

Proposed Rules

Federal Register

Vol. 63, No. 89

Friday, May 8, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (the "Commission") is commencing a rulemaking to amend its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 ("the Care Labeling Rule" or "the Rule"). The Commission proposes amending the Rule: (1) To require that an item that can be cleaned by home washing be labeled with instructions for home washing; (2) to allow that a garment that can be professionally wet cleaned be labeled with instructions for professional wet cleaning; (3) to clarify what can constitute a reasonable basis for care instructions; and (4) to change the definitions of cold, warm, and hot water in the Rule. The Commission is commencing this rulemaking because of the comments filed in response to its Advanced Notice of Proposed Rulemaking ("ANPR"), and other information discussed in this notice. The Commission invites interested parties to submit written data, views, and arguments. This notice includes a description of the procedures to be followed, an invitation to submit written comments, a list of questions and issues upon which the Commission particularly desires comments, and a description of a workshop conference that will be held to discuss the issues. The Commission will announce the time and place of the public workshop after the close of the comment period. Any persons wishing to participate in the public workshop must file a comment in response to this notice and must indicate therein their interest in participating. The comments will be available on the public record and on the Commission's web site on the

Internet (<http://www.ftc.gov>) so that interested parties can review them. After the conclusion of the workshop, the record will remain open for 30 days for additional or rebuttal comments. If necessary, the Commission will also hold hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c). Interested parties who wish to request such hearings should file a comment in response to this notice and indicate therein why they believe such hearings are necessary and how they would participate in such hearings. **DATES:** Written comments must be submitted on or before July 27, 1998.

ADDRESSES: Written comments should be identified as "16 CFR Part 423—Care Labeling Rule—Comment," and sent to Secretary, Federal Trade Commission, Sixth and Pennsylvania Ave., N.W., Washington D.C. 20580. To facilitate prompt and efficient review and dissemination of the comments to the public, all written comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. In order for files from other operating systems to be accepted, they should be submitted in ASCII text format.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or James Mills, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth St. and Pennsylvania Ave., N.W., S-4302, Washington, D.C. 20580, (202) 326-2966 or (202) 326-3035.

SUPPLEMENTARY INFORMATION:

Part A—Introduction

This notice is being published pursuant to Section 18 of the Federal Trade Commission ("FTC") Act, 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of

Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

The Care Labeling Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883 (1971). In 1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or dry cleaning information to be included on care labels. 48 FR 22733 (1983). The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating "what regular care is needed for the ordinary use of the product." (16 CFR 423.6(a) and (b)). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. (16 CFR 423.6(c)).

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice ("FRN") on June 15, 1994, 59 FR 30733. This FRN sought comment on the costs and benefits of the Rule, and related questions such as what changes in the Rule would increase the benefits of the Rule to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. The comments in response to the 1994 FRN generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and/or by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. The Commission published an ANPR on December 28, 1995, 60 FR 67102, which elicited 64 comments on the several possible amendments of the Rule described therein.¹ Based on the

¹ The comments were from: 41 consumers; one consumer group; four academics; one clothing retailer; one textile manufacturers association; one apparel manufacturers association; one professional cleaner; one professional cleaners association; one wet cleaning equipment manufacturer; two manufacturers of cleaning products; one cleaning products manufacturers association; one environmental protection group; one non-profit

Continued

comments and the evidence discussed herein, the Commission proposes to amend the Rule in the following ways.

Part B—Analysis of Proposed Amendments

1. Labeling for Home washing

a. Background and Discussion of Comments

The 1994 FRN noted that the Environmental Protection Agency ("EPA") had been working with the dry cleaning industry to reduce the public's exposure to perchloroethylene ("PCE" or "perc"), the most common dry cleaning solvent,² and asked whether the Rule poses an impediment to this goal. The Rule currently requires either a washing instruction or a dry cleaning instruction; it does not require both. Thus, garments that can legally be labeled with a "dry clean" instruction alone also may in some cases be washable, a fact not ascertainable from such an instruction. The 1994 FRN asked about the extent of care labeling that fails to indicate both washing and dry cleaning instructions. Finally, the 1994 FRN asked whether the use of dry cleaning solvents would be lessened, and whether consumers and cleaners could make more informed choices as to cleaning method, if the Rule were amended to require both washing and dry cleaning instructions for garments cleanable by both methods. 59 FR 30733-34.

In the 1995 ANPR, the Commission analyzed the comments submitted in response to the 1994 FRN and proposed amending the Rule to ensure that consumers are provided with information that would allow them the choice of washing garments when possible. The Commission concluded that lack of such information can result in substantial injury to consumers in the form of unnecessary expense and/or the inability to use what they regard as a more environmentally friendly method of care. 60 FR 67104-05.

clearinghouse for information on emissions control; one home appliance manufacturers trade association; one manufacturer of home appliances; one home appliance repairman; one international association for textile care labeling; one federal agency; and the Economic Union of European Countries. The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, Washington, D.C. The comments are referred to in this Notice of Proposed Rulemaking ("NPR") by their name and the number assigned to each submitted comment.

² Congress designated PCE as a hazardous air pollutant in Section 112 of the Clean Air Act; many state legislatures have followed suit under state air toxics regulations.

The ANPR asked for comment on an amendment of the Rule to require a home washing instruction for all covered products for which home washing is appropriate; providing dry cleaning instructions for such washable items would be optional. Manufacturers marketing items with a "Dry Clean" instruction alone would be required to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them (as the Rule currently requires them to do when providing a "Dry Clean Only" instruction). This proposal would not result in the additional substantiation testing (and increased PCE use) that the comments suggested a "dual disclosure" requirement could necessitate, because a dry cleaning instruction would be optional, as would the necessary substantiation to support it. *Id.* at 67105. That is, manufacturers labeling their goods for home washing (and possessing the appropriate substantiation for that instruction) would not have to also provide a dry clean instruction or have substantiation that dry cleaning would harm the garment.

Fifty-three comments addressed whether the Commission should require a home washing instruction for items that could be safely washed at home, and only three of those opposed the proposal.³

Eighteen commenters, including individual consumers, academics, and an appliance manufacturers' trade association, contended that many manufacturers currently label items that can be both washed and dry cleaned with a "dry clean" or "dry clean only" instruction.⁴ Many commenters stressed that knowing that garments can be washed at home would save them (or consumers in general) garment care dollars.⁵ Two consumers stated that

³ Aqua Clean Systems, Inc. ("Aqua Clean") (34) pp. 8-9; Center for Emissions Control ("CEC") (44) pp. 5-6; American Apparel Manufacturers Association ("AAMA") (57) p.2.

⁴ Henry Gluckstern, Esq. (16) pp. 1-2; Bette Jo Dedic, University of Kentucky College of Agriculture Extension Service ("Univ. of KY") (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; UCLA Pollution Prevention Education and Research Center ("UCLA PPERC") (45) p. 3; Aileen Mills (47) p. 1; Association of Home Appliance Manufacturers ("AHAM") (51) p. 2.; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1. But see Aqua Clean (34) p. 8: "As a general observation, garments which can be home laundered or drycleaned are usually labeled with both care instructions."

⁵ Univ. of KY (20) p. 1; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Carolyn Powers (35) p.

washing garments that are labeled "dry clean" or "dry clean only" but that appear washable (such as 100% cotton) is risky because, if the garment is ruined, the manufacturer will not stand behind it.⁶ AHAM, a trade association for appliance manufacturers, noted that: the cost for testing a garment fabric sample for proper care instructions is just a fraction of the consumer expense experienced by many thousands of individuals incurring ongoing dry cleaning expenses for a garment that could be washed at home.⁷

Many commenters also noted that consumers believe there are environmental benefits from home washing rather than dry cleaning washable items.⁸ Consumers Union stated, "If only one method must appear on the label, it has to be the least expensive and the least hazardous to the consumer and the environment."⁹

Three commenters recommended that both washing and dry cleaning instructions be included if both are appropriate.¹⁰ Two comments specifically opposed this type of "dual labeling," however, because of the increased levels of dry cleaning substantiation tests that would follow.¹¹

Two commenters (one of which is an association for apparel manufacturers) argued that manufacturers (having made the items) are best qualified to make the decision as to how garments can best be cleaned and urged the Commission to leave apparel manufacturers the

1; Spencer and Diana Hart (36) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Aileen Mills (47) p. 1; Joyce Rash (48) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1.

⁶ Dana Dodson (4) p. 1; Margaret Petty (37) p. 1.

⁷ AHAM (51) p. 2.

⁸ Linda Smith, Tenn. State Univ. Cooperative Extension Program (3) p. 1; John & Elizabeth Gray (15) p. 1; Univ. of KY (20) p. 2; Vera Rines (28) p. 1; Thelma Carpenter (30) p. 1; Katherine King (32) p. 1; Ida Carpenter (33) p. 1; Margie Helton (38) pp. 1-2; Jewell Brabson (40) p. 1; Susan DuBois (42) p. 1; Consumers Union (46) p. 2; Aileen Mills (47) p. 1; S.K. Taylor (49) p. 1; Helen DuBois (52) p. 1; M. Adkins (54) p. 1; Teresa Mills (58) p. 1; Sarah O'Neal (59) p. 1; Frances McCarter (61) p. 1; Gladys Bebbler (62) p. 1.

⁹ Consumers Union (46) p. 2.

¹⁰ International Fabricare Institute ("IFI") (56) p. 2; Ginetex (the International Association for Textile Care Labeling) (63) p. 4; European Union (64) p. 3.

¹¹ Univ. of KY (20) p. 2; Consumers Union (46) p. 2. See also the discussion of "dual disclosures" in the ANPR:

The Commission has learned from several commenters, primarily manufacturers, that requiring both washing and dry clean labels (a "dual disclosure" amendment) would require a dry cleaning instruction on virtually all washable items. According to these commenters, this would necessitate additional testing expenses for manufacturers and a resulting increase in PCE use, to the detriment of human health and the environment. (60 FR 67105, n. 30).

flexibility to decide which care instructions to use.¹² A third commenter in opposition to the proposal, a non-profit clearinghouse for information on emission control in chlorinated solvent applications, including dry cleaning, stated that there did not appear to be many instances of washable items being labeled "dry clean."¹³

b. Proposed Amendments and Reasons Therefor

Based on the comments, the Commission has reason to believe that "dry clean" labels on home-washable items are prevalent and that consumers have a preference for being told when items that they are purchasing can be safely washed at home. Moreover, the information about washability may be important to consumers for economic or environmental reasons, or both. Some consumers wish to avoid the use of PCE and clean in water when possible because they believe it is better for the environment. The record also supports the conclusion that this aspect of the Rule is an impediment to EPA's goal of reducing the use of dry cleaning solvents.¹⁴

When a garment that can be washed at home is labeled "dry clean," many consumers may be misled into believing that the garment cannot be washed at home, and they may incur the unnecessary expense of dry cleaning the garment and/or potential damage to the environment that they wish to avoid.¹⁵ Moreover, it can be extremely difficult for consumers to obtain the information about washability of an item for themselves. Although fiber content can be a guide to washability, other factors—such as the type of dye or finish used—can also determine washability, and consumers have no way of learning what dyes and finishes

were used and whether they will survive washing.

Accordingly, the Commission proposes amending the Rule to require a home washing instruction for garments for which home washing is appropriate. This amendment would permit optional dry cleaning instructions for such washable items, provided dry cleaning would be an appropriate alternative cleaning method. The amendment would, however, require that manufacturers selling items with a "dry clean" instruction alone be able to substantiate both that the items could be safely dry cleaned and that home washing would be inappropriate for them.¹⁶

As noted in the comments, the proposed amendment would enable consumers to make a more informed purchasing choice and provide them with the option of saving money by washing at home instead of incurring the higher expenses of dry cleaning. In addition, consumers who are concerned about reducing the use of PCE will have information about the "washability" of all apparel items they are considering purchasing.

The Commission agrees, as it did in the ANPR, with the commenters (primarily manufacturers) that cautioned against a "dual labeling" instruction requiring both home washing and dry cleaning instructions if both methods are appropriate. Such an instruction would result in some manufacturers of traditionally washable products performing dry cleaning tests to substantiate that dry cleaning was an appropriate care method, which would be contrary to EPA's goal of reducing the use of dry cleaning solvents. Moreover, the comments do not indicate a consumer preference for such dual labeling. The Commission has no reason to believe at this time that it is either unfair or deceptive for a manufacturer or importer to fail to reveal that a garment labeled for washing can also be dry cleaned, and to require such dual labeling might raise costs without providing any real benefit to consumers.

The proposed amendments would permit a home washing instruction only for those covered products for which home washing—and traditional home finishing processes such as ironing—would be an appropriate method of care. Many commenters cautioned that, for

some items that could be washed in water, there would be many additional finishing steps required for the garment that the average consumer could not perform at home. In the case of some garments, such as suits made from wool or silk (fibers that generally can be safely washed in water), post-home washing finishing processes like steampressing and pleat and crease setting are necessary for proper refurbishing. These processes are beyond the capabilities of most consumers and the equipment available to them.¹⁷ Under the proposed amendments, a home washing instruction would not be appropriate or required for an item that could be safely washed in water with the proper cleaning agents but could not be finished properly at home by the average consumer. Moreover, the Commission recognizes that manufacturers have experience with the consumers who buy their garments, and the Commission would expect to defer to manufacturers' decisions in the case of garments that would be difficult to refurbish for some but not all consumers.¹⁸

2. The "Professionally Wet Clean" Instruction

a. Background and Discussion of Comments

The ANPR asked whether the Rule should be amended to recognize the new technology referred to as "professional wet cleaning" by requiring a professional wet cleaning instruction for products that cannot be washed at home but could be cleaned by means of this new technology.¹⁹ (Professional wet cleaning uses computer-controlled washers and dryers to achieve precise control of mechanical action, fluid levels, temperatures, and other important factors.) The ANPR asked for information on the cost of wet cleaning, the availability of wet cleaning facilities, whether the process currently could serve as a practical alternative to dry cleaning, and whether fiber

¹² Aqua Clean (34) pp. 8–9; AAMA (57) p. 2, noting that "There are some garments with 'dry clean only' labels that can be washed at home * * * but if the cleaning is not done correctly, it can lead to damage."

¹³ CEC (44) p. 5.

¹⁴ EPA's comment (73) to the 1994 FRN stated, at p. 1, that the Rule should be revised to require manufacturers to state whether a garment "can be cleaned by solvent-based methods, water-based methods, or both. We believe this change is necessary to advance the use of water-based cleaning technology." EPA's comment to the 1995 FRN referred to the 1994 comment, and stressed the need for recognition in the Rule of professional wet cleaning. EPA (17) p. 1.

¹⁵ A Perdue University survey found that 89.3% of the 962 respondents indicated that they would not wash a garment labeled "dry clean." Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 423) (May 1978), p. 141. Other surveys showed similar results. *Id.* at 142–143.

¹⁶ The Rule currently requires this level of substantiation for a "dry clean only" instruction. Under the proposed amendment, any garment for which home washing is not recommended and dry cleaning is recommended, would have to be labeled "dry clean only." In other words, a "dry clean" instruction by itself would no longer be permissible.

¹⁷ See Aqua Clean (34) pp. 8–9.

¹⁸ In addition, manufacturers that wished to stress that a particular garment could be refurbished at home but might be difficult for some consumers to refurbish adequately at home could add a phrase such as "For best results, dry clean."

¹⁹ In the narrative discussing this issue in the ANPR, the Commission sought information on the feasibility of a "professionally wet clean" instruction on "all covered products bearing a dry cleaning instruction." 60 FR 67105. In the Request for Comments Section of the Notice, however, the Commission limited the applicability of the question to "a garment that cannot be home laundered but can be dry cleaned." 60 FR 67107. Most of the commenters responded in the latter context.

identification should be on a permanent label. 60 FR 67105, 67107.

Twenty-nine commenters addressed the "professionally wet clean" instruction.²⁰ Only four opposed the proposal to amend the Rule to require a "professionally wet clean" instruction for wet cleanable garments that cannot be washed at home. The Soap and Detergent Association and Procter & Gamble contended that the term "professionally wet clean" may be confused with a home washing instruction by consumers.²¹ The Center for Emissions Control contended that wet cleaning is a new technology that is neither well understood nor widely available, and that a required wet cleaning instruction now would therefore be unreasonable and counterproductive.²² SDA, P&G, and CEC all recommended requiring some version of a "professionally clean" instruction that would encompass both dry cleaning and professionally wet cleaning.²³ CEC also suggested that eventually the Rule could provide for a "professionally wet clean" instruction that would be permitted, but not required, when the manufacturer thought professional wet cleaning would be appropriate.²⁴ AAMA opposed any provision in the Rule for professional wet cleaning on the ground that it is too new and that there are too few cleaners who can provide the service.²⁵

(1) *Defining Professional Wet Cleaning.*²⁶ Six organizations provided

²⁰ Joyce McCarter (14) p.1; John & Elizabeth Gray (15) p.1; Henry Gluckstern, Esq. (16) pp.1, 3; EPA (17) p.1; Linda Arant (18) p.1; Vera Rines (28) p.1; Thelma Carpenter (30) p.1; Ida Carpenter (33) p.1; Aqua Clean (34) pp. 6-7; Margie Helton (38) p.1; Jewell Brabson (40) p.1; American Textile Manufacturers Institute ("ATMI") (41) p.3; Susan DuBois (42) p.1; The Soap and Detergent Association ("SDA") (43) pp.1, 3; CEC (44) pp.1-2, 5; UCLA PPERC (45) pp.2-3; Consumers Union (46) pp.1-2; Center for Neighborhood Technology ("CNT") (55) pp.2, 4; IFI (56) p.2.; AAMA (57) p.2; Teresa Mills (58) p.1; Sarah O'Neal (59) p.1; P&G (60) pp.2, 4; Frances McCarter (61) p.1; Gladys Bebbler (62) p.1; Ginetex (63) p.3.

²¹ SDA (43) pp.1, 3; Procter & Gamble ("P&G") (60) pp.2, 4.

²² CEC (44) p.5.

²³ SDA (43) pp.1, 3; CEC (44) pp.1-1, 5; P&G (60) pp.2, 4.

²⁴ CEC (4) p.5.

²⁵ AAMA (57) p.2.

²⁶ The ANPR noted that EPA had published a summary of an alternative cleaning process referred to as "Multiprocess Wet Cleaning." 60 FR 67103 (Dec. 28, 1995). According to several commenters, "multiprocess wet cleaning" is a cleaning process that involves knowledgeable individuals hand-cleaning individual garments, often employing a "spot cleaning" technique rather than full immersion, and using water, heat, steam and natural soaps instead of perchloroethylene or petroleum solvents. Aqua Clean (34) pp.1-2, noting that "Professional wet cleaning has already supplanted multiprocess wet cleaning. Indeed,

information describing the wet cleaning process.²⁷ They defined "machine wet cleaning" or "professional wet cleaning" as an automatic, water-based cleaning process that relies on the use of sophisticated, computer-controlled washers and dryers in which the washing and drying cycles, including heat, moisture, and agitation, can be precisely controlled according to the requirements of the various fiber, fabric, and garment types.²⁸

Three organizations provided information about the equipment used in professional wet cleaning.²⁹ UCLA PPERC and CNT said that five companies provide the equipment systems necessary for professional wet cleaning.³⁰ Aqua Clean provided a detailed description of the equipment needed to provide professional wet cleaning services:

All professional wet cleaning systems consist of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer always uses a frequency-controlled motor, which allows the computer to precisely control the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation and extraction parameters, etc. The dryer always incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals which are on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act (TSCA).³¹

(2) *As an Alternative to Dry Cleaning.* The ANPR asked two related questions about the feasibility of wet cleaning as a practical alternative to dry cleaning, and the extent to which items that have historically been dry cleaned could successfully be professionally wet cleaned. Five commenters responded directly to the first question. ATMI and AAMA pointed out that, while the fibers and dyes now in use will stand up to the chemical solvents used in the dry cleaning process, the textile industry does not know if they will stand up to

those cleaners (Ecofranchising, NY; Cleaner Image, CT) which initially used multiprocess wet cleaning have converted to professional wet cleaning because of the economic advantages." See also CEC (44) p.4. Consequently, Multiprocess Wet Cleaning is not addressed in the remainder of this Notice.

²⁷ Aqua Clean (34) pp.1-2; CEC (44) p.4; UCLA PPERC (45) p.3; CNT (55) p.2; IFI (56) p.2; Ginetex (63) p.3.

²⁸ Aqua Clean (34) pp.1-2; UCLA PPERC (45) p.3.

²⁹ Aqua Clean (34) pp.2-3; UCLA PPERC (45) p.3; CNT (55) p.2.

³⁰ UCLA PPERC (45) p.3; CNT (55) p.2.

³¹ Aqua Clean (34) pp.2-3.

professional wet cleaning.³² ATMI predicted that:

If consumers just assume that they can use the new cleaning method on their existing wardrobe and current clothing purchases, we would expect to see an increase in apparel damage claims. This is because the fabrics used in these clothing items have finishes and formulations designed for dry cleaning. We told EPA that the industry would need a long phase-in time (2-3 years) to adjust our dyes and finishes to work compatibly with "wet clean" processes.³³

Ginetex, which is responsible for the care labeling system used in European countries, indicated its interest in the wet cleaning technique, but said it is waiting for a standardized test method so manufacturers can test garments to determine whether wet cleaning would be a safe care method.³⁴ IFI cautioned that wet cleaning technology is new and stated its determination to undertake research into the process:

The use of machine wet cleaning is still in the investigative or infant stage. The technology originated in Europe and the most extensive analysis of these systems has been completed by two European research groups—Hohenstein and FCRA. The conclusion of these studies is that machine wet cleaning is an adjunct to dry cleaning, not a complete replacement. The Environmental Protection Agency, as a result of its evaluation of wet cleaning under its Design for the Environment Program, concludes that machine wet cleaning is not a complete replacement for drycleaning. There is still much investigative work to be done in this area. To that end, IFI has formed a partnership with Greenpeace, other industry groups, and other environmental and labor groups to explore the possibilities of wet cleaning—The Professional Wet Cleaning Partnership.³⁵

Aqua Clean estimated that 90% of garments can be safely and satisfactorily cleaned by professional wet cleaning. Aqua Clean stated that it has found no significant wetcleanability versus drycleanability differences applicable to wool, silk, rayon, acetate, linen, etc. with the exception of heavier wool suits, which are made with linings and shoulder pads that dry at a rate different from the wool, and thus require extra time.³⁶ CEC stated that estimates of the percentage of garments labeled "dry clean only" that can be successfully wet

³² ATMI (41) p.3; AAMA (57) p.2.

³³ ATMI (41) p.3.

³⁴ Ginetex (63) p.3.

³⁵ IFI (56) p.2.

³⁶ Aqua Clean (34) p.4. Aqua Clean said that it has corresponded with the International Wool Secretariat (IWS), the research and marketing arm of the wool industry, and anticipates cooperating with the IWS's announced intention to develop wool processing technologies at the mill level that will make wool garments better suited to professional wet cleaning, so they can be dried faster at higher temperatures. *Id.* at 5.

cleaned vary from 30% to 70%, with industry experts narrowing that spread to 30% to 50%.³⁷ IFI contended that it is too early to estimate the percentage with any certainty, but stated that early indications are that the percentage of "dry clean" labeled garments that could be effectively machine wet cleaned could be anywhere from 25% to 75%.³⁸ CNT estimated, based on its own research and research conducted by Environment Canada, that from 30% to 70% of clothes generally cleaned in PCE could be safely cleaned using standard commercial or domestic laundering equipment.³⁹

(3) *Businesses that Provide Wet Cleaning.* When it filed its comment in early 1996, Aqua Clean estimated that, by the end of 1996, approximately 350 businesses would have professional wet cleaning systems.⁴⁰ Three other commenters estimated that professional wet cleaning is currently being offered by 100 businesses.⁴¹ CEC also estimated that it will be several years, even at best, before a substantial number of the nation's 30,000 cleaners have purchased professional wet cleaning technology.⁴²

(4) *Costs to Consumers.* ATMI said that the additional costs incurred by textile and apparel manufacturers to substantiate a wet cleaning instruction would be passed on to consumers.⁴³ Both UCLA PPERC and CNT stated that the costs to consumers for wet cleaning services are comparable to the costs of dry cleaning.⁴⁴ CNT estimated that the range for wet cleaning a two-piece wool suit was from \$4.50 to \$9.00, and added that interviews with cleaners indicated that those who provided both types of cleaning were providing them for approximately the same cost, and that in no case were charges for wet cleaning higher than for dry cleaning.⁴⁵

Aqua Clean said that it was not aware of any cleaner charging more for wet cleaning services than for dry cleaning services, and that in some cases the cost of wet cleaning is less, because many dry cleaners impose a surcharge (typically 50 cents) to cover the rising cost of disposing of hazardous dry cleaning waste.⁴⁶

(5) *The Environmental Impact of the Process.* Aqua Clean and CNT stated that none of the substances used in the process are prohibited by EPA; further, Aqua Clean said that the only materials released into the environment in connection with the process are chemicals that appear on EPA's public inventory of approved chemicals under the Toxic Substances Control Act.⁴⁷ CEC suggested, however, that the primary environmental issue associated with the wet cleaning process is water consumption, because the process uses 2.5 gallons of water to clean a pound of clothes. CEC pointed out that, although this compares favorably to the 6 gallons per pound used by home clothes washers, the wet cleaning process uses more water than the dry cleaning process, which uses water primarily for cooling purposes, and typically recycles it.⁴⁸ UCLA PPERC stated that research suggests that wet cleaning is a safe alternative to dry cleaning.⁴⁹

The Commission notes that it has not made an independent assessment of the environmental desirability of the various methods of cleaning textile wearing apparel. Rather, it has noted EPA's goal of reducing the use of dry cleaning solvents and the preference of numerous consumers for information about whether garments can be cleaned in water. The Commission has prepared a proposed Environmental Assessment in which it analyzed whether the amendments to the Rule were required to be accompanied by an Environmental Impact Statement. Because the main effect of the proposed amendments is to provide consumers with additional information rather than directly to affect the environment, the Commission concluded in the proposed Environmental Assessment that an Environmental Impact Statement is not necessary. The Commission requests comment on this issue. The Environmental Assessment is on the

access cleaning services, are refusing to rent space to or renew leases for drycleaners. These landlords simply do not want to bear the legal exposure or insurance expense associated with drycleaning machines and their toxic waste stream. Aqua Clean Systems is currently negotiating with a major national shopping center owner to become their exclusive tenant for 100% perc-free cleaning facilities. At present, they refuse to allow a drycleaner in any of their 1,800 shopping centers. Similar discussions are taking place with a major chain in the Southeast. This trend will continue. If the Rule is not amended to accommodate professional wet cleaning, access to cleaning services will decline as regulatory and landlord pressures cause a decline in the number of drycleaners, which will eventually reduce competition and cause an increase in consumer prices. *Id.*, pp. 9-10.

⁴⁷ Aqua Clean (34) p.3; CNT (55) p.3.

⁴⁸ CEC (44) p.3.

⁴⁹ UCLA PPERC (45) p.4.

public record and is available for public inspection at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, Washington, D.C. It can also be obtained at the FTC's web site at <http://www.ftc.gov> on the Internet.

(6) *The Requirement for Fiber Identification on a Permanent Label.* Eight comments addressed the desirability of a requirement for fiber identification on a permanent label, and all favored the idea.⁵⁰ Five recommended that the fiber identification be on the same label as the care instructions.⁵¹ Several commenters said that fiber information need not necessarily be on the care label but should be on a permanent label.⁵² Most of the commenters said that cleaners need fiber identification information in order to provide the best cleaning services for their customers. Aqua Clean explained as follows: [F]abric identification [should] be on a permanent label because it is essential information for all cleaners regardless of the technology employed; requiring this by regulation will merely codify a nearly uniform practice at no measurable cost to manufacturers. A secondary consideration is that individuals with allergies to certain fibers (e.g., wool) should be provided with this information. It is clear that requiring fiber identification on a permanent label should be acceptable to manufacturers and consumers because it has already become an accepted part of business at all levels of manufacture, distribution, sales, and garment care.⁵³

b. *Proposed Amendment and Reasons Therefor.* The comments show that professional wet cleaning is a process that is of interest to consumers, especially those who believe it has the potential for less negative impact on the environment than dry cleaning. Thus, the Commission is proposing amendments that will incorporate professional wet cleaning into the Rule's system of instructions for care.

Nevertheless, professional wet cleaning is a very new technology, and it does not appear to be widely available. Moreover, there is not a standardized test by which manufacturers can establish a reasonable basis for a professional wet

⁵⁰ Univ. of KY (20) p. 1; Aqua Clean (34) p. 7; ATMI (41) p. 4; CEC (44) p. 2; UCLA PPERC (45) p. 3; Consumers Union (46) p. 2; AHAM (51) p. 2; P&G (60) p. 4.

⁵¹ CEC (44) p. 2; UCLA PPERC (45) p. 3; Consumers Union (46) p. 2; AHAM (51) p. 2; P&G (60) p. 4.

⁵² Univ. of KY (20) p. 1; Aqua Clean (34) p. 7.

⁵³ Aqua Clean (34) p. 7.

³⁷ CEC (44) p.4.

³⁸ IFI (56) p.2.

³⁹ CNT (55) p.2.

⁴⁰ Aqua Clean (34) p.3.

⁴¹ UCLA PPERC (45) p.3; CNT (55) p.3; AAMA (57) p.2.

⁴² CEC (44) p.5.

⁴³ ATMI (41) p.3.

⁴⁴ UCLA PPERC (45) p.4; CNT (55) p.4.

⁴⁵ CNT (55) p.4.

⁴⁶ Aqua Clean (34) p.5. Aqua Clean also raised an issue that was not addressed in the ANPR—consumer access to cleaning services:

Many developers and owners of strip centers and shopping centers, which is where most consumers

cleaning instruction.⁵⁴ For these reasons, the Commission is not at this time proposing an amendment to the Rule that would require a wet cleaning instruction. Instead, the Commission is proposing amendments that would add a definition to the Rule for "professional wet cleaning" and would permit manufacturers to include a "professionally wet clean" instruction on labels for those items for which they have a reasonable basis for a professional wet cleaning instruction. The proposed amendments do not require manufacturers who label items with a "dry clean only" instruction to be able to substantiate that professional wet cleaning would be an inappropriate method of care.

The Commission also concludes that fiber identification on a permanent label is important to professional wet cleaners.⁵⁵ The record contains numerous references to the need for precise fiber content information due to the complexity of the computer-controlled equipment used in the wet cleaning process. Therefore, the proposed amendment requires that, if a care instruction recommends professional wet cleaning, the fiber content must be provided on the permanent care label along with the care instructions. The Commission seeks comment as to whether any accompanying change should be made to the Textile Rules.⁵⁶

Finally, it should be noted that at this time, the Commission proposes allowing a "professional wet clean" instruction along with a conventional care instruction because many consumers do not currently have access to professional wet cleaners. Nevertheless, because professional wet cleaning appears to be growing rapidly, the Commission seeks comment on this point.

⁵⁴ Testing is one of several types of evidence that can serve as a reasonable basis for a care instruction.

⁵⁵ The Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. 70 *et seq.*, requires marketers of covered textile products to mark each product with the generic names and percentages by weight of the constituent fibers present in the product. The Commission has issued Rules and Regulations under the Textile Act ("Textile Rules"). Rule 15 of the Textile Rules, 16 CFR 303.15, allows any type of label to be used as long as the label is securely affixed and durable enough to remain attached to the product until the consumer receives it; Rule 15 does not require a permanent label.

⁵⁶ Rule 16 of the Textile Rules, 16 CFR 303.16, requires, with some exceptions, that all information required by the Textile Act shall be set out on one label, and on the same side of the label. The Commission recently sought comment on modifications of the Textile Rules. 61 FR 5344 (Feb. 12, 1996).

3. The Reasonable Basis Requirement of the Rule

a. Background and Discussion of Comments

The Rule requires that manufacturers and importers of textile wearing apparel possess, prior to sale, a reasonable basis for the care instructions they provide. Under the Rule, a reasonable basis must consist of reliable evidence supporting the instructions on the label. 16 CFR 423.6(c). Specifically, a reasonable basis can consist of (1) reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or the industry expertise supporting the care information on the label; or (6) other reliable evidence. *Id.*

The 1994 FRN solicited comment on whether the Commission should amend the Rule to conform with the interpretation of "reasonable basis" described in the FTC Policy Statement Regarding Advertising Substantiation, ("Advertising Policy Statement") 104 F.T.C. 839 (1984), or to change the definition of "reasonable basis" in some other manner. The comments in response to the 1994 FRN suggested that a significant number of care labels lack a reasonable basis. Based on these comments, the ANPR proposed amending the reasonable basis requirement to reduce the incidence of inaccurate and incomplete labels. The ANPR sought comment on that incidence, the extent to which it might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification.

The Commission further solicited comment on whether to amend the Rule to clarify that the reasonable basis requirement applies to a garment in its entirety rather than to each of its individual components. In addition, the Commission asked for comment on whether the Rule should specify standards for determining acceptable and unacceptable changes in garments following cleaning as directed, and whether the Rule should identify properties, such as colorfastness and dimensional stability, to which such standards would apply.

The ANPR sought comment on the option of indicating in the Rule that whether one or more of the types of

evidence described in Section 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the Advertising Policy Statement and whether the Rule should be amended to make testing of garments the only evidence that could serve as a reasonable basis under certain circumstances. Finally, the ANPR sought comment on whether the Rule should specify particular testing methodologies to be used. Ten commenters responding to the ANPR discussed the reasonable basis provision.⁵⁷ Seven supported the modification of the Rule, arguing that the provision should be clarified and strengthened to reduce mislabeling.⁵⁸ Two maintained that the reasonable basis provision should not be amended, because the proposed changes would likely increase the cost to consumers and apparel firms without materially increasing the benefits to consumers.⁵⁹

Only two commenters provided data on the incidence of mislabeling. Both concluded that there is a high incidence of inaccurate and/or incomplete labeling. IFI cited statistics from its Garment Analysis database (which, in 1995, consisted of 25,160 damaged garments) indicating that inaccurate care labels were responsible for 40% of the damaged garments.⁶⁰ Clorox concluded from its own study that 70% of all home washing instructions provide inaccurate bleach information.⁶¹

ATMI, however, stated that most home washing labels are accurate, and that the vast majority of dry clean instruction labels are accurate, despite limited problems associated with care instructions for special items such as beaded apparel, sequins, and leather appliques.⁶² ATMI and AAMA both

⁵⁷ Univ. of KY (20) p.2; Clorox (31) pp. 4-5; ATMI (41) pp. 5-7; SDA (43) pp. 1,3; Consumers Union (46) pp. 2-3; AHAM (51) p.2; IFI (56) p. 3; AAMA (57) p. 2; P&G (60) p. 5; Ginetex (63) p.4.

⁵⁸ Univ. of KY (20) p. 2; Clorox (31) pp. 4-5; SDA (43) pp. 1,3; Consumers Union (46) pp. 2-3; AHAM (51) p. 2; IFI (56) p. 3; P&G (60) p. 5.

⁵⁹ AAMA (57) p. 2; ATMI (41) pp. 5-7. Ginetex, the European care labeling organization, stated that it gives technical advice "to give indications how to test in the case of uncertainty to choose the correct care label." Ginetex (63) p. 4.

⁶⁰ IFI (56) p.3.

⁶¹ Clorox (31) p.2.

⁶² ATMI (41) p.5. See also AAMA (57) p.3 ("There are a few problems with leather patches and some other materials attached to garments.") The Commission has litigated one case involving inaccurate care instructions that resulted in damage to garments. *FTC v. Bonnie & Company Fashions, Inc. and Bonnie Boerer*, Civ. Action No. 90-4454 (D.N.J.). In addition, since that litigation, the Commission has obtained five settlements that alleged violation of the Rule due to inaccurate care instructions; in three of those five settlements, the Commission alleged that the trim on the garments was damaged when cleaned.

stated that the costs to consumers of complaining to manufacturers or retailers about garments damaged in cleaning is minimal, usually consisting of returning that item to the store, a telephone call, or postage for mailing a letter.⁶³ Moreover, according to both commenters, garment or piece goods manufacturers generally offer refunds for products damaged in cleaning despite adherence to care label directions if numerous consumers complain about an item.⁶⁴

Several commenters specifically addressed whether the Rule should require testing as a reasonable basis in certain situations. Two commenters argued that testing should be the only permissible reasonable basis.⁶⁵ Clorox stated that tests performed on a representative sample of each garment are "the most reliable evidence of care instruction accuracy," and that textbooks and manuals should not be allowed as evidence of a reasonable basis.⁶⁶ Clorox maintained that such a requirement would place little additional expense on manufacturers because "published tests on specific fabric and dye combinations are already shared among the trade."⁶⁷

Two commenters, ATMI and AAMA, however, opposed such an amendment to the Rule.⁶⁸ ATMI expressed its concern that a testing requirement would substantially increase the prices for apparel and home furnishing items.⁶⁹ AAMA noted that its members already test new styles and fabrics for use in garments; thus, it is unaware of any garments which "would need a legal requirement to be tested."⁷⁰

A number of commenters discussed whether the rule should specify testing methodologies to be used. Consumers Union asserted that the Rule should specify test methods that relate to consumer expectations, assessing "product performance after repeated cleaning, shrinkage, colorfastness, appearance retention, and at least one fabric strength test."⁷¹ In contrast, AAMA contended that requiring

specific test methods may impede the introduction of new fibers and fabrics.⁷²

Several commenters responded to the Commission's questions relating to whether the Rule should require a reasonable basis for a whole garment versus each component. Three commenters maintained that the Rule should require a reasonable basis for a garment in its entirety.⁷³ IFI noted that its database shows that "a large portion of the garments damaged are the result of the trim or component part of the garment failing in a specified care procedure."⁷⁴ Consumers Union also argued that "to state an instruction that excludes its applicability to garment trim is not often practical as some trim are hard to remove and reposition after cleaning."⁷⁵

Two commenters stated that the Rule should not require testing on a complete garment.⁷⁶ AAMA asserted that many garments are made of just one major fabric. Accordingly, there may not be a need to test an entire garment, as opposed to the materials used, if the other materials used in the garment are of the same fiber and basic construction.⁷⁷ Moreover, AAMA argued that it is sufficient for manufacturers to specify in care instructions that a specific trim is excluded, because consumers are thereby warned that care must be taken when refurbishing the garment.⁷⁸ ATMI stated that testing of completed garments would significantly raise the cost of manufacturing apparel, but noted that trim should be covered by the Rule, and that manufacturers should be responsible for selecting and combining component materials that can be refurbished together.⁷⁹

Many commenters responded to the Commission's request for comments on whether the Rule should refer to performance standards, concluding that it may not be feasible for the Rule to do so. Consumers Union, for example, noted that because fabrics and apparel items are continually offered and discontinued, it may not be possible for the Commission to set performance standards in a timely fashion to cover all properties and types of garments.⁸⁰

AAMA asserted that although there is "reason to look at minimum performance standards, including colorfastness, abrasion resistance, etc.," the Commission should not modify the reasonable basis requirement until the United States, Mexico and Canada have harmonized their labeling standards.⁸¹

Finally, two commenters stated that the Commission would improve the effectiveness of the Rule by incorporating the criteria from the Advertising Policy Statement.⁸²

b. Proposed Amendments and Reasons Therefor

Section 423.6(c)(3) of the Rule currently states that a manufacturer or importer establishes a reasonable basis for care information by "possessing prior to sale: [r]eliable evidence * * * for each component part of the product." Based on its review of the comments, the Commission proposes to amend the reasonable basis standard to make clear that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components. The Commission believes that the record establishes that in some cases care instructions may not be accurate for the entire garment. A garment component that may be cleaned satisfactorily by itself might, for example, bleed onto the body of a garment of which it is a part. Thus, in the proposed Rule, Section 423.6(c)(3) has been amended to clarify that a manufacturer must possess a reasonable basis for the garment as a whole, including any trim.⁸³ Proposed Section 423.6(c)(3) provides that "Reliable evidence * * * for each component part of the product, in conjunction with reliable evidence for the garment as a whole" can constitute a reasonable basis for care instructions. The proposed Rule does not require testing of the entire garment if there is an adequate reasonable basis for the garment as a whole without such testing; the proposed change would clarify, however, that testing of separate components is not necessarily sufficient if problems are likely to occur when the components are combined.⁸⁴

⁶³ ATMI (41) p.7; AAMA (57) p.4. But see Univ. of KY (20) p.2 (consumers may not complain to stores because they are intimidated or do not think their problems will be resolved).

⁶⁴ ATMI (41) p.7 (noting that if only one consumer complains about an item "of which thousands were produced, it is likely that the damage was caused by a commercial cleaner or by the consumer"); AAMA (57) p.4.

⁶⁵ IFI (56) p. 3; Clorox (31) pp. 4-5.

⁶⁶ Clorox (31) p. 4.

⁶⁷ *Id.*

⁶⁸ ATMI (41) p. 5; AAMA (57) p. 3.

⁶⁹ ATMI (41) p. 7.

⁷⁰ AAMA (57) p. 3.

⁷¹ Consumers Union (46) p. 2.

⁷² AAMA (57) p. 3.

⁷³ Univ. of KY (20) p. 2; Consumers Union (16) p. 3; IFI (56) p. 3.

⁷⁴ IFI (56) p. 3.

⁷⁵ Consumers Union (46) p. 3.

⁷⁶ AAMA (57) p. 4; ATMI (41) pp. 5-6.

⁷⁷ AAMA (57) p. 4.

⁷⁸ *Id.*

⁷⁹ ATMI (41) p. 6.

⁸⁰ Consumers Union (46) p. 2 (suggesting that the FTC implement a rule that requires manufacturers, retailers, and importers to issue refunds for products damaged in cleaning despite adherence to the label).

⁸¹ AAMA (57) p. 2.

⁸² SDA (43) p. 3; P&G (60) p. 5 (also suggesting that the Commission consider methods of certification and other tools such as U.S. Customs requirements to reduce the number of mislabeled imported goods, especially those labeled "Dry Clean Only.")

⁸³ The Commission notes that an instruction to clean "exclusive of trim" is only a valid care instruction if the trim can be easily removed and easily reattached.

⁸⁴ For example, red trim that is to be placed on white fabric should be evaluated to determine if it

The Commission, however, believes that the comments do not provide sufficient reason to propose modifying other aspects of the reasonable basis provision at this time. As noted by the AAMA, the United States, Mexico, and Canada are in the process of harmonizing their labeling requirements. Until this harmonization is complete, the Commission believes that further modification of the reasonable basis provision may be premature.

4. Definitions of Water Temperatures

a. Background and Discussion of Comments

The Rule currently requires that a care label that recommends washing must also state a water temperature that may be used unless "the regular use of hot water will not harm the product." 16 CFR 423.6(b)(1)(i). The Rule also provides that if the term "machine wash" is used with no temperature indication, "hot water up to 150 degrees F (66 degrees C) can regularly be used." 16 CFR 423.1(d). This definition is repeated in Appendix 1.a. "Warm" is defined in Appendix 1.b. as ranging from 90 to 110 degrees F (32 to 43 degrees C), and "cold," in Appendix 1.c., as cold tap water up to 85 degrees F (29 degrees C).

Some comments to the 1994 FRN recommended that the Commission revise the definition of cold water. Commenters noted that tap water temperatures vary across the United States, and that such differences can cause problems because, in the winter in colder parts of the country, detergents may not fully activate during a cold wash cycle. Other comments suggested that the Rule's definition of hot water should be changed. The American Association of Textile Chemists and Colorists ("AATCC") commented that the temperatures stated in the Appendix should be changed to match the AATCC definitions, which the AATCC believes "more accurately reflect current washing machine settings and consumer practice."⁸⁵ The AATCC defines "hot" as 120 degrees F plus or minus 5 degrees (49 degrees C plus or minus 3 degrees).

The ANPR sought comment on whether the Commission should amend the Rule to change the definitions of "warm" and "hot" water, or to include

is likely to bleed onto the surrounding fabric. A company may possess reliable evidence—for example, past experience with particular dyes and fabrics—that a particular red trim does not bleed onto surrounding fabric. In such a case testing of the entire garment might not be necessary.

⁸⁵ Comment 34 to 1994 FRN, p. 1.

a new term such as "cool" or "lukewarm" in the Appendix. The Commission further sought comment on whether the Rule should be amended to state that care labels recommending "cold" wash must define the highest acceptable temperature for "cold" on the label, and on the benefits and costs to consumers and manufacturers of such an amendment.

All eleven comments received in response to the ANPR that discussed the definitions of cold, warm, and hot water favored some change.⁸⁶ ATMI stated that it is very important that the Rule's water temperature definitions be consistent with those used in standard test methods developed by AATCC because those test methods are used by the textile and apparel industries.⁸⁷ Six of the commenters also supported the idea of including a numerical temperature on the care label.⁸⁸ Consumers Union, for example, stated that consumers need to know the actual range of water temperature in which they can safely wash their clothes.

Words such as lukewarm, cold, warm or hot serve their purposes only if the consumers are aware of safe water temperature ranges. Testing laboratories have assigned temperature ranges onto each of these words. They use these "safe temperature ranges" to test products for durability to repeated cleaning. Consumers should know what these safe water temperature ranges are.⁸⁹

(1) *Definition of cold water.* As noted, six commenters favored the inclusion of a numerical temperature on the care label. Two others favored a numerical temperature when the label recommends a "cold" wash. SDA noted that in northern locations in winter, cold water washes can be as cold as 40 degrees F and that "the performance of all laundry products is seriously diminished if they are used in water temperatures below 60 degrees F."⁹⁰ SDA suggested the following care instruction, in lieu of "cold":

Wash in the warmest available water, not to exceed (approximate temperature) degrees F.

⁸⁶ Bruce Fifield (22); ATMI (41); SDA (43); Consumers Union (46); AHAM (51); Maytag Appliances ("Maytag") (53); IFI (56); AAMA (57); P&G (60); Ginetex (63); European Commission (64).

⁸⁷ ATMI (41) p. 1.

⁸⁸ Fifield (22) p.1; Consumers Union (46) p.1; AHAM (51) p.1; AAMA (57) p.1; European Commission (64) p.2; Ginetex (63) p.2. In a meeting with staff on August 7, 1996, AHAM indicated that it no longer favors this.

⁸⁹ Consumers Union (46) p.1.

⁹⁰ SDA (43) p.2. P&G (60) stated, at p.3, that "all detergency and cleaning performance decreases substantially in cold water below 70 degrees F."

Maytag suggested that a range of 65 to 80 degrees F should be stated on the care label because

consumers are not aware that water can be too cold to activate detergents, thus they experience poor cleaning and other laundry problems. By incorporating a temperature range consumers would know exactly what temperatures will provide good results.⁹¹

P&G said that a national consumer study it had conducted showed that 78% of "cold" loads washed in January and February were in temperatures below 65 degrees F (with some as low as 34 degrees F), and that, year round, 50% of "cold" loads were washed in temperatures below 65 degrees F.⁹²

ATMI suggested that "cold" be defined consistently with the definition specified in AATCC test methods [27 degrees C plus or minus 3 degrees, or 82 degrees F plus or minus 5 degrees] and with standards developed by the American Society for Testing and Materials ("ASTM") [30 degrees C, or 86 degrees F].⁹³

(2) *Definition of warm water.* Section 1.b of the Appendix to the Rule defines warm water as 90 to 110 degrees F (32 to 42 degrees C). Several commenters recommended maintaining this definition, but adding the term "lukewarm," defined as 70 to 89 F (21 to 31 C).⁹⁴ Other commenters opposed "lukewarm," stating that it would be confusing to consumers because washing machine dials only offer the choices of cold, warm, and hot.⁹⁵ ATMI suggested a definition of 40 degrees C plus or minus 5 degrees (104 degrees F plus or minus 9 degrees), which it described as consistent with the definition established by AATCC for use in garment testing [41 degrees C plus or minus 3 degrees, or 106 degrees F plus or minus 5 degrees] and by ASTM in its standards [40 degrees C or 104 F].

(3) *Definition of hot water.* Maytag stated that "the current definition of hot water as up to 150 degrees is unrealistic due to scald laws in some states" and because new water heaters are preset at 120 degrees F.⁹⁶ P&G also noted that hot water heaters are now usually preset at 120 F, "much less than the 140 degrees F of older models."⁹⁷ SDA estimated that "20% of today's homes have hot water heaters set at 120–125 F."⁹⁸ Maytag favored

⁹¹ Maytag (53) p.2.

⁹² P&G (60) p.3.

⁹³ ATMI (41) p.2.

⁹⁴ SDA (43) p.2; P&G (60) p.2.

⁹⁵ ATMI (41) p.1; AHAM (51) p.2; Maytag (53) p.1; AAMA (57) p.1.

⁹⁶ Maytag (53) p. 2; see also SDA (43) p. 2, P&G (60) p. 2.

⁹⁷ P&G (60) p. 3.

⁹⁸ SDA (43) p. 2.

defining hot as 120 to 140 degrees F, and SDA and P&G favored defining hot as 111 to 140 F. ATMI recommended 50 degrees C plus or minus 5 degrees C, which it described as consistent with definitions used by AATCC [49 degrees C plus or minus 3 degrees C, or 120 F plus or minus 5 degrees F] and ASTM [50 C or 122 F].⁹⁹

Several commenters argued for the addition of "very hot."¹⁰⁰ P&G noted that some American consumers will be able to achieve the higher temperatures "as new washing machines from Europe with onboard heaters enter the U.S."¹⁰¹ IFI noted that professional laundries can achieve the higher temperatures, and that the higher temperatures are necessary to clean certain types of clothes, such as men's dress shirts.¹⁰²

b. Proposed Amendments and Reasons Therefor

The Commission believes that the definition of cold, warm, and hot water should be changed because of changes in settings on hot water heaters and in consumer washing practices in the years since the definitions were established. The AATCC has changed its definitions, which are used in textile testing, to take account of these factors, and AATCC test methods are used by much of the apparel industry. Consequently, the Commission believes that the definitions in the Rule should be changed to be consistent with the definitions used by AATCC. The Commission proposes changing the upper range of temperature definitions in the Rule to the upper range of what is allowed in tests published by AATCC. Thus, the upper range for "cold" would be 30 degrees C (86 degrees F); for "warm," 44 degrees C (111 degrees F); and for hot, 52 degrees C (125 degrees F).

Finally, the Commission proposes adding the term "very hot" to the rule, defined consistently with the AATCC definition, *i.e.*, with an upper range of 63 degrees C (145 degrees F). The comments indicate that some garments do need to be cleaned at temperatures higher than 125 degrees F, and that some consumers have access to water hotter than 125 degrees F, either at home or through laundering by professional cleaners. The addition of the term "very hot," together with appropriate consumer education, should give notice to those consumers whose hottest water is 120 degrees F that they may have to have garments that should

be cleaned in very hot water professionally laundered. The Commission is aware, however, that the term "very hot" may be confusing to some consumers because most washing machine dials only offer the choices of "cold," "warm," and "hot." The Commission requests comment on this issue, and, in particular, on suggestions for methods of consumer education to alleviate this problem.

In addition, some comments indicate that consumers need more precise information in order to select the appropriate temperature setting on their washing machines. Consumers may be using water that is too cold to activate detergents. Similarly, the addition of a precise temperature (52 degrees C, 125 degrees F) after the word "hot" on the care label of a garment might give those consumers some notice that their hot water may be too hot for that garment.¹⁰³ An upper range for "warm" might also be helpful to consumers because on many machines the dial setting for warm simply produces a mixture of hot and cold, and if the incoming tap water is very cold, the water in the machine may be too cold to produce optimal cleaning of the clothes being washed.

The Commission does not believe, however, that the solution to these problems at this time is to require numerical temperatures on care labels. Such additional information may not be cost-effective because most American consumers do not know the temperature of the tap water entering their homes or the cold or warm water in their washing machines. Indeed, some may also lack precise information about the temperature of the hot water heated by their water heaters, and, even those who know the upper limit of their hot water may not know the temperature of the hot water that enters their washing machines given the heat loss that occurs as water is piped to washing machines.

Therefore, at this time the Commission is not proposing to modify the Rule to require that precise temperatures be listed on care labels. The Commission is interested, however, in non-regulatory solutions to this problem. Accordingly, this notice asks questions about the possibility of a consumer education campaign on these issues. The Commission solicits comment on the feasibility of such a consumer education campaign, the form

⁹⁹ ATMI (41) p. 1.
¹⁰⁰ ATMI (41) p. 1.
¹⁰¹ P&G (60) p. 3.
¹⁰² P&G (60) p. 3.
¹⁰³ Although new water heaters are being set at lower temperatures, the comments indicate that many homes still have older heaters that produce water at 140 degrees F or even hotter. A garment that has been tested in water heated to 125 degrees F may withstand washing in that temperature without damage but nevertheless be damaged by water at 140 degrees F.

it should take, and industry members and consumer groups that would be interested in participating. Moreover, should the comments provide additional information about how numerical temperatures on care labels could be of use to American consumers, the Commission is willing to reconsider that issue.

The following changes are proposed in the definitions Section of the Rule and in the Appendix to the Rule.

Section 6.(b)(1)(l) of the Rule would be modified to read as follows:

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

The last sentence of Section 1(d) of the Rule would be modified to read as follows:

When no temperature is given, *e.g.*, "warm" or "cold," very hot water up to 145 degrees F (63 C) can be regularly used.

"Hot" water would be defined in Appendix 1.a as ranging from 112 to 125 degrees F [45 to 52 degrees C], "warm" water would be defined in Appendix 1.b as ranging from 87 to 111 degrees F [31 to 44 degrees C], and "cold" water would be defined in Appendix 1.c as ranging up to 86 degrees F [30 degrees C]. In addition, "very hot" water would be defined in Appendix 1.a as ranging from 126 to 145 degrees F [53 to 63 degrees C].

The Commission seeks comment on these proposed changes, their importance to consumers, the necessity for a consumer education campaign to help consumers understand and use information about water temperature, and the form such a campaign might take.¹⁰⁴

Part C—Rulemaking Procedures

The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has

¹⁰⁴ Some companies have already begun to educate consumers about these issues. A consumer chart prepared by Maytag, with numerical definitions for hot, warm, and cold water, states, "The clothes washer will not ensure these temperatures because the actual water temperatures entering the washer are dependent on water heater settings and regional water supply temperatures. For example, cold water entering the home in the northern states during winter may be 40 degrees F which is too cold for effective cleaning. The water temperature in this situation will need to be adjusted by selecting a warm setting or adding some hot water to the fill."

decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.

The Commission will hold a public workshop conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the **Federal Register** stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

Part D—Section-By-Section Description of Proposed Amendments

1. Amendments Relating to Required or Permissible Care Instructions

The Commission proposes to amend section 423.1, "Definitions" to include the following definition:

(h) *Professional wet cleaning* means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

The Commission proposes to amend section 423.6(b) of the Rule to read as follows:

(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction or a dry cleaning instruction. If an item of textile wearing apparel can be successfully washed and finished by a consumer at home, the

label must provide an instruction for washing. If a washing instruction is not included, or if washing is warned against, the manufacturer or importer must establish a reasonable basis for warning that the item cannot be washed and adequately finished at home, by possessing, prior to sale, evidence of the type described in paragraph (c) of this section. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a dry cleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. An instruction for professional wet cleaning may also be given. If an instruction for professional wet cleaning is given, it must comply with the requirements set forth in paragraph (b)(3) of this section. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed both by washing and by dry cleaning, the label might say, "Do not wash—do not dry clean," or "Cannot be successfully cleaned."] The instructions for washing, dry cleaning, and professional wet cleaning are as follows:

It should be noted that, in addition to the additions to section (b) noted in bold, the following sentence has been deleted: "If either washing or dry cleaning can be used on the product, the label need have only one of these instructions."

The Commission also proposes to add the following subsection to section (b).

(3) Professional wet cleaning.

If a professional wet cleaning instruction is included on the label, it must state at least one type of professional wet cleaning equipment that may be used to clean the garment. However, if the product can be successfully cleaned by all commercially available types of professional wet cleaning equipment, the label need not mention any type of wet cleaning equipment. A care label that recommends professional wet cleaning must list the fiber content of the garment and must recommend one other method of cleaning, such as washing or drycleaning, or must warn that the garment cannot be washed or drycleaned if such is the case.

2. Amendment of Reasonable Basis Section

The Commission proposes to amend § 423.6(c)(3) as follows:

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

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of

this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole;

3. Amendment of Definitions of Water Temperatures

The Commission proposes to amend the last sentence of § 423.1(d) of the Rule to read as follows:

When no temperature is given, e.g., "warm" or "cold," very hot water up to 145 degrees F (63 C) can be regularly used.

The Commission proposes to amend section 423.6(b)(1)(I) of the Rule to read as follows:

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

The Commission proposes that Appendix A.1.a–1.c be modified to read as follows:

1. Washing. Machine Methods:

a. Machine wash—a process by which soil may be removed from products or specimens through the use of water, detergent, or soap, agitation, and a machine designed for this purpose. When no temperature is given, e.g., "warm" or "cold," very hot water up to 145 degrees F (63 degrees C) can be regularly used.

b. Hot—initial water temperature ranging from 112 to 125 degrees F [45 to 52 degrees C].

c. Warm—initial water temperature ranging from 87 to 111 degrees F [31 to 44 degrees C].

d. Cold—initial water temperature up to 86 degrees F [30 degrees C].

Part E—Regulatory Analysis and Regulatory Flexibility Act Requirements

Under section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a preliminary regulatory analysis for a proceeding to amend a rule only when it (1) estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has preliminarily determined that the proposed amendments to the Rule will not have such effects on the national

economy, on the cost of textile wearing apparel or piece goods, or on covered businesses or consumers. The Commission, however, requests comment on these effects.

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-12, requires that the agency conduct an analysis of the anticipated economic impact of the proposed amendments on small businesses.¹⁰⁵ The purpose of a regulatory flexibility analysis is to ensure that the agency considers impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

Because the Care Labeling Rule covers manufacturers and importers of textile wearing apparel and certain piece goods, the Commission believes that any amendments to the Rule may affect a substantial number of small businesses. For example, unpublished data prepared by the U.S. Census Bureau under contract to the Small Business Administration ("SBA") show there are some 288 manufacturers of men's and boys' suits and coats (SIC Code 2311), more than 75% of which qualify as small businesses under applicable SBA size standards.¹⁰⁶ There are more than 1,000 establishments manufacturing women's and misses' suits, skirts, and coats (SIC Code 2337), most of which are small businesses. Other small businesses are likely covered by the Rule.

Nevertheless, the proposed amendments would not appear to have a significant economic impact upon such entities. The amendment to allow for labeling for professional wet cleaning simply provides an option that can be taken advantage of by businesses if they wish. The amendment to require that garments that can be safely washed at home be labeled for home washing will also not add significantly to the cost of compliance for most businesses because businesses will still only be required to provide instructions for one method of cleaning. It is true that those businesses that currently label garments for dry cleaning without investigating

whether they can be washed at home would have to make that determination. Most businesses, however, obtain information about the washability of the components of their garments from the sources of those components, and in many cases this simple inquiry will provide a reasonable basis for either a dry clean instruction or a home washing instruction. Although some businesses may have to engage in additional efforts, such as testing, to make this determination, it does not seem likely that this will be the case for most businesses. The Rule specifies that a reasonable basis can consist of various types of reliable evidence other than testing, and most businesses do not routinely test each garment style they manufacture or import. Nevertheless, the Commission specifically seeks comment regarding these amendments' potential impact on small businesses.

In addition, the Commission is proposing to amend one category of the types of evidence that can constitute a reasonable basis, *i.e.*, evidence of testing of components of the garment, to clarify that the manufacturer or importer must also have reliable evidence that the garment as a whole can be cleaned as directed without damage. The Commission specifically has indicated that testing of the garment as a whole is not required in all instances, however; what is required is an evaluation of whether the garment as a whole can be successfully cleaned without damage in the manner recommended on the care label. The Commission views the amendment of this section of the Rule as simply a clarification of the fact that the manufacturer or importer must have a reasonable basis for the garment as a whole, not simply for the separate components.

Based on available information, the Commission certifies that amending the Care Labeling Rule as proposed will not have a significant economic impact on a substantial number of small businesses. To ensure that no significant economic impact is being overlooked, however, the Commission requests comments on this issue. The Commission also seeks comments on possible alternatives to the proposed amendments to accomplish the stated objectives. After reviewing any comments received, the Commission will determine whether a final regulatory flexibility analysis is appropriate.

Part F—Paperwork Reduction Act

The Rule contain various information collection requirements for which the Commission has obtained clearance under the Paperwork Reduction Act, 44

U.S.C. 3501 *et seq.*, Office of Management and Budget Control Number 3084-0103. As noted above, the Rule requires manufacturers and importers of textile wearing apparel to attach a permanent care label to all covered items and requires manufacturers and importers of piece goods used to make textile clothing to provide the same care information on the end of each bolt or roll of fabric. These requirements relate to the accurate disclosure of care instructions for textile wearing apparel. Although the Rule also requires manufacturers and importers to base their care instructions on reliable evidence, it does not contain any explicit recordkeeping requirements.

The Rule also provides a procedure whereby a member of the industry may petition the Commission for an exemption for products that are claimed to be harmed in appearance by the requirement for a permanent label, but only one petition, subsequently withdrawn, has been filed in recent years. A Notice soliciting public comment on extending the clearance for the Rule through December 31, 1999, was published in the **Federal Register** on August 26, 1996, 61 FR 43764. OMB has extended the clearance until December 31, 1999.

The proposed amendments would not increase the paperwork burden associated with these paperwork requirements. The Commission's proposed amendment regarding professional wet cleaning does not increase the paperwork burden because it is optional. Businesses that do not believe it is beneficial to label for professional wet cleaning are not required to do so. The proposed amendment of the Rule to require that any garment or fabric that can be washed at home be so labeled will not increase the burden for businesses because they will still need to label for only one method of cleaning.

The proposed amendment to change the numerical definition of the words "hot," "warm," or "cold," when they appear on care labels, and to add the term "very hot," will not add to the burden for businesses because they are already required to indicate the temperature in words and to have a reasonable basis for whatever water temperature they recommend. Moreover, businesses are not burdened with determining what temperature should accompany the words "very hot," "hot," "warm," or "cold"; the proposed amendment would provide the numerical temperature that should accompany each term. OMB regulations provide, at 5 CFR 1320.3(c)(2), that "the

¹⁰⁵ The RFA addresses the impact of rules on "small entities," defined as "small businesses," "small businesses," "small governmental entities," and "small [not-for-profit] organizations," 5 U.S.C. 601. The Rule does not apply to the latter two types of entities.

¹⁰⁶ SBA's revised small business size standards are published at 61 FR 3280 (Jan. 31, 1996).

public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of collection of information.]”

Thus, the Commission concludes that the proposed amendments would not increase the paperwork burden associated with compliance with the Rule. To ensure that no significant paperwork burden is being overlooked, however, the Commission requests comments on this issue.

Part G—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission’s consideration of proposed amendments to the Care Labeling Rule. The Commission requests that factual data upon which the comments are based be submitted with the comments. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

A. Requiring Instructions for Cleaning in Water

(1) Is there empirical evidence regarding whether consumers interpret a “dry clean” instruction to mean that a garment cannot be washed?

(2) How many domestic businesses provide professional wet cleaning, as defined in Part D.1. above, to the public on a regular basis?

(3) Should the Rule provide that, if an instruction for professional wet cleaning is provided, no other instruction need be given, or should a professional wet cleaning instruction only be allowed along with another cleaning instruction?

B. The Reasonable Basis Requirement of the Rule

(4) Would the amendment of Section 423.6(c)(3) of the Rule, which provides that a reasonable basis can consist of reliable evidence that each component of the garment can be cleaned according to the care instructions, to state, additionally, that a manufacturer or importer must possess a reasonable basis for the garment as a whole, clarify the reasonable basis requirements? Is any additional clarification needed?

C. Definitions of Water Temperatures

(5) How can consumers best be made aware of the approximate water temperatures in which they can safely and effectively wash their clothing? How can consumers best be made aware of how these temperatures correlate to the descriptors “hot,” “warm,” and “cold”? Do consumers need to determine the actual or approximate water temperature in their washing machines when they select “hot,” “warm,” and “cold” on their washing machine dials, and, if so, how could they easily and practically do this? Could consumers use this information to select the optimal temperature offered by their washing machines for clothes labeled for “hot,” “warm,” or “cold” washing?

(6) Would consumers understand an instruction to use “very hot” water? Could consumers use this information either to select the optimal temperature offered by their washing machines for clothes labeled for “very hot” washing or to determine that such clothes should be washed by a professional cleaner?

Authority: Section 18(d)(2)(B) of the Federal Trade Commission Act, 15 U.S.C. 57a(d)(2)(B).

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods; Trade practices.

By direction of the Commission, Commissioner Azcuenaga not participating.

Donald S. Clark,

Secretary.

[FR Doc. 98-12233 Filed 5-7-98; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND-037-FOR, Amendment No. XXVI]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the “North Dakota program”) under the Surface Mining Control and

Reclamation Act of 1977 (SMCRA). The proposed amendment consists of proposed changes to North Dakota’s revegetation policy document, “Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments.”

The changes pertain to (1) prime farmland woodland productivity standards, (2) woodland cover standards, (3) wetland standards, (4) woodland and shelterbelt standards for recreational lands, and (5) methods for sampling woodland cover. The amendment is intended to revise the North Dakota program to be consistent with SMCRA and the Federal regulations, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., June 8, 1998. If requested, a public hearing on the proposed amendment will be held on June 2, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 26, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM’s Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East “B” Street, Federal Building, Room 2128, Casper, Wyoming 82601-1918, Telephone: 307/261-6550
James R. Deutsch, Director, Reclamation Division, Public Service Commission, State Capitol—600 E. Boulevard, Bismarck, North Dakota 58505-0480, Telephone: 701/328-2400.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261-6550; Internet: GPadgettOSMRE.GOV

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. General background information on the North Dakota program, including the Secretary’s findings, the disposition of comments, and conditions of approval of the North Dakota program can be