UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20580

Division of Enforcement
Bureau of Consumer Protection

September 29, 2008

Kathleen K. Lucchesi, Esquire
Johnston, Allison & Hord, P.A.
1065 East Morehead Street
Charlotte, NC 28204

Dear Ms. Lucchesi:

I write in response to your June 5, 2008, letter on behalf of the Hosiery Association ("THA" or "the Association"). Specifically, THA requested an opinion that an exemption to the Care Labeling Rule, 16 C.F.R. Part 423, granted for "hosiery" in a 1972 letter from then Bureau of Consumer Protection Director Robert Pitofsky ("Pitofsky letter") applies to all footless tights or footless pantyhose (collectively "footless tights").

We decline to issue the opinion you request because, as explained below, the Pitofsky letter's hosiery exemption does not to apply to footless tights. However, we believe a separate exemption in the Pitofsky letter covers footless tights weighing 50 denier or less.[1]

I. The Pitofsky Letter

In 1972, THA's predecessor petitioned the Commission seeking a Care Labeling Rule exemption under then Section 423.1(c)(1) of the Rule for certain hosiery items. That section authorizes exemptions for an article of clothing when the "utility or appearance [of the article] would be substantially impaired by a permanently attached label." *See* 36 Fed. Reg. 23883, 23884 (Dec. 16, 1971), attached. In response, Director Pitofsky, acting on behalf of the Commission,[2] granted exemptions for, among other things, "hosiery" and "girls' and women's sheer hosiery and panty hose (50 denier or less)," explaining that due to these products' "extreme delicacy," labeling them would impair their utility. Significantly, the Division of Enforcement has taken the position that the hosiery exemption granted in the Pitofsky letter does

[1]In issuing this opinion, we understand, based on an August 19, 2008 email from THA to the Division, that footless hosiery (i.e. footless tights) are items that cover the knee.

[2]In 1972, the Commission delegated its authority to grant exemptions to the Care Labeling Rule to the Director of the Bureau of Consumer Protection. *See* 37 Fed. Reg. 9210, attached.

not cover items lacking feet,[3] including footless tights.

II. The Hosiery Exemption Does Not Cover All Footless Tights.

Your letter makes several arguments in support of your conclusion that footless tights fit within the hosiery exemption. These arguments include noting that industry typically classifies and sells footless tights as hosiery and explaining that the FTC's Care Labeling Rule guidance document does not foreclose the application of the exemption to footless tights. However, we do not agree that the hosiery exemption covers footless tights, for the following reasons.

First, including footless tights within the hosiery exemption would be inconsistent with the Care Labeling Rule's provision limiting the exemption to only those items whose utility or appearance would be impaired by a label. Consistent with that provision, the Pitofsky letter justified the exemption for hosiery by noting that attaching a label to a hosiery item such as a sock or stocking "would result in an uncomfortable, unattractive or damaged article." In contrast, attaching labels to footless tights would not necessarily impair those items' utility or appearance. Like pants, footless tights have waistbands on which a label can be placed and are not necessarily so fragile so as to be "functionally disposable."[4]

Second, including footless tights within the hosiery exemption would result in an illogical exemption scheme. As discussed above, the Pitofsky letter provides exemptions for both hosiery and for "sheer hosiery and panty hose" weighing 50 denier or less. If, however, the hosiery exemption covered footless tights, as you suggest, then that exemption would cover pantyhose without feet regardless of weight, while the exemption for sheer hosiery and panty hose would exclude pantyhose with feet weighing more than 50 denier.

III. The Pantyhose Exemption Covers Footless Tights Weighing 50 Denier or Less.

Although the hosiery exemption does not cover footless tights, we believe that the pantyhose exemption covers footless tights weighing 50 denier or less. As explained above, the Pitofsky letter's exemption for pantyhose and sheer hosiery exempts those items if they weigh no more than 50 denier. The letter justified this exemption by noting that those articles are extremely delicate and essentially disposable. That logic applies with equal force to pantyhose with and without feet. Accordingly, we believe that the pantyhose exemption covers footless tights that cover the knee and weigh 50 denier or less.

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[3] As noted in your letter, an FTC guidance document, "Clothes Captioning: Complying with the Care Labeling Rule," states that anklets and leg warmers fall within the exemption. However, these items are essentially like socks and stockings because they are sold in pairs and lack a waistband. Therefore, placing a label on them could cause discomfort for consumers, thereby impairing the article's utility. Thus, they come within the Pitofsky letter's hosiery exemption.

[4] As explained in Section III, below, footless tights weighing no more than 50 denier do meet the functionally disposable criteria and, therefore, fall within the exemption.

In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c), you should know that this is a staff opinion only and has not been reviewed or approved by the Commission or by any individual Commissioner. This opinion is given without prejudice to the right of the Commission to later rescind the advice and, where appropriate, to commence an enforcement action. In accordance with Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, your request for advice, any correspondence related thereto, and this response will be placed on the public record.

We appreciate your taking the time to write to us. Please feel free to call Matthew Wilshire, 202-326-2976, or Steve Ecklund, 202-326-2841, if you have any further questions.

Sincerely yours,

James Kohm
Associate Director for Enforcement

cc: Chris Moore

Attachments

Dr. Samuelsen further recommended that the Commission should encourage the development and early implementation of a posting system using symbols rather than numbers (Record 1425).

Others advocated postponing further the effective date of the rule pending additional study of the development of an improved system of gasoline classification. (Record 1230–1231, 1389, 1327, 1331, 1371, 1402, 1383–1384.)

The Commission determined, however, that further delay pending additional study to develop a system of gasoline classification would not be in the public interest. The public will be better served by requiring the marketers and distributors of gasoline to provide consumers now with the information as to octane number called for by the promulgated rule.

After considering all pertinent comments and views submitted, the Commission proposed a revision of the rule. The proposed revision continued to require the posting of the minimum octane numbers on the pumps. In lieu of use of the minimum research octane number, the proposed revision required the posting of the minimum octane number derived from the sum of Research (R) and Motor (M) octane numbers divided by 2; i.e., (R+M)/2.

In order to afford interested parties an opportunity to comment, notice of the proposed revision to the rule appeared in the Thursday, August 19, 1971 (36 F.R. 16120), edition of the FEDERAL REGISTER and was announced by a press release of the same date. Additionally, the Commission reopened the public record until September 21, 1971, for the receipt of any further comment on the proposed revision and postponed indefinitely the effective date of the rule pending final decision of the Commission in this matter.

Comments regarding the revision to the rule varied from that of urging the posting of an octane number now, either research or (R+M)/2 (Record 1479, 1571, 1549–1550, 1487, 1466, 1428E, 1428G, 1428K, 1430, 1431, 1433, 1435, 1437, 1440, 1443, 1444, 1445, 1459, 1460, 1475, 1477, 1538, 1540, 1541, 1543, 1545, 1560, 1572, and 1573); to return to the rule which would post only the research octane number (Record 1479–1480, 1549, 1490); support of the use of (R+M)/2 as a more suitable number to smaller refiners (Record 1457–1458, 1442 and 1476); and acknowledgment by some large refiners that the use of (R+M)/2 is a better indicator of a gasoline's actual road octane performance than is the research octane number (Record 1449–1450, 1473, 1492, and 1557).

Further postponement of the rule in favor of the use of a gasoline classification system, i.e., grading gasoline in terms of its antiknock values and other components such as lead content, without actually posting an octane number, again was suggested as an alternative by several parties opposing the concept of posting an octane number on the pump. (Record 1565–1566, 1551–1559, 1456, 1522, and 1526). Other alternate suggestions in lieu of octane number posting included classification systems utilizing specific octane values based on (R+M)/2 for each grade or classification but under the suggestions, and contrary to the promulgated rule, the octane number would not have appeared on the pump (Record 1472, 1450, 1464 and 1492).

Summary and conclusion. The Commission reaffirms the numbered conclusions as previously stated pp. 39–40 of this Statement of Basis and Purpose.

By virtue of the Commission's reopening the public record of these proceedings for the reception of further data and comments relating to the proper octane reference number to utilize in the rule, the Commission further concludes that the record demonstrates the desirability of modifying the rule so that it calls for the use of a number other than the research octane number alone.

The use of (R+M)/2 in determining octane is a technically more precise number than the research octane number alone. The fact that the posting of that number will provide more meaningful information to consumers, is supported by the record. Its use in determining the octane number was recommended by Dr. Samuelsen, the Commission consultant (Record 1186, 1311, 1314, 1327, 1369, 1378, 1388, 1421, 1442, 1449, 1457, 1473, 1479, 1492, 1520, 1524, and 1557).

In considering the various methods available for ascertaining octane values (i.e., research, motor, road or averaging of research and motor numbers), the use of an octane number derived from (R+M)/2 is the best to adequately reflect the road octane performance of fuels for the overall car population. It is the simplest, it is technically more precise, and it is a meaningful parameter having applicability to automotive engines (Record 1311, 1423).

The Commission is further persuaded to the use of (R+M)/2 by the fact that both industry representatives and Government agencies dealing with automotive gasoline are shifting or have shifted to the use of (R+M)/2 as the primary benchmark in evaluating gasolines' octane capabilities. The American Society For Testing and Materials has obtained preliminary approval of its members to adopt (R+M)/2 as the governing octane number in the revised Standard Specifications For Gasoline. This specification is universally used by both industry and Government purchase agencies (Record 1536, 1620). The Bureau of Mines now includes in its Petroleum Products Survey the (R+M)/2 octane number as well as the research and motor method octane numbers (Record 1639–1684). Government purchase specifications presently utilize (R+M)/2 as the controlling octane requirement (Record 1311, 1585, 1600).

The recommendations for gasoline classification systems, such as that of The American Petroleum Institute-American Society For Testing and Material—Society of Automotive Engineers Ad Hoc Committee (Record 1568); Texaco, Inc. (Record 1450); Sun Oil Co. (Record 1472); and Atlantic Richfield Co. (Record 1492) also would utilize (R+M)/2 as the number in their systems which would determine the octane values of the different gasoline classifications they recommend.

The Commission has concluded, however, that further delay pending additional study to develop a system of gasoline classification would not be in the public interest. The public will be better served by requiring the marketers and distributors of gasoline to provide consumers now with the information as to octane numbers called for by the promulgated rule.

Future developments in gasoline composition or engine designs may cause the number utilized to be changed. As the octane requirements vary over the years, the consumer is entitled to be made aware of the changing values and, if necessary, the formulation of (R+M)/2 can be modified. However, the posting of an octane number on the pump based on the (R+M)/2 formula, will provide consumers with a uniform numbering system now. This will enable a consumer to evaluate the octane number and price of gasoline in relation to the requirements, or his preferences, for his automobile or other automotive product.

The vast majority of gasoline purchasers have not been exposed to any octane numbers because most marketers do not post an octane number on their pumps. Use of a system of uniform numbers by all marketers will serve the interests of all consumers due to the fact that a retail purchaser of gasoline will be provided with an octane rating number determined in a standard manner industrywide, regardless of the brand of gasoline. Consequently, consumers will be in a better position to make an informed purchase of gasoline.

The temporary inconvenience to those relatively few marketers presently posting research octane ratings is outweighed by the benefit to consumers being provided with an octane rating number uniformly derived by use of the formula (R+M)/2.

The Commission urges the cooperation of automobile manufacturers in publishing in the owner's manual as soon as practicable the recommended gasoline usage in terms of octane numbers based on (R+M)/2.

While a future, improved system of providing consumers with meaningful information regarding the gasoline they buy may develop sooner or later, there is no reason why during the interim period the consumer should not have the benefit of an essential piece of information easily made available through posting the minimum octane rating of the gasoline dispensed from the pump.

Therefore, on the basis of the evidence adduced in the record of this proceeding, the Commission modifies its unnumbered conclusion set out on page 40 of this Statement of Basis and Purpose so as to read that:

"Therefore, on the basis of the Record in this proceeding the Commission concludes that the failure on the part of marketers of gasoline for general automotive use to affirmatively disclose the minimum octane number, derived from the formulation of (R+M)/2, of the gasoline to the consumer at the point of sale (the pump) in a readily accessible manner constitutes an unfair method of competition and an unfair trade practice in violation of section 5 of the Federal Trade Commission Act."

VIII. *The Commission's rule making authority.* The argument was made during the course of this proceeding, as has been done in other Trade Regulation Rule proceedings, that the Commission has no authority to promulgate Trade Regulation Rules. (See Record pp. 307, 359, 361, 364, 434 and n. 1, 578, 626, 702, 1447, 1455, 1483, 1492, 1520, and 1524.)

In its Statement of Basis and Purpose accompanying the Cigarette Rule, the Commission elaborated at length on its trade regulation rulemaking authority and concluded that a Trade Regulation Rule is "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) The Commission continues to adhere to that view.

IX. *The effective date of the rule.* The effective date of the Rule will be March 15, 1972.

[FR Doc.71-18255 Filed 12-15-71;8:45 am]

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL

Promulgation of Trade Rule and Statement of Basis and Purpose

The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41, et seq.,

and the provisions of Subpart B, Part 1 of the Commission's Procedures and Rules of Practice, 16 CFR 1.11, et seq., has conducted a proceeding for the promulgation of a trade regulation rule pertaining to the care labeling of textile products. Notice of this proceeding, including proposed rules, was published in the FEDERAL REGISTER on November 4, 1969 (34 F.R. 17776). Interested parties were thereafter afforded opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rules.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notice, as prescribed by law, and has determined that the adoption of the trade regulation rule and statement of its basis and purpose set forth herein is in the public interest.

§ 423.1 The Rule.

(a) It is an unfair method of competition and an unfair or deceptive act or practice to sell, in commerce, as "commerce" is defined in the Federal Trade Commission Act, any textile product in the form of a finished article of wearing apparel which does not have a label or tag permanently affixed or attached thereto by the person or organization that directed or controlled the manufacture of the finished article, which clearly discloses instructions for the care and maintenance of such article.

(b) It is an unfair method of competition and an unfair or deceptive act or practice to sell, in commerce, as "commerce" is defined in the Federal Trade Commision Act, any textile product in the form of piece goods, made for the purpose of immediate conversion by the ultimate consumer into a finished article of wearing apparel, which is not accompained by a label or tag which:

(1) Clearly discloses instructions for the care and maintenance of such goods, and

(2) Is provided by the person or organization that directed or controlled the manufacture of such goods, and

(3) Can, by normal household methods, be permanently affixed to the finished article by the ultimate consumer.

(c) (1) The Commission shall consider, upon good cause shown and upon written petition to be placed on the public record, addressed to the Secretary of the Commission, any request for exemption of any specific article from the coverage of paragraph (a) of this section. In making this determination, the Commission shall consider the physical characteristics of the article and whether its utility or appearance would be substantially impaired by a permanently attached label. If such request for exemption is granted, the information required by paragraph (a) of this section must accompany such article whenever it is sold in commerce, as "commerce" is defined by the Federal Trade Commission Act, but does not have to be included on a label or tag permanently affixed or attached thereto.

(2) The Commission shall also consider, under the procedure described above, requests for exemption from this section for specific articles intended to be sold at retail for $3 or less and which are completely washable under all normal and reasonably forseeable circumstances.

(d) For the purposes of this section, the following definitions shall obtain:

(1) "Textile product" is any commodity spun, woven, knit, or otherwise made in whole or in part from fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser;

(2) "Finished article of wearing apparel" is any costume, garment, or article of clothing whose manufacture is complete and which is customarily used to cover or protect any part of the body, including hosiery, but excepting all other footwear, and such articles that are used exclusively to cover or protect the head or the hands;

(3) "Piece goods" are textile products sold on a piece by piece basis from bolts, pieces, or rolls;

(4) "A label or tag permanently affixed or attached hereto" is a label or tag attached or affixed in such a manner that it will not become separated from the product during its useful life;

(5) "Accompanied by a label or tag" means a tag must be included with every individual purchase of piece goods by the ultimate consumer, regardless of the size and shape of such goods.

NOTE: Instructions for the care and maintenance of any article within the scope of paragraphs (a) and (b) of this section 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, dry cleaning, 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.

Examples. The following are examples of instructions which are deemed acceptable under this section:

1. Machine wash in sudsy water at medium temperature, rinse well, tumble dry thoroughly, hang immediately. Garment may be drip dried and steam pressed.

2. Machine wash warm. Gentle cycle. Do not use chlorine bleach.

3. Hand wash cold. Do not twist or wring. Reshape. Dry flat. Do not dry clean.

4. Dry clean only. Do not use petroleum solvents, or the coin operated method of drycleaning.

AUTHORITY: The provisions of this Part 423 issued under 38 Stat. 717, as amended; 15 U.S.C. 41–58.

Effective: July 3, 1972.

Promulgated: December 9, 1971.

By the Commission.

[SEAL] CHARLES A. TOBIN, *Secretary.*

STATEMENT OF BASIS AND PURPOSE

I. *Background—A. History and notice of hearing.* Care labeling is not a new idea. In 1938, a study sponsored by the National Retail Dry Goods Association (now the National Retail Merchants Association) observed that "* * * informative labeling remains the one big problem manufacturers and retailers must cope with in the very near future."[1] During the 1958 Senate hearings on the Textile Fiber Products Identification Act, several opponents of the legislation argued that consumers need to be advised as to the care and maintenance of textiles rather than fiber content.[2] In March 1967, the Industry Advisory Committee on Textile Information adopted "A Voluntary Industry Guide for Improved and Permanent Care Labeling of Consumer Textile Products".[3] In addition, Congress has considered several bills directed at the problem of care labeling.

(As used herein "Record" refers to the written comments and materials in the public record of this proceeding. "Transcript" refers to the transcript of the public hearing of this proceeding.)

On November 4, 1969, the Commission published in the FEDERAL REGISTER (34 F.R. 17776), three proposed care labeling rules. In addition to the proposed rules, the Commission gave notice to all interested parties of hearings to be held beginning in January 1970. Three days of hearings were held in January and three in March 1970, at which oral testimony was taken and written comments were submitted by interested members of the textile industry and by various individuals and consumer groups. These comments are included in the public record.

The final rule contained herein is grounded mainly upon the extensive testimony given at the hearings and the written statements received.

It is to be emphasized that since this rule has been limited with respect to product coverage, the Commission reserves the right to consider the addition of other products at a later date.

B. *Reasons for the hearing.* The public notice published by the Commission stated that,

[1] Record, Vol. 3, p. 647, Black and Judelle, "Preliminary Report of a Nation-Wide Survey of Informative Labeling in Department Stores," May 1938, National Retail Merchants Association.

[2] U.S. Senate, 85th Congress, second sess., hearings before the Committee on Interstate and Foreign Commerce on H.R. 469, Feb. 24–27, 1958; Statement of W. Gordon McKelvy, Southern Garment Manufacturers Association, Inc., at pp. 220–221; statement of Louis W. Haviland, American Institute of Laundering at p. 249; statement of Arthur R. Wachter, American Viscose Corp., at pp. 253–254.

[3] Industry Advisory Committee on Textile Information Report (IACTI), May 1966, pp. 2–3. The committee (IACTI) was a volunteer group composed of representatives from the textile, apparel and related industries. It was formed in January 1966, in cooperation with the President's Special Assistant on Consumer Affairs.

in the field of textile products, there is a vast array of fibers, fabrics, and finishes. Each of these products has unique care performance characteristics and each requires the application of specific care techniques. However, most manufacturers and marketers of these products do not disclose in a permanent form care instructions to prospective purchasers. When this information is given, it is normally in the form of detachable labels or tags which may easily be lost or destroyed by the consumer shortly after purchase. As a result, consumers are unable to determine with certainty what care procedures or techniques should be used to insure that the utility and appearance of the product will not be impaired and that satisfactory results will be achieved. In addition, they are deprived of the opportunity to make a rational and informed choice among competing textile products because of the absence of care information upon which to base an intelligent comparison. The notice stated further that failure to give adequate care instructions may constitute an unfair method of competition in commerce and an unfair or deceptive act or practice in commerce in violation of section 5 of the Federal Trade Commission Act.

C. *Statement of proposed rule.* Accordingly, the Commission proposed the following trade regulation rules:

"(1) It is an unfair method of competition and an unfair or deceptive act or practice to sell any textile product in commerce, as 'commerce' is defined in the Federal Trade Commission Act, which does not have a label or tag permanently affixed or attached thereto which accurately and clearly discloses proper instructions for the laundering and cleaning of such product, as well as any other instruction material to the proper care and normal use of such product, which, if not followed, may result in the impairment of its utility or appearance.

"(2) It is an unfair method of competition and an unfair or deceptive act or practice to sell any textile product in commerce, as 'commerce' is defined in the Federal Trade Commission Act, which does not contain, either on the label or tag permanently affixed or attached thereto disclosing instructions for the laundering, cleaning, and care of such product, or on a separate permanently affixed or attached label or tag, a certification from the manufacturer of the product to the ultimate consumer-purchaser that the instructions for the laundering, cleaning, and care of such product disclosed on the permanent label or tag are valid and proper, and will not impair the product's utility or appearance.

"(3) No person shall be adjudged in violation of Rule (1) of the rules if he establishes a guaranty received in good faith, signed by and containing the name and address of the person residing in the United States by whom the textile product guaranteed was manufactured or from whom it was received, that said product is not mislabeled under the provisions of the rules. Said guaranty shall be (a) a separate guaranty specifically designating the textile product guaranteed, in which case it may be on the invoice or other paper relating to said product; or (b) a continuing guaranty given by seller to the buyer applicable to all textile products sold to or to be sold to buyer by seller; or (c) a continuing guaranty filed with the Commission applicable to all textile products handled by a guarantor.

"The furnishing of a false guaranty, except in good faith reliance upon a guaranty received from a supplier, is an unfair method of competition and an unfair and deceptive act or practice."

* * * * *

"For purposes of this proceeding, 'textile' product is any commodity, made in whole or in part of fibers, yarn or fabric, which commodity is intended for sale or resale, in the form manufactured, to consumer-purchasers. 'Laundering and cleaning instructions' include information with respect to dry cleaning and pressing; washing, drying, and ironing; or other applicable procedures used to clean a particular textile product."

Interest in the trade regulation rule proceeding was substantial and the response to the invitation for comments resulted in a voluminous public record.

The public hearings on the proposed rules were held before William D. Dixon, Assistant Director, Division of Rules and Guides, a presiding officer appointed by the Commission. All persons who sought to express their views either orally or in writing were able to do so. The stenographic transcript, consisting of 788 pages of testimony, has been made a part of the public record.

II. *The need for a care labeling rule—A. Present sources of care information.* The technological advances which have occurred in the apparel and cleaning industries have had a significant effect on the care process.[4] The large number of products on the market, each with different care performance characteristics, has made it almost impossible for consumers to be informed about any one product, much less the entire range of products.

[4] By far the largest potential for different care performance characteristics lies in the possibilities which exist as a result of the many sophisticated and complex manufacturing processes that components of apparel products can be subjected to. Yarn counts, weaving combinations, dyeing, printing, and finishing combinations all combine to make the total potential for variety in finished apparel components virtually incalculable. One expert described the possible variations as follows:

"If we were to take the largest single use combination such as 65% polyester 35% cotton and eliminate the variations of manufacturer or type within manufacturer, we then arrive at variations of different yarn counts all the way from coarse (6's) in the knitting industry to fine (60's) in the woven goods industry. These can be further varied as to twist multiplier or number of terms per inch in order to obtain specific yarn hardness or performance characteristics.

These variations can then be further permuted on looms or knitting machines from simple plain weaves and stockinette stitches to fancy dobbies and jacquards. It is further complicated by the dyeing and finishing operation which could involve myriad colors and/or print patterns to variations in hand and/or surface and performance characteristics.

If we then take this same simple two-fiber combination, multiply it by a variation of only 10 yarn combinations, which is an extremely small number, furthered by perhaps 10 more variations within each yarn size for the twist multiplier and multiplied by a minimum of 25 weaving combinations complicated still further by an extremely low estimate of 100 dyeing, printing and/or finishing combinations, we can easily see that this one simple fiber combination has a quarter of a million permutations. When we add to this the other fiber blends which are available on the market the resultants, as can be seen, are astronomical and have quite frankly never been calculated. It would appear that there are 10 million or more different kinds of fabrics available on the market at any given instant and daily certain fabrics are being withdrawn and others being added to the list in order to supply industry's need to satisfy consumer demands in both the area of high performance and style." (Record, Vol. 8, pp. 1546–1547.)

As a result, the traditional source of care information, personal experience[5] based on trial and error, no longer meets the needs of consumers.[6]

Information derived from personal experience may indeed be adequate when the fibers and other components of wearing apparel are relatively few, or when the manufacturing processes to which these components are subjected are uncomplicated, or when the care procedures are simple. But personal experience cannot readily be applied to whatare basically new products or complex variations of old products.[7] Technological advances in components and manufacturing processes are being made at a rapid rate and variations of familiar textile products are continually appearing only to be replaced by products of more recent development.[8] In

[5] "Care problems * * * must continue to be handled as in the past, by general care instructions * * * and by trial and error by consumers." (Record, Vol. 3, p. 503); "Some time in the marketplace is usually required before the new items can really be judged. The so-called guinea pigs in this instance usually pay higher prices to be among the first to get the new items * * *." (Record, Vol. 8, p. 2295.)

[6] Report for the President's Committee on Consumer Interests prepared by Consumers Union of the U.S., Inc., April, 1965: "Problems Consumers Face in the Field of Textiles and Clothing, p. 1.

[7] Record, Vol. 8, p. 2031, American Home Appliance Manufacturers release, dated February 18, 1970, summarizing the results of a laundry study conducted by Dr. Johnson of Southern Illinois University: "[There are] many areas of confusion on the part of today's homemaker concerning the proper use of new products and techniques * * *. A great deal of confusion was revealed concerning the proper treatment of permanent press and wash and wear fabrics." Record, Vol. 6, pp. 831–5, National Consumer League: "Consumers today are constantly being confronted with textiles for whose care nothing in their experience prepares them adequately * * *. It is almost impossible to be sure whether to wash in hot, warm or cold water, whether to drip-dry or spin-dry".

Record, Vol. 8, p. 1632, Pennsylvania League for Consumer Protection. "Shoppers are daily confronted with new garments with new features and nothing they have encountered in their own experiences can prepare them in determining the value of miracle fabrics in terms of style, function, performance or care.

Transcript, p. 24, statement of Mrs. Margaret Dana, Consumer Relations Counsel: "[T]hey have slowly been discovering that along with the wonders of fabric innovation, new services, new fibers, there has also come a loss of traditional knowhow in dealing with them."

[8] Record, Vol. 8, p. 1573, American Apparel Manufacturers Assn., Inc., Exhibit D. See also, Record, Vol. 6, p. 937–8, American Society for Testing and Materials: "With new textile products being introduced at an ever increasing rate, it is impossible for the ultimate consumer to know the technicalities of washing conditions, drycleaning, pressing and ironing. This becomes more complicated when a textile consumer product is a composite of many materials of varying properties that are frequently treated with various chemical finishes and types of dyes." Record, Vol. 8, p. 1631, Pennsylvania League for Consumer Protection: "New fibers, blends, yarns, and finishing processes have come so rapidly and are so endless that the consumer who takes the trouble to learn about a commodity soon finds his knowledge obsolete or that it is almost impossible to keep up to date with change."

sum, the number of different products with different care performance characteristics has become so great as to foreclose any possibility that one person could ever accumulate enough personal information, or be able to recall this information when it is needed.[8]

Sales clerks and other retail store personnel have served in the past as a useful source of care information. These sales personnel deal with the same or similar products over a long period of time and often have occasion to discuss care performance characteristics with their customers. Their advice could be especially valuable because it is given at the point of sale. Many store owners admit, however, that even their most experienced sales personnel are unable to advise consumers properly because of the great diversity of fibers and finishes.[10] The rapid expansion of self-service outlets and the corresponding decline in the need for highly trained sales personnel has further diminished the availability of this traditional source of care information.[11]

Advertising of the textile and apparel industries could conceivably be a source of care information. But mass media advertising tends to supply mainly promotional and uninformative material. And while this advertising may create the impression of ease of maintenance; very little, if any, specific care instruction is provided and there appears to be no real prospect of significant change in this regard.[12]

Nor does it appear that industry-sponsored voluntary labeling programs are likely to be successful.[13] As indicated earlier, an Industry Advisory Committee on Textile Information (IACTI) was established in 1967 in response to a request by the then Special Assistant to the President for Consumer Affairs, Mrs. Esther Peterson. The program included: Participation by industry members on a voluntary basis; a recommendation for care labels for all products which require "special" care; and permanent attachment of the labels to the product.[14] The record evidence indicates that these guidelines have not been successful despite the best efforts of the members of the Advisory Committee. Few manufacturers have implemented the program. Mrs. Virginia Knauer, successor to Mrs. Peterson, observed that: "* * * the evidence at point of sale certainly seems to indicate a rather slow implementation of the good work of the guide—results so far dim the hope that a solution will come in the near future for voluntary action."[15] To the extent the industry does now provide care information, it is in the form of nonpermanent, detachable labels which more often than not are lost after the purchase is made.[16]

Another potential source of care information is consumer education. Most consumer education programs, however, convey only the most general information which is unrelated to specific products, models, or brand names.[17] And while various consumer-oriented publications, such as Consumer Reports, offer an evaluation of specific products by brand and model, the number of textile products requiring such evaluation far exceed the resources of these testing organizations.[18] These private testing facilities cannot even begin to cope with fiber changes made from year to year. Finally, neither the broad consumer education programs nor private testing programs present the information in such a manner that it is available for use by the consumer either at the point of sale or when it is actually needed for care of the product.[19]

B. *Statements in support of a care labeling rule.* One indication of the importance of care information and care labeling is the size of the public record which was developed in response to the Commission's Public Notice. Over 750 letters were received from individuals and over 225 statements and letters were received from the textile industry, trade associations, consumer groups and other interested persons and organizations. Forty-six witnesses presented their views at the hearings.

Of the letters from individuals, all but 36 indicated a general approval of a care labeling program. Only four writers indicated that they did not approve of such a program. The Neighborhood Cleaners Association, representing dry cleaners located in New York, New Jersey, and Connecticut, submitted a petition signed by approximately 47,000 consumers in favor of care labeling.[20]

Two opinion surveys were conducted expressly for this rulemaking proceeding. In the first, conducted by George Washington University Law Center, 169 out of 170 responses approved of the concept of care labeling. There was an indication in 120 of these responses that the consumer had actually experienced damage to a garment because of improper care.[21] In the second survey, conducted by the Bucks County Consumer 100, a consumer organization founded by Margaret Dana of the Consumer Relations Counsel, 29 of 38 replies to a five-part questionnaire indicated a pressing need for care labeling.[22]

Other surveys were conducted by experts at the University of Vermont Extension Services,[23] the New York State College of Human Ecology,[24] Good Housekeeping Maga-

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[8] Supra note 6, 1966 Consumers Report, at p. 1. "At the same time, few would deny that consumers have fallen hopelessly behind in their understanding of modern textiles. The most knowledgeable people have trouble identifying the fabric of which a garment is made, and even when given this information, they cannot adequately predict the garment's performance."

"Products requiring widely different care are developed so rapidly in this highly competitive and inventive market that consumers haven't much opportunity to learn from experience and a lore on proper care procedures does not exist * * *. Information on proper care procedures is essential if the consumer is to obtain satisfactory wear and performance." (Report to the Chairman, President's Committee on Textile Information (hereinafter cited as IACTI Report), May 1966, pp. 2-3.)

[10] Record, Vol. 7, p. 1350 New York State College of Human Ecology (Cornell University); Record, Vol. 8, p. 1632; Record, Vol. 6, p. 1165 (Launderette): "We have found that it is impossible to keep our attendants up on these various products". *Supra* note 6, 1966 Consumers Report, at p. 8: "As a rule, the sales clerk is just as confused as the customer. At best he may parrot the manufacturer's sales literature; at worst, his information may be self-serving or simply unreliable." Their advice could be especially valuable since it is given at the point of sale.

[11] Transcript, p. 174; Record, Vol. 8, p. 1651.

[12] Barnes, The Law of Trade Practice II: False Advertising, 23 Ohio State L.J. 587 (1962): "* * * one may almost say that there is a natural law of advertising rivalry which leads sellers from the realm of fact to the realm of fancy, from truthful and informative advertising to imaginative and deceptive advertising." *Supra* note 6, 1966 Consumers Report, at p. 9; *Supra* note 7, Johnson Study: "Very few [women] felt that they gained any information * * * from television commercials and similar sources."

[13] Supra note 3, IACTI Report, at p. 5: "out of 31,000 textile damage complaints analyzed for cause at the Institute last year, very few had permanently attached care labels. Of other types of care labels seen, some were too complex, some incomplete, some were inaccurate and others were contradictory especially in cases where two or more different tags were on the same item" (Citing the National Institute of Drycleaning report to the Committee.) See also, Consumer Reports, p. 66, Feb. 1968: "To wish for some such textile care labeling system is hardly to dream the impossible dream—industry groups have drafted a number of promising schemes in recent years. But each scheme has been voluntary, and the manufacturers of textile goods by and large have not complied".

[14] Supra note 3, IACTI Report, at p. 10.

[15] Record, Vol. 6, pp. 1005-6; Record, Vol. 6, pp. 982-983; Mrs. Dana, Consumer Relations Counsel; Record, Vol. 3, p. 533, Consumer Federation of America: "Nearly 4 years have elapsed since the committee made its recommendations, and nothing has been done to carry it out." See also, Record, Vol. 8, p. 1580, "Howell, Permanent Care Labeling in Textile Products from the Consumer's Viewpoint"; Record Vol. 8, p. 1632, Menswear Retailers of America; Record, Vol. 8, p. 1653 Pennsylvania League for Consumer Protection: "This committee (IACTI) did not call for permanent labeling of all fabrics but it is notable that industry-wise, these necessary but modest recommendations have been ignored as a matter of practice."

[16] Supra note 3, IACTI Report, at p. 9.

[17] Supra Note 6, 1966 Consumers Report, at p. 9.

[18] Id.

[19] Id.

[20] See, e.g., Record, Vol. 7, pp. 1221-1224. The petition reads as follows: "For my protection, I want clothing manufacturers to tell it like it is. Garments which require special care and cleaning instructions should have a stitched-in label with all vital information." The significance of the word "special" will be discussed later in the statement.

[21] Record, Vol. 8, pp. 1641-1647; pp. 638-648. The questionnaire covered 13 different questions about all aspects of care labeling including product coverage, permanent attachment of labels, experience with damaged garments and dry cleaning.

[22] Record, Vol. 10, pp. 2377-2403. The survey asked five questions:

(1) Do you think permanent labels giving specific directions for care * * * are needed by consumers on all textile products?

(2) Do you think only some items need such labeling?

(3) Do you feel that the majority of fabrics used today are of a conventional type needing no instructions as to care?

(4) Has your experience been that most textile items you have bought perform as expected when washed or drycleaned, according to the labels used on them?

(5) Do you feel that permanent care labels should be required by law, or regulation on all textiles?

[23] Record, Vol. 6, p. 879, Clothing and Textile Specialist, University of Vermont; "Well over 50 percent of the questions that come to the office * * * concern textiles for home or person which have been damaged or spoiled by incorrect care procedures. Invariably the question arises after the damage is done."

[24] Record, Vol. 7, p. 1350.

zine,[23] Macy's, Inc., and Filene's, Inc.[24] In addition, the record contains statements by home economists and teachers of university-level textile and clothing courses which cite the need for a care labeling program.[25] These surveys and statements support such a program on the basis that improper care was found to be a major cause of damage. Cited most often was the fact that as a result of improper care colors run, clothing shrinks, or the material is ruined by heat.[26] These statements also indicate that even if no damage occurs, consumers are not being informed about which care practice is best for overall performance, and that, in the absence of such information, consumers cannot rationally choose between products on the basis of the expense of ordinary maintenance.[27]

[23] Record, Vol. 9, p. 2148. Thirty percent of the respondents "needed more detailed and clearer care instructions" and 86 percent of the respondents looked for and read care labels when they purchased clothing.

[24] Record, Vol. 2, pp. 2–9, Myers, "Textile and Apparel Testing and Labeling," Harvard studies in Marketing Farm Products (1954): "Of the 1,000 complaints examined in Macy's laboratory, 66.6 percent were adjudged not justifiable. Of the 4,657 complaints at Filene's, 57.4 percent did not appear justifiable. This indicates that the larger percentage of textile failures is owing not to garment defects but to the treatment given them by consumers * * * it appears that consumer-induced failures are largely traceable to (1) poor laundering, (2) antiperspirants and deodorants, and (3) accidents * * *. A careful review of laboratory tests reports on returned merchandise suggests that many failures classified as accidental are in fact traceable to improper laundering."

[25] Record, Vol. 3, p. 438, Mr. Stewart Lee, Chairman, Dep't. of Economics and Business Administration, Geneva College; Record, Vol. 3, p 494, Mrs. Mary James, Assistant Professor, Textiles and Clothing Department, University of Rhode Island; Record, Vol. 6, p. 898, Ms. Marjory L. Joseph, Chairman, Home Economics Department, San Fernando Valley State College; Record, Vol. 6, p. 881, Clothing and Textiles Department, Pennsylvania State University; Record, Vol. 6, p. 818, Mrs. Faith Prior, Family Economist, University of Vermont Extension Service; Record, Vol. 6, pp. 941–7, Mr. Robert J. McEwen, Chairman, Department of Economics, Boston College; Record, Vol. 6, p. 1021, Mrs. Russell Gray, Home Economist; Record, Vol. 6, pp. 1174–5, Ms. Victoria Anderson, Assistant Professor of Home Economics, East Los Angeles College; Record, Vol. 8, p. 1589, Textiles and Clothing Department, University of Tennessee; Record, Vol. 8, p. 1590, Miss Phyllis Williams, Home Economists Department, Lompoc High School, Lompoc, Calif., Record, Vol. 8, pp. 1731–5, American Home Economics Association; Record, Vol. 8, pp 1876–8, Mr. Robert F. Johnson, Professor of Textile Engineering, Texas Tech. University; Record, Vol. 8, pp. 1877–8, Mrs. Jane Brunswold, Home Economist, Extension Service Montana State University.

[26] Supra note 26, Myers study.

[27] Record, Vol. 3, p. 409, State of Florida: Consumer Services Coordination; Record, Vol. 3, p. 537, Consumer Federation of America; Record, Vol. 6, pp. 894–7, National Consumer League; Record, Vol. 6, pp. 882–3, Oregon Consumers League; Record, Vol. 6, pp. 938–9, Commonwealth of Massachusetts: State of Consumers Council; Record, Vol. 6, pp. 1013–5, Wisconsin Consumers League; Record, Vol. 6, pp. 1016–7, Illinois Federation of Consumers; Record, Vol. 6, p. 1086, American Hungarian Ladies Aid; Record, Vol. 8, pp. 1649–63, Pennsylvania League for Consumer Protection.

Consumer groups and related organizations were not alone in endorsing a rule providing for care labeling.[28] As indicated above, members of the cleaning industry, especially drycleaners, have expressed the most vigorous support for care labeling.[29] Cleaners are increasingly unwilling to accept responsibility for unlabeled garments which are damaged during the cleaning process.[30] These cleaners said that it has been their experience that many garments are submitted for dry cleaning which, in fact, cannot be cleaned without damage.[31]

C. Technological feasibility of a care labeling rule. Testing programs and performance standards which would make a care labeling requirement technologically feasible already exist. For example, the testing program of the Apparel Research Foundation has been in effect since 1968. The Foundation has conducted workshops and training courses on the subjects of testing for care characteristics.[32] In April, 1970, the Foundation announced its intention to "establish, implement and publish acceptable performance level standards for all categories of wearing apparel manufactured in the United States."[33]

Since 1936, the American Institute of Laundering has conducted its "Certified Washable Seal" program. This program is based upon established test standards which every product must meet to earn the Seal, standards which "have been exactingly maintained through the years."[34] Like the Apparel Research Foundation's testing program, the Certified Washable program is available to all garment manufacturers. In addition, the American National Standards Institute has published at least two standards which relate to the care performance of textiles.[35]

III. *Opposition to the rule.*—A. *Arguments that a rule is either not necessary or not feasible.* Those who do not agree with the proposition that a mandatory care labeling requirement is necessary do not deny that care information is essential to the ordinary use and enjoyment of textile products. Instead, they contend that consumers already know how to take care of textile products and, therefore, do not need the assistance of a care labeling rule. The only factual support for this contention is contained in several statements by manufacturers to the effect that they have received no complaints about the care performance of their particular products.[36] This argument overlooks the

[28] Consumer groups are, however, the strongest proponents of care labeling. Every group encountered (see note 29) voiced full and complete approval of the concept.

[29] Record, Vol. 3, p. 304, Norwood Cleaners; Record, Vol. 3, p. 412, West Town Cleaners; Record, Vol. 3, p. 442, Arnold Cleaners; Record, Vol. 3, p. 441, Riverview Cleaners; Record, Vol. 4, p. 449, Wellington Cleaners; Record, Vol. 3, p. 447, Mercier and Greenwald Cleaners; Record, Vol. 3, p. 479, Fashion Cleaners; Record, Vol. 3, p. 493, Troy Cleaners; Record, Vol. 4, p. 683, Wight Cleaners; Record, Vol. 4, p. 703, Abiitt Cleaners; Record, Vol. 6, p. 1087, Tomarlo Cleaners; Record, Vol. 6, p. 1165, Gast Launderette & Dry Cleaners; Record, Vol. 9, p. 2027, Betty Brite Dry Cleaners; Record, Vol. 8, p. 1483, HEG Coin Laundry Co.

[30] The National Institute of Drycleaning publishes an annual bulletin announcing its Damage Analysis Statistics for the previous year. The bulletin contains the following language: "In many cases our laboratory assigns responsibility for damage based on the presence or absence of a permanent sewn-in label on the garment. The manufacturer of the garment and the retailer who sold it can frequently pass the responsibility on to the drycleaner or to the purchaser by the simple device of specifying on a permanent label how the garment should be processed during cleaning * * * Dry cleaners do not have infrared vision. They cannot be expected to distinguish an acrylic fabric from a wool fabric by looking at it." (Record, Vol. 4, pp. 612, et seq.)

[31] Supra note 31. "I have been in dry cleaning for 25 years and I have run into so many different garments which would not clean properly * * *. It isn't fair for customers to lose these clothes * * * nor should the cleaner be held responsible for articles which have no instructions as to idiosyncrasies concerning the particular materials." (Norwood Cleaners.) "I have been actively engaged in the Dry Cleaning and Laundry business since 1935 * * *. Manufacturers and Designers have been notorious for combining fabrics, leathers, synthetics, and other trim, making these items not serviceable by the Fabric Care Industry". (Arnold Cleaners.) Of the 21 statements in the public record from such businessmen, 20 were unreservedly in favor of the proposed rule.

Several dry cleaning and laundry trade associations were also recorded as supporters of the proposed rule. "In behalf of 800 Dry Cleaners and Laundry owners in the Metropolitan Detroit area, I urge that a law be passed to require textile product manufacturers to permanently attach care labels on their products." (Dry Cleaning & Laundry Institute.) "But probably our greatest support for such a regulation comes from the financial loss suffered by those concerned. The consumer buys a product that is unserviceable, improperly labeled, or with no label at all to indicate how it should be cared for". (Nebraska State Drycleaners Association.) (Record, Vol. 3, p. 451; Record, Vol. 4, p. 708.)

[32] Record, Vol. 7, p. 1332, Apparel Research Foundation: "The decade of the consumer demand is upon us * * *. Government enforced care labeling has been proposed * * *. The Apparel manufacturer must prepare—and be prepared—to meet these and all similar demands * * *. The Apparel Research Foundation's 2-year-old" Testing Programs for the Apparel Industry "were designed specifically for this purpose."

[33] Apparel Research Foundation Report, No. 16, Apr. 30, 1970.

[34] Record, Vol. 6, pp. 970–1, American Institute of Laundering. The brochure promoting the program lists seven areas of testing: shrinking; color fastness; chemical reactions; tensile strength; laundering; component testing; specialty tests.

[35] Record, Vol. 10, p. 2462. The two standards contain (1) performance requirements for textile fabrics and (2) performance requirements for Institutional Textiles. Both contain the following language, with respect to textile products that are or may be composed of components other than the particular fabric evaluated: "All textile components and components other than textiles incorporated into this textile shall conform to applicable performance requirements of this standard in order not to cause alteration in appearance of fabrics meeting these requirements after appropriate refreshing tests." There is no indication in the public record that either standard is being used to any appreciable extent by manufacturers.

[36] Transcript, pp. 283–6, statements of Mr. Brebbia and Mr. Meredith, American Apparel Manufacturers Association, Inc.; Transcript, pp. 351–2, statement of Mr. Korzenik, Apparel Industries Inter-Association Committee, et al.; Transcript, p. 383, statement of Mr. McCabe, National Knitwear Manufacturers Association; Record, Vol. 3, pp. 503–6, National Outerwear and Sportswear Association; Record, Vol. 7, pp. 1316–25, Burlington Industries, Inc.; Record, Vol. 7, pp. 1472–7, Futorian Manufacturing Co.

fact that the number of complaints received by manufacturers is largely determined by whether retailers (who do, in fact, receive a substantial number of such complaints) happen to forward these complaints to their suppliers.[39] And while retailers or manufacturers may be told about a garment which is completely ruined, neither retailers nor manufacturers may be informed about less dramatic but nevertheless costly damage—the product that is tumble dried, for example, instead of drip-dried and because of the greater stresses caused by high temperature in the automatic dryer, lasts only one year instead of two. Nor may manufacturers or retailers be informed about yard goods sufficient in length to make a dress when purchased but which shrink after the first washing with the result that the dress no longer fits properly.[40]

Another argument which has been advanced is that while articles of wearing apparel which require "special" care should carry care information, articles requiring "normal" or "regular" care need not be so labeled. Under this approach, however, the consumer would have no way of knowing what significance to attach to the lack of a care label. The absence of a label could mean either that the article does not require "special" care, or that it does require "special" care but the manufacturer simply did not affix a label so stating. Under these circumstances, the consumer might well take the precaution of applying unnecessary "special" care.[41]

Manufacturers also argue that they do not know the care requirements of their products and therefore are reluctant to assume responsibility for providing such information.[42] If it is reasonable for consumers to expect that products can be subjected to ordinary use without incurring economic loss, as the Commission believes, then sellers of these products cannot be heard to say that consumers have the burden of providing this technical information. Manufacturers are in a better position than consumers to determine care performance characteristics, and to translate those characteristics into simple care instructions.[43]

Another argument that has been made is that the present lack of uniformity detracts from the feasibility of issuing a care labeling rule at this time and such a rule should await the development of national standards.[44] The record evidence indicates, however, that with the large number of articles of wearing apparel and varieties within product lines, it is unlikely that any consensus standards could or will ever be developed. For each variety of each product, several care performance characteristics would have to be considered, evaluated and agreed upon. Finally, since the nature of the textile industry is that of "short runs" and frequent changes of components, whatever standards may be agreed upon would soon be obsolete.[45]

B. *Cost objections to a Care Labeling Rule.* Several manufacturers raised cost objections to a care labeling rule.[46] Cost estimates for permanently attached labels vary from "tremendously" [47] to "incalculable".[48] It has been estimated, for example, that the cost will be as high as 8 percent on lower priced garments as compared to one-half of 1 percent on higher priced garments. It is contended that this will operate to prohibit sales of lower priced garments and shift too great a portion of the cost burden to those consumers having a relatively low income.[49] The fact is that lower priced garments often need care labeling instructions as much as higher priced products, and low-income consumers can ill-afford the loss of even inexpensive items which could otherwise be safely maintained if properly labeled.[50] Moreover, low-income consumers could take special advantage of the long-term savings to be derived from a care labeling program by selecting items which do not require expensive cleaning.[51] There are, however, low-priced items of clothing which experience has shown are so completely washable under almost all foreseeable conditions that the advantages of permanent labeling—whether it be in terms of avoiding the risk of improper care or to facilitate comparison shopping—are not commensurate with the possibly disproportionate increase in consumer costs. Accordingly, the rule has been written to allow manufacturers of low-cost items—those intended to sell at retail for $3 or less—to petition for an exception where it can be shown that the product is completely washable.

On the overall question of costs even if it is assumed that most of the costs incurred by the apparel industry in establishing and operating a care labeling program will be passed on to the purchaser, the record indicates consumer willingness to accept this extra burden in exchange for the benefits of care labeling.[52] Consumers believe that elimination of loss resulting from improper care will more than offset the added initial cost, and ultimately, will result in a net saving.[53] Retail stores have expressed their willingness to assume a portion of the cost burden because of the potential improvement in customer relations and corresponding decrease in time spent handling complaints and explaining the care performance characteristics of their merchandise to purchasers.[54] Drycleaners will experience fewer instances of damage to garments and will have fewer customers' claims to pay.[55]

IV. *Power of the Commission to Require Affirmative Disclosure of Care Information.*—A. *Congressional preemption of care labeling.* The Record contains statements to the effect that the legislative history of the Textile Fiber Products Identification Act, 15 U.S.C.

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[39] Record, Vol. 8, pp. 1677–89, Sears, Roebuck & Co., Inc.; Record, Vol. 8, pp. 1597–1611, Montgomery Ward, Inc. See also, Record, Vol. 3, p. 350, Godchaux's: "As a retailer of wearing apparel I wish to express my approval of the intent of this regulation to clear up confusion in the minds of our csutomers concerning the laundering and/or cleaning of garments * * *. As a retailer we will appreciate this as it will mean that customers can properly take care of their garments and therefore have fewer complaints to us."

[40] For additional statements of retailers in support of care labeling, see Record, Vol. 5, pp. 869–71, Parke-Davis; Record, Vol. 7, p. 1384–1407, Linen Trade Association; Record Vol. 6, p. 1166, Editor-in-Chief, Textile World; Record, Vol. 7, pp. 1417–27, American Retail Federation; Record, Vol. 8, pp. 1630–1639, Menswear Retailers of America.

[41] For statements of manufacturers, see transcript, p. 72, statement of Mr. Seitz, Association of General Merchandise Chains; Transcript, p. 78, statement of Mr. Baumgart, Association of Home Appliance Manufacturers; Record, Vol. 7, p. 1363, Man-Made Fiber Producers Association, Inc.; Record, Vol. 8, p. 1497, Apparel Industries Inter-Association Committee.

The adjectives "normal," "routine," "ordinary," and "Special" are all used to describe the relative complexities of refurbishing textile products. The concept of "regular" or "normal" care has been almost entirely dissipated by the number and variety of fabrics which require different care procedures on the market today. "Special" care to one user might be "regular" to another.

[42] Record, Vol. 7, p. 1247, Russell Mills, Inc.; Record, Vol. 8, p. 1551, American Apparel Manufacturers Ass'n., Inc.; supra note 26, Myers study, at p. 3.

[43] Transcript, p. 449, Montgomery Ward Co. This retailer has already recognized this fact. Others (Sears, Penney's) are beginning to follow suit. "We currently ask our manufacturers to take a sampling of every finished garment and wash it or clean it and if it doesn't work do it a different way until they come up with the way in which they recommend to us that we in turn recommend to our customers that that garment be handled." (Montgomery Ward).

[44] Supra note 2, 1958 Senate Hearings, statement of Mr. Kintner at pp. 118–119; "In these circumstances it appears that performance labeling, while desirable, is so far from resolution of the innumerable scientific and practicable questions involved as to make the subject incapable at present of being reduced to reasonably workable legislation without prolonged testing and study, including establishment of necessary standards * * * progress in voluntary labeling for the disclosure of performance data has been limited, largely due it seems to the difficulty of achieving sufficient unanimity among industry groups for evaluating performance factors and creating the necessary scientific standards". See also, 1958 Senate Hearings, statement of Mr. Young, National Cotton Council of America, at p. 42.

[45] Record, Vol. 8, p. 1551, American Apparel Manufacturers Association. "It must be kept in mind that within each item category, performance standards change with price level and the passage of time.".

[46] For example, see Record, Vol. 3, p 492; Record, Vol. 7, p 1257.

[47] Record, Vol. 4, p 699.

[48] Record, Vol. 3, p 508.

[49] Record, Vol. 6, p 1156; Record, Vol. 7, p 1247, Russell Mills, Inc.

[50] See Record, Vol. 8, p 1655, for consumer comment on the cost problem. See also statement of the Pennsylvania League for Consumer Protection.

[51] Record, Vol. 3, p 431, National Consumer Law Center. "The rules are particularly important for the low-income consumer, for in most instances these consumers do not have the financial means to have their clothes dry cleaned * * *. If the proposed rule is adopted, low income consumers could select those fabrics which do not require dry cleaning and thus extend the useful life of their clothing. This should free a portion of (their) limited funds for the purchase of other necessities."

[52] Record, Vol. 9, p. 2033. In addition, thirty percent of the letters received by the Commission either in response to the Public Notice for hearings or as general letters of complaint have contained comments on the money lost, wasted or unwisely spent because of the lack of care information.

[53] Record, Vol. 6, p. 1112, Fabric Research Laboratory; supra note 26, Myers Study, at p. 6. See also comment of National Consumers League, Record, Vol. 6, p. 894.

[54] Record, Vol. 9, p. 1979 (retail employee). "A permanent label in all garments would eliminate many of our problems * * * and would save the customer, the store and the manufacturer a great deal of money in the long run."

[55] Record, Vol. 3, p. 1442, Arnold Cleaners. "With the advent of synthetic fabrics we paid hundreds of thousands of dollars to customers for damaging their garments * * * because we were not aware of the problems created by these new materials."

Section 70, and the eventual decision of Congress not to act in the area of "performance" or "care" labeling indicates that Congress intended to preempt the field of care labeling. This argument also suggests that the Commission should at least defer action on a care labeling rule until Congress has acted upon pending legislation.[54]

That Congress has not acted does not justify the conclusion that Congress intended to foreclose the Commission from all aspects of care labeling or to preempt the field until such time as Congress might act. The fact that Congress believed the problem of "performance" or "care" labeling to be enormous, or even insurmountable, does not prevent the Commission from taking action in this area by means of a trade regulation rule.[55] In Helvering v. Hallock, 309 U.S. 106, 120 (1940), the Supreme Court said that to give weight to non-action by Congress was to "venture into speculative unrealities". And in Mary Muffet, Inc., et al. v. FTC, 194 F 2d 504, (2d Cir. 1952), the court of appeals held:

Specific statutory requirements for the labeling of wool products, 15 U.S.C. paragraphs 68–68j, or affirmative disclosure in the advertising of foods, drugs, curative devices and cosmetics, 15 U.S.C. paragraphs 52, 55(a) do not tie the hands of the Commission from acting in the public interest in all other cases.

The failure of Congress to enact legislation respecting "performance" or "care" labeling, therefore, cannot be construed as a bar to action by the Commission.

B. *The Commission's general rule making authority.* The argument was made during the course of the proceeding that the Commission has no authority to promulgate Trade Regulation Rules.

In its Statement of Basis and Purpose accompanying the 1964 Cigarette Rule, the Commission elaborated at length on its trade regulation rulemaking authority and concluded that a Trade Regulation Rule is "* * * within the scope of the general grant of rulemaking authority in section 6(g) (of the Federal Trade Commission Act), and authority to promulgate it is, in any event, implicit in section 5(a)(6) (of the Act) and in the purpose and design of the Trade Commission Act as a whole." (See Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising or Labeling of Cigarettes in Relation to Health Hazards of Smoking and Accompanying Statement of Basis and Purpose of Rule, pp. 127–150 and 150.) The Commission adheres to that view.

C. The Commission's authority to require affirmative disclosure of care information. Many industry members argued that the Commission lacked the authority to require care and maintenance instructions where previously no instructions were furnished. This argument is based on the premise that there can be no deception in remaining silent and the consumer can be misled only where existing labels misinform.

The Commission's powers are not so narrowly circumscribed. The Commission has often required affirmative disclosures where the public assumed from silence that a certain state of facts existed which, in fact, did not. Thus, sellers have been required to disclose the true properties of their products where the appearance of those products, absent disclosure, would mislead—e.g., disclosures were required where paper simulated wood products (Haskelite Manufacturing Corporation v. Federal Trade Commission, 127 F. 2d 765 (7th Cir. 1942)) or where rayon fabrics looked like silk (Mary Muffet, Inc. v. Federal Trade Commission, 194 F. 2d 504 (2d Cir. 1952)) or where oil was used rather than crude (Mohawk Refining Corporation v. Federal Trade Commission, 263 F. 2d 818 (3d Cir. 1959), cert. denied, 361 U.S. 814 (1959)). Similarly, silence respecting the foreign origin of a product has been deemed misleading; in these instances, the public will assume domestic origin absent disclosure (Segal v. Federal Trade Commission, 142 F. 2d 295 (2d Cir. 1944)).[56] By the same token 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.[57]

In addition to the element of deception, care disclosures are required because it is unduly oppressive and unfair to consumers to withhold information essential to the ordinary use of a product. 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.[58] 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.[59] 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. Federal Trade Commission v. R. F. Keppel & Br. Inc., 291 U.S. 304; Goldberg v. Federal Trade Commission, 283 F. 2d 299 (C.A. 7); Lichtenstein v. Federal Trade Commission, 194 F. 2d 607 (C.A. 9); National Trade Publications Service, Inc. v. Federal Trade Commission, 300 F. 2d 790 (C.A. 8); Norman Co., 40 F.T.C. 296; Federal Trade Commission v. Consumer Home Equipment Co., 164 F. 2d 972 (C.A. 6); Dorfman v. Federal Trade Commission, 144 F. 2d 737, 739–740 (C.A. 8); Federal Trade Commission v. Holland Furnace Co., 295 F. 2d 302 (C.A. 7); Federal Trade Commission v. Grand Rapids Varnish Co., 41 F. 2d 996 (C.A. 6); Bernard Lowe Enterprises, Inc., 59 Federal Trade Commission 1485; Independent Directory Corporation v. Federal Trade Commission, 188 F. 2d 468 (C.A. 2); Hastings Manufacturing Co. v. Federal Trade Commission, 153 F. 2d 253 (C.A. 6); See also Zlotnick the Furrier, Inc., 51 F.T.C. 1068, and Interstate Home Equipment Co., 40 F.T.C. 260.

V. *Conclusion.* Considering the wide variety of textiles used in apparel, consumers must be informed of proper care and maintenance procedures in order (1) to avoid possible damage to the product through improper care; (2) to use the care procedure which will give the best overall performance; and (3) to be able to select apparel on the basis that it can be cared for inexpensively yet effectively. Such information is not available in permanent form on most apparel products commonly used by consumers. For the reasons discussed above, the Commission believes that the absence of such information is deceptive and unfair. The Commission has concluded, therefore, that sufficient need exists for the adoption of a care labeling rule.

VI. *The scope of the rule.*—A. *Product coverage.* The proposed rules applied to all textile products in commerce and contained no limiting provisions. Both consumers and industry members suggested several factors to be used in restricting the applicability of the rule.

The proposed rule did not distinguish between articles which require care and maintenance for ordinary use and enjoyment and those which do not. The final rule makes this distinction. Clearly, no care instructions are needed for articles (such as disposable products) which require no care.[60]

Both the proposed rule and the final rule make no distinction between domestic and imported products and industry members agree that none should be made.[61] Sellers of imported products fall within the rule; therefore, imports should be properly labeled (by the foreign manufacturer) when they enter the country, or the importer should see that a proper label is provided after the product enters the country but before it is sold in commerce.

Several manufacturers argue that the products covered by the rule should be limited to those sold to "consumer purchasers."[62] After due consideration, the

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[54] Record, Vol. 8, p. 1591.

[55] See supplemental statement on H.R. 469, Congressman Smith, Hearings Before Committee on Interstate and Foreign Commerce, U.S. Senate, 85th Cong., Second Sess., p. 283, February 1958. See also Hearings before Subcommittee of Committee on Interstate and Foreign Commerce, House of Representatives, 85th Cong., First Sess., p. 24, April 1957.

[56] See also American Tack Co., Inc. v. FTC, 211 F. 2d 239 (2d Cir. 1954); Royal Oil Corp. v. FTC, 262 F. 2d 741 (4th Cir. 1959); Mohawk Refining Corp. v. FTC, 263 F. 2d 818 (3d Cir. 1959); Kerran v. FTC, 265 F. 2d 246 (10th Cir. 1959); Bantam Books, Inc., v. FTC, 275 F. 2d 680 (2d Cir. 1960).

[57] In addition to many cases which have required material disclosures, this requirement has been also expressed in a number of guides and trade regulation rules. Shoes or slippers, for example, which are composed of nonleather material having the appearance of leather must bear labeling which clearly discloses 1) the general nature of the material or 2) that the material is simulated or imitation leather. Guides for Shoe Content Labeling and Advertising—Guide VII. Similarly, it is deceptive to sell belts which are made of non-leather material unless disclosure is made of the true composition of the product. Trade Regulation Rule Regarding Misbranding and Deception as to Leather Content of Waist Belts—16 C.F.R. 405.4(b). The Commission's rule relating to incandescent lamps (effective Jan. 25, 1971) requires disclosure of facts deemed necessary to properly judge the character of light bulbs (power consumed, light output, laboratory life).

[58] Record, Vol. 8, p. 1586; Record, Vol. 2, pp. 11–12. In addition, see supra notes 27 and 29. Economic loss because of improper care is based upon assumptions which the consumer must make in absence of any care instructions. The product must be cleaned somehow; the consumer must often guess as to how it is to be done.

[59] Supra note 21, Care Labeling Survey. The distinction between washing and drycleaning was mentioned innumerable times. See also, Record, Vol. 6, pp. 1006–1007.

[60] Record, Vol. 8, p. 1586, The Disposables Association; Record, Vol. 2, pp. 11–12, U.S. News and World Report (Sept. 15, 1969).

[61] Record, Vol. 7, p. 1376, American Textile Manufacturers Institute Inc.; Record, Vol. 7, p. 1303, J. C. Penney Co. See also Record, Vol. 7, p. 1367, Man-made Fiber Producers Association.

[62] Record, Vol. 7, p. 1453, Vinyl Fabrics Institute. Most manufacturers, including this group, wanted to limit the applicability of the rule to "consumer-purchasers" in order to exclude intermediate products. Intermediate products have been excluded for other reasons.

Commission has determined that there is no reason for distinguishing, for example, between a "consumer-purchaser" who buys one uniform and a uniform supply company that buys many. Each needs to be informed as to the care and maintenance necessary to be applied to these products. The rule protects those who obtain an article of wearing apparel by purchase without regard to the category into which these purchasers might fall.

The argument has been made that the rule need not apply to intermediate products or component parts of a finished textile product.[65] The Commission agrees for the reason that there is little record proof that manufacturers are seriously handicapped by the absence of care instructions. In the ordinary commercial dealings between businessmen (for example, between manufacturers and raw material suppliers), there are ample pressures which can be applied to get adequate information about care procedures; moreover, there is little record proof that suppliers have either unfairly or deceptively withheld this information.

The Record contains several proposals for limiting the coverage of the rule to wearing apparel.[66] This limitation has been adopted by the Commission for two reasons. In the first place, based upon the number of complaints received by the Commission, it is clear that the most pressing need for care labeling is on articles of wearing apparel.[67] The apparel industry is the largest part of the total textile industry and the major consumer of textile mill products.[68] Secondly, the Commission has decided to proceed in stages in the care labeling field. This apparel rule is only a first stage; others may be forthcoming. This decision is based upon an assessment of the inevitable administrative problems which will arise in enforcing even a first stage rule, and the limited resources available to the Commission for dealing with these problems.

Since "piece goods" comprise an ever-growing portion of the typical consumer's clothing budget, they are included in the rule in paragraph (b). The "home sewing industry" constitutes a significant part of the wearing apparel industry.[69] A rule which covers all appropriate wearing apparel must include "piece goods" which are used by the consumer to make finished articles of wearing apparel.

Several proposals have been made for totally exempting certain products, including certain apparel products, on the grounds that manufacturers believe that the consumer is currently provided with sufficient information about "their" particular products.[70] The fact that a particular manufacturer's voluntary care labeling program may meet or exceed the requirements of the rule is commendable but is not a valid argument for exempting these products.[71]

Other industry members argue that, because their products are cared for by "experts" and not consumer-purchasers, they should be totally exempted from the rule.[72] While "experts" may be aware of proper care procedures, there is evidence that some may ignore any proffered care instructions.[73] An exemption for these products, moreover, would render consumers powerless to challenge an "expert's" responsibility for any damage which may occur.[74] In addition, the consumer should be aware of the kind of care required by an article before he buys, and specifically, whether or not it requires more expensive "expert" treatment.

B. *A permanent label.* It has been suggested that any deception or unfairness which exists as a result of lack of care labeling instructions would be cured by simply making such information available to the purchaser rather than requiring that this information be "permanently attached" to the garment.[75] Even if the care instructions are properly disclosed on a tag at the time of sale, such tags are soon destroyed or misplaced.[76] In order for information separately furnished at the point of sale to be available at the point where care is attempted, it must be saved, stored, located, and then matched with the product it accompanied. Successful implementation of this approach requires an elaborate filing system that most purchasers are unable to maintain.[77] If furnished as part of the package or container in which the product is sold, the information may be inadvertently thrown away or destroyed by the purchaser upon opening the container.[78]

It is realized, however, that the utility and appearance of some articles may not survive a permanently attached label. In this connection, the physical characteristics of the article, its shape, size, fragility, and sheerness, are relevant. It may be physically impossible to attach a permanent label on a very small or oddly shaped article.[79] Other products might be too fragile to support a label of any kind.[80] The difficulty of attaching a permanent label to such products outweighs any additional benefit the user would derive by reason of permanently attached information.[81] In addition, a permanently attached label readily accessible to the user might so impair the appearance of an article so as to significantly diminish its desirability. There is little purpose in insisting on a permanently attached label if, as a result of the attachment, a potential purchaser would either refuse to buy the article or would remove the label, perhaps damaging the article in the process.[82]

Paragraph (c) (1) of the rule provides for exemptions of such articles from the permanent attachment requirement. In these cases the required care information may be in the form of accompanying labels or tags.

C. *Responsibility for compliance.* Paragraph (1) of the proposed rule did not specify who is to be responsible for providing relevant care information. The Commission has concluded that such responsibility should be placed on "the person or organization that directed or controlled the manufacture of the finished article." Various levels and segments of the apparel industry may fall within this area of responsibility,[83] but in most instances responsibility will rest with the finished product manufacturer—the person

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[65] Id. See also Record, Vol. 7, p. 1320, Burlington Industries, Inc. Most of the textile industry adheres to this view.

[66] Statement of Sears, Roebuck & Co., dated May 1, 1970, p. 1 (not in public record); Record, Vol. 7, p. 1373, American Textile Manufacturers Institute, Inc.; Record, Vol. 7, p. 1305–1309, J. P. Stevens and Co., Inc. All of the textile industry desired that the rule be limited in some way. Most proposed wearing apparel as the most obvious choice.

[67] Over 65 percent of the total number of care labeling complaints received by the Commission before and during the hearings pertained to wearing apparel. Ninety percent of the care labeling complaints received in the first half of 1971 concerned wearing apparel.

[68] Priestland, "FOCUS—An Economic Profile of the Apparel Industry," AAMA, Inc., 1969, p. 9.

[69] The number of complaints about the labeling (or nonlabeling) of piece goods has been substantial. Out of 289 letters received in direct response to the public notice of the hearings, 172 pertained to piece goods designed to make an article of wearing apparel. See Record, Vol. 10, pp. 2247–2329, pp. 2406–2461, pp. 2465–2480.

[70] Record, Vol. 7, p. 1386; Record, Vol. 8, pp. 1515–1520; Record, Vol. 8, pp. 1767, 1768–69; Record, Vol. 8, pp. 1861–1865.

[71] The major objection to any voluntary program is the inability to compel compliance. The Commission must be able to exert continuous and uniform enforcement of the rule. Record, Vol. 2, p. 25, Consumers Reports, February 1968. Accord, Supra note 6, 1966 Consumers Reports, at p. 15: "The consumers needs must be met if not voluntarily, then by government regulation." See also, Record, Vol. 7, p. 1419, American Retail Federation. No voluntary plan to date has fulfilled the requirements of this rule, e.g., the plan advanced by the Industry Advisory Committee on Textile Information provides only for "special" care labeling.

[72] See, e.g., Record, Vol. 8, p. 1569, Carpet and Rug Institute. Carpets are one matter; wearing apparel is another. Most consumers must themselves confront the problem of cleaning garments. Fewer "experts" are involved.

[73] See, e.g., Transcript, p. 534, Clothing Manufacturers Association of America.

[74] With required care labeling instructions, if the "expert" does not follow them or follows them incorrectly, the consumer would have some chance of remedy—either against the "expert" or the organization responsible for the label. See also Record, Vol. 6, pp. 1006–1007, Mrs. Virginia Knauer, Special Assistant to the President for Consumer Affairs; supra note 26, Myers study, at p. 6. In addition, one of the most important benefits of care labeling will be an improved ability to make cost comparisons.

[75] See, e.g., Record, Vol. 7, p. 1300 (J. C. Penney Co.) and 1475 (Futorian Manufacturing Co.).

[76] Record, Vol. 8, p. 1894, Mrs. Margaret Dana: "I have found that string attached labels become lost, or even worse, exchanged from one garment to another in the fitting rooms * * * I know one proprietor of a women's dress shop who removes all the hand tags from her garments * * *." Sixty percent of care labeling letters received by the Commission affirmatively requested permanent attachment of labels. Seventy-eight out of eighty responses to the notice, discussing the subject of permanent attachment, indicated that hand tags are not a satisfactory solution.

[77] Record, Vol. 2, p. 24, Consumer Reports (February 1968): "Each tag or label must be annotated so that you will know weeks or months later which article it was originally attached to. On washday, each item in the wash must be reassociated with its instructions which must be read, obeyed, and refiled."

[78] Record, Vol. 6, p. 879, Extension Service, University of Vermont; Record, Vol. 8, p. 1877, Cooperative Extension Service—Montana State University.

[79] Record, Vol. 4, p. 788 (light combinations of yarn); Record, Vol. 7, p. 1466 (thread). Others may be shoelaces or items normally used as clothing which are very small or depend for their popularity upon a certain distinctive shape.

[80] Record, Vol. 4, pp. 646–647, National Association of Hosiery Manufacturers (some kinds of exceptionally sheer hosiery). Items with no body or extremely dainty items might be included.

[81] Record, Vol. 8, pp. 1553–1554, American Apparel Manufacturers Association; Record, Vol. 7, p. 1247, Russell Mills, Inc., The extra cost involved is also a consideration to take into account.

[82] Record, Vol. 7, p. 1769.

[83] Supra Note 68, "FOCUS," at p. 10 (jobbers, for example). Jobbers may determine which components, accessories and finishing processes will be used. The actual implementation of this control may be accomplished by an external factory which works under directions provided by the jobber.

who assembles or controls the assembly of the various components to make the finished article.

The manufacturer has control over the three main factors which will determine care performance: fabric components, accessories, and the final manufacturing process used.[54] As the last person involved in the manufacture of the product, the finished product manufacturer logically should bear the responsibility for determining which care instructions are to be placed on the label and for designing and attaching the labels.[55] While manufacturers will ordinarily be responsible for compliance with the rule, in specific fact situations this responsibility may rest with jobbers or even retailers where it can be shown that they, in fact, directed or controlled the manufacturer or the finished product.

1. *Certification.* Paragraph (2) of the proposed rules required that care instructions be accompanied by a certification from the manufacturer of the product to the ultimate consumer-purchaser warranting the accuracy of the instructions required by the Rule. There is little in the record of this proceeding which indicates that a major problem confronting consumers is inaccurate care labeling. Throughout the record are statements about how consumers suffered economic loss because of the lack of any care labeling instructions rather than improper instructions.[56] In short, the proposed certification rule seemed to go to a problem which may not exist, and, at any rate, one that is not substantiated by the record of these proceedings. If it later develops that some manufacturers are mislabeling their products (in contrast to no label at all), all of the powers of the Commission under section 5 of the Federal Trade Commission Act will be involved in these cases.

2. *Manufacturer's guarantee to the retailer.* Paragraph (3) of the proposed rules, which provided for an exemption for retailers who obtain guarantees from manufacturers, has also been omitted in the final rule since it is superfluous. The person who directed or controlled the manufacture of the finished article will be held responsible, whether it be the manufacturer of the finished article (as is usually the case) or the retailer, wholesaler, or jobber, as may be the case in specific factual situations.

D. *The form and nature of the care instructions.*—1. *Required disclosure.* The words "fully" in subparagraph 1 of the note to the rule and "clearly" in paragraphs (a) and (b)(1) of the rule are intended to preclude certain labeling methods which the Commission considers unacceptable.

The use of promotional language, as part of the care instructions, will not be compliance with the rule. The phrase "never needs ironing" is one example. If a purchaser does decide to iron the product, she needs to know the proper ironing methods for that product. In this example, the purchaser has no way of knowing whether the product can be ironed, or if it can be ironed, the proper temperature for the iron.[57]

The use of a negative term without more (such as "no bleach") does not tell the purchaser what to do with the garment. It contains no positive information, and thus is inadequate standing alone.[58] On the other hand a "positive" instruction, such as "wash by hand," may also require a negative instruction if the article cannot be drycleaned.[59]

To avoid the problem of providing meaningful care information, some manufacturers have used such labels as "Dry Clean Only," (known as "low" labeling)[60] when, in fact, the product could be washed at much less cost to the consumer.[61] Whenever an article of wearing apparel can be easily and safely cleaned, for example, by either washing or drycleaning, the purchaser should be made aware of the availability of a choice.

Instructions must be thorough. The simple instruction "Dryclean" may not be sufficient. Although most drycleaners use chlorinated solvents, some still use petroleum solvents.[62] Some products which can be cleaned in petroleum solvents will not survive chlorinated solvents.[63] Products which survive chlorinated solvents generally survive all solvents. Unless the instruction "Dryclean" is based on a test with a chlorinated solvent, that and other similar instructions must not be used without additional words, e.g., "Dry Clean in Petroleum Solvents."[64]

The care instructions must apply to all components of the product including nondetachable linings, trim and other details. Any exceptions should be indicated on the labeled instruction.[65] An intentionally removable component, such as a zip-out liner is expected to be separately labeled when it requires different care procedure than the main garment itself.

2. *"Regular" care vs. "spot" care.* Generally speaking, there are two kinds of care and maintenance: regular care and maintenance, which is required by mere use of the product, and spot care and maintenance, which is needed when a substance is accidentally spilled on the product.

When a garment is worn, small particles of dust, grime, and soot normally adhere to it. Unless these substances are removed at regular intervals, a gradual but steady diminution of the garment's utility and appearance will ocur. By definition, regular care and maintenance instructions must be aimed at the consequences of normal and expected wear. In addition, because the substances usually adhere to different parts of the whole garment, the care instructions must relate to the whole garment. Spot care is another matter. When a foreign substance is accidentally spilled, the care required is usually very specific and suitable only for removing a particular substance from the garment. In addition, the procedure is usually applied only to the area of the product where the substance has made contact.

It is one matter to require a product manufacturer to determine which of the regular

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[54] "Twenty-five years ago the basic component of most apparel products was one of four natural fibers: cotton, wool, silk, linen. Performance characteristics of these fibers largely varied only according to the place the fiber was grown. Today in addition to the natural fibers, there are in production at least 12 man-made fibers (by generic name). Each manufacturer of a man-made fiber may produce several variations of it all with different performance characteristics". (Record, Vol. 8, p. 1546, American Apparel Manufacturers Association, Inc.)

"The potential for different care performance characteristics with respect to apparel products is further increased by the fact that most apparel products have other components in addition to the basic fiber components. Items such as buttons, thread, zippers, etc., affect the care performance of the whole product." (Record, Vol. 8, p. 1549, American Apparel Manufacturers Association, Inc; Record, Vol. 4, pp. 672-5, Association of Home Appliance Manufacturers.) For example, "(m)ost present day dresses are composed of fabric, buttons, trimmings, linings, decorations and thread. Each of these may require a different cleaning method for best care." (Record, Vol. 3, pp. 507-9, Daytime Apparel Institute.) Even the final manufacturing process, which only puts together all of the component parts, can alter the care performance characteristics of the finished product. (Tr. pp. 746-47, statement of Mr. Holtzman, Eve Carver Fashion Corp.; Record, Vol 8, p. 1547, American Apparel Manufacturers Association, Inc.)

[55] Supra note 3, IACTI Report, p. 10: "It is recognized that the application of permanent labels, where appropriate, to convey care instructions to the consumer is the function of the fabricator of the consumer item."

[56] Supra notes 27-29; Record, Vol. 7, p. 1323; Record, Vol. 8, pp. 1785-89 Supra, note 51 and text accompanying. In addition, many asserted that certification would not be appropriate to instructions contemplated by the rule because, by necessity, they would have to be long and detailed. Both industry members and consumers agreed that the information provided should be in the nature of brief general instructions which are related to the kinds of care procedures likely to be attempted by consumers. It would also mean larger labels increasing the label cost. Furthermore, certification might mislead consumers into believing that they can rely on the stated instructions to restore the textile product, regardless of what has happened to it. Consumers could even neglect to take ordinary precautions when accidents occur. A stain which has been permitted to set in a fabric, for example, might not later be removed even though the instructors are adequate for regular cleaning of the product.

[57] Transcript, p. 114-115, statement of Mr. Johnson, National Institute of Drycleaning: "In the interest of efficient communication, labels should be devoid of promotional claims or verbosely or deviously worded instructions". In the text example, the instruction "warm iron" is more appropriate; it is informative and could be validated.

[58] Record, Vol. 6, pp. 978 and 982, Mrs. Margaret Dana, Consumer Relations Counsel. The meaning of such a phrase is ambiguous and confusing to the consumer.

[59] Id. at p. 982. The instructions may be either positive or both positive and negative as the situation demands. In addition, ambiguous instructions, such as "drycleanable" may be unacceptable. The suffix "* * * able" destroys the meaning of the term. The object of the rule is to provide for instructions which are meaningful without an additional interpretive statement.

[60] Transcript, p. 189, Massachusetts Consumer Association.

[61] Record, Vol. 3, p. 487, Home Laundering Consultative Council.

[62] Record, Vol. 3, p. 417, Dixo Co., Inc.

[63] Record, Vol. 3, p. 424, Filter-Mate Corp.

[64] Record, Vol. 4, p. 573, Dixo Co., Inc. There are other examples of misleading "drycleaning" instructions. For example, the instruction "clean by Furrier Method" does not inform the purchaser that the furrier method only removes surface soil. The direction "Use Coin-Op Drycleaning" does not indicate that the use of the moisture to remove water borne stains will remove fabric color. (Record, Vol. 6, p. 951, Neighborhood Cleaners Association.)

[65] For example, see Record, Vol. 3, p. 442; Transcript, p. 603, statement of Mrs. Margaret Dana, Consumer Relations Counsel (white wool dress trimmed with black buttons—dry cleaning melted the buttons staining entire dress. The dress had no care label).

care procedures should be used to refurbish his product, and then to instruct purchasers as to the implementation of that procedure. It is another matter to require him to anticipate all the substances that could be expected to spill on his product, to determine what specific spot care and maintenance procedure should be used for each substance, and finally, to advise purchasers as to the implementation of all those procedures.[96] The Commission has concluded that instructions pertaining to "spot" care should not be required in the Rule.

3. *Symbols vs. words.* The public record contains comments on the desirability of requiring symbols rather than words on care labels. On behalf of symbols, it is argued that symbols would transcend language barriers, reduce the size and cost of labels, facilitate international trade and promote standardized instructions.[97] The best known symbol system in existence is the one adopted by the International Symposium for Care Labeling of Textiles.[98] The system is currently being used in several European countries.[99] Participation is voluntary. The care instructions are based on standards adopted by the International Standards Organization and relate only to color fastness.[100] The ISO has proposed a new set of symbols which are much more detailed, yet still do not encompass all care situations.[101]

Because of the continuing and rapid technological development in the apparel industry, it would be extremely difficult to devise a symbol system that would be flexible enough so that future developments in the care and maintenance area could be indicated without constantly adding new symbols.[102] If a symbol system were adopted, the Commission clearly would have to dictate the use of one particular set of symbols. And while symbols do transcend language barriers, the symbol language itself must be learned. Adoption of a new symbol system would necessitate a significant extra expenditure of time and effort to teach a new language.[103]

The Commission has concluded that the rule should require words and phrases, with the only limitation being that the words and phrases "clearly" and "fully" articulate care and maintenance instructions as determined by the manufacturer or other responsible party.

VII. *Additional comments on the language of the rule.*—A. *Paragraph (a)*—1. *"Textile product".* " 'Textile Product' is any commodity spun, woven, knit or otherwise made in whole or in part from fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by whoever purchases it."

While various witnesses expressed different views about product coverage (the proposed Rules covered *all* textile products), there was no substantial disagreement about the Commission's technical definition of a "textile product"—"a commodity, made in whole or in part of fibers, yarn, or fabric." Product coverage has been limited to "any textile product in the form of a finished article of wearing apparel" for reasons explained above. Other limitations placed on the phrase "textile product" are for purposes of clarity. "Spun, woven, and knit" has been added in order to exclude paper and plastics, and it has been made clear that the Rule does not apply to disposable products but rather only to those products "which require care and maintenance".

2. *"Finished article of wearing apparel."* " 'Finished article of wearing apparel' is any costume, garment or article of clothing whose manufacture is complete and which is customarily used to cover or protect any part of the body, including hosiery, but excepting all footwear and such articles that are used exclusively to cover or protect the head or the hands."

A "finished article" is an article "whose manufacture is complete"—i.e., the product is ready to be sold to a purchaser for use as an article of wearing apparel. All hosiery (socks, stockings, and the like) are included. Excluded are gloves, shoes, boots, slippers and rubbers or overshoes—i.e., articles used exclusively to cover or protect the feet or hands. This exclusion is based on the fact that footwear ordinarily does not require the kind of laundering or dry cleaning care and maintenance which is the subject of this rule.[104] Hats and gloves and other articles used exclusively to cover or protect the head or hands are excluded from this first stage rule. The Record developed in this proceeding shows that most adult headwear cannot be maintained or cared for in the sense in which these terms are used in this rule.[105] There is little Record evidence concerning gloves, except for statements that work gloves are in the "disposable" class and are not designed for ordinary care and maintenance.[106] Subsequent review of this rule will consider whether these exemptions should be limited or amended, particularly as they apply to children's hats and gloves.

3. *"Permanently affixed or attached".* " 'A label or tag permanently affixed or attached thereto' is a label or tag attached or affixed in such a manner that it will not become separated from the product during its useful life."

The definition of "permanently affixed or attached" requires that the label be as durable as the product to which it is bound. In addition, the information on the label must be "permanent."[107] Some question has been raised concerning the permissibility of imprinting the instructions directly upon a product.[108] As currently used by industry, imprinted instructions have not been found to meet the "permanency" requirements outlined above nor are the instructions as clearly "visible" as those on a label.[109] The Commission, however, has no objection to the use of imprinted instructions provided they meet the requirements of permanency and legibility in the rule.

4. *"Clear" disclosure.* The note to the rule provides basic criteria for a "clear" disclosure. Paragraph (1) of the proposed rules also provided that the label or tag accurately and clearly disclose " * * * any other instructions material to the proper care and normal use of such product which, if not followed, (would) result in the impairment of its utility or appearance." This provision was intended to require manufacturers to include "warnings" in the information to be included on the label. In response to this proposed language, manufacturers said "that it is impossible to comply with the literal terms of this requirement. Every cleaning process places some strain on a product. There is simply no way in which cleaning cannot impair utility or appearance." [110]

The Commission has concluded on the basis of these objections that the language above is too broad, vague and ambiguous since it would seem to include not only "warnings" and instructions on "spot" maintenance, but also directions on the use of the product.[111] Subparagraph 2 of the note, therefore, has been narrowed and, as with subparagraph 1, warnings as to "spot" maintenance are not required. The words "substantially diminish" should remove the objection that any cleaning will impair the utility of a product. As reworded, subparagraph 2 will alert purchasers to techniques and procedures which may so impair utility and appearance as to substantially diminish the ordinary use and enjoyment of a product.

Subparagraph 3 of the note outlines the legibility requirement. Instructions must be readable to be of use. Instructions, therefore, are required by the rule to be legible for the useful life of the product to which they are permanently attached.[112]

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[96] The descriptions of "regular" and "spot" care were accepted as fact during the hearings without dispute. All participants conceded the impossibility of requiring the inclusion of "spot" care procedures in care instructions.

[97] Record, Vol. 6, p. 951, Neighborhood Cleaners Association; Vol. 6, p. 1112, Fabric Research Laboratories, Inc.; Record, Vol. 7, p. 1440, Spring Mills, Inc.

[98] Transcript, pp. 590–598; Record, Vol. 5, pp. 841–850; Record, Vol. 6, pp. 1176–1181.

[99] Germany, France, Holland, Belgium, Luxembourg, Switzerland, and Austria.

[100] Record, Vol. 5, p. 844, statement of Dr. M. Burer, President of the Symposium. The difference between indicating how certain care and maintenance procedures will affect color fastness and indicating what and how care maintenance should be used is great.

[101] International Organization of Consumer Unions Letter, Apr. 1, 1970, "Care Labeling." For example, their "caution" symbol may signify a variety of different procedures relating to drying, ironing and drycleaning. There is no symbol to specify "tumble dry."

[102] Accord, Transcript, pp. 605–606, Mrs. Dana, Consumer Relations Counsel.

[103] Record, Vol. 3, pp. 486–487. Consider the problem, for example, of devising symbols for the following label: "Machine washable in sudsy water at medium temperature. Rinse well, tumble dry thoroughly, hang immediately to eliminate pressing. Garment may be drip dried or steam pressed." At least nine symbols would be required.

[104] See Record, Vol. 7, p. 1257.

[105] Record, Vol. 4, p. 699 and Vol. 5, p. 837 (men's and boys' hats); Record, Vol. 7, p. 1380 (women's hats). Their use must be "exclusive"; if an article, for example, is customarily used to cover both the head and another part of the body, such as the neck, then it may be included in the rule.

[106] Record, Vol. 8, p. 1586 (disposables).

[107] Transcript, p. 20, statement of Mrs. Dana, Consumer Relations Counsel: "Again, a permanent care label is little real help unless it is literally permanent, in the durability of the fabric making the label and the permanency of the ink in the printed words * * *. [W]omen write me very often, this was a good label to start with, but after the second washing, the words all faded out and I don't know what they said."

[108] Record, Vol. 8, pp. 1560–1561.

[109] Many complained of instructions "fading out" when proper care procedures were applied. Record, paragraph 129, p. 2489, Malony Report.

[110] Record, Vol. 7, p. 1298, J.C. Penney, Co. See also Record, Vol. 4, p. 786, Cannon Mills, Inc. Once raised, this issue was not disputed at the hearings.

[111] Record, Vol. 8, p. 1503, Apparel Industries Inter-Association Committee; Record, Vol. 4, p. 718, Association of General Merchandise Chains. Such is not the purpose of the rule.

[112] Record, Vol. 8, p. 1534, p. 1633, American Apparel Manufacturers Association and Menswear Retailers Association.

Subparagraph 4 of the note is included to ensure that the purchaser, without unreasonable effort, may gain access to the instructions which are permanently attached.[112]

The scope of the disclosure provision in the proposed rule has been broadened by substituting the word "care" for the word "laundering" and by the addition of the word "maintenance" throughout the rule. The phrase "care and maintenance" more accurately reflects the scope of care information required to be disclosed. "Laundering" is only one of the many kinds of care that may be attempted on a particular product.

B. *Paragraph (b).*—1. *"Accompanied by a label or tag."* "'Accompanied by a label or tag' means a tag must be included with every individual purchase of piece goods by the ultimate consumer, regardless of the size and shape of such goods."

The nature of piece goods and the method by which they are sold dictate against a permanently attached label. In addition, the quantity of goods purchased might be too small or the label might interfere with the appearance of the future finished article of wearing apparel.[114] As discussed above, however, the need for information about care and maintenance still persists. The rule, therefore, provides for "accompanying labels or tags." The manufacturer of piece goods will have the responsibility of supplying retailers with enough labels to satisfy individual consumers. The object of the rule is to ensure that each purchaser of piece goods be provided with care information for each type of goods that he buys. The quantity of the purchase is irrelevant.

2. *"Immediate conversion."* The phrase "immediate conversion" is not intended to have any time limitation. If piece goods are sold for the purpose of transforming them to articles of wearing apparel falling within the scope of the definition, the piece goods are included in the rule. The consumer need not perform the transformation within any specified period of time. The consumer's intent to convert the piece goods will be presumed from the original act of purchasing such goods.

3. *"Ultimate consumer."* The person or organization who effects the change(s) mentioned above must be considered the "ultimate consumer." "Ultimate consumer" may be defined as a person or organization obtaining any piece goods by purchase or exchange with no intent to sell or exchange them and with no intent to incorporate or otherwise use them as a component(s) of another product intended for sale or resale.[115] The term has been used in paragraph (b) to exclude from the scope of the rule intermediate textile products and components and to exclude from responsibility under the rule all suppliers of intermediate textile products and components except that the responsibility continues to rest with the manufacturer of the piece goods, intermediate or otherwise, if the fabric is sold directly to the ultimate consumer. If it is sold to a finished product manufacturer for the purpose of resale in any form, then the finished product manufacturer is responsible for its labeling as it is incorporated or otherwise used in the finished product.

4. *"Made for the purpose of."* The piece goods must be "made for the purpose" of a conversion.[116] Piece goods will be deemed made for such purpose under the following circumstances:

(1) they are made to be sold directly to the ultimate consumer, as described above, and

(2) the type of fabric used to make the piece goods can be used in the making of a finished article of wearing apparel. The rule is meant to apply not only to piece goods which are used solely to make articles of wearing apparel, but to goods which can be used to make two or more types of textile articles, as long as one of those types falls in the category of wearing apparel as defined in the rule, for example, piece goods made of linen that can be used to make either tablecloths, draperies, or dresses. Such piece goods fall within the scope of the rule. If they cannot be used to make a finished article of wearing apparel under any circumstances, or, if they can be so used but such a use would be deemed highly unusual or extraordinary in the wearing apparel trade, then the piece goods do not fall within the scope of the rule.

5. *"Normal household methods."* The phrase "normal household methods" may be defined as any method(s) which does not require either an expert in the field of textile adhesion or cohesion, or tools which would not be found in the normal household.[117] Examples of "normal household methods" include sewing, ironing and the like. Use of gummed labels is permissible as long as their adhesive character is made to survive the useful life of the article, including its proper care. A label should possess the same care performance traits as does the piece goods which it describes. In any case, a label provided under paragraph (b) must be one which, when properly attached, will not become separated from the product during its useful life, i.e., a consumer must be able to "permanently attach" it to her garment.[118]

C. *Paragraph (c).* Paragraph (c)(1) of the rule outlines the exemption procedure which may be used. Because the criteria for exemption are based entirely on possible detriment to an article as a result of a permanently attached label, this procedure applies only to paragraph (a) and not to paragraph (b). Other exemptions (such as for articles not requiring care and maintenance) are built into the language of the rule and, as such, are automatic. Paragraph (c)(1) is meant to include those articles which, although included in the rule, have peculiar or special characteristics which make permanent attachment impossible or unreasonable.

The exemption applies only to the standard of permanent attachment outlined in paragraph (a). It does not totally exempt any article from the coverage of the rule. All articles which require care and maintenance and otherwise fall within the scope of paragraph (a) must be provided with an accompanying label if the exemption is granted or a permanently attached label if the exemption is either denied or not requested. Any article which is exempted under paragraph (c)(1) must be accompanied by a label or tag containing the information required by paragraph (a), according to the definition of "accompaniment" stated in the rule.

The criteria stated in paragraph (c)(1) (discussed supra) are the only standards which will be used in considering any request for exemption. They are stated in the rule itself to discourage wholesale applications for exemption from manufacturers merely seeking to avoid the extra expense of a permanently attached label. A permanently attached label must "substantially impair" the appearance or utility of an article. It is recognized that most permanently attached labels will affect the appearance of an article of wearing apparel to some degree.[119] Paragraph (c)(1) is concerned with labels or tags which inordinately interfere with an article's utility or appearance. This standard has been left broad to allow the Commission room for interpretation when considering the facts of each individual case.

Paragraph (c)(2) is included in the rule for reasons discussed supra, page 23.

VIII. *The effective date of the rule.* The Commission has given careful consideration to requests by affected parties that a reasonable length of time be allowed to afford them opportunity to bring their labeling into conformity with the provisions of the rule. The Commission believes that some delay of the effective date of the rule is reasonable. Accordingly, with respect to all forms of labeling for finished articles of wearing apparel and piece goods leaving the manufacturing plant, the rule will become effective on July 3, 1972.

[FR Doc.71-18382 Filed 12-15-71;8:48 am]

Title 7—AGRICULTURE

Chapter IX—Consumer and Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture

[Navel Orange Reg. 246]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.546 Navel Orange Regulation 246.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907, 35 F.R. 16359), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel

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[112] Supra note 3, IACTI Report at p. 10.

[113] Record, vol. 7, p. 1269. This possibility applies to all articles where the seller does not know how large the purchase will be i.e., where there are not standard "units" available in which items are normally purchased.

[114] Record, Vol. 7, p. 1453, Vinyl Fabrics Institute. Several manufacturers submitted definitions identical to this.

[115] If they are not "made for the purpose of" a conversion into wearing apparel, then they do not fall within the product coverage of the rule.

[116] Any other requirement would force the consumer to seek commercial aid in attaching her label. The extra trouble and cost involved would partially defeat the purpose of this portion of the rule.

[117] If she cannot "permanently attach" it to her garment, the consumer must cope with what is essentially a separate hang tag, discussed previously. One of the main reasons for the rule is specifically to avoid this problem.

[118] Record, Vol. 7, p. 1298; supra note 110.

system. Finally, this AD will delete the requirement for reporting defects, because reports submitted in connection with AD 72-1-6 have not provided any additional significant information.

Since this amendment in part provides for clarification, is to some extent relaxatory and is in the interest of safety, notice and public procedure hereon are impracticable and good cause exists for making the amendment effective in less than thirty (30) days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to 99 series airplanes (Serial No. U-1 and up).

Compliance: To reduce probability of landing gear retraction/extension system malfunction, accomplish A, B, C, and E below within the next 50 hours' time in service after the effective date of this AD unless already accomplished within the intervals listed below and thereafter at the intervals as specified below:

(A) At intervals not exceeding 100 hours' time in service inspect forward and rear nose gear chains for wear and tension and lubricate the chains.

(B) At intervals not exceeding 2,500 landings, inspect each landing gear actuator for jackscrew end play and integrity of mounting.

(C) At intervals not exceeding 1,000 hours' time in service, lubricate each landing gear actuator.

(D) If an unairworthy condition is found during action outlined above, replace or repair components as necessary to correct the condition, prior to further flight, except that the aircraft may be flown in accordance with FAR 21.197 to a base where the repair or replacement can be made.

(E) Replace or overhaul main and nose landing gear actuators at intervals not exceeding 5,000 landings.

(F) Action prescribed above must be accomplished in accordance with the Beech 99 Airliner Shop Manual (Part No. 99-590015B revised March 1972, or any later revision) or by any FAA-approved equivalent method. Upon request of an operator, an FAA Maintenance Inspector, subject to approval of the Chief, Engineering and Manufacturing Branch, FAA, Central Region, may adjust inspection and replacement intervals specified in this AD to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

This AD supersedes AD 72-1-6.

This amendment becomes effective May 12, 1972.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6 (c), Department of Transportation, 49 U.S.C. 1655(c))

Issued in Kansas City, Mo., on April 28, 1972.

CHESTER W. WELLS,
Acting Director, Central Region.

[FR Doc.72-6918 Filed 5-5-72;8:47 am]

[Airspace Docket No. 72-SW-25]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Control Zone

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the Galveston, Tex., control zone by changing it from a full-time to a part-time control zone.

On April 11, 1972, a notice of proposed rule making was published in the FEDERAL REGISTER (37 F.R. 7165) stating the Federal Aviation Administration proposed to alter the Galveston control zone.

Interested persons were afforded an opportunity to participate in the rule making through submission of comments. All comments received were favorable; however, it was pointed out that the name of the Galveston VORTAC had been changed to Scholes VORTAC.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., June 22, 1972, as hereinafter set forth.

In § 71.171 (37 F.R. 2056), the Galveston, Tex., control zone is amended by deleting "Galveston VOR" and substituting "Scholes VORTAC," therefor and by adding "This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airman's Information Manual."

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348; sec. 6(c), Department of Transportation Act, 49 U.S.C 1655(c))

Issued in Fort Worth, Tex., on April 28, 1972.

R. V. REYNOLDS,
Acting Director, Southwest Region.

[FR Doc.72-6919 Filed 5-5-72;8:47 am]

Title 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

PART 423—CARE LABELING OF TEXTILE WEARING APPAREL

Delegation of Authority To Act Upon Requests for Exemptions; Correction

In F.R. Doc. 72-5190 appearing at page 6835 of the issue for Wednesday, April 5, 1972, paragraph (b) of § 423.2 is hereby corrected to read as follows:

§ 423.2 Exemptions.

* * * * *

(b) *Procedure.* (1) The Director of the Bureau of Consumer Protection will, by letter to the applicant, grant or deny each request for exemption, with a brief statement of the reason for any denial. The letter will be placed upon the public record. Within five (5) days after the letter is placed upon the public record, the applicant or any person who would be adversely affected by the Director's decision may file with the Secretary a request for review and reversal thereof by the Commission. The Commission, in its discretion, may grant or deny the request for review and will by letter notify the applicant and any such affected person of its decision, with a brief statement of its reasons therefor, and will place the letter upon the public record.

(2) If no timely request for review is filed and if the Commission, on its own motion, does not place the Director's decision upon its docket for review, the Director's decision shall become the action of the Commission ten (10) days after the Director's letter to the applicant was placed upon the public record.

(3) If the Commission determines on its own motion to review the Director's decision, it may affirm or set aside such decision and grant or deny the applicant's request for an exemption. By letter, the Commission will notify the applicant and any affected party who filed a timely request for review of its decision, together with a brief statement of its reasons therefor, and will place said letter upon the public record.

By direction of the Commission dated March 14, 1972.

[SEAL] CHARLES A. TOBIN,
Secretary.

[FR Doc.72-7024 Filed 5-5-72;8:53 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

[T.D. 72-123]

PART 1—GENERAL PROVISIONS

Port of Entry; Vicksburg, Miss.

On April 7, 1972, notice of a proposal to designate Vicksburg, Miss., as a port of entry in the New Orleans, La., Customs district (Region V), was published in the FEDERAL REGISTER (37 F.R. 7003). No comments were received regarding this proposed designation.

Accordingly, by virtue of the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), which was delegated to the Secretary of the Treasury by the President by Executive Order No. 10289, September 17, 1951 (3 CFR Ch. 11), and pursuant to authority provided by Treasury Department Order No. 190, Rev. 7 (34 F.R. 15846), Vicksburg, Miss., is hereby designated a port of entry in the New Orleans, La., district (Region V), effective as of May 1, 1972.

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June 5, 2008

Mr. Jim Kohm
Associate Director of Enforcement
Federal Trade Commission
Washington, DC 20580

Dear Mr. Kohm:

On behalf of the Hosiery Association ("THA" or "the Association"), a national trade association representing legwear manufacturers, suppliers and resource partners responsible for the production of more than 85 percent of the hosiery made in the United States, I am writing to request that the Federal Trade Commission ("FTC" or "the Commission") reconsider its internal staff opinion that footless legwear (often called "footless tights" or "footless pantyhose") are not hosiery articles and therefore are not covered by the exemption from certain provisions of the Care Labeling of Textile Wearing Apparel Rule ("Care Labeling Rule") granted for such articles.

As you know, §423.1(c)(1) of the Care Labeling Rule issued on December 9, 1971 provided for the exemption of specific articles from the requirement that "any textile product in the form of a finished article of wearing apparel" must have "a label or tag permanently affixed or attached thereto by the person or organization that directed or controlled the manufacture of the finished article, which clearly discloses instructions for the care and maintenance of such article."[1] The Rule further provided that "if such request for exemption is granted, the information [...] must accompany such article whenever it is sold in commerce."

At the request of the National Association of Hosiery Manufacturers, to which THA is the successor entity, the FTC granted such an exemption for hosiery articles that meet certain criteria. In the attached July 3, 1972 letter to the legal counsel for the National Association from then Director of the Bureau of Consumer Protection Robert Pitofsky, the Commission granted an exemption to several kinds of hosiery, including "all items of: hosiery which are not completely washable, as defined, [...]." For more than thirty years, that specific exemption and others covered by the letter have enabled hosiery manufacturers to deliver comfortable and attractive legwear products that respond to the way American consumers choose to accessorize their legs, while ensuring care instructions are clearly provided on the outer packaging of these garments.

THA member companies therefore were surprised to learn earlier this year of the FTC's internal staff opinion that footless tights – an increasingly important part of many of their product lines – are not hosiery and thus may no longer benefit from the exemption.

[1] "Part 423 – Care Labeling of Textile Wearing Apparel; Promulgation of Trade Rule and State of Basis and Purpose," *Federal Register* 36:242 (16 December 1971), pp. 23884.

We understand this opinion, upon which many major retailers are now relying when making their sourcing decisions, is based on the fact that footless tights cover the waist and legs but not the feet. THA President and CEO Sally Kay and Hanesbrands Vice President of International Trade and Government Affairs Jerry Cook met with you on March 19, 2008 to share the Association's concerns about the opinion and the negative impact it is having on hosiery manufacturers and consumers. At that time, you asked the Association to submit a suggested interpretation of hosiery with respect to footless tights to assist the FTC in determining the extent of the product line to be included under the exemption to the Care Labeling Rule.

The following information responds to your request and states the specific reasons why THA believes footless tights are hosiery articles and fall into at least one of the categories of such articles for which the FTC has granted an exemption to certain provisions of the Care Labeling Rule. As explained further below, footless tights are considered hosiery articles for the purposes of U.S. law governing the treatment of these products in other circumstances, maintain the character of hosiery articles throughout their entire production chain, and are marketed to consumers as hosiery. A decision by the FTC to revise its internal opinion and extend the exception to certain provisions of the Care Labeling Rule to footless tights would be consistent with consumer expectations, the Commission's own guidance and common dictionary definitions of hosiery.

1. Footless Tights are Hosiery Articles

Footless tights are considered hosiery for the purposes of U.S. law governing the treatment of these articles in other circumstances. For example, footless tights are classified under Heading 6115 of the *Harmonized Tariff Schedule of the United States* (HTSUS), which covers "panty hose, tights, stockings, socks and other hosiery, [...] knitted or crocheted."[2] In classifying products as hosiery, the HTSUS makes no distinction between legwear that covers the foot and legwear that does not.

Footless tights maintain the unique character of hosiery articles throughout their production chain. Specifically, they are:

- Produced by the same manufacturers that make other hosiery articles. Each THA member company that produces footless tights also makes other hosiery articles, including pantyhose, knee highs, and tights, and all but one produce hosiery exclusively.

- Made using the same fibers in combination, including spandex (or elastane), nylon, wool, cotton, as other hosiery articles, such as pantyhose, knee highs, thigh highs, anklets and dress socks. To produce the stretchy, knit mesh unique

[2] *Harmonized Tariff Schedules of the United States*, Chapter 61, Section 6115, (1 January 2008), pp 64 – 67.

to hosiery products, a combination of manmade and/or synthetic fibers is used in all hosiery production, including footless tights.

- Manufactured on the same machines and by the same processes as other hosiery articles. Just like pantyhose, knee highs, thigh highs, anklets or dress socks, footless tights are manufactured on circular knitting machines with 404 or fewer needles and then stretched and shaped on a board.

- Created as essentially seamless garments. While finishing toe and decorative seams may be found in stockings, footless tights – like all hosiery products – are knit to shape without seams and never cut.

Moreover, footless tights are marketed and sold as hosiery articles to end consumers, who expect to find these articles alongside other legwear so they can easily compare products based on size, price and look. To wit:

- Major retailers sell footless tights in the same sections of their stores and catalogues as other hosiery articles and market them to consumers as hosiery. Footless tights are found under "hosiery" categories and using the search term "hosiery" on the Web sites of major department stores and Internet-only retail sites.[3]

- Footless tights are sized like other hosiery products – using simple height and weight charts unique to the hosiery industry. Hosiery sizing charts allow consumers to know how the product will fit based on previous purchases. Consumers expect to purchase hosiery products, including footless tights, without having to remove packaging and without trying on the product in the store.[4]

2. Footless Tights Meet the Standard to Which the Exemption Applies

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[3] See, for example, http://shop.nordstrom.com/C/6014317/0~2376776~2374327~6014317?mediumthumbnail=Y&origin=leftnav&pbo=2374327 and http://www1.macys.com/search/results.ognc?sortOption=*&Keyword=hosiery&resultsPerPage=24&Action=searchdrilldown&attrs=Gender:AGE_GENDER:Womens

[4] See, for example, sizing charts for the following products: http://shop.nordstrom.com/S/2900833?refsid=140837&refcat=0%7e2376776%7e2374325%7e2384880&SourceID=&SlotID=1&origin=related and http://shop.nordstrom.com/S/2855971?refsid=57063&refcat=0%7e2376776%7e2374325%7e2384880&SourceID=1&SlotID=2&origin=related

Footless tights continue to fall into at least one of the categories of hosiery articles for which the FTC has granted an exception to certain provisions of the Care Labeling Rule. In particular, footless tights are "hosiery which are not completely washable, as defined, including those which in the course of washing transfer a substantial amount of their dye onto lighter colored fabrics in the same wash or onto lighter colored portions of such hosiery [...]."[5] We understand "completely washable" refers to products that can be cleaned safely under the harshest procedures.

The synthetic and manmade fibers in footless tights and other hosiery products are chosen for their ability to maintain their shape. However, the thin fibers are susceptible to snags and tears. Manufacturers recommend hand washing footless tights and certain other hosiery products to keep the component yarns from breaking down and losing shape and to keep the dye from washing out of the fibers.

3. Classifying Footless Tights as Hosiery Would Be Consistent with Consumer Expectations, FTC Guidance and Dictionary Definitions

A decision by the Commission that footless tights are properly considered hosiery articles and therefore covered by the existing exemption to the Care Labeling Rule would be fully consistent the FTC's own guidance documents and common dictionary definitions of hosiery. The Commission's guidance document entitled "Clothes Captioning: Complying with the Care Labeling Rule"[6] characterizes hosiery in an expansive manner that does not foreclose the possibility that the exemption may apply to hosiery articles not specifically listed. It notes that the "only product line exemption" to the Care Labeling Rule applies to "hosiery, including stockings, anklets, waist-high tights, panty hose and leg warmers." Likewise, the Merriam-Webster dictionary defines hose, in part, as "a cloth leg covering that sometimes covers the foot" or "a close-fitting garment covering the legs and waist that is usually attached to a doublet by points."[7]

More importantly, such a decision would be consistent with consumer expectations. As fashion trends move toward more comfortable everyday clothing in the workplace, consumers expect hosiery products that complement casual attire – including sandals, which cannot be worn with hosiery that covers the foot. Footless tights allow women to transition from traditional suits and still wear hosiery products that fit new fashion trends. Differences in packaging and labeling between footless tights and other hosiery products would only create confusion.

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[5] Robert Pitofsky, Federal Trade Commission. "Letter to National Association of Hosiery Manufacturers Legal Representative, Mr. Daniel H. Margolis, Bergson, Barkland, Margolis and Adler." Washington D.C.: FTC Bureau of Consumer Protection, July 3, 1972.

[6] See http://www.ftc.gov/bcp/conline/pubs/buspubs/comeclean.shtm.

[7] See http://www.merriam-webster.com/dictionary/hose.

In short, THA believes there is good cause for the FTC to reconsider its internal staff opinion with respect to the characterization of footless tights and to decide such products are hosiery articles to which the existing exemption to the Care Labeling Rule applies.

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On behalf of THA and its member companies, I appreciate this opportunity to share the views of the hosiery industry on this important topic and look forward to your favorable reply.

Sincerely,

JOHNSTON, ALLISON & HORD, P.A.

Kathleen K. Lucchesi

KKL/jhm
Enc. as noted
cc: Ms. Sally Kay, President, The Hosiery Association
Ms. Cathy Allen, Chairperson, The Hosiery Association
Mr. Steve Ecklund, Federal Trade Commission
Mr. Jerry Cook, Hanesbrands

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

BUREAU OF
CONSUMER PROTECTION

July 3, 1972

Mr. Daniel H. Margolis
Bergson, Barkland, Margolis and
Adler
21 Dupont Circle, N. W.
Washington, D. C. 20036

Re: Care Labeling 215-22: Petition of National Association of Hosiery Manufacturers

Dear Mr. Margolis:

In response to the petition of your client, National Association of Hosiery Manufacturers, for exemption of certain hosiery products pursuant to paragraphs (c)(2) and (c)(1) of the Care Labeling Rule, this office has reached the following conclusions which will apply to all exemption petitions regarding hosiery.

1. Exemption pursuant to paragraph (c)(2) is granted for all men's socks and stockings; girls', boys' and women's socks and stockings (in excess of 50 denier); infants' and children's socks and stockings, manufactured of the following fiber blends:

(a) Cotton - 100% cotton, and combinations of blends predominantly of cotton with one or more of the following: nylon, polyester, acrylic, spandex, rayon and olefin.

(b) Nylon - 100% nylon, and combinations of blends predominantly of nylon with one or more of the following: cotton, polyester, acrylic, spandex, rayon and olefin.

(c) Polyester - 100% polyester, and combinations of blends predominantly of polyester with one or more of the following: cotton, nylon, acrylic, spandex, rayon and olefin.

(d) Acrylic - 100% acrylic, and combinations of blends predominantly of acrylic with one or more of the following: cotton, polyester, nylon, spandex, rayon and olefin.

(e) Wool - combinations of blends, of wool with one or more of the following in shrink-resistant socks: cotton, nylon, polyester, acrylic, spandex, rayon and olefin.

(f) Olefin - 100% olefin, and combinations of blends predominantly of olefin with one or more of the following: cotton, polyester, nylon, spandex, rayon and acrylic.

All of the aforesaid articles of hosiery sell or are intended to sell for $3.00 or less; and on the basis of an affidavit, samples and other materials submitted, the said articles are completely washable, as that term has been defined by the Commission.

No exemption pursuant to paragraph (c)(2) has been granted to those hosiery products which, in the course of machine washing and drying at hot settings, transfer a substantial amount of their dye onto lighter colored fabrics in the same wash or onto lighter colored portions of such hosiery.

2. Exemption pursuant to paragraph (c)(1) has been granted for all items of: hosiery which are not completely washable, as defined, including those which in the course of washing transfer a substantial amount of their dye onto lighter colored fabrics in the same wash or onto lighter colored portions of such hosiery; girls' and women's sheer hosiery and panty hose (50 denier or less); or hosiery which are completely washable but sells for more than $3.00.

The (c)(1) exemption has been granted as to the aforesaid products because, in considering the physical characteristics of these articles, it has been determined that the physical nature of these articles is such that affixing a permanent label would result in an uncomfortable, unattractive or damaged article, thus substantially impairing either the utility and/or the appearance of these articles.

With regard to sheer panty hose and tights, among the physical characteristics which were considered determinative in granting the (c)(1) exemption was the extreme delicacy or fragility of the fabric, valued for its appearance and not

its durability, to the end that in many instances such articles are functionally disposable.

You understand that the information required by paragraph (CARE) (a) must accompany these articles.

3. Based primarily on your information that additional time will be necessary to adapt manufacturing methods and to create and produce accompanying packages or labels as required, this office has extended the effective date to December 31, 1972. Nonetheless, we assume that the Association members will comply where appropriate as soon as it is feasible.

Your request for exemption and this letter will be placed on the public record on July 7, 1972. Further, this action may be reviewed by the Commission on its own initiative. Should you desire to petition for Commission review of this action, the petition should be addressed to the Commission's Secretary and must be received by July 14, 1972.

Sincerely,

Robert Pitofsky
Director
Bureau of Consumer Protection