Regulation K would not have a significant economic impact on a substantial number of small entities that are subject to its regulation.

List of Subjects in 12 CFR Part 211

Exports, Federal Reserve System, Foreign banking, Holding companies, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 211 as set forth below:

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

1. The authority citation for Part 211 continues to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1841 *et seq.*, 3101 *et seq.*, 3901 *et seq.*

2. In § 211.22, paragraph (a) is revised; paragraph (c) is removed; and paragraph (d) is redesignated as paragraph (c) to read as follows:

§ 211.22 Interstate banking operations of foreign banking organizations.

(a) *Determination of home state.* (1) A foreign bank (except a foreign bank to which paragraph (a)(2) of this section applies) that has any combination of domestic agencies or subsidiary commercial lending companies that were established before September 29, 1994, in more than one state and have been continuously operated shall select its home state from those states in which such offices or subsidiaries are located. A foreign bank shall do so by filing with the Board a declaration of home state by March 31, 1996. In the absence of such selection, the Board shall designate the home state for such foreign banks.

(2) A foreign bank that, as of September 29, 1994, had declared a home state or had a home state determined pursuant to the law and regulations in effect prior to that date shall have that state as its home state.

(3) A foreign bank that has any branches, agencies, subsidiary commercial lending companies, or subsidiary banks in one state, and has no such offices or subsidiaries in any other states, shall have as its home state the state in which such offices or subsidiaries are located.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 21, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–31364 Filed 12–27–95; 8:45 am]

BILLING CODE 6210–01–P

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: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Trade Commission (the ''Commission'') proposes to commence a rulemaking proceeding 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 seeks comment on whether the definitions of water temperatures in the Appendix of the Rule should be amended. In addition, the Commission seeks comment on possible alternatives for amending the Rule's current requirement that either a washing instruction or a dry cleaning instruction may be used. Finally, the Commission seeks comment on whether the reasonable basis portion of the Rule should be amended.

DATE: Written comments must be submitted on or before March 13, 1996.

ADDRESSES: Written comments should be identified as ''16 CFR Part 423'' and sent to Secretary, Federal Trade Commission, Room 159, Sixth Street and Pennsylvania Ave., NW., Washington D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio or Laura Koss, Attorneys, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Sixth Street and Pennsylvania, Ave., NW., S–4302, Washington, DC 20580, (202) 326–2966 or (202) 326–2890.

SUPPLEMENTARY INFORMATION:

Part A—General Background Information

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.[1] 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. This FRN sought comment on the standard regulatory review 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 FRN elicited 81 comments.[2] The comments 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. Most comments said that the costs imposed on consumers because of the Rule were minimal when compared to the benefits. Based on this review, the Commission has determined to retain the Rule, but to seek additional

[1] The Rule was amended on May 20, 1983, 48 FR 22733 (1983).

[2] The commenters included cleaners; consumers; public interest-related groups; fiber, textile, or apparel manufacturers or sellers (or conglomerates); federal government entities; fiber, textile, or apparel manufacturers or retailers trade associations; two label manufacturers; one cleaning products manufacturer; one association representing the leather apparel industry; one Committee formed by industry members from the countries signatory to NAFTA; one appliance technician; one appliance manufacturers trade association; two standards-setting organizations; and two representatives from foreign nations. 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, during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Avenue, NW, Washington, D.C. The comments are referred to within this Advance Notice of Proposed Rulemaking (''ANPR'') by their name and the number assigned to each submitted comment.

comment on possible amendments to the Rule as discussed below.

The FRN sought comment on possible amendments, which are addressed below, in this ANPR, including: (1) Whether the Rule should be amended to require labeling instructions for *both* washing and dry cleaning, rather than for just one method of cleaning and (2) whether the reasonable basis standard set forth in the Rule should be clarified or changed. The comments also recommended that the Commission consider other amendments, which also are addressed in detail below.

Several comments suggested expanding the coverage of the Rule. The Leather Apparel Association (''LAA'') suggested that garments made completely of leather be included in the Rule, which now applies only to textile wearing apparel and certain piece goods.[3] J.C. Penney suggested that consumers would benefit by expanding the Rule to cover items such as ''towels, sheets, window coverings and other textile home furnishing products.''[4] However, the Commission considered and rejected including these product categories when it amended the Rule in 1983. The comments do not provide sufficient evidence for reopening these issues.

Part B—Objectives the Commission Seeks To Achieve and Possible Regulatory Alternatives

1. Definitions of Water Temperature in the Appendix

a. Background

Some comments recommended that the Commission revise the definition of cold water temperature in the Appendix to the Rule. The Appendix to the Rule currently states that ''cold'' water means ''cold tap water up to 85 degrees F (29 degrees C).''[5] Commenters noted that tap water temperatures vary across the United States, and that such differences can cause problems in washing clothes because, in the winter in colder parts of the country, granular detergents may not fully dissolve and activate during a cold wash cycle.[6] An appliance technician from Maine noted that consumers may hesitate to use hotter water when the label advises to use ''cold'' water.[7] As a result, clothes may not be thoroughly cleaned and may be left with soap residue.[8]

Other comments suggested that the Rule's definition of hot water (up to 150 degrees F, or 66 C)[9] should be changed. The American Association of Textile Chemists and Colorists (''AATCC'') commented that the temperatures stated in the Appendix to the Rule should be changed to match the AATCC definitions, which the AATCC believes ''more accurately reflect current washing machine settings and consumer practice.''[10] The AATCC defines ''hot'' as 120 F plus or minus 5 (49 C plus or minus 3). Another commenter noted the variances in temperature definitions within the NAFTA countries and suggested they should be harmonized.[11]

b. Objectives and Regulatory Alternatives

The Commission believes that the definition of cold water in the Appendix may need to be revised to ensure that consumers understand that washing clothes in extremely cold water may not be effective. In addition, the Commission believes that the definitions of warm and hot water may need to be changed to ''more accurately reflect current washing machine settings and consumer practice.'' Accordingly, the Commission seeks comment on whether the Commission should amend the Rule to change the definitions of ''warm'' and ''hot'' water, or to include a new term such as ''cool'' or ''lukewarm'' in the Appendix. The Commission further seeks 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.

2. Environmental Issues

a. Background

In the June 1994 FRN, the Commission stated that, because of evidence that dry cleaning solvents are damaging to the environment, the Environmental Protection Agency (''EPA'') was interested in reducing the use of such solvents. The Commission stated that EPA's Office of Pollution Prevention and Toxics had been working with the dry cleaning industry to reduce the public's exposure to perchloroethylene (''PCE''), the most common dry cleaning solvent.[12] In connection with this effort, EPA has published a summary of a process referred to as ''Multiprocess Wet Cleaning,'' which is an alternative cleaning process that relies on the controlled application of heat, steam and natural soaps to clean clothes that would ordinarily be dry cleaned.[13]

The FRN asked whether the current Rule may pose an impediment to reducing solvent use because it 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 be washable, a fact not ascertainable from such an instruction. If the Rule were amended to require both washing and dry cleaning instructions for garments cleanable by both methods, consumers and cleaners could make more informed choices and the use of dry cleaning solvents might be lessened. To solicit comment on these issues, the Commission posed a series of questions in the FRN, each of which is separately addressed below:

(i) *Does the current Rule pose an impediment to the EPA's goal of reducing the use of dry cleaning solvents?* Nine commenters addressed this question. Three responded simply that the Rule does not pose an impediment to EPA's goals.[14] Six others, however, contended that the current Rule impedes EPA's goal of reducing the use of dry cleaning solvents by permitting manufacturers to disclose only one cleaning instruction when a

[3] Comment 58, p.1; see also Drycleaners Fund (65) p.4. LAA stated that consumers ''would benefit from having a label that, in so many words, advises consumers that leather requires special care * * *.'' Comment 58, p.1. However, it seems probable that most consumers know that leather requires special care; in the absence of evidence to the contrary, the Commission cannot conclude that it is unfair or deceptive for manufacturers of leather garments to fail to disclose this information. Secondly, LAA stated that leather cleaning ''is more art than science'' and that any care label ''must be non-specific as to the cleaning process.'' LAA suggested a label that simply states ''Do not wash or dry clean by fabric method. Take to a leather expert.'' *Id.* Such a label is unlikely to significantly assist the average dry cleaner, who presumably already knows that conventional dry cleaner, who presumably used on leather garments and knows whether or not he has the ability to clean leather garments.

[4] Comment 70, p.1.

[5] 16 CFR Part 423, Appendix A, 2.c.

[6] Association of Home Appliance Manufacturers (53) p.2.

[7] Bruce W. Fifield (62) p.1.

[8] *Id.*

[9] 16 CFR Part 423, Appendix A, 2.a.

[10] Comment 34, p.1.

[11] Jo Ann Pullen (44) p.3.

[12] PCE has been designated as a hazardous air pollutant under Section 112 of the Clean Air Act and under many state air toxics regulations. On September 15, 1993, EPA set national emission standards for new and existing PCE dry cleaning facilities. According to a study conducted on Staten Island and in New Jersey, PCE is among the toxic air pollutants found at the highest concentrations in urban air.

[13] 59 FR 30733–34. See also EPA (73) p.1.

[14] Baby Togs, Inc. (2) p.2; The Warren Featherbone Co. (33) p.3; VF Corp. (36) p.5.

garment can be either washed or dry cleaned.[15]

(ii) *What is the actual incidence of labeling that fails to include both washing and dry cleaning instructions?* Few comments responded directly to this question. One guessed that the incidence is ''Probably none,'' reasoning that, because washing is less expensive than dry cleaning, it would be unimaginable for a manufacturer to put a ''Dry Clean'' label on a garment that could be washed.[16] Another stated that it is common practice to label conservatively (*e.g.*, ''dry clean only''),[17] and a third alleged that there is a wide variation in adherence to the requirements of the Rule, especially among small firms and importers.[18] Two cleaners using wet cleaning technology contended between them that the incidence ranged from 40% to 100% because a ''Professionally Wet Clean'' instruction is never given on labels for garments that normally would be dry cleaned but also could be professionally wet cleaned.[19]

(iii) *With regard to a garment that can be either washed or dry cleaned, should the Commission amend the Rule to require that care instructions be provided for both washing and dry cleaning?* Several commenters preferred that the Rule not be amended in this regard at all, contending that apparel manufacturers should be free to select the best care method based on their own judgment.[20] Some commenters favored, without extensive analysis, requiring care instructions for both dry cleaning and home laundering if neither process would harm the garment. Most of these expected that such an amendment would enable consumers to save the expense associated with unnecessary dry cleaning for products that could safely be laundered at home.[21] Others maintained that a reduction in dry cleaning would diminish for humans and the environment those risks that are associated with the use of PCE.[22] One commenter pointed out that some consumers may prefer to dry clean washable garments and that care instructions should give these individuals a choice of methods when both laundering and dry cleaning would be appropriate.[23]

Another group of commenters suggested that the Rule be amended to require washing instructions for garments that can be safety laundered as well as dry cleaned, and to require dry cleaning instructions solely for those garments that must only be dry cleaned, rather than to require that both instructions be specified for garments that could withstand both processes.[24] These commenters reasoned that, although many items (cotton underwear and outerwear, children's clothing, wash-and-wear apparel, etc.) could safely be dry cleaned, it would be neither necessary nor desirable to do so. In fact, they contended, a requirement for dual instructions for such products would actually result in an increase in the use of dry cleaning solvents because manufacturers now exclusively producing washable (but also dry cleanable) products would have to install dry cleaning facilities and equipment so they could provide a reasonable basis for the dry cleaning instruction.

Other commenters suggested that the Rule be amended to include a requirement that labels on garments for which dry cleaning is appropriate include a ''professionally wet clean'' instruction in addition to the dry cleaning instruction.[25] These commenters contended that the professional wet cleaning process is a viable alternative to dry cleaning in most cases, and that the process does little damage to the environment. Because wet-cleaning wash formulas are created to cover categories of fabric type, two commenters stated that labels should clearly state the composition of the fabric or fabrics used so the correct machine wet-cleaning formula may be used.[26]

(iv) *What are the costs and benefits, including environmental benefits, of such an amendment?* Several commenters opposing the amendment to require instructions for both washing and dry cleaning contended that a dual labeling requirement would result in increased costs for manufacturers who would have to test for both methods instead of only one.[27] However, those who favored amending the Rule in any of the ways discussed above cited as benefits the reduced cleaning costs to consumers, the benefits to human health and the environment, or, occasionally, both.

Materials describing methods, training, and equipment in many of the comments suggesting a requirement for a ''Professionally Wet Clean'' instruction implied that a significant cost would be incurred by cleaners wishing to use the new technology. One comments also concluded that an amendment to require such an instruction should be accompanied by a consumer education effort.[28]

b. Objectives and Regulatory Alternatives

The record indicates that PCE is dangerous to humans and the environment, and that some consumers are interested in avoiding the use of PCE when possible. Through the proposed amendments to the Rule, discussed below, the Commission seeks to ensure that consumers are provided with information that would allow them the choice of washing garments when possible, or having them professionally wet cleaned. The information about washability may be important to many consumers, either for economic or environmental reasons.

When a garment is labeled ''dry clean,'' many consumers may be misled into believing that the garment cannot be washed in water; if the garment can be washed in water, the consumer may

[15] Business Habits, Inc. (38) p.4 (the current Rule is a disincentive for the dry cleaner to consider washing or professional wet cleaning when the labels state ''Dry Clean Only''); Mothers & Others (22) pp.1–4 (unless consumers are informed of their options, the market will be skewed in favor of dry cleaning and consumers may not use cheaper methods (home laundering) and/or safer methods (professional wet cleaning)); Aqua Clean System (20) p.4; Ecofranchising, Inc. (28) pp.3–4; Jo Ann Pullen (44) p.7; Center for Neighborhood Technology (59) pp.2–3.

[16] Baby Togs, Inc. (2) p.2.

[17] Carter's (24) p.3.

[18] OshKosh B'Gosh, Inc. (27) p.2.

[19] Aqua Clean System (20) p.4; Ecofranchising, Inc. (28) pp.3–4.

[20] The Warren Featherbone Co. (33) p.1–2, 3; Clothing Manufacturers Association (40) p.1; Salant Corp. (52) p.1. See also Braham Norwick (25) p.3.

[21] See, e.g., Benjamin Axleroad (1) p.1; Don Pietsch (3) p.1; Evelyn Borrow (4) p.1; Claudia G. Pasche (5) p.1; Margaret S. Jones (6) p.1; Judith S. Barton (7) p.1; Virginia J. Martin (8) p.1; SuzAnne A. Darlington (14) p.1; Ann Geerhar (29) p.1.

[22] See, e.g., Ardis W. Koester (12) p.1; University of Kentucky College of Agriculture (15) p.1; Center for Neighborhood Technology (59) pp. 2–3.

[23] Drycleaners Environmental Legislative Fund (65) p.2.

[24] See, e.g., OshKosh B'Gosh, Inc. (27) p.2; VF Corp. (36) p. 5; see also Fieldcrest Cannon (11) p. 4 (opposed suggested amendment but advanced the same reasoning as the preceding commenters); American Textile Manufacturers Institute (56) pp.5–6.

[25] Aqua Clean System (20) pp. 4–6; Mothers & Others (22) pp. 2–3; The Massachusetts Toxics Use Reduction Institute (23) pp. 1–2; Ecofranchising, Inc. (28) p. 3; Public Advocate for the City of New York (39) pp. 8, 73; Friends of the Earth (43) p. 1, Jo Ann Pullen (44) p. 7; Greenpeace (45) pp. 1–3; Association of Home Appliance Manufacturers (53) p. 2, Center for Neighborhood Technology (59) pp. 2–4; EPA (73) p. 1. See also American Apparel Manufacturers Association (68) p. 5.

[26] Aqua Clean (20) p. 7; Ecofranchising (28) pp. 2, 4.

[27] Fieldcrest Cannon (11) p. 4; Woolrich, Inc. (21) p. 1; OshKosh B'Gosh, Inc. (27) p. 2; VF Corp. (36) p. 5, Industry Canada (37) p. 3; The GAP, Inc. (78) p. 5.

[28] See, e.g., Mothers & Others (22) pp. 1–2; Public Advocate for the City of New York (39) (transmitting the comprehensive report on ''The Risk to New Yorkers from Drycleaning Emissions and What Can Be Done About It''); Greenpeace (45) pp. 1–3, Attachment: ''Dressed to Kill''; Center for Neighborhood Technology (59) pp. 2–3.

incur the unnecessary expense of dry cleaning the garment.[29] If the garment is labeled ''dry clean'' when it in fact could be wet cleaned by a professional cleaner, the consumer may believe it is necessary to have the garment dry cleaned although the consumer would prefer a cleaning method that is less damaging to the environment.

The lack of this information can result in substantial injury to consumers in the form of unnecessary expense and/or damage to the environment that the consumer wishes to avoid. Moreover, it can be extremely difficult for consumers to avoid this injury by obtaining the information about washability of an item for themselves. While 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. In addition, it may be that some garments that traditionally have been damaged by washing (*e.g.*, wool business suits) can be cleaned without damage by new methods of professional wet cleaning, but consumers have no way of determining for themselves which of the many garments available to them are now washable.

Accordingly, the Commission seeks comment on whether it should amend the Care Labeling Rule to require a laundering instruction for all covered products for which laundering is appropriate. This amendment would permit optional dry cleaning instructions for such washable items, provided dry cleaning would be an appropriate alternative cleaning method.[30] The amendment would, however, require that manufacturers marketing items with a ''Dry Clean'' instruction alone be able to substantiate both that the items could be safely dry cleaned and that home laundering would be inappropriate for them.[31]

The disclosures required by this proposal would inform consumers purchasing washable items that the items could be safely laundered at home. As noted in the comments, this would enable consumers to make a more informed purchasing choice and provide them with the option of saving money by laundering 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. Moreover, 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.

The Commission also seeks comment on the feasibility of requiring, for all covered products bearing a dry cleaning instruction, the addition of a professional wet cleaning instruction for items for which professional wet cleaning would be appropriate. The comments indicate that the comparatively new processes of professional wet cleaning technologies are promising alternatives to PCE-based dry cleaning. However, these comments do not provide enough information about professional wet cleaning for the Commission to assess whether and how the Rule should address wet cleaning. Therefore, the Commission seeks information on the cost of wet cleaning, the availability of wet cleaning facilities, and any other information that would help the Commission determine whether it should consider amending the Rule to require, for all covered products bearing a dry cleaning instruction, the addition of a professional wet cleaning instruction for items for which professional wet cleaning would be appropriate. The Commission also seeks comment on the feasibility of the processes as practical current alternatives to dry cleaning. In addition, the Commission seeks comment on whether fiber identification should be on a permanent label, as is currently required for care information, because this information may be needed for wet-cleaning processes, and comment on the costs to manufacturers of such a requirement.

3. The Reasonable Basis Requirement of the Rule

a. Background

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. 16 CFR 423.6(c).

The FRN solicited comment on whether the Commission should amend the Rule ''to make clear that a variety of types of evidence, alone or in combination, might provide a reasonable basis [for cleaning directions] in specific instances,'' but that as reflected in the Rule's original Statement of Basis and Purpose, the Rule should not be read to suggest that the reasonable basis standard necessarily is met whenever a seller possesses at least one of the types of evidence set forth as examples of how the standard might be satisfied. The FRN also sought comment on whether the Commission should clarify in the Rule that the criteria for determining the proper level of substantiation that were recited in the Commission's Policy Statement Regarding Advertising Substantiation,[32] apply to care labeling claims, whether analyzed directly under Section 5 or under the Rule.

In addition, the Commission expressed interest in whether particular types of garments or garment components might necessitate special treatment. Question 9 in the FRN asked:

Should the Commission amend the Rule to specify under what conditions a manufacturer or importer must possess a particular type of basis among those listed in

[29] A Perdue University survey found that 89.3% of the 962 respondents indicated that they would not wash a garment labeled ''dryclean.'' 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.

[30] 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. 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. The comments also indicate that most consumers would not want to spend the additional money necessary to dry clean such items.

[31] The Rule currently requires this level of substantiation for a ''Dry Clean Only'' instruction.

[32] *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839 (1984). The Commission issued this statement to ''reaffirm[]'' its commitment under Section 5 of the FTC Act, 15 U.S.C. § 45, to requiring adequate substantiation for objective advertising claims before they are disseminated.

§ 423.6(c) of the Rule, such as test results? Should the ''reasonable basis'' requirements of the Rule be modified in any other way?

The comments responding to these portions of the FRN suggest that some care labels may lack a reasonable basis. One commenter stated that inaccurate care labels were responsible for 33–45% of the damaged garments sent in to the International Fabricare Institute for testing during a 1988–1993 period.[33] Furthermore, many of the commenters' responses to Question 10 in the FRN (''Are there garments in the marketplace that contain inaccurate or incomplete care instructions?'') indicate that many garments are labeled ''dry clean only'' without a reasonable basis for warning that they cannot be washed.[34] The comments additionally suggest that care instructions may not be appropriate for *all* components of a garment, such as trims.[35] Colorfastness and shrinkage were also identified as problems experienced with inaccurate or incomplete care instructions.[36]

Twelve commenters stated that they were in favor of modifying the reasonable basis portion of the Rule, suggesting that the reasonable basis requirement should be clarified and strengthened to reduce the problem of inaccurate and incomplete care labels.[37] Seven commenters were opposed to modifying the reasonable basis requirements of the Rule.[38] These commenters expressed concern, for example, that requiring tests would be too expensive and would ultimately increase costs for consumers.

Several commenters recommended clarifying the Rule by specifying the circumstances in which a manufacturer or importer must possess test results or another specific type of evidence to establish a reasonable basis.[39] One commenter said that testing might not always be required and suggested that the Rule should specify different types of required evidence for different circumstances.[40] This commenter stressed, however, that the Rule should require a reasonable basis for a garment in its finished state, noting that the current Rule suggests that it is satisfactory to have reliable evidence ''for each component part'' of a garment.[41] Another Commenter suggested that the Rule should set out performance standards for certain properties of garments (*e.g.*, dimensional stability and colorfastness) and should identify both testing methodologies and evaluation criteria for those properties.[42]

b. Objectives and Regulatory Alternatives

The Commission appreciates the comments submitted on the FRN and continues to explore this area. The Commission seeks comment on the incidence of inaccurate and incomplete labels, the extent to which that incidence might be reduced by clarifying the reasonable basis standard, and the costs and benefits of such a clarification. Section 423.6(c)(3) of the Rule provides that a reasonable basis may consist of reliable evidence that ''each component'' of the garment can be cleaned according to the care instructions. As several commenters pointed out, however, a garment component that may be cleaned satisfactorily by itself might not be cleaned satisfactorily when cleaned as part of an assembled garment made of different components, for example, by bleeding noticeably onto the other parts of the garment. The Commission, therefore, seeks comment on whether to amend the Rule to specify that the reasonable basis requirement applies to the garment in its entirety rather than to each of its individual components.

If the Commission decides to amend the reasonable basis standard, one option is to indicate 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 FTC Policy Statement Regarding Advertising Substantiation.[43] Another option, as reflected in Question 9 of the FRN, is to require in the Rule that cleaning directions for certain garments, fabrics or materials will comply with the Rule only if they are supported by the results of appropriately designed and conducted scientific tests recognized by experts in the field as probative of whether the item can be cleaned as directed without damage. The Commission also seeks comment on whether, if testing is required under certain circumstances, the Rule should specify particular testing methodologies to be used.

Finally, the Commission solicits comment on whether the Rule should set forth standards for acceptable and unacceptable changes in garments following cleaning as directed. The Commission also seeks comment on whether it would be useful for the Rule to specify properties, such as dimensional stability and colorfastness, to which such standards would apply.

Part C—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 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. Definitions of Water Temperatures in the Appendix

(1) Is it feasible and desirable to use the words ''lukewarm'' or ''cool'' on a care label rather than ''cold''? Should

[33] Drycleaners Environmental Legislative Fund (65) p.4.

[34] Evelyn Borrow (4) p.1; Claudia G. Pasche (5) p.1; Margaret S. Jones (6) p.1; University of Kentucky College of Agriculture (15) p.1; Aqua Clean System (20) p.3; Carter's (24) p.3; Braham Norwick (25) p.1; Ecofranchising, Inc. (28) pp.3–4; Jo Ann Pullen (44) pp.2–3; J.C. Penney (70) p.3.

[35] VF Corp. (36) p.7; Drycleaners Environmental Legislative Fund (65) p.4.

[36] J.C. Penney (70) p.3.

[37] Clorox Co. (32); Industry Canada (37); Business Habits, Inc. (38); Jo Ann Pullen (44); Salant Corp. (52); Association of Home Appliance Manufacturers (53); Center for Neighborhoods Technology (59); Drycleaners Environmental Legislative Fund (65); Department of the Air Force (67); American Apparel Manufacturers Association (68); EPA (73); The Gap, Inc. (78).

[38] Baby Togs, Inc. (2); Carter's (24); OshKosh B'gosh, Inc. (27); The Warren Featherbone Co. (33); VF Corp. (36); American Textile Manufacturers Institute (56); Fruit of the Loom (64).

[39] *E.g.*, Center for Neighborhood Technology (59) p.1; Salant Corp. (52) p.2; Drycleaners Environmental Legislative Fund (65) p.4; Clorox Co. (32) p.3.

[40] Drycleaners Environmental Legislative Fund (65) p.4. Thus, for example, for garments made entirely of material with a long history of care, such as 100% undyed cotton, historical knowledge may be sufficient to constitute a reasonable basis. In contrast, when the garment is made of a new fiber and is dyed with a new dye or when the garment is a cotton garment with a bright trim, a manufacturer may be required to conduct multiple tests on various samples of the garment in order to establish a reasonable basis.

[41] Drycleaners Environmental Legislative Fund pointed out that a trim might not noticeably bleed when cleaned by itself but might bleed onto the body of a garment when the finished garment is cleaned. Thus, it would not suffice to have one ''reasonable basis'' for the body of a garment and another for the trim. Comment 65, p.4.

[42] Industry Canada (37) p.2.

[43] In the Statement, the Commission set forth criteria to consider in establishing the minimum required basis for objective advertising claims, where no specific basis was stated or implied: ''These factors include: the type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable.'' *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839, 840 (1984).

these terms be required instead of the word ''cold''? What benefits would consumers derive from such a change?

(2) Is it feasible and desirable to amend the Rule to require that the highest acceptable temperature for ''cold'' water be stated on the care label? What benefits would consumers derive from such an amendment? What costs would such an amendment impose on manufacturers?

(3) Should the Rule's definition of ''warm'' water be amended, and if so, what temperature should be specified instead? What benefits would consumers derive from such an amendment?

(4) Should the Rule's definition of ''hot'' water be amended, and if so, what temperature should be specified instead? What benefits would consumers derive from such an amendment?

B. Environmental Issues

(1) Please describe the process, or the processes, commonly referred to as ''Wet Cleaning,'' ''Multiprocess Wet Cleaning,'' ''Professional Wet Cleaning,'' or other similar terms, and provide as much technical detail as possible.

(2) What equipment and what materials are necessary for a professional cleaning establishment to employ the wet cleaning processes?

(3) What effects do the materials used in the wet cleaning process have on human beings, animals, plants, and the environment? Please be as specific as possible.

(4) How many domestic businesses provide professional wet cleaning to the public on a regular basis? Please specify the type(s) of professional wet cleaning provided. Does the service comprise all, or a part of, each such company's business? If part, what percentage?

(5) What percentage of garments and other items for which professional dry cleaning has historically been the only appropriate cleaning method are safely and satisfactorily cleanable by professional wet cleaning? Please be as specific as possible as to fiber, fabric, and garment type. What difference, if any, would there be in customer satisfaction between the results of the two processes?

(6) What is the average cost, for as many items as respondents can reasonably describe, of professional wet cleaning compared to professional dry cleaning? The Commission requests information both as it pertains to the cost to the cleaner providing the service and the cost to the consumer using it.

(7) With regard to a garment that cannot be home laundered but can be dry cleaned, should the Commission amend the Rule to require a professional wet cleaning instruction too (provided wet cleaning is appropriate for the garment)? What would be the benefits and costs to consumers and manufacturers of such an amendment?

(8) Should fiber identification be on a permanent label? Should fiber identification be on the same label as care information? What costs would such requirements impose on manufacturers?

(9) How many garments currently labeled ''dry clean'' or ''dry clean only'' could be washed at home by consumers? Should the Rule be amended to require a laundering instruction for all covered products for which laundering is appropriate? What would be the benefits and costs to consumers and manufacturers of such an amendment?

C. The Reasonable Basis Requirement of the Rule

(1) Are care label instructions generally accurate? If not, in what ways are they inaccurate, and do these inaccuracies result in damage to the affected garments or other costs to consumers?

(2) Are any types of garments or piece goods particularly prone to damage even when the care label instructions are followed?

(3) Are home laundering directions on care labels incomplete or inaccurate in ways that result in damage to garments when they are laundered as directed? If so, what are the most common problems, and how widespread are they?

(4) Are dry cleaning directions on care labels incomplete or inaccurate in ways that result in damage to garments when they are dry cleaned as directed? If so, what are the most common problems, and how widespread are they?

(5) What actions, if any, do garment or piece goods manufacturers ordinarily take to assure that care labels are accurate? To what extent do garment manufacturers rely solely on care information provided by the suppliers of components of garments?

(6) Do garment manufacturers typically analyze or test garments for appropriate cleaning procedures in their completed form or before the garments' components are assembled?

(7) In what situations, if any, should the testing of garments be the only evidence that would be legally acceptable?

(8) Should the Rule specify testing methodologies to be used in situations in which testing would be required? What should those methodologies be?

(9) Should the Rule refer to performance standards for certain properties of garments? If so, which properties, and what should these performance standards be?

(10) What steps, if any, do garment manufacturers take to provide cleaning instructions for products comprising more than one fabric or material, such as those with metallic trim or trim of a fabric or color different from that of the main part of the product?

(11) What evidence is there concerning the effectiveness of current actions by garment manufacturers to ensure appropriate cleaning of their products?

(12) Do garment labels stating, for example, that particular cleaning instructions apply to the garment ''exclusive of trim'' provide sufficient guidance to consumers or cleaners to enable them to avoid damaging the garments by improper cleaning?

(13) Should the Rule be amended to delete Section 423.6(c)(3), 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 and to state, instead, that a manufacturer must possess a reasonable basis for the garment as a whole?

(14) Should the Rule be amended to clarify that whether one or more of the types of evidence described in Section 423.6(c) constitutes a reasonable basis is based on the factors set forth in the FTC Policy Statement Regulating Advertising Substantiation?

(15) Do garment or piece goods manufacturers or retailers offer refunds for products damaged in cleaning despite adherence to care label directions? What is the typical refund policy? How is the existence of such refunds made known to consumers?

(16) What are the costs to consumers of complaining to manufacturers or retailers about garments damaged in cleaning? Are there factors that discourage consumers whose garments have been damaged in cleaning from complaining to manufacturers or retailers?

(17) What would be the benefits and costs to consumers and manufacturers of these amendments clarifying the Rule's reasonable basis requirement?

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.

Donald S. Clark,

Secretary.

[FR Doc. 95–31411 Filed 12–27–95; 8:45 am]

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RAILROAD RETIREMENT BOARD

20 CFR Part 255

RIN 3220–AA44

Recovery of Overpayments

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) revises part 255 of its regulations, currently entitled ''Recovery of Erroneous Payments'', to clarify and update its regulations with respect to recovery of overpayments. The revisions more clearly identify the individuals from whom recovery may be sought and under what circumstances recovery of an overpayment of benefits will be made. The revisions also cover the circumstances under which such recovery may be waived, and the circumstances under which such recovery may be terminated or suspended under the Board's authority concerning administrative relief from recovery.

DATES: Comments must be received by January 29, 1996.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701).

SUPPLEMENTARY INFORMATION: Part 255 of the Board's regulations has not been revised since 1967. Although section 10 of the Railroad Retirement Act of 1974 (45 U.S.C. 231i) includes provisions for recovery and waiver of overpayments of benefits which are substantially the same provisions included in the Railroad Retirement Act of 1937 (45 U.S.C. 228i, superseded), internal procedures dealing with overpayments of benefits have been developed which should properly be included in the regulations of the Board. In addition, in the Board's view, waiver should not be available with respect to certain types of overpayments and this proposed rule reflects those proosals. Because the proposed rule would make extensive changes in the existing regulation, a section-by-section analysis is provided below.

The title of part 255 is proposed to be revised to ''Recovery of Overpayments''. The current title, ''Recovery of Erroneous Payments'', mistakenly implied that all such payments were caused by ''fault''. Overpayments can and do occur through no fault of the recipients of such payments. The purpose of part 255 is to set out regulations to govern those instances where more than the correct amount of benefits has been paid, regardless of whether or not ''fault'' exists.

Section 255.1 would replace the present § 255.1, which sets out statutory provisions, with an introductory statement to summarize what is included in part 255.

Section 255.2 defines ''overpayment'' using essentially the same language that is used in the current § 255.2 to define ''erroneous payments''.

Section 255.3 states the general rule that overpayments shall be recovered in all cases except where recovery is waived under § 255.10 or administrative relief from recovery is granted under § 255.17 or where collection is suspended or terminated under these regulations or the Federal Claims Collection Standards.

Section 255.4 would replace the current § 255.4, which simply states in a summary manner the methods by which erroneous payments may be recovered, with a detailed description of those individuals from whom overpayments may be recovered.

Section 255.5–255.8 set out the methods by which an overpayment of benefits may be recovered. These methods include recovery by cash payment (§ 255.5), recovery by setoff from any subsequent payment determined to be payable on the basis of the same record of compensation (§ 255.6), recovery by deduction in the computation of a residual lump-sum death benefit payable under the Railroad Retirement Act (§ 255.7), and recovery by actuarial adjustment of an annuity (§ 255.8). These sections are substantially similar to the current §§ 255.5–255.8. However, § 255.8, unlike the current section, provides that an actuarial adjustment is not effective until the overpaid annuitant negotiates the first check which reflects the actuarially adjusted rate.

Section 255.9 provides that where recovery of an overpayment is by setoff which can be effected within 5 months and the individual from whom recovery is sought is an enrollee under Medicare Part B, the individual's monthly Medicare premium will be paid and the balance of the annuity amount will be applied toward recovery of the overpayment. This section is new and is intended both to save the agency the administrative costs of billing an annuitant for his or her Part B Medicare premium where his or her annuity would be offset in its entirety to recover an overpayment and also to avoid lapse of Medicare coverage.

Section 255.10 sets out the general requirements for waiver of recovery of an overpayment as set forth in the Railroad Retirement Act and replaces the present §§ 255.10 and 255.11.

Section 255.11, as currently in effect, would be removed because it is redundant. The new section 255.11 would define ''fault'' and gives examples of when an individual is or is not at fault based upon past agency decisions. Section 255.12 defines when recovery is contrary to the purpose of the Railroad Retirement Act, based upon past agency decisions. Section 255.13 defines when recovery is against equity or good conscience. Each of these sections is new and together they expand on the present § 255.12.

Sections 255.14, 255.15, and 255.16 are new sections which describe special situations where waiver of recovery of an overpayment is not available. Specifically, § 255.14 provides that waiver is not available under certain circumstances when recovery can be made from an accrual of social security benefits. Section 255.15 provides that waiver is not available to the estate of an individual.

Section 225.16 would provide that recovery of a small overpayment of less than $500 will never be considered contrary to the purpose of the Railroad Retirement Act or against equity or good conscience. Under this rule, waiver of recovery would not be applicable for debts under $500. This proposed rule is similar to the rule contained in § 340.10(e)(2) of the Board's regulations with respect to recovery of overpayments under the Railroad Unemployment Insurance Act (20 CFR 340.10(e)(2)).

Section 255.17 sets out internal Board policy governing those situations where recovery of an overpayment may not be waived under section 10(c) of the Railroad Retirement Act, thus extinguishing the debt, but where recovery will not be sought for equitable reasons. The regulations do not currently contain such a provision.

Section 255.18 is new and explains how an overpayment is recovered when that overpayment was made to a representative payee under part 266 of this chapter.