care labeling. Each of these is discussed separately below.

2. *Improper Labeling.* a. *Insufficient care Labeling.* Some care labels fail to provide sufficient information to enable the buyers to effect the regular care necessary for the ordinary use and enjoyment of textile wearing apparel. Although the care instructions may be clear in what they do state, crucial steps are omitted. For example, some consumers complained that washing instructions are not accompanied by drying or ironing instructions. Others complained that there is not enough information given about the proper temperatures for washing, drying and ironing.[22] In some cases, instructions failed to warn against harmful procedures, or even to warn that *no* care was possible.[23]

b. *Inconsistent care labeling.* Inconsistent care instructions is a second problem. Inconsistency is attributable primarily to the variety of terms used by manufacturers to convey similar meanings,[24] and by the use of the same terms to convey different meanings.[25] This inevitably creates confusion among consumers as to the meaning of care instructions.[26]

An additional problem involves the inconsistent meaning of silence (*i.e.*, lack of specific instructions on a particular care procedure) in labels prepared by different manufacturers. The record indicates that on some labels silence as to a particular procedure (for example, bleaching) may mean that the procedure is improper or unsafe. In other cases, silence may signal that the procedure is safe. In yet other cases, silence may mean that the manufacturer does not know whether the procedure can safely be used on the product. Such inconsistency has led to consumer confusion and product damage.[27]

c. *In accurate care labeling.* A third problem is care labels that specify a care procedure which either is harmful to or ineffective for the textile wearing apparel to which it applies. The existence of such inaccurate care labeling has been noted by commenters from within the textile manufacturing

followed by the exhibit number and the page number.

[13] Rebuttal material was placed in volume 215-22-1-15 of the rulemaking record. References to rebuttal material herein will be "R. 25" followed by the page number.

[14] Report of the Presiding Officer on Proposed Revised Trade Regulation Rule Regarding Care Labeling of Textile Products and Leather Wearing Apparel (July 11, 1977) (hereinafter Presiding Officer's Report). The Presiding Officer's Report was placed on the public record at volume 215-22-1-26.

[15] Staff Report and Proposed Revised Trade Regulation Rule, (May, 1978) at 10-28 (hereinafter, Staff Report). The Staff Report was placed on the public record in volume 215-22-1-26. *See, also,* Release of Staff Report and Proposed Revised Trade Regulation Rule; Invitation to Comment, 43 FR 28334 (1978).

[16] Notice of Oral Presentation Before the Commission, 44 FR 30570 (1979). The transcript of the presentation was placed in volume 215-22-1-24.

[17] Notice of Opportunity for Technical Comment on Proposed Rule, 46 FR 935 (1981). Comments were placed in volume 215-22-1-27.

[18] 36 FR 23883, 23886 (1971).

[19] *Id.*, at 23885.

[20] For example, when the Commission asked in 1974 "are care labels presently affixed to all finished articles of wearing apparel made of textiles?", 3464 of 3811 comments (90%) indicated compliance insofar as presence of the label is concerned. Comment Report, R. 22 at 8.

[21] The record does not show what percentage of care labels fail to provide clear and complete care instructions. *See* discussion in Section V.A below.

[22] *E.g.* R. 18 at 724, consumer; R. 20 at 345, textile specialist; R. 20 at 479, extension agent; R. 20 at 254, Headquarters, Army and Air Force Exchange Service, Dallas; R. 18 at 637, consumer; R. 18 at 330, consumer.

[23] *See, e.g.*, Staff Report at 49-51. There also is evidence in the record suggesting the reverse of insufficient care labeling, namely labeling which is unnecessarily detailed. For example, the preparers of a survey which sampled over 2,500 apparel items from 122 different manufacturers concluded that some major suppliers and retailers ". . . have provided lengthy, detailed, and sometimes confusing care instructions of twenty to thirty words." R. 17 at 1505, Kurt Salmon Associates, "Analysis of the Care Labeling Practices of the Apparel and Textile Industries in the U.S." (October 1975-January 1976). It may be that such manufacturers, who provide more care information than is reasonably necessary, do so because they do not accurately understand their compliance obligations under the current rule.

[24] R. 18 at 828A, consumer; R. 20 at 344-45, extension specialist; R. 20 at 627-31, M. Dana.

[25] Tr. 1995-96, V. White, Chairman, ASTM Committee D-13. The New York Cooperative Extension Agents, on surveying their consumer constituency, found that the word "wash" had 56 different meanings, the word "ironing" had 22 meanings and the word "dryclean" had 13 different connotations. "One word has to be meaningful to many people and we have to make it clear . . . what these words mean."

[26] R. 17 at 124, Celanese (especially with variations in temperature descriptions); R. 17 at 421, American Home Appliance Association (overly-technical language); R. 18 at 110, consumer (many different ways of saying the same thing); R. 18 at 200, 830, 777, 822, consumers; R. 20 at 5, extension agent.

[27] Staff Report at 139-41.

industry[28] and by clothing retailers.[29] Consumers also have cited instances in which textile wearing apparel was damaged due to inaccurate instructions.[30] In addition, drycleaners have expressed concern about harm to fabrics from inaccurate labeling,[31] and bleach manufacturers have noted inaccurate bleaching instructions.[32]

The problem of inaccurate labeling may not be entirely attributable to manufactures' uncertainties over the current rule. Some commenters have suggested that inaccurate labeling results when manufacturers have no actual concern for accuracy and put labels on garments merely to appear in compliance with the current rule.[33] If some manufacturers are, in fact, deliberately ignoring their obligations under the current rule, they may ignore their obligations under the amended rule as well. The amended rule will, however, make it easier for the Commission to enforce the rule against such manufacturers by more clearly defining their obligations, thereby making it easier to demonstrate that rule violations have occurred. The amended rule therefore can be expected to deter deliberately inaccurate labeling more effectively than the current rule. Moreover, some inaccurate labeling may result because manufacturers misunderstand their obligations under the current rule. For example, some manufacturers may be unaware that they are required to have a reasonable basis for their care instructions. This requirement is implicit but not directly stated in the current rule. The amended rule expressly requires a reasonable basis for care instructions and explains what kinds of information may be relied upon as a reasonable basis for care instructions. The amended rule will therefore reduce inaccuracies by specifying more clearly manufacturer's compliance obligations under the rule.

B. *Unfair and Deceptive Acts and Practices—§ 423.5*

1. *Introduction.* The statement of basis and purpose accompanying the current rule explained why the acts and practices prohibited by its Sections 423.1 (a) and (b) violate Section 5 of the FTC Act. Essentially the same practices are prohibited by Section 423.5 of the amended rule. The Commission, therefore, intends here only to summarize the legal analysis which supported adoption of the current rule and to amplify it insofar as necessary to explain the amended rule. Accordingly, the discussion below presents, first, the legal basis for the current rule and, second, the basis for those changes from the current rule's Section 423.1 (a) and (b) reflected in Section 423.5 of the amended rule. Third, the Commission separately explains why Section 423.5 of the amended rule includes an explicit reasonable basis requirement.

2. *Legal basis of the current rule.* Sections 423.1 (a) and (b) of the current rule define as an unfair method of competition[34] and an unfair or deceptive act or practice the fast use of manufacturers of finished textile apparel to affix labels ". . . which clearly disclose instructions for the care and maintenance of such article[s]." The note to the rule specifies in more detail the content of labeling which is not unfair or deceptive.

In adopting the current rule, the Commission found the failure to provide care instructions to be deceptive in violation of Section 5 of the FTC Act. In doing so, the Commission relied on the established principle that the failure to disclose facts is deceptive where silence has the effect of misleading the public, concluding:

> It is deceptive not to reveal care instructions when silence on this subject can either mislead the public into using a care procedure which is harmful, or frustrate a basic assumption inherent in the initial purchase—that no special and costly maintenance will be required, and that the consumer will be able to distinguish between the whole range of possible care procedures and use the procedure which is both most effective and most economical.[35]

Various Commission actions since adoption of the current rule have affirmed the underlying principle.[36] Accordingly, the Commission here restates its 1971 determination that a failure to provide care instructions is deceptive.

The Commission also found in 1971 that it was an unfair practice in violation of Section 5 of the FTC Act for manufacturers to fail to provide care instructions. The Commission's finding of unfairness was derived from the substantial injury caused to consumers by the failure to provide care information. The Commission stated:

> The record indicates that many consumers do experience substantial economic loss because of erroneous assumptions about care of clothes, assumptions which are quite normal in the absence of contrary instructions from the manufacturer. Still another source of serious consumer loss derives from the fact that, without this essential information, consumers are unable to distinguish between apparel which may cheaply be maintained, and those which are expensive because of the care procedure involved. The courts have recognized the Commission's broad authority to prohibit practices as unfair (even though not deceptive) where the record proof shows substantial economic injury to a significant number of consumers. [Citations omitted.][37]

This finding was made before the Commission's 1980 statement articulating the three part test to determine whether a practice is unfair under Section 5.[38] However, the Commission concludes here that the finding of unfairness in the current rule's statement of basis and purpose is consistent with this test.

To violate Section 5, the injury created by an unfair practice ". . . must be substantial; it must not be outweighed by any countervailing benefits to consumers or competition that the practice produces; and it must be an injury that consumers themselves could not reasonably have avoided."[39] Each of these factors was considered by the Commission, albeit not necessarily as parts of an unfairness test, when adopting the current rule. The passage cited above from the 1971 statement of basis and purpose contains a finding of substantial economic injury to consumers due to lack of care labeling. Elsewhere, the Commission found that

[28] *See, e.g.*, R. 17 at 130, Director of Research and Development, Phillips-Van Heusen Co. (inaccurate labeling is extensive and often results when manufacturers use information supplied by mills without verifying it); Tr. 1727, American Apparel Manufacturers Association (there is no question but that many garments are mislabeled).

[29] *See, e.g.*, R. 17 at 92, The Colonial, Seattle, Washington (washable labels on jackets when inner construction not washable).

[30] Staff Report at 44–48. (Instances of items damaged when washed or drycleaned by consumers according to instructions). *See also*, Staff Report at 137–39 (washable items "low labeled" as being only drycleanable).

[31] *See, e.g.*, Tr. 1298, J. Schapiro, Dixo Company (many care labels carry information which bears no relation to truth); TR. 1387, International Fabricare Institute; R. 17 at 145 ("dryclean only" lables on garments which cannot be drycleaned properly).

[32] R. 17 at 473, Clorox Co. (negative bleaching instructions on items that can be bleached safely).

[33] *See, e.g.*, R. 17 at 179, drycleaner (some manufacturers are not testing garments and just "putting on the labels" to be in compliance with the care labeling rule).

[34] The amended rule does not define the failure to provide care labels as an "unfair method of competition." The amended care labeling rule is intended to prevent injury to consumers and only incidentally to prevent harm to competitors. Moreover, the amended rule is promulgated under Section 18 of the FTC Act, which applies only to rules that define unfair or deceptive acts or practices.

[35] 36 FR 23889 (1971).

[36] *See, e.g.*, Statement of Basis and Purpose, Trade Regulation Rule, Labeling and Advertising of Home Insulation, 44 FR 50217, 50223 (1979); *Simeon Management Corp. v. FTC*, 579 F. 2d 1137 (9th Cir. 1978).

[37] 36 FR 23889 (1971).

[38] *See* letter from the Commission, to the Honorable Wendell H. Ford and the Honorable John C. Danforth (December 17, 1980).

[39] *Id.*

there was a countervailing benefit to not labeling textile garments—the savings to consumers of the costs associated with a care labeling program—but concluded that this benefit did not outweigh the injury resulting from damaged fabrics.[40] The Commission also considered whether it was possible for consumers to avoid the injury caused by inadequate care labeling and concluded that the variations in appropriate care procedures and the large number of products on the market precluded consumers from obtaining necessary care information unless it was provided by the manufacturer.[41] Accordingly, the Commission now concludes that its 1980 unfairness statement does not require a modification of its 1971 finding that the failure to provide care labels is an unfair practice.

3. *Legal basis of the amended rule.* Section 423.5 of the amended rule is essentially a restatement of Section 423.1 (a) and (b) and the note to the current rule. In revising the rule, the Commission has clarified the rule's requirements and simplified and streamlined the language. The Commission also has made three changes.

First, the Commission has incorporated the provisions of the note into the text of the rule. The note described more specifically the unfair and deceptive acts or practices prohibited in general terms in Section 423.1 (a) and (b). In the amended rule, however, the Commission has integrated these provisions in Section 423.5(a).

A second change is made in response to the Second Circuit's decision in *Katharine Gibbs School Inc.* v. *FTC*, 612 F. 2d 658 (1979). That case held that the Magnuson-Moss Act requires that Commission rules define with specificity the unfair or deceptive acts or practices prohibited. Those acts or practices are defined in Section 423.5(a) of the amended rule. Sections 423.2 and 423.6 through 423.8 of the amended rule set forth remedial requirements prescribed for the purpose of preventing such acts or practices. Section 423.5(b) provides that a manufacturer who complies with the amended rule's remedial requirements is not engaged in the unfair and deceptive acts and practices defined by Section 423.5(a). The revised definitions in Section 423.5(a) are intended neither to increase nor to decrease the compliance obligations specified in the rule's remedial requirements.

Third and finally, Section 423.5(a) contains a few changes to the language used in the note to the current rule. For example, the fourth element in the note, the requirement that care instructions by "made readily accessible to the user" is deleted. To accomplish the same purpose, the Commission has added language to the other parts of amended Section 423.5(a) clarifying that care information must be disclosed to purchasers "prior to sale."

4. *Reasonable basis requirement.* Section 423.5(a)(5) defines it as unfair or deceptive for manufacturers to fail to have a reasonable basis for all regular care information disclosed to a purchaser. There is no comparable language in the current rule. Nevertheless, the inclusion of such language in the amended rule does not materially extend the current rule.

The statements on the care labels required by the current rule are governed by established Commission precedent requiring sellers to have a reasonable basis for material claims they make to consumers.[42] Because care instructions are material claims,[43] all manufacturers currently are required to have a reasonable basis for the care information they put on their labels. Section 423.5(a)(5) sets out this obligation explicitly. The Commission's purpose in placing such a requirement in the amended rule is to ensure that all manufacturers understand the existing need for a reasonable basis and to clarify what constitutes a reasonable basis in this context.[44]

C. *Remedial Requirements—§§ 423.2, .6–.8*

1. *Introduction.* As the discussion above shows, the Commission's major purpose in amending the care labeling rule is to eliminate improper labeling caused by a lack of specific guidance in the current rule. The amended rule contains remedial requirements providing a comprehensive and consistent framework for care information disclosures, which should result in a greater number of clear, comparable, and complete care labels than under the current rule. Any remedial requirements adopted by the Commission must bear a reasonable relationship to the unfair and deceptive practices they are designed to cure.[45] Based upon experience gained under the current rule and the rulemaking record in this proceeding, the Commission has determined that the remedial requirements in the amended rule do bear such a reasonable relationship to the unfair and deceptive acts and practices identified in Section 423.5(a). In fact, the information expressly required by the amended rule already should appear on care labels to comply with the current rule. The amended rule requires that manufacturers provide either washing or drycleaning instructions on a permanent care label for textile wearing apparel. The instructions must identify a proper procedure for each necessary step in the washing or drycleaning process, with additional warnings where applicable. The same information must appear at the end of the bolt or roll of fabric for certain piece goods. These requirements and their intended operation are described below individually, by sections.

2. *Section 423.6—Textile Wearing Apparel.* Section 423.6 contains the provisions of the amended rule which specify the washing or drycleaning instructions which must be on the care labels for textile wearing apparel, and the requirement that the care label of an item which cannot be washed or drycleaned disclose this information. Section 423.6 also identifies how the information should be displayed. This discussion of Section 423.6 describes each of its four parts: (1) Section 423.6(a), attachment of care labels; (2) Section 423.6(b)(1), washing instructions; (3) Section 423.6(b)(2), drycleaning instructions; and (4) Section 423.6(c), reasonable basis.

a. *Section 423.6(a)—Attachment of care labels.* Section 423.6(a) of the amended rule states that "care labels"[46] must be attached to textile products in such a manner that they can be seen or easily found when the product is offered for sale to customers. However, if manufacturers wish to package a garment in such a manner that the care label is not visible, they may do so as long as the care instructions are displayed on the outside of the package

[40] 36 FR 23883, 23888 (1971).

[41] *Id.* at 23885–86.

[42] *See, e.g., Pfizer, Inc.*, 81 FTC 23 (1972). *See also National Dynamics Corp.*, 82 FTC 488 (1973), *mod. on other gds.*, 492 F. 2d 1333 (2nd Cir. 1974), *cert. denied*, 419 U.S. 933 (1974); *Crown Central Petroleum Corp.*, 84 FTC 1493 (1974), *aff'd per curiam*, No. 75–1124 (D.C. Cir., March 4, 1976); *Fedders Corp.*, 85 FTC 38 (1975), *aff'd* 529 F. 2d 1398 (2d Cir. 1976).

[43] *Pfizer, Inc.*, 81 FTC 23, 62 (1972).

[44] Section 423.6(c) of the amended rule clarifies what constitutes a reasonable basis by listing five specific categories of evidence which can be used to comply with the rule, as well as permitting use of other reliable evidence for the same purpose.

[45] This standard has been applied to the Commission's adjudicative orders in a number of cases, including *Jacob Siegel Co. v. FTC*, 327 U.S. 608 (1946), *FTC v. National Lead Co.*, 352 U.S. 419 (1956), and *FTC v. Colgate-Palmolive Co.*, 380 U.S. 374 (1965).

[46] The term "care label" is defined in section 423.1(a) as a "permanent label or tag . . . that is attached or affixed in such a manner that it will not become separated from the product and will remain legible during the useful life of the product."

or on a hang tag. Section 423.6(a) thus permits merchandising flexibility for manufacturers while ensuring that consumers can determine a textile garment's care both at the point of purchase and at the point of care.

b. *Section 423.6(b)(1)—Washing instructions.* As noted above, Section 423.6 requires manufacturers to place on care labels either a set of washing or a set of drycleaning instructions. For products that can be cleaned by either method, manufacturers may select which of these two sets of instructions to place on the label. Section 423.6(b)(1) describes the information necessary if the label describes a washing procedure.

(1) *Washing method and temperature description*—If a washing procedure is described, Section 423.6(b)(1)(i) of the amended rule states that care labels must specify whether an item should be washed by hand or by machine. This basic information always must appear on the label. In addition, the label ordinarily must say what water temperature should be used. However, if the regular use of hot water will not harm the product, the label need not mention any water temperature. For example, "machine wash" means hot, warm, or cold water can be used.

The amended rule requires information about washing method and temperature to help consumers guard against the most frequent types of damage to textiles.[47] These are excessive shrinkage, color fading or bleeding and general deterioration of a component when washed improperly. Such damage generally is caused by water contact and excessive heat or agitation. It also may be caused by various adverse reactions to detergents, soaps, or softening agents.[48] The amended rule will help prevent application of excessive heat or agitation in washing by specifying that care labels always provide washing method instructions and provide temperature instructions if regular use of hot water will harm the products.[49]

(2) *Drying instructions*—Because drying usually is necessary after washing textile wearing apparel, § 423.6(b)(1)(ii) of the amended rule requires care labels state whether an item should be dried by machine or by some other method. If machine drying is specified, the label also must say what drying temperature should be used. However, if the highest temperature setting will not harm the product, the label need not indicate a drying temperature.[50]

This information will prevent the damage to fabrics during drying, which usually is the result of excessive heat in machine dryers. Use of such improper drying methods can result in shrinkage, permanent wrinkling, scorching or melting.[51]

(3) *Ironing instructions*—The current rule states that purchasers of textile products should be "fully informed" of ironing instructions when such instructions are "necessary to the ordinary use and enjoyment of the article."[52] Section 423.6(b)(1)(iii) of the amended rule clarifies that ironing instructions must be given if ironing is needed regularly to preserve the product's appearance, and that, if ironing is mentioned, the care label also must say what temperature should be used, unless the regular use of a hot iron will not harm the garment.[53] If ironing is not regularly necessary for the care of a particular item, ironing instructions do not have to be put on its care label.[54] However, if ironing would damage the product, a warning is required.[55]

The record in this proceeding supports the need for ironing instructions on the labels of products which require regular ironing. For example, the lack of, or inadequacy of, ironing instructions has caused scorching, burning, or melting which renders items totally unusable.[56] In addition, the fact that a garment does not need ironing on a regular basis, which would be shown by the lack of ironing instructions on its label, may be important to consumers when deciding whether or not to purchase it.[57]

(4) *Bleaching instructions*—The current rule requires bleaching instructions be provided when "necessary to the ordinary use and enjoyment of the article".[58] The rule does not further specify when and what sort of bleaching instructions must be provided.

The apparent result has been the emergence of several conflicting disclosure approaches by manufacturers. For example, some manufacturers overcautiously and misleadingly include "Do Not Bleach" instructions on items which are bleachable.[59] Others simply omit bleaching instructions, leaving the decision whether to bleach to purchasers.[60] These manufactures may not intend the absence of bleaching instructions to imply anything about whether the product may be bleached, but others use silence on a label to imply the article may be bleached.[61] Still others, however, affirmatively state bleaching instructions if bleaching can or should be done.[62] This lack of uniformity in labeling is mirrored by a lack of uniformity in consumer interpretation of labels. For example, 21% of the respondents in one survey believed "machine wash" implies bleachability, while 66% assumed no bleach should be used.[63]

The amended rule clarifies the existing obligation by establishing a uniform disclosure scheme for bleaching instructions. If all available bleaches can safely be used on a regular basis, the label need not mention bleaching.[64]

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[47] The current rule requires washing instructions where "necessary to the ordinary use and enjoyment of the article." 16 CFR 423.1 (Note) (1982). This includes information about washing method and temperature. (*See e.g.*, the second example given of acceptable care instructions under the current rule, 16 CFR 423 (Note) (Example 2) (1982): "Machine wash warm. Gentle Cycle. Do not use chlorine bleach.") The amended rule, however, clarifies this requirement.

[48] Staff Report at 55–59.

[49] The Commission has rejected a proposal by its staff to require care labels always state a washing temperature. As noted in the text, damage to textiles ordinarily results from water that is too hot. Where a product could be damaged by such water, the amended rule requires the label disclose an appropriate washing temperature. Silence as to water temperature would mean even the harshest (hottest) temperature can be used.

[50] As with the washing instructions, the Commission has decided that it is unnecessary to include a drying temperature on a care label unless excessive heat will cause product damage. *See* Staff Report at 59–64.

[51] *Id.* the current rule requires information about drying where it "is necessary to the ordinary use and enjoyment of the article", 16 CFR 423.1 (Note) (1982), but the amended rule clarifies this obligation.

[52] 16 CFR 423.1 (Note) (1982).

[53] This is consistent with the approach adopted by the Commission for disclosure of temperature instructions for washing and drying.

[54] Some commenters favored a requirement that ironing instructions be disclosed in all instances to let consumers know whether or not ironing was necessary. *See* Staff Report at 65–67. The Commission shares the view of other commenters and its staff, however, that ironing instructions need not be included where the owner can obtain full use of an item without ironing. *See* Staff Report at 65–68. Under this disclosure system, a consumer can infer from a label's lack of ironing instructions that a garment does not need ironing as part of its regular care.

[55] *See* Section 423.6(b)(1)(v).

[56] *See* R.18 at 238–291, Students, University of Wisconsin; R.18 at 428, 433, 732, 754, 776, 792, 841, 905, 922, consumers; R. 20 at 239, Home Economist, Univ. of Arizona; Tr. 2519, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County.

[57] *See* R. 18 at 2403, Consumer Staff Report at 67.

[58] 16 CFR 423.1 (Note) (1982).

[59] Staff Report at 81.

[60] Staff Report at 86.

[61] Staff Report at 89, 100.

[62] R. 17 at 1263, Walker Survey.

[63] R. 17 at 1461, Marketing and Research Counselors, Inc., "Bleachability Terminology Study" (April 1976).

[64] Some commenters, including members of the bleach industry, advocated affirmative bleaching instructions in cases where all bleaches can be used safely. Those commenters felt affirmative instructions were necessary to overcome existing consumer confusion as to the bleachability of garments whose labels are silent with respect to bleaching. However, bleaching is a procedure which, like ironing, is not necessary on a regular

On the other hand, if bleach would harm a product when used on a regular basis the label must so warn purchasers. If all bleaches would be harmful, it must include a phrase such as "No bleach." If bleaches other than chlorine can be used, the label must say "Only non-chlorine bleach, when needed."[65]

The amended rule also prohibits placing a "No bleach" warning on bleachable products.[66] First, the amended rule specifies that such a warning may only be included on a label if regular use of bleach would harm a product. Second, Section 423.5(b)(5) of the rule explicity requires manufacturers to have a reasonable basis for the information they place on care labels. Thus, the amended rule makes clear that a "No bleach" warning may only be placed on a care label if a manufacturer has a reasonable basis for concluding that *all* available bleaches would harm a product in regular use.

(5) *Warnings*—Under the current rule, manufacturers should warn purchasers if any care procedure normally thought of as applying to a product would, in fact, diminish the product's usability.[67] The amended rule imposes a similar obligation. Section 423.6(b)(1)(v) requires warnings about harmful washing procedures. Section 423.6(b)(2)(ii) requires equivalent warnings about harmful drycleaning procedures.

The amended rule does, however, reflect two principal changes from the current rule. First, Section 423.6(b)(1)(v) of the amended rule requires a warning where use of a normal washing method might cause damage not just to the product itself, but also to other items being washed with it. The current rule, by contrast, only indicated the need for a warning if the product itself might be harmed. The second change in the amended rule is to place two limits on this obligation to warn against harmful care methods. First, a care label does not have to warn against washing methods which are alternatives to those stated on the label. For example, a label which states "Hand wash" does not have to warn "Do not machine wash." Second, a label which contains washing instructions does not have to warn against drycleaning procedures. In other words, the care label need not read "Machine wash warm, tumble dry. Do not dryclean." (The reverse also is true.) This approach is consistent with the Commission's view that care labels need only provide instructions for one type of care precedure—washing or drycleaning—rather than for both.[68]

c. *Section 423.6(b)(2)—drycleaning instructions.* Drycleaning, as defined in the amended rule,[69] is a process by which organic solvents are used in machines to remove soil from textile wearing apparel. In addition to organic solvents, drycleaning may involve use of moisture by addition to solvent (up to 75% relative humidity), tumble drying (up to 160° F) and restoration by steam press or steam-air finishing. While the current rule requires drycleaning instructions if "necessary to the ordinary use and enjoyment of the article," the rule does not indicate what information must be set forth in drycleaning instructions.[70] In consequence, some care labels which mention drycleaning provide no specific guidance to consumers and drycleaners as to what type of drycleaning solvent should be used, and as to any modifications to the normal drycleaning process which may be needed. When this happens, professional drycleaners may be unable to determine the combination and nature of fibers and finishes used in a particular fabric and thus may not be able to determine the appropriate solvent and drycleaning procedure to be followed.[71] This may result in improper drycleaning with resulting damage to the garment involved.[72]

To better ensure that care labels fully inform purchasers about drycleaning procedures, Section 423.6(b)(2) of the amended rule requires labels that include drycleaning instructions to disclose the type(s) of solvent(s) that should be used, except where any commercially available solvent can be used. Considering that only three types of solvents generally are used, and that the manufacturer should know the fiber content and appropriate care traits of a given item, the Commission has concluded that the manufacturer is in the best position to provide solvent information.[73]

The amended rule also prohibits the use of the terms "Drycleanable" or "Commercially dryclean" in drycleaning instructions because of evidence that these terms do not have a clear meaning for consumers and drycleaners. The term "commercial" technically refers to all types of drycleaning establishments, including facilities where consumers use coin-operated automatic machines and facilities where trained professionals operate machines with variable cycles.[74] The term "drycleanable" has been commonly used where special procedures, *e.g.*, mild solvents or low temperatures, must be used if an item is drycleaned. However, it also has been used where no special procedures are necessary.[75] Thus, to prevent confusion and encourage uniformity in terminology, the Commission has eliminated the further usage of the terms "Drycleanable" and "Commercially Dryclean" in care label instructions.

Finally, Section 423.6(b)(2)(ii) of the amended rule requires warning disclosures if any regular step of the drycleaning procedure which consumers or drycleaners reasonably can be expected to use would harm the product or other items being cleaned with it. Some products must be drycleaned using modified procedures, such as lower heat and moisture levels than specified in the amended rule, or adjusted pressing methods. Failure to

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basis for the ordinary use of all washables. *See* Staff Report at 92. The Commission has chosen a disclosure scheme to minimize the length and complexity of care labels by mandating disclosure of instructions only for washing and drying, which are required for the care of all washables. Moreover, the Commission's disclosure scheme should assist those consumers who are confused as to whether or not a product may be bleached if the label is silent. In the future, such silence will have only one meaning: a product is bleachable using all available bleaches.

[65] Until a few years ago, the only bleaches available were chlorine. Now consumers also can use milder oxygen bleaches based on monopersulfate and perborate compounds. *See* Staff Report at 74.

[66] Manufacturers give several explanations for this practice. One is the fear that consumers will misuse bleach and thereby damage products which would not be harmed by regular, proper use of bleach. Another is that some products were labeled "No bleach" before milder, nonchlorine bleaches were developed. These products have yet to be relabeled. A third explanation is that it is cheaper to use the same label for both bleachable and nonbleachable products. *See* Staff Report at 83. None of these reasons would justify a "No bleach" warning under the amended rule.

[67] 16 CFR 423.1 (Note) (1982).

[68] *See* Section IVB, *infra*, for a discussion of the Commission's reasons for taking this approach.

[69] *See* Section 423.1(c).

[70] 16 CFR 423.1 (Note) (1982).

[71] Staff Report at 109.

[72] Staff Report at 116–20.

[73] Some manufacturers argued that consumers may erroneously interpret solvent disclosures to mean that all solvents are equally available to all drycleaners. Staff Report at 130–31. These claims were unsupported by empirical evidence. Moreover, consumers who erroneously believe, for example, that their usual drycleaner can clean a jacket labeled "Professionally dryclean: petroleum" when, in fact, the drycleaner cannot use a petroleum solvent are better off than if the jacket were labeled "Dryclean only." By consulting the label, the drycleaner can quickly establish that it cannot clean the jacket and so advise the consumer. In addition, of course, the label reduces the likelihood that the drycleaner will mistakenly apply the wrong solvent, damaging the product. The Commission also rejects the argument that the rule should treat textile products as incapable of being drycleaned if they cannot be cleaned with the solvent perchlorethylene. While perchlorethylene is the most widely used solvent, others are available such as petroleum, which can safely clean products that would be harmed by perchlorethylene.

[74] Staff Report at 109–110.

[75] Staff Report at 132.

use such procedures can cause product damage, including shrinkage, stretching or color loss.[76] While the current rule requires warnings in certain situations,[77] the amended rule provides more specific guidance as to when warnings are necessary and what information they should contain.[78]

d. *Section 423.6(c)—reasonable basis.* Section 423.6(c) sets forth the requirement that manufacturers have a reasonable basis for care instructions and identifies the types of evidence which can be used to provide such a reasonable basis.[79] The Commission believes that this provision may benefit consumers to the extent that manufacturers are not already aware of their obligation to have a reasonable basis for care instructions. By clarifying the obligation it may also reduce the costs of complying with the rule. For example, Section 423.6(c) makes clear that a reasonable basis for care instructions includes not only evidence from tests simulating ordinary care, but also information from current technical literature, and past experience. This will enable manufacturers to adopt efficient, as well as effective methods of obtaining a reasonable basis for care instructions.

3. *Section 423.7—Certain Piece Goods.* To help ensure that consumers are provided with care instructions for all wearing apparel, including clothing they make themselves, the current rule requires care labels be provided for piece goods sold to consumers for the purpose of making home sewn wearing apparel.[80] The Commission required manufacturers to provide such labels to retailers, so retailers could provide them to consumers, and consumers could sew them into homemade garments. The rulemaking record of this proceeding suggests, however, the requirement has not operated as intended. Manufacturers of piece goods are supplying care labels to retailers.[81] Retailers, however, usually do not distribute them to purchasers,[82] and it appears consumers do not sew them into the garments they make.[83]

The Commission has considered a variety of ways to better ensure purchasers of piece goods are provided with care instructions, and, at the same time, to eliminate any unnecessary burden the current rule might impose on manufacturers and retailers of piece goods. The Commission has concluded the most efficient way to achieve these goals is to require care information be provided on the end of each bolt or roll of certain piece goods [84], rather than on separate care labels. Section 423.7 of the amended rule so provides. This requirement will enable consumers to compare the care requirements of different piece goods in the store prior to purchase and will help ensure that the fabrics they purchase fit their care needs. It will not provide them with a label for use on the finished garment, but the evidence in this proceeding suggests that such labels are not often used. At the same time, retailers will not have to distribute care labels under the amended rule. Moreover, manufacturers will have only the simplified burden of providing care instructions at the end of a bolt or roll of certain piece goods, rather than having to ensure that individual care labels are provided with each sale of fabric from that bolt or roll.

4. *Section 423.8—Exemptions.* Section 423.8 of the amended rule sets out exemptions from the general remedial requirements in Sections 423.6 and 423.7. The exemptions apply in four specific instances.

Two exemptions apply where it would be impractical for manufacturers to use a permanent care label. First, Section 423.8(a) automatically exempts any garment that is totally reversible and has no pockets in which the label can be sewn from the permanent label requirement. Second, Section 423.8(b) permits manufacturers of any other garment to request an exemption from the permanent label requirement if the label would harm the appearance or usefulness of the product. The Commission will then determine whether an exemption is appropriate. The Commission's rationale from permitting this exemption is that the physical characteristics of some apparel, *e.g.*, shape, size, fragility or sheerness, might make permanent label attachment impossible or undesirable.

If an exemption is granted under Section 423.8 (a) or (b), Section 423.8(c) still requires that the care information be placed on a hang tag or in some other conspicuous place at the point of retail sale. Without such a temporary label, consumers would have no way of knowing what care was safe for the unlabeled garment.

The other two exemptions are for instances where the Commission deems a permanent care label to be unnecessary. One exemption, contained in Section 423.8(e) is for sales of textile products to institutional buyers for commercial use.[85] The exemption has been included in the rule because institutional buyers, unlike individual consumers, are in a position to bargain for and obtain care information from manufacturers if they desire it. The second exemption is for textile wearing apparel which can be cleaned safely under the harshest washing and drycleaning procedures. Section 453.8(d) sets out the exemption and specifies the care procedures which a product must withstand to be entitled to it.[86] It also requires manufacturers of such products to place the statement "wash or dry clean, any normal method" on a hang tag or in some other conspicuous place at the point of sale. Absent such a temporary label, consumers would not be able to tell whether the lack of a permanent label meant a product was "totally cleanable", or the manufacturer simply was not complying with the rule's requirement to provide care information.

In addition to these specific exemptions, Section 423.8(f) states that all exemptions previously granted will remain in effect so long as the products exempted still meet the criteria upon which the exemptions were based. Otherwise, the exemptions are automatically revoked. The purpose of this provision is to prevent the confusion and delay that would result if the Commission staff were required to reexamine all previously granted exemptions.[87]

5. *Section 423.2—Terminology.* When adopting the current rule, the Commission did not designate

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[76] *Id.* at 119. *See* Tr. 1400–01. International Fabricare Institute.

[77] 16 CFR 423.1 (Note) (1982).

[78] For a more detailed explanation of the differences between the current rule and the amended rule, see the discussion, *supra*, of Section 423.6(a)(1)(v), the amended rule's warning provision for washing procedures.

[79] The Commission has considered a proposal that it limit the types of evidence sufficient to establish a reasonable basis for care instructions to evidence derived from designated testing methods. The Commission has determined, however, that such a limitation could place a substantial compliance burden on manufacturers without producing corresponding benefits. *See* Staff Report at 425–28. For similar reasons, the Commission has rejected a proposal that manufacturers be required to keep records substantiating their compliance with the reasonable basis requirement.

[80] 16 CFR 423.1(b) (182).

[81] Staff Report at 155–56.

[82] *Id.* at 156–159.

[83] *Id.* at 162.

[84] The term "certain piece goods" is defined in Section 423.1(b).

[85] This exemption is similar to Commission interpretation of the current rule permitting unlabeled products to be sold to institutions. *See* Staff Report at 355.

[86] Section 453.8(d) is similar to the current rule's exemption for those articles costing $3 or less which are completely washable. *See* 16 CFR 423.1(c)(2) (1982). However, the Commission has removed any price ceiling from the amended rule in light of the fact that both expensive and inexpensive articles subject to the exemption would not be damaged by normal cleaning procedures.

[87] Staff Report at 352.

terminology for care instructions. The only requirement specified in the rule was that care labels use words and phrases to describe care procedures, rather than merely symbols.[88]

Section 423.2 of the amended rule similary permits manufacturers to use any terms[89] they prefer as long a these terms clearly and accurately describe regular care procedures. This may result in some variation among the care labels used by different manufacturers. The Commission has concluded, however, that the remedial requirements in Sections 423.6 and 423.7 provide sufficient guidance for manufacturers to ensure adequately against inconsistent or confusing care labels.

In order to provide additional guidance for manufacturers and to further minimize consumer confusion, the Commission also has provided a glossary of standardized terms, appended to the Rule as Appendix A, which may be used to meet the requirements of the rule.

For the most part, Appendix A consists of terms developed by the American Society for Testing and Meterials (ASTM), a private standards-setting group. However, the record reveals discrepancies between consumer understanding of some terms listed in the ASTM glossary and the manner in which the glossary defined these terms.[90] The glossary adopted by the Commission includes the terms and definitions from the ASTM glossary which were found clear and meaningful to consumers. The unclear terms in the ASTM glossary have been replaced and definitions reconstructed based upon the evidence in the record.[91]

D. *Other Rule Provisions*

1. *Section 423.1—Definitions.* In section 423.1 the Commission defines terms that are considered of particular importance in the rule. Most of these terms were defined under the current rule.[92] Terms such as "Textile Product" and "Textile Wearing Apparel" still have the same definition. The term "Care Label" under the amended rule encompasses the older definition for "a label or tag permanently affixed or attached hereto", but the new definition also makes it clear that such a label must remain legible during the useful life of the product.

The term "Certain Piece Goods" is a claification of the older definition for "Piece Goods". Under the amended rule, the definition not only explains that piece goods are textile products sold by the piece from bolts or rolls, but further explains that the rule only covers piece goods for the purpose of making home sewn textile wearing apparel. Finally, the definition exlcludes some manufacturers remnants and trim up to 5 inches wide. These exclusions have been granted by interpretation under the current rule.

The term "Regular Care" has been included in the definition section of the amended rule to make it clear that the Commission does not require instructions for "spot" care under this rule.[93]

Two new terms are added under the amended rule for the primary purpose of clarifying and standardizing their meaning when used in care instructions. "Machine Wash" is now defined to include only removal of soil from products in a specially designed machine using water, detergent or soap and agitation. This precise limitation is necessary because previously used definitions included in this single term implications that the product could also be safely bleached, dried, and pressed by any customary commercial or home method.[94] The term "Dryclean" also has been defined elsewhere in several ways. Temperature and moisture level, and solvent are implicit in any definition of "Dryclean." The Commission has, therefore, defined the term "Dryclean" as a soil removing process using a machine and any common drycleaning solvent and including moisture addition up to 75% relative humidy, tumble drying up to 160° F, and steam press or steam air finishing.[95]

2. *Section 423.3—What this regulation does.* In Section 423.3 the Commission outlines the overall purpose of the amended rule which is to provide regular care instructions on textile wearing apparel and certain piece goods at the time the products are sold. Care instructions must be provided on care labels or by some other method described in this rule.

3. *Section 423.4—Who is covered.* Manufacturers and importers are not specifically named in the current rule as responsible for compliance. Section 423.4 now clarifies this matter and further states that the term manufacturer and importer also includes any person or organization that directs or controls the manufacture or importation of covered products.

4. *Section 423.9—Conflict with flammability standards.* Section 423.9 of the rule states that in the event of any conflict with the rules issued under the Flammable Fabrics Act, the Flammable Fabrics regulations will govern over this rule. There are no known conflicts to date, but this provision recognizes the policy that, in the case of conflict, safety rules predominate over rules to prevent economic injury.[96]

The Commission also notes that it is unaware of any state or local laws which conflict with the amended rule. Any such laws are preempted to the minimum extent necessary to resolve the conflict.[97]

5. *Section 423.10—Stayed or Invalid Parts.* The amended rule imposes several different labeling requirments *e.g.*, specific label content, warnings, a reasonable basis for care instructions. To the extent possible, each particular requirement has been included in a single specific provision of the rule. To make clear its intent, the Commission has included a provision stating that if any section of this rule is stayed or held invalid, the rest of the rule will remain in force.

III. Impact of Amended Rule Upon Small Business and Consumers

A. *Introduction*

The Commission has concluded that the amended rule will not have a significant impact either upon the businesses subject to the rule or upon consumers. The Commission also has concluded that the amendments will not have an annual effect on the national economy of $100,000,000 or more and will not cause a substantial rise in the cost or price of goods or services. Based upon these conclusions, the Commission

[88] Current Rule Statement of Basis and Purpose, 36 FR 23883, 23892 (1971) Manufacturers were permitted to use symbols in combination with words and phrases.

[89] They may use symbols in combination with words if they desire.

[90] Staff Report at 385. For example, the ASTM glossary defined "Machine Wash" to include the capability of bleaching, drying and ironing. This was inconsistent with the understanding of consumers and some industry members. It is also inconsistent with the provisions of the amended rule.

[91] The terms that have been replaced include "Machine wash","Hand wash", "Home launder", "Wash separately", as well as all bleaching instructions and all drycleaning instructions. *See* Staff Report at 411

[92] 16 CFR 423.1(d) (1982).

[93] *See* Current Rule Statement of Basis and Purpose, 36 FR 23883, 23891 (1971).

[94] *See e.g.*, Staff Report 385–389

[95] *Id.* at 395–397.

[96] To date, the Consumer Product Safety Commission has issued labeling requirements under the Flammable Fabrics Act for children's sleepwear in the wearing apparel area. *See* 16 CFR 1602–1632 (1982). None of the regulations governing the labeling of these products conflicts with the provisions of the amended rule.

[97] For a discussion of the Commission's authority to preempt state law, *see* the Statement of Basis and Purpose and Regulatory Analysis, Trade Regulation Rule, Funeral Industry Practices, 47 FR 42260, 42287 (1982).

has determined that it is not required to issue a final regulatory analysis to accompany this amended rule.[98] The Commission's estimates of the amended rule's costs and benefits are described below.

B. *Impact of Rule on Small Business*

1. *Costs.* Since the principal effect of the amended rule is to clarify care labeling obligations already imposed by the current rule, there should be no significant new compliance costs attributable to it. For example, while the amended rule expressly requires a reasonable basis for care instructions, that obligation is implicit in the current rule. The amended rule may result in some reduction in compliance costs, however, due to the clarification of the rule's requirements.

2. *Benefits.* The amended rule should provide modest benefits to small manufacturers and importers. By clarifying the broad range of information that may afford a reasonable basis for care instructions, the rule may reduce the costs incurred by all manufacturers and particularly benefit small manufacturers that lack testing facilities. Similarly, clarifying the labeling requirements may reduce costs associated with unnecessarily detailed labeling. In addition, because the rule will enable consumers to compare all brands for care characteristics, small manufacturers without a substantial market reputation enhanced by national promotion and advertising may be able better to penetrate markets with quality goods at lower prices.[99]

The amended rule also may provide some benefits to small retailers. Better care instructions should reduce the quantity of consumer complaints and customer returns of goods damaged by improper care procedures. In addition, where care problems do occur, the responsibility for the problem can be clearly assigned. Small retailers noted that the amended rule also would help them compete with larger businesses by equalizing the care information that consumers receive. This is particularly important to small businesses whose personnel receive less training about the care characteristics of the items being sold than personnel in larger stores.[100]

Finally, it may be somewhat easier for smaller retailers to make purchase decisions because manufacturers will offer products with clearly described care characteristics. Overall, the effect of the rule on small retailers should be to increase consumer satisfaction with their merchandise.[101]

C. *Impact of Amended Rule Upon Consumers*

1. *Costs.* There should be no costs to the consumer attributable to the amendments. Under the current rule the costs of determining appropriate care and preparing and affixing care labels probably is passed on to consumers. The amended rule, however, does not significantly affect these costs, except that, by clarifying the reasonable basis requirement, it may actually reduce costs somewhat.

2. *Benefits.* The amended rule will provide several benefits to consumers. At the point of purchase, clearer and more comparable care instructions will enable consumers better to consider care costs in making purchase decisions. Items which requires expensive or special care can be avoided, if the consumer so desires.

Better care information also will be beneficial to consumers at the point of care. By helping them better to avoid incorrect and damaging care, it will help then prolong the life of their textiie wearing apparel.

IV. Other Alternatives Considered

A. *Extension of the Current Rule to Other Products*

When the Commission promulgated the current rule in 1971, it expressly envisioned the possibility of extending the rule's coverage to other products if the need for coverage was demonstrated.[102] Thus, in 1974, when the Commission issued the Request for Comment to evaluate the current rule, questions were included concerning the need for such extensions. After analyzing the comments, the staff recommended extending the current rule's coverage to draperies, curtains, slipcovers, linens, piece goods sold for covering furniture or making slipcovers, leather and suede apparel, yarn, carpets and rugs, and upholstered furniture. In 1982, however, the Director of the Bureau of Consumer Protection recommended against adoption of the extensions, based upon an evaluation of the rulemaking record.

The Commission has determined not to extend the rule to additional products. The rulemaking record does not establish that the proposed extensions are needed to correct systematic injury to consumers or others; that the extensions, if adopted, would alleviate such injury as may occur; or that the benefits flowing from the extensions would exceed the costs imposed. Consequently, the Commission did not approve any of the proposed amendments extending the rule's coverage to additional products.

B. *Alternative Care Labeling*

Some care labels currently fail to disclose care procedures that are both safe and effective for the product and easier or less expensive to use than those recommended on the label. For example some items with care labels reading "Dryclean Only" are, in fact, washable.[103] The Commission considered adopting an "alternative care requirement" to remedy this problem. For example, where an item could be cleaned safety either by washing or drycleaning, the alternative care requirement would have required that both methods be disclosed on the care label. However, the Commission has declined to adopt such a requirement for several reasons.

First, an alternative care requirement is unnecessary to meet the basic goal of the care labeling rule. This is to provide consumers with a set of instructions for a care procedure normal use of which will not harm the product. If a product labeled "Dryclean" can, in fact, be safety cleaned that way, consumers have the basic information they need to care for the product. Moreover, if manufacturers label items "Dryclean Only", they violate the rule's reasonable basis provision unless they can substantiate the implicit representation that the product cannot be washed.

Second, the record in this proceeding did not show that the benefits of an alternative care requirement would exceed its costs. An alternative care labeling requirement would impose significant testing and substantiation costs on manufacturers. For example, it would require them to give drycleaning instructions, and to have a reasonable basis for those instructions, for all items they already label as washable. The benefits of the requirement are, however, speculative. For example, the record does not show how many washable garments are labeled "Dryclean," what percentage of consumers owning such garments actually follow these instructions, or what percentage of such consumers would choose to wash rather than dryclean if told they could do so. Thus,

[98] *See* 15 U.S.C. 57b–3.

[99] *See., eg.*, Tr. 2190–92, E. Kennedy, small retailer.

[100] *See, e.g.*, R. 20 at 34, Extension Specialist, CES, North Dakota.

[101] *See, e.g.*, R. 18 at 756, department store employee; R. 17 at 225, consumer; R. 23 at 548, E. Bilezikian; R. 17, at 157–8, Applebaum Tag and Label; and Tr. 2190–92, E. Kennedy small retailer.

[102] Current Rule Statement of Basis and Purpose, 36 FR at 23890. Textile clothing was the focus of the current rule because it needed care on a more frequent basis than other textile products.

[103] Staff Report at 137–39.

the Commission cannot conclude that the requirement would be warranted.

Third the Commission believes such a requirement is unnecessary due to the existence of market forces prompting manufacturers not to engage in such labeling. Manufacturers who label washable items with only drycleaning instructions forego sales to consumers unwilling to go to the effort and expense of drycleaning.[104] Some manufacturers may choose to do so, for reasons, they consider valid.[105] The decision on this point is one the Commission believes is best left to them.

V. Other Matters

A. Statement as to Prevalence

The rulemaking record does not permit a determination of how widespread improper care labeling of textile wearing apparel may be. It does show, however, that incomplete, confusing and inaccurate labeling occurs and is due, in part, to ambiguities in manufacturer's obligations under the current rule. Therefore, the rulemaking record does permit a determination that the amended rule will reduce improper labeling and that its remedial requirements are reasonably related to the prevention of the defined unfair and deceptive practices. Because the amended rule will not impose significant incremental costs, the Commission has concluded that this is sufficient to justify the amendments.

B. Effective Date

According to Section 21 of the Federal Trade Commission Improvements Act of 1980, the Commission, after promulgating any trade regulation rule, must submit it to Congress for review.[106] Congress then has ninety calendar days of continuous session for considering the rule before the rule can take effect. Because the amended rule does not require a significant change from the existing care labeling practices of manufacturers and does not involve a lengthy start-up time, the Commission has determined to make the amended rule effective ninety days after the completion of congressional review. The Commission will publish an announcement of the rule's effective date in the **Federal Register** following completion of the congressional review process. All products manufactured or imported after this date must comply with the amended rule.

[104] *See, e.g.*, R. 17 at 385 Levi-Strauss & Co.; R. 17 at 124, Celanese Fibers Marketing Co.; R. 17 at 226–27, Cranston Printing Works; R. 20 at 194, Extension Agent, CES, Oregon.

[105] For example, they may conclude that an item is delicate and likely to be damaged by consumers who fail to follow precisely the washing instructions on its care label. They may fear loss of good will should this occur.

[106] 15 U.S.C. 57a–1.

List of Subjects in 16 CFR Part 423

Clothing, Labeling, Textiles, Trade practices.

Accordingly, Chapter I of 16 CFR is amended by revising Part 423 to read as follows:

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS AS AMENDED

Sec.

423.1 Definitions.
423.2 Terminology.
423.3 What this regulation does.
423.4 Who is covered.
423.5 Unfair or deceptive acts or practices.
423.6 Textile wearing apparel.
423.7 Certain piece goods.
423.8 Exemptions.
423.9 Conflict with flammability standards.
423.10 Stayed or invalid parts.
Appendix A—Glossary of standard terms.

Authority: 38 Stat. 717, as amended; (15 U.S.C. 41, et seq.)

§ 423.1 Definitions.

(a) "Care label" means a permanent label or tag, containing regular care information and instructions, that is attached or affixed in such a manner that it will not become separated from the product and will remain legible during the useful life of the product.

(b) "Certain Piece Goods" means textile products sold by the piece from bolts or rolls for the purpose of making home sewn textile wearing apparel. This includes remnants, the fiber content of which is known, that are cut by or for a retailer but does not include manufacturers' remnants, up to ten yards long, that are clearly and conspicuously marked "pound goods" or "fabrics of undetermined origin" (i.e., fiber content is not known and cannot be easily ascertained) and trim, up to five inches wide.

(c) "Dryclean" means a commercial process by which soil is removed from products or specimens in a machine which uses any common organic solvent (e.g. petroleum, perchlorethylene, fluorocarbon). The process may also include adding moisture to the solvent, up to 75% relative humidity, hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.

(d) "Machine Wash" means a process by which soil is removed from products in a specially designed machine using water, detergent or soap and agitation. When no temperature is given, e.g., "warm" or "cold," hot water up to 150 degrees F (66 degrees C) can be regularly used.

(e) "Regular Care" means customary and routine care, not spot care.

(f) "Textile Product" means any commodity, woven, knit or otherwise made primarily of fiber, yarn or fabric and intended for sale or resale, requiring care and maintenance to effectuate ordinary use and enjoyment.

(g) "Textile Wearing Apparel" means any finished garment or article of clothing made from a textile product that is customarily used to cover or protect any part of the body, including hosiery, excluding footwear, gloves, hats or other articles used exclusively to cover or protect the head or hands.

§ 423.2 Terminology.

(a) Any appropriate terms may be used on care labels or care instructions so long as they clearly and accurately describe regular care procedures and otherwise fulfill the requirements of this regulation.

(b) Any appropriate symbols may be used on care labels or care instructions, in addition to the required appropriate terms so long as the terms fulfill the requirements of this regulation.

(c) The terminology set forth in Appendix A may be used to fulfill the requirements of this regulation.

§ 423.3 What this regulation does.

This regulation requires manufacturers and importers of textile wearing apparel and certain piece goods, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, to provide regular care instructions at the time such products are sold to purchasers through the use of care labels or other methods described in this Rule.

§ 423.4 Who is covered.

Manufacturers and importers of textile wearing apparel and certain piece goods are covered by this regulation. This includes any person or organization that directs or controls the manufacture or importation of covered products.

§ 423.5 Unfair or deceptive acts or practices.

(a) *Textile wearing apparel and certain piece goods.* In connection with the sale, in or affecting commerce, of textile wearing apparel and certain piece goods, it is an unfair or deceptive act or practice for a manufacturer or importer:

(1) To fail to disclose to a purchaser, prior to sale, instructions which prescribe a regular care procedure

necessary for the ordinary use and enjoyment of the product;

(2) To fail to warn a purchaser, prior to sale, when the product cannot be cleaned by any cleaning procedure, without being harmed;

(3) To fail to warn a purchaser, prior to sale, when any part of the prescribed regular care procedure, which a consumer or professional cleaner could reasonably be expected to use, would harm the product or others being cleaned with it;

(4) To fail to provide regular care instructions and warnings, except as to piece goods, in a form that can be referred to by the consumer throughout the useful life of the product;

(5) To fail to possess, prior to sale, a reasonable basis for all regular care information disclosed to the purchaser.

(b) *Violations of this regulation.* The Commission has adopted this regulation to prevent the unfair or deceptive acts or practices, defined in paragraph (a) of this Section. Each manufacturer or importer covered by this regulation must comply with the requirements in §§ 423.2 and 423.6 through 423.8 of this regulation. Any manufacturer or importer who complies with the requirements of §§ 423.2 and 423.6 through 423.8 does not violate this regulation.

§ 423.6 Textile wearing apparel.

This section applies to textile wearing apparel.

(a) Manufacturers and importers must attach care labels so that they can be seen or easily found when the product is offered for sale to consumers. If the product is packaged, displayed, or folded so that customers cannot see or easily find the label, the care information must also appear on the outside of the package or on a hang tag fastened to the product.

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a drycleaning instruction. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a drycleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. If either washing or drycleaning can be used on the product, the label need have only one of these instructions. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by drycleaning, the label might say "Do not wash—do not dryclean," or "Cannot be successfully cleaned."] The instructions for washing and drycleaning are as follows:

(1) Washing, drying, ironing, bleaching and warning instructions must follow these requirements:

(i) *Washing.* The label must state whether the product should be washed by hand or machine. The label must also state a water temperature that may be used. However, if the regular use of hot water will not harm the product, the label need not mention any water temperature. [For example, "Machine wash" means hot, warm or cold water can be used.]

(ii) *Drying.* The label must state whether the product should be dried by machine or by some other method. If machine drying is called for, the label must also state a drying temperature that may be used. However, if the regular use of a high temperature will not harm the product, the label need not mention any drying temperature. [For example, "Tumble dry" means that a high, medium, or low temperature setting can be used.]

(iii) *Ironing.* Ironing must be mentioned on a label only if it will be needed on a regular basis to preserve the appearance of the product, or if it is required under paragraph (b)(1)(v) of this section, *Warnings.* If ironing is mentioned, the label must also state an ironing temperature that may be used. However, if the regular use of a hot iron will not harm the product, the label need not mention any ironing temperature.

(iv) *Bleaching.* (A) If all commercially available bleaches can safely be used on a regular basis, the label need not mention bleaching.

(B) If all commercially available bleaches would harm the product when used on a regular basis, the label must say "No bleach" or "Do not bleach."

(C) If regular use of chlorine bleach would harm the product, but regular use of a non-chlorine bleach would not, the label must say "Only non-chlorine bleach, when needed."

(v) *Warnings.* (A) If there is any part of the prescribed washing procedure which consumers can reasonable be expected to use that would harm the product or others being washed with it in one or more washings, the label must contain a warning to this effect. The warning must use words "Do not," "No," "Only," or some other clear wording. [For example, if a shirt is not colorfast, its label should state "Wash with like colors" or "Wash separately." If a pair of pants will be harmed by ironing, its label should state "Do not iron."]

(B) Warnings are not necessary for any procedure that is an alternative to the procedure prescribed on the label. [For example, if an instruction states "Dry flat," it is not necessary to give the warning "Do not tumble dry."]

(2) *Drycleaning.*—(i) *General.* If a drycleaning instruction is included on the label, it must also state at least one type of solvent that may be used. However, if all commercially available types of solvent can be used, the label need not mention any types of solvent. The terms "Drycleanable" or "Commercially Dryclean" may not be used in an instruction. [For example, if drycleaning in perchlorethylene would harm a coat, the label might say "Professionally dryclean: fluorocarbon or petroleum."]

(ii) *Warnings.* (A) If there is any part of the drycleaning procedure which consumers or drycleaners can reasonably be expected to use that would harm the product or others being cleaned with it, the label must contain a warning to this effect. The warning must use the words "Do not," "No," "Only," or some other clear wording. [For example, the drycleaning process normally includes moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160 degrees F and restoration by steam press or steam-air finish. If a product can be drycleaned in all solvents but steam should not be used, its label should state "Professionally dryclean. No steam."]

(B) Warnings are not necessary to any procedure which is an alternative to the procedure prescribed on the label. [For example, if an instruction states "Professionally dryclean, fluorocarbon," it is not necessary to give the warning "Do not use perchlorethylene."]

(c) A manufacturer or importer must establish a reasonable basis for care information by processing prior to sale:

(1) Reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions on the label, including instructions when silence has a meaning. [For example, if a shirt is labeled "Machine wash. Tumble dry. Cool iron.," the manufacturer or importer must have reliable proof that the shirt is not harmed when cleaned by machine washing (in hot water), with any type of bleach, tumble dried (at a high setting), and ironed with a cool iron]; or

(2) Reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label. However, the manufacturer or importer need not have proof of harm when silence does not constitute a warning. [For example, if a shirt is labeled "Machine wash warm. Tumble dry medium", the

manufacturer need not have proof that the shirt would be harmed if washed in hot water or dried on high setting]; or

(3) Reliable evidence, like that described in paragraph (c) (1) or (2) of this section, for each component part of the product; or

(4) Reliable evidence that the product or a fair sample of the product was successfully tested. The tests may simulate the care suggested or warned against on the label; or

(5) Reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or

(6) Other reliable evidence.

§ 423.7 Certain piece goods.

This section applies to certain piece goods.

(a) Manufacturers and importers of certain piece goods must provide care information clearly and conspicuously on the end of each bolt or roll.

(b) Care information must say what regular care is needed for the ordinary use of the product, pursuant to the instructions set forth in § 423.6. Care information on the end of the bolt need only address information applicable to the fabric.

§ 423.8 Exemptions.

(a) Any item of textile wearing apparel, without pockets, that is totally reversible (i.e., the product is designed to be used with either side as the outer part or face) is exempt from the care label requirement.

(b) Manufacturers or importers can ask for an exemption from the care label requirement for any other textile wearing apparel product or product line, if the label would harm the appearance or usefulness of the product. The request must be made in writing to the Secretary of the Commission. The request must be accompanied by a labeled sample of the product and a full statement explaining why the request should be granted.

(c) If an item is exempt from care labeling under paragraph (a) or (b), of this section the consumers still must be given the required care information for the product. However, the care information can be put on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the care information before buying the product.

(d) Manufacturers and importers of products covered by § 423.5 are exempt from the requirement for a permanent care label if the product can be cleaned safely under the harshest procedures. This exemption is available only if there is reliable proof that all of the following washing and drycleaning procedures can safely be used on a product:

(1) Machine washing in hot water;

(2) Machine drying at a high setting;

(3) Ironing at a hot setting;

(4) Bleaching with all commercially available bleaches;

(5) Drycleaning with all commercially available solvents. In such case, the statement "wash or dry clean, any normal method" must appear on a hang tag, on the package, or in some other conspicuous place, so that consumers will be able to see the statement before buying the product.

If a product meets the requirements outlined above, it is automatically exempt from the care label requirement. It is not necessary to file request for this exemption.

(e) Manufacturers and importers need not provide care information with products sold to institutional buyers for commercial use.

(f) All exemption granted under § 423.1(c) (1) or (2) of the Care Labeling Rule issued on December 9, 1971, will continue to be in effect if the product still meets the standards on which the original exemption was based. Otherwise, the exemption is automatically revoke.

§ 423.9 Conflict with flammability standards.

If there is a conflict between this regulation and any regulations issued under the Flammable Fabrics Act, the Flammable Fabrics regulation govern over this one.

§ 423.10 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

Appendix A—Glossary of Standard Terms

1. *Washing, Machine Methods:*

a. "Machine wash"—a process by which soil may be removed from products or specimens through the use of water, detergent or soap, agitation and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold", hot water up to 150° F (66° C) can be regularly used.

b. "Warm"—initial water temperature setting 90° to 110° F (32° to 43° C) (hand comfortable).

c. "Cold"—initial water temperature setting same as cold water tap up to 85° C).

d. "Do not have commercially laundered"—do not employ a laundry which uses special formulations, sour rinses, extermely large loads or extermely high temperatures or which otherwise is employed for commercial, industrial or institutional use. Employ laundering methods designed for residential use or use in a self-service establishment.

e. "Small load"—smaller than normal washing load.

f. "Delicate cycle" or "gentle cycle"—slow agitation and reduced time.

g. "Durable press cycle" or "permanent press cycle"—cool down rinse or cold rinse before reduced spinning.

h. "Separately"—alone.

i. "With like colors"—with colors of similar hue and intensity.

j. "Wash inside out"—turn product inside out to protect face of fabric.

k. "Warm rinse"—initial water temperature setting 90° to 110° F (32° to 43° C).

l. "Cold rinse"—initial water temperature setting same as cold water tap up to 85° F (29° C).

m. "Rinse thoroughly"—rinse several times to remove detergent, soap, and bleach.

n. "No spin" or "Do not spin"—remove material start of final spin cycle.

o. "No wring" or "Do not wring"—do not use roller wringer, nor wring by hand.

2. *Washing, Hand Methods:*

a. "Hand wash"—a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap, and gentle squeezing action. When no temperature is given, e.g., "warm" or "cold", hot water up to 150° F (66° C) can be regularly used.

b. "Warm"—initial water temperature 90° to 110° F (32° to 43° C) (hand comfortable).

c. "Cold"—initial water temperature same as cold water tap up to 85° F (29° C).

d. "Separately"—alone.

e. "With like colors"—with colors of similar hue and intensity.

f. "No wring or twist"—handle to avoid wrinkles and distortion.

g. "Rinse thoroughly"—rinse several times to remove detergent, soap, and bleach.

h. "Damp wipe only"—surface clean with damp cloth or sponge.

3. *Drying, All Methods:*

a. "Tumbel dry"—use machine dryer. When no temperature setting is given, machine drying at a hot setting may be regularly used.

b. "Medium"—set dryer at medium heat.

c. "Low"—set dryer at low heat.

d. "Durable press" or "Permanent press"—set dryer at premanent press setting.

e. "No heat"—set dryer to operate without heat.

f. "Remove promptly"—when items are dry, remove immediately to prevent wrinkling.

g. "Drip dry"—hang dripping wet with or without hand shaping and smoothing.

h. "Line dry"—hang damp from line or bar in or out of doors.

i. "Line dry in shade"—dry away from sun.

j. "Line dry away from heat"—dry away from heat.

k. "Dry flat"—lay out horizontally for drying.

l. "Block to dry"—reshape to original dimensions while drying.

m. "Smooth by hand"—by hand, while wet, remove wrinkles, straighten seams and facings.

4. *Ironing and Pressing:*

a. "Iron"—Ironing is needed. When no temperature is given iron at the highest temperature setting may be regularly used.

b. "Warm iron"—medium temperature setting.

c. "Cool iron"—lowest temperature setting.

d. "Do not iron"—item not to be smoothed or finished with an iron.

e. "Iron wrong side only"—article turned inside out for ironing or pressing.

f. "No steam" or "Do not steam"—steam in any form not to be used.

g. "Steam only"—steaming without contact pressure.

h. "Steam press" or "Steam iron"—use iron at steam setting.

i. "Iron damp"—articles to be ironed should feel moist.

j. "Use press cloth"—use a dry or a damp cloth between iron and fabric.

5. *Bleaching:*

a. "Bleach when needed"—all bleaches may be used when necessary.

b. "No bleach" or "Do not bleach"—no bleaches may be used.

c. "Only non-chlorine bleach, when needed"—only the bleach specified may be used when necessary. Chlorine bleach may not be used.

6. *Washing or Drycleaning:*

a. "Wash or dryclean, any normal method"—can be machine washed in hot water, can be machine dried at a high setting, can be ironed at a hot setting, can be bleached with all commercially available bleaches and can be drycleaned with all commercially available solvents.

7. *Drycleaning, All Procedures:*

a. "Dryclean"—a process by which soil may be removed from products or specimens in a machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include moisture addition to solvent up to 75% relative humidity, hot tumble drying up to 160° F (71° C) and restoration by steam press or steam-air finishing.

b. "Professionally dryclean"—use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both. Such modifications or special warnings must be included in the care instruction.

c. "Petroleum", "Fluorocarbon", or "perchlorethylene"—employ solvent(s) specified to dryclean the item.

d. "Short cycle"—reduced or minimum cleaning time, depending upon solvent used.

e. "Minimum extraction"—least possible extraction time.

f. "Reduced moisture" or "Low moisture"—decreased relative humidity.

g. "No tumble" or "Do not tumble"—do not tumble dry.

h. "Tumble warm"—tumble dry up to 120° F (49° C).

i. "Tumble cool"—tumble dry at room temperature.

j. "Cabinet dry warm"—cabinet dry up to 120° F (49° C).

k. "Cabinet dry cool"—cabinet dry at room temperature.

l. "Steam only"—employ no contact pressure when steaming.

m. "No steam" or "Do not steam"—do not use steam in pressing, finishing, steam cabinets or wands.

8. *Leather and Suede Cleaning:*

a. "Leather clean"—have cleaned only by a professional cleaner who uses special leather or suede care methods.

Dated: May 13, 1983.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-13576 Filed 5-19-83; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

Foreign Equipment Purchases by, and Repairs to, American Vessels

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to state explicitly that an appeal for the remission or refund of duties paid to Customs on the cost of repairs made to American vessels outside the United States, because of circumstances such as stress of weather or other casualty must be made within two years after liquidation of a vessel repair entry. This amendment is proposed to clarify existing regulatory provisions.

DATE: Comment must be received on or before July 19, 1983.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jerry C. Laderberg, Carrier Rulings Branch, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5706).

SUPPLEMENTARY INFORMATION:

Background

The owners or masters of certain American vessels are required by section 466(a), Tariff Act of 1930, as amended (19 U.S.C. 1466(a)), to declare, enter, and pay a special 50 percent ad valorem duty on the cost of all repairs (including purchases of equipment, repair parts, or materials) made to the vessel outside the United States. If the owner or master disputes the decision of the appropriate Customs officer to classify an expenditure as dutiable, the owner or master may file a protest with Customs challenging the classification, rate, and amount of duties chargeable, in accordance with section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514). Section 466(d), Tariff Act of 1930, as amended (19 U.S.C. 1466(d)), provides for remission or refund of the duty if (1) the repairs or purchases were necessary to repair damage caused by stress of weather or other casualty while the vessel was in the regular course of its voyage and to secure the safety and seaworthiness of the vessel to enable it to reach its port of destination, (2) the equipment, repair parts, or materials purchased were of American origin and installed by the vessel's crew or U.S. residents, or (3) the equipment, repair parts, or materials purchased, including the labor cost involved, were used as dunnage for cargo, or for the erection of temporary bulkheads or similar devices for the control of cargo.

The administrative procedure for remission or refund of duties when the master or vessel owner alleges that an expenditure covered by an entry is not subject to duty under section 466(a), or within the circumstances specified in section 466(d), is set forth in § 4.14, Customs Regulations (19 CFR 4.14).

The effect that liquidation of a vessel repair entry has on the right to appeal by the master or owner of a vessel depends on whether the appeal is based upon a question of classification (dutiability of the foreign expenditure) or remission or refund of duties due to certain circumstances. If the expenditure is alleged not to be dutiable under section 466(a), the owner of the vessel must file a protest in accord with section 514 within 90 days of liquidation of the entry to obtain further review of the claim. However, if the expenditure is alleged to warrant relief pursuant to section 466(d), because of circumstances such as stress of weather or other casualty, there is presently no specific time limit after liquidation of the entry within which a request for additional consideration of the claim must be filed. An appeal from that decision may be made at any time after liquidation of the entry. However, as noted below, Customs is proposing a requirement whereby an appellant would have two years from the date of liquidation of the vessel repair entry within which to present to Customs "good and sufficient evidence" of a claim for relief.

Prior to October 1980, the above dichotomy was stated in the last sentence of former § 4.414(e), Customs Regulations, as follows:

> Inasmuch as an unprotested liquidation insofar as it relates to the classification of items under section 466(a) of the Tariff Act of 1930, as amended, is final at the expiration of 90 days, a subsequent application in regard to such classification cannot be considered in the absence of a timely protest.