UNITED STATES GOVERNMENT

memorandum

DATE: MAY 8 1978

FROM: John F. LeFevre, Attorney
Cynthia S. Lamb, Research Analyst
Division of Credit Practices, Bureau of Consumer Protection

SUBJECT: Staff Report: Proposed Revised Rule Relating to the Care Labeling of Textile Products and Leather Wearing Apparel

TO: Commission

In accordance with Section 1.13(g) of the Commission's Rules of Practice, transmitted herewith is the report of the Commission staff on the proceeding to revise the Commission's Trade Regulation Rule Relating to the Care Labeling of Textile Wearing Apparel for your consideration. It is recommended that the final Rule proposed therein be promulgated as soon as possible - to become effective six months after the date of promulgation.

Respectfully submitted,

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Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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CARE LABELING OF TEXTILE PRODUCTS AND LEATHER WEARING APPAREL

Staff Report to the Federal Trade Commission
and Proposed Revised Trade Regulation Rule
(16 C.F.R. Part 423)

BUREAU OF CONSUMER PROTECTION
FEDERAL TRADE COMMISSION

MAY 1978

CARE LABELING OF TEXTILE PRODUCTS AND LEATHER WEARING APPAREL

Final Report to the Federal Trade Commission

and Recommended Trade Regulation Rule

(16 C.F.R. Part 423)

BUREAU OF CONSUMER PROTECTION

This report, required by section 1.13(g) of the Commission's Rules of Practice, contains the staff's analysis of the record and its recommendations as to the form of the final Rule. The report has not been reviewed or adopted by the Commission. The Commission's final determination in this matter will be based upon the record taken as a whole, including the staff's report and the report of the Presiding Officer under section 1.13(f) of the Rules, and comments upon these reports received during the 60-day period after the staff report is placed on the public record.

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I. PURPOSE

Pursuant to section 1.13(g) of the Commission's Rules of Practice, the Bureau of Consumer Protection hereby submits its final report (staff report) in the proceeding to revise the Commission's Trade Regulation Rule Relating to the Care Labeling of Textile Wearing Apparel (16 C.F.R. Part 423), hereinafter referred to as the current rule. This report contains a complete analysis of the evidence placed in the record of the proceeding as well as conclusions and recommendations where appropriate. It is intended to aid the Commission in determining the final disposition of the proposed revision to the Rule (Care Labeling of Textile Products and Leather Wearing Apparel, 41 F.R. 3747) published on January 26, 1976 (hereinafter the proposed revised rule).

This report was prepared on a basis totally independent of the Presiding Officer of this proceeding, any member of the Commission or its staff or any outside party (except to the extent that the party's views had already been placed on the record). Therefore, the analysis, conclusions and recommendations contained herein are based solely on what is contained in the record or on previously published Commission documents relating to the current Care Labeling Rule.

II. GENERAL INTRODUCTION

A. Background

Official Commission involvement in the area of care labeling began with its publication of three proposed care labeling "rules" on November 4, 1969.[1] These rules made it unfair and deceptive in violation of Section 5 of the Federal Trade Commission Act for <u>any</u> party to sell <u>any</u> textile product without a permanent label disclosing instructions for the "laundering and cleaning of such product . . ." as well as other instructions material to proper care. Such labels were also to contain a certification from the product's manufacturer that the instructions contained thereon are valid and will not damage the product. Finally, the rules provided that retailers could obtain an exemption from these requirements if they obtained "guarantees" from the products' manufacturers.[2] Almost

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1 Trade Regulation Rule Relating to the Care Labeling of Textile Wearing Apparel, 16 C.F.R. 423 (1977), Statement of Basis and Purpose, Chapter I.A.(hereinafter "Care Labeling Rule" or "Statement").

2 <u>Id.</u>, Chapter I.C.

immediately, the problems presented by these proposals became evident. Under these rules, for example, tennis balls and typewriter ribbons would have been required to have permanent labels containing instructions for care, the need for which is questionable at best. Whoever sells these products would have been held accountable under the rules irrespective of the seller's knowledge of the composition or care traits of the product. Problems such as care instructions for dental floss and permanent labels for false eyelashes appeared insoluble. The necessity for certification of otherwise accurate care instructions was questioned. Staff saw no reason to exempt retailers to whose specifications the product was made. The incongruities and anomalies contained in the proposals were endless.

Although there was little question of the need for care labeling in some form[3] and no question as to the Commission's willingness to assert its authority in this regard,[4] four important decisions, dictated by practicality, had to be made:

(1) What products should be required to have care instructions?

(2) What care instructions should be required for these products?

(3) How should these care instructions be transmitted to the ultimate consumer?

(4) Who should be responsible for devising them?

Hearings were held on the proposed rules in January and March, 1970 in which all views were considered. On the basis of these hearings and all other written comment, the Commission issued the current rule on December 16, 1971 (effective July 3, 1972). Many improvements were made, among which the most notable were:

(1) The manufacturer's guarantee provision was removed from the Rule as being superfluous;[5]

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3 Id., Chapter II.

4 Id., Chapter IV.

5 Id., Chapter VI.C.2.

(2) The certification requirement was unsubstantiated by the record and removed; the manufacturer (as defined) was deemed responsible for care instructions and labels under the Rule;[6]

(3) The product coverage of the Rule was narrowed to include only textile wearing apparel and piece goods used to make textile wearing apparel which require regular care for their ordinary use and enjoyment. Two reasons were cited: first, wearing apparel demonstrated the greatest need for care information; second, the Commission was acutely aware of the administrative problems likely to arise in enforcing such a Rule. In light of its limited resources, therefore, it made the determination to "proceed in stages in the care labeling field . . . ," the first stage being wearing apparel. The Commission also warned, however, that, given a demonstrated need, "others may be forthcoming.";[7]

(4) The care instructions required were limited to such "regular care and maintenance as is necessary to the ordinary use and enjoyment of the article . . ." and warnings as to such care, where appropriate.[8] Regular care was defined as that care necessitated by "mere use" of the product as opposed to spot care "which is needed when a substance is accidentally spilled on the product." Properly, the Commission deemed it an impossible task for the manufacturer of a product to anticipate and disclose all conceivable spot removal techniques on a label;[9]

(5) Although the Commission adhered to the theory of a permanent label (as opposed to a temporary label or tag), it recognized the existence of articles for which a permanent label would be unfeasible. It, therefore, provided an opportunity for manufacturers to obtain an exemption from the requirement of a permanent label in certain specified situations.[10]

These improvements, along with the numerous other modifications, served to make the current rule more consistent with the needs of the public as well as more feasible from the standpoint of implementation and compliance by the industry.

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[6] Id., Chapter VI.C.1.

[7] Id., Chapter VI.A.

[8] Care Labeling Rule, Notes 1 and 2.

[9] Statement, Chapter VI.D.2.

[10] Id., Chapter VII.C.

The Commission had a firm basis for the Rule in an atmosphere which for rulemaking was somewhat uncertain. Between the promulgation date and the effective date of the Rule, the United States District Court for the District of Columbia filed an order in the matter of National Petroleum Refiners Association v. Federal Trade Commission, 340 F.Supp. 1343 (D.D.C. 1972) stating, among other things, that the Commission lacked authority to issue any rules having the effect of substantive law. In so doing, it struck down the Commission's final Trade Regulation Rule Relating to the Posting of Octane Numbers on Gasoline Pumps (16 C.F.R. 422). Although the authority of the Commission to issue trade regulation rules was ultimately upheld,[11] it was obvious at the time of the initial order that the octane and care labeling rules were premised on similar grounds, namely:

(1) that the Commission may require affirmative disclosures where the public assumes from silence that a state of facts exist which, in fact, do not exist;

(2) that such disclosures may be required where silence can mislead the public into employing a procedure which is harmful or frustrate a basic assumption inherent in the purchase of the applicable item;

(3) that such disclosures may be required when consumers suffer economic loss because of the lack of information essential to the ordinary use of a product.[12]

These general principles have been consistently upheld by the courts.[13] Specifically in terms of the Care Labeling Rule, the Commission determined that:

> consumers must be informed of proper care and maintenance procedures in order (1) to avoid possible damage to the product due to improper care; (2) to use the care procedure which will give the best overall performance, and (3) to be able to select apparel on the basis that it can be cared for inexpensively yet effectively. Such information is not available in permanent form on most apparel products commonly

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11 National Petroleum Refiners Ass'n. v. FTC, 482 F.2d 672 (D.C. Cir. 1973), cert. denied, 415 U.S. 951 (1974).

12 Statement, Chapter IV.C.

13 Id.

used by consumers. For the reasons discussed above, the Commission believes that the absence of such information is deceptive and unfair.[14]

It was on this basis that the Commission determined to adopt the Rule which it has now proposed be revised.

Despite these changes and the Commission's firm stance in support of its rulemaking authority, the language of the current rule is still quite general and reflects a relatively cautious outlook allowing for a great deal of flexibility in the Rule's interpretation. Consequently, the Commission staff was inundated with inquiries from industry as to possible avenues of compliance. From these inquiries, certain deficiencies in the Rule began to emerge which, although temporarily resolvable by staff interpretation, were becoming increasingly apparent to the industry as well as to the staff. Additionally, as months passed and excuses for what appeared to be non-compliance became suspect, the volume of consumer complaints about selected aspects of the industry's implementation of the Rule, as well as about the lack of care information on other non-covered products, increased. The Commission had anticipated this eventuality in the Rule's Statement of Basis and Purpose: "It is to be emphasized that since this Rule has been limited with respect to product coverage, the Commission reserves the right to consider the addition of other products at a later date."[15] The result was the Commission's Notice of Opportunity to Submit Written Comment and Data Regarding Specific Questions Related to the Care Labeling Rule, issued April 2, 1974 (39 F.R. 12036) (hereinafter Request for Comment). It represented an effort to evaluate fully the industry's treatment of the general provisions of the current rule as well as to estimate the validity of the consumer complaints theretofore received. Questions in the Request for Comment were designed to pinpoint any problems, from the viewpoint of compliance or otherwise, that were occurring in the marketplace with respect to care information on textile or related products. They addressed such topics as whether care instructions were affixed to all wearing apparel and whether care labels accompanied the retail sale of piece goods, as required. Further inquiry was made into the nature of care instructions and labels being supplied, the desirability of extending the Rule to cover other related products, the nature of retailer responsibility under the Rule and other important issues. Consumer response to this request was surprisingly large totaling 12,000 pages of

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14 Id., Chapter V.

15 Id., Chapter I.A.

public record. Painstaking analysis of these comments revealed that industry had apparently strayed from the spirit of the current rule in certain material respects, especially in areas where the language of the Rule was particularly general or unclear. It also revealed an expression of consumer need for care instructions on items not then included within the Rule's scope. As noted in the staff report to the Commission on these comments, dated June 10, 1975,[16] a revision to the current rule is clearly justified and was so recommended. The proposed revisions were drafted to reflect not only the substance of the comments received but the staff interpretations issued in selected areas a year or two earlier in response to genuine consumer or industry need. Although a rehash of the statistics upon which the revisions were based will not be attempted here (see the staff report itself), a brief summary and explanatory comparison may be made:

(1) Whereas the current rule covers only textile wearing apparel and piece goods used to make such apparel, the proposed revision covers, in addition, draperies and curtains, linens, slipcovers, upholstered furniture, leather and suede apparel, piece goods used to make the above items, yarn, carpets and rugs and intermediate components.

(2) Whereas the current rule contains a general statement of what care instructions are required, the proposed revision contains a very specific statement of required care information for wearing apparel as well as a proposed glossary of terms.

(3) Whereas the current rule is indefinite in some respects as to the responsibility for the transmittal of care instructions from the manufacturing level to the consumer level, the proposed revision is more specific.

(4) Whereas the current rule does not address such concepts as alternative care, symbols in care instructions, abrasiveness of labels, waivers and flammable fabrics regulations, the proposed revision addresses each of these topics.

There are numerous other issues to be resolved which are not mentioned here. The background of each of these issues as well as their proposed resolution will be considered in minute detail.

On January 26, 1976, the Commission accepted staff's recommendations and published the proposed revised rule in the Federal Register (41 F.R. 3747)[17] thereby initiating a proceeding to revise

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16 Record 215-22-1-24 at 1-62.

17 Record 215-22-1-15 at 1 et seq.

the current rule. The proposal contains a brief "Statement of Reasons" for the revisions contained therein as well as a series of questions designed to elicit responses to specific issues presented. Approximately 5000 written comments were received[18] on the proposal until the deadline of September 24, 1976. On August 25, 1976, the Presiding Officer issued a "Final Notice of Proposed Trade Regulation Rulemaking Proceeding and Public Hearings," (41 F.R. 35863) designating issues to be considered pursuant to section 1.13(d) of the Commission's Rules of Practice and scheduling hearings to begin in Washington, D.C. on November 8, 1976 and in Los Angeles, California on January 10, 1977. Two weeks of hearings in Washington and one week of hearings in California were held in due course without significant delay. Approximately 2100 pages of verbatim transcript were compiled accompanied by 545 pages of physical exhibits.[19] The record remained open for rebuttal of oral testimony from January 13, 1977 until March 1, 1977 during which 451 pages of comments were submitted.[20] The Presiding Officer closed the record at the end of the rebuttal period. Commission staff is entirely satisfied with the manner in which the proceeding was conducted and commends the Presiding Officer in this regard. Fairness, openness, and impartiality characterized his performance.

From the beginning, the Commission staff perceived its role in this proceeding as composed of two elements: one, as advocates to support the proposed rule; two, as Commission employees to ensure a balanced, adequate record replete with evidence on both sides of all issues. As this proposal directly affects a large number of industries as well as the consuming public,[21] staff made a conscious effort to ensure that their views were included in the record in a balanced fashion. Thus, witnesses representing the apparel manufacturing industry, the retail fabric, apparel and household furnishings industry, the leather industry, the yarn industry, the carpet cleaning industry, the carpet and rug manufacturing industry, the decorative fabric industry, the drycleaning industry, the zipper industry, the fabric manufacturing industry, the linen industry, the furniture manufacturing industry, and the label industry all appeared and testified at the hearings. Consumers were also well represented at the hearings by the National Consumers Congress as well as by consumer education teachers,

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18 Record 215-22-1-17, 18, 19, 20, 21, and 22.

19 Record 215-22-1-23 and 24.

20 Record 215-22-1-25.

21 Cotton, wool and man-made fiber producers, textile mills, yarn mills, the leather apparel industry, broadwoven fabric industry, knit fabric industry, synthetic woven fabric industry, apparel industry, furniture industry, carpet and rug industry, laundry and drycleaning industry, appliance industry and soap and detergent industry to mention only a few.

county extension agents, county and city supervisors of consumer affairs and representatives of Better Business Bureaus. Finally, the list of witnesses included much needed expert testimony from those in the trade as well as those in academic circles including textile chemists and analysts, representatives of the American Society for Testing and Materials and extension specialists and instructors in clothing and textiles and home economics. Although this Rule will not operate to preempt any state law, numerous written comments were received from state consumer protection officials and attorneys general throughout the country. Staff believes that this testimony, combined with the plethora of written comment, provides ample information upon which to base all decisions that need to be made in resolving the issues presented.[22]

B. The Report

The report will begin with a summary of staff's conclusions and recommendations in Chapter III and will then discuss each of the major issues in the context of each of the products proposed to be covered. Thus, the issues of product coverage, transmittal of care instructions and content of care instructions with respect to textile wearing apparel, piece goods, yarn, draperies and curtains, upholstered furniture and slipcovers, linens, carpets and rugs, intermediate components and leather and suede wearing apparel will be considered in Chapter IV. A brief discussion of coverage-related issues such as exclusions, exemptions, definitions and waivers will conclude this Chapter. Chapter V will consider the general character of the care label (permanency, accessibility, placement and abrasiveness) and the instructions on the label (legibility, the symbol question, standardization of terms, and testing). Economic impact of the Rule on small business and the consumer will be taken up in Chapter VI, Severability in Chapter VII and a statement of the Rule in toto in Chapter VIII. Included in the Appendices are a list and brief description of all witnesses who testified at the hearings (Appendix A) as well as a list and brief description of all the surveys and studies received during the course of the proceeding (Appendix B). The Presiding Officer's conclusions on each issue will be treated in seriatim as each topic is considered.

For purposes of consistency, citations to the record in the text or footnotes will be made using the same abbreviations as those used by the Presiding Officer,[23] namely:

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22 See Appendix A for a list and brief description of witnesses represented at the hearings.

23 Gray, John, "Report of the Presiding Officer On Proposed Revised Trade Regulation Rule Regarding Care Labeling of Textile Products And Leather Wearing Apparel" (July 1977) at 5 (hereinafter Presiding Officer's Report).

R. This refers to written comments in the record, including rebuttal submissions. Citations will be made to section and page only. The prefacing record numbers (215-22-1) are common to all citations and will be ommitted. Section numbers refer to the following types of comments:

- 16 Recommendations as to Disputed Issues of Fact
- 17 Industry Written Comments
- 18 Consumer Written Comments
- 19 Scientific and Technical Written Comments
- 20 Government Agency Written Comments
- 21 General Written Comments
- 22 Staff Written Submissions (Staff Report Only)
- 23 Prospective Witness Statements
- 25 Rebuttal Submissions.

Thus R. 18 at 600 refers to a written consumer comment on page 600 of the record.

Tr. This refers to oral testimony contained in the transcript (Section 24). Such testimony will be cited only by transcript page number, i.e., Tr. 800.

HX. This refers to physical exhibits placed in the record at the hearings. Citations to exhibits will be given using the exhibit number and the record page, i.e., HX 10 at 350.

Appendix A contains an alphabetical list and short description of witnesses who testified at the hearings as well as the various organizations represented. Appendix B contains an alphabetical list and brief description of all studies and surveys referenced in the report. Staff has accorded appropriate weight to each according to the number surveyed and the methods used. All surveys, studies, the staff and Presiding Officer's reports and most witnesses are given one full citation when first mentioned; thereafter, citations are abbreviated as indicated.

III. SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

(These summaries are not complete or comprehensive discussions of all record facts, conclusions or recommendations in each area. Reference should be made to the body of the report for such discussions.)

Introduction

The current Care Labeling Rule was promulgated on December 9, 1971 and became effective on July 3, 1972. Generally speaking, it covers only textile products in the form of finished articles of wearing apparel and piece goods used to make such items which require regular (as opposed to spot) care for their ordinary use and enjoyment. It requires that manufacturers of wearing apparel affix permanent labels to such items containing appropriate care instructions, such as washing, drying, bleaching, drycleaning, or other procedures which may be deemed necessary at the manufacturer's discretion. It also requires that manufacturers of piece goods used to make wearing apparel provide labels containing such instructions for the use of the over-the-counter piece goods' purchaser in constructing a garment at home. These labels must be of such a character that they can be permanently attached to the finished item by the consumer using methods available in any household.

In the period between July 3, 1972 and January 26, 1976, the Commission staff became aware through a number of sources that compliance with the Rule was not satisfactory in certain areas, especially with regard to piece goods and with regard to the adequacy of care instructions being supplied with wearing apparel. Further investigation confirmed these facts and also revealed a significant demand for care instructions with other textile products, such as yarn, upholstered furniture, slipcovers, carpets and rugs, linens and draperies as well as suede and leather apparel. Therefore, in June, 1975, staff recommended that the Commission publish a revised Rule and initiate a proceeding which the Commission accepted. The proposed revised rule was published on January 26, 1976 and contains several major revisions to the current rule, including 1) a substantial increase in the coverage of the Rule to include household furnishings, yarn, suede and leather wearing apparel as well as component parts of these products; 2) a far more specific and detailed statement of required care instructions for all products covered; and 3) a clearer delineation of the responsibility for transmitting these instructions to the ultimate consumer. Written comments were received until September 24, 1976. Hearings were held in Washington, D.C. and Los Angeles, California in November, 1976 and January, 1977 and the record was closed on March 1, 1977. All facets of the textile and cleaning industries participated in the proceeding (see Appendices A and B). The Presiding Officer's Report was published in August, 1977. The following is a summary of staff's conclusions and

recommendations based upon the record developed in the proceeding.

Definitions

Staff recommends that the definitions of 1) "textile product," 2) "finished article of wearing apparel," 3) "leather product," 4) "suede product," 5) "manufacturer," 6) "retailer" and 7) "ultimate consumer" in the final Rule remain substantively the same as those contained in the proposed revised rule. Modifications made in the definition of "textile product" are for clarification only.

Staff recommends that the definition of "finished household furnishings" in the proposed revised rule be eliminated and that upholstered furniture, carpets and rugs and linens be separated and defined individually in the final Rule. It is staff's opinion, however, that draperies, curtains and slipcovers need no definition and the final Rule contains none.

Staff recommends that the definition of "piece goods" be modified to clarify the fact that "remnants" for which fiber content is unknown are excluded from the scope of the Rule.

Staff recommends that the definition of a "permanent" label remain the same as that contained in the proposed revised rule for all products except upholstered furniture where a different standard of permanency should be incorporated.

Staff recommends that the proposed rule's definition of "intermediate component" be clarified to include only those components which are "sold to or used" by a finished product manufacturer. Components of "components," however, should be specifically excluded.

Staff recommends that a new definition, entitled, "irregulars or seconds," be added to the definitional section of the Rule to delineate precisely what kinds of products are included in this category. Section 423.10(c) of the final Rule exempts these products from the Rule's permanency requirements because of their relatively low cost.

Textile Wearing Apparel

In this proceeding, the issue of whether or not textile wearing apparel should be covered by the final Rule is moot since the current rule already includes these products. As the record supports continued coverage, staff recommends that wearing apparel be included within the scope of the final Rule. Similarly, the issue of whether permanent labels should be required for wearing apparel has also been previously resolved. Staff, therefore, recommends that care instructions for wearing apparel be transmitted via permanent labels as currently required.

Care instructions for wearing apparel (washing, drying, and ironing instructions) supplied under the current rule have in many cases either been entirely lacking or inaccurate, incomplete, unclear or inconsistent with other instructions separately supplied. Further, some apparel currently on the market cannot be cleaned by any commercially available cleaning method. Both consumers and small businessmen have suffered considerable economic injury as a result. Therefore, staff first recommends that requirements for washing, drying and ironing instructions in the final Rule be made more precise and specific, as outlined in the proposed revised rule. Specifically, while instructions must currently inform the purchaser in general terms of appropriate regular care for the labeled item and warn against the use of care procedures which will damage the labeled item, staff recommends that washing instructions include, at minimum, information regarding the method of washing and a description of appropriate water temperature, method of drying and, if by machine, a description of the proper drying temperature, and use of an iron, if necessary, accompanied by a description of the appropriate ironing temperature.

Second, staff recommends that the bleaching provision in the proposed revised rule be revised and expanded. Specifically, bleaching instructions should be required to be disclosed in all washing instructions, accompanied by a cautionary statement except in cases where the responsible party determines that bleach will never be necessary to the ordinary use and enjoyment of the labeled item. To the extent that bleach has the effect of improving the overall appearance of an item through the apparent elimination of soil accumulation, it constitutes a "regular" care procedure under the Rule and can in some circumstances act to extend the useful life of an item to the consumer's benefit. Depending upon the extent of such soil build-up, the periodic use of bleach is likely to be necessary to the ordinary use and enjoyment of most washable articles at some point in their useful lives. Such necessity can only be determined by the user of the product. Because of overwhelmingly negative consumer assumptions about the use of bleach in the absence of bleaching instructions, and because of the current prevalence of negative, inaccurate bleaching instructions on otherwise bleachable items a substantial number of consumers are and have been effectively deprived of the use of bleach in situations where bleach is necessary to the ordinary use and enjoyment of an item and, to this extent, have suffered economic injury as a result.

It is not generally necessary to the ordinary use and enjoyment of most washable and otherwise bleachable products covered by the Rule, however, that they be bleached every time they are washed in order to render them acceptable to their owners. The use of bleach in these circumstances may only be required on an occasional basis depending upon the individual tastes of the owner of the product. Therefore, a bleach disclosure should not function to encourage unnecessary use of bleach and should contain an appropriate caution in this regard. Further, chlorine bleach has the potential of impairing the strength of certain washable products covered by the Rule on a cumulative basis when used repeatedly over a period of time thus causing a reduction in the service lives of such products. For these

reasons, staff recommends against use of the term "bleach-safe" in bleaching instructions. A distinction between chlorine and oxygen bleaches, however, should be made where appropriate. Staff recommends, therefore, that the terms "no bleach," "non-chlorine bleach only when needed" and "bleach only when needed," or their precise equivalents, be used in all washing instructions when the subject of bleaching is addressed.

Third, staff recommends that drycleaning instructions required in the proposed revised rule be expanded in the final Rule to include the type of drycleaning solvent to be used when not all commercially available solvents can be used as well as any other significant modifications to the drycleaning process, as defined, when such modifications are necessary to clean the item successfully. The terminology currently used for drycleaning instructions is unacceptably vague; general terms such as "drycleanable," "commercially dryclean," "professionally dryclean" and "do not use coin-op cleaners" have a host of different meanings to the manufacturers, drycleaners, and consumers alike. These terms used alone and without further clarification are incomplete and do not provide sufficient information to enable drycleaners to process many items safely. The record shows that massive numbers of items have been damaged during the drycleaning process in the absence of this information. Such damage has occurred not only because incorrect solvents were used but also because of the failure of the drycleaner to modify other parts of the drycleaning process (such as moisture level and temperature) to fit the care traits of the item being cleaned. In this connection, the record supports the use of the standardized descriptive term "dryclean" to indicate that all standard drycleaning processes can be used safely and "professionally dryclean" to indicate that some modification in this process is necessary to safely refurbish an item. The terms "commercial[ly]" and "drycleanable", on the other hand, are inherently confusing and should be prohibited. Modifications to the professional drycleaning process should be expressed according to staff's recommendations for drycleaning terminology contained in Chapter V.E. of this report.

While consumers may mistakenly assume that a specified solvent will be readily available in the vicinity of their residences (since the three principal drycleaning solvents are not used with equal frequency in all parts of the country), consumers will not be significantly harmed by this assumption. Most local drycleaners are aware of plants using alternate solvents or can obtain such information easily.

Fourth, the record supports a provision for alternative care in the final Rule as proposed. Staff, therefore, recommends that when an item can be both washed and drycleaned without damage or substantial impairment, both methods be disclosed except in cases where it is determined on the basis of reliable evidence that one method is clearly superior to the

other. "Low labeling" (the use of extraordinarily cautious instructions when they are not, in fact, needed) in the form of instructions stating "dryclean only" is currently prevalent in care instructions. Most consumers either assume that items so labeled cannot be washed, when such is often not the case, or are totally confused. Such assumptions cause economic injur by forcing consumers to utilize the more expensive process when it may not be necessary. On the other hand, many consumers often assume that all items labeled with washing instructions are also "drycleanable." In many cases, these assumptions are erroneous and have resulted in extensive drycleaning damage. Both consumers and drycleaners view alternative care instructions as a solution to these problems. Only when one procedure is clearly superior to the other, on the basis of its effect on the item as well as the cost and effort involved, are alternative care instructions unnecessary. The cost to manufacturers of providing alternative care instructions where warranted will be no greater than that required to ensure the accuracy of any care instruction prescribed since both "washability" and "drycleanability" are fundamental to that determination. Finally, alternative care instructions need only be supplied for apparel "outerwear," draperies, curtains and slipcovers as well as piece goods and yarn used to make these articles; they are unnecessary for such items as linens and "underwear."

Piece Goods

In this proceeding, the issue of whether or not piece goods used to make wearing apparel should be covered by the Rule is moot since the current rule already includes these products. As the record supports continued coverage, staff recommends that piece goods be included within the scope of the final Rule. Staff also recommends that piece goods used to make other finished products now proposed to be covered (upholstery, drapery, slipcover and linen fabrics) also be included within the final Rule for reasons outlined in sections discussing these products.

Currently, manufacturers of piece goods are providing care labels to retailers (or reimbursing retailers for their cost) in compliance with the current rule. Further, at least 95% of fabric bolts or rolls on display at the retail level are labeled with care instructions when they leave the mill. Most retailers of piece goods, however, are simply not providing these labels to the ultimate consumer.

Since both consumers and the industry agree that care information should be available to the consumer before the point of retail sale, staff recommends that manufacturers be required to include care instructions with bolts or rolls of fabric as they are now doing. The importance of labels which can be permanently attached to products made from such goods (to ensure the availability of care information at the point of care), however, has also been shown. While there does not appear to be any practical method by which manufacturers can

transmit such labels directly to the ultimate consumer without the aid of an intervening party (the retailer), manufacturers have already been successful in distributing such labels to retailers under the current rule. Staff recommends that they continue to be required to do so in the final Rule. Of the two systems advocated by which retailers may feasibly distribute care labels to ultimate consumers (pre-sale availability on request v. automatic distribution without request), the latter is the preferable system. A pre-sale availability system is unreliable and is not likely to operate consistently to provide consumers with labels for use at the point of care. Further, the record contains no evidence of any significant burden to retailers in implementing an automatic distribution system. Staff, therefore, recommends that they be required to do so in the final Rule to remedy a major failure of the current rule.

Staff also recommends that decorative fabrics, including custom-made fabrics, be included within the piece goods provision to the extent that such fabrics are sold over-the-counter at retail. In all other cases, manufacturers of decorative fabrics should only be responsible for providing care information, not labels, as such fabrics are intermediate components of finished products, as defined herein. Responsibility for providing labels for products made from decorative fabrics depends upon who may be deemed the "manufacturer" of the finished product, as defined. In most cases, the "manufacturer" will either be the consumer or the party who puts the product together.

Staff recommends that remnants of undetermined fiber content, created at the manufacturing level in lengths of 10 yards or less, be excluded from the final Rule. All other goods, whether or not they are termed "remnants," should remain within the coverage of the final Rule. This includes so-called "remnants" created at the retail level as well as those whose fiber content is known.

Finally, staff recommends that care instructions for piece goods conform to the standards outlined in the Rule for the products they are designed to make.

Yarn

While the current rule does not include yarn, staff recommended that it be covered in the proposed revised rule. Products made from yarn by ultimate consumers (wearing apparel and carpets and rugs, for example) do require regular care; the care characteristics of such products vary in the same manner as those made from fabric. Currently, some yarn manufacturers are voluntarily supplying surprisingly explicit care instructions on the bands or wrappers containing each skein of yarn; others, however, are not. Consumers have suffered economic injury because of the lack of care instructions with yarn through damage caused by improper care to products made from yarn purchased over-the-counter. Staff recommends,

therefore, that care instructions for yarn be required in the final Rule as proposed. Care instructions on the yarn wrapper, without more, however, are not sufficient to ensure that adequate care information is available to the consumer at the point of care. Therefore, staff recommends that while care instructions should continue to be conspicuously disclosed on the yarn wrapper to ensure their availability at the point of sale, they should also be supplied on a label suitable for attachment to the item made from the yarn. For reasons outlined in staff's discussion of piece goods, such labels must be distributed to the consumer without request. In this situation, labels can either be supplied directly to the consumer by the manufacturer in each skein or separately by the retailer at the point of purchase, as recommended for piece goods. Either method might be appropriate, depending upon many individual factors. Staff, therefore, recommends that yarn manufacturers be given the option of either providing one label per skein in the skein itself or ensuring that retailers have enough labels to supply separately to the consumer. In the latter case, staff further recommends that retailers ensure that labels are distributed to consumer-purchasers without request, as in the case of piece goods.

Finally, staff recommends that care instructions for yarn conform to the standards outlined in the Rile for the products they are designed to make.

Draperies and Curtains

Draperies and curtains are not covered in the current rule but are proposed to be covered in the final Rule. All draperies require regular care for their ordinary use and enjoyment although the care traits of these products differ in many respects. The drapery industry has supplied care instructions with draperies and curtains on a haphazard basis, at best. Consumers and drycleaners need such instructions to avoid damage due to improper care; indeed, consumers have suffered substantial economic injury either in the absence of care instructions or in the presence of inaccurate instructions. As consumers are often unable to obtain appropriate care information for such products, staff recommends that care instructions for draperies and curtains be required in the final Rule. For reasons previously cited, staff also recommends that care instructions be transmitted on labels permanently attached to such items. Finally, regular care procedures for draperies are similar to or the same as those used for wearing apparel. Staff recommends, therefore, that care instructions for such products be governed by the standards outlined for care instructions for wearing apparel.

Upholstered Furniture and Furniture Fabric; Slipcovers

Furniture, furniture fabric and slipcovers are not covered

in the current Rule but are proposed to be covered in the final Rule. Regular periodic care is necessary for the ordinary use and enjoyment of upholstered furniture and slipcovers although such care may not be performed as frequently as that for wearing apparel. The care traits of many upholstery and slipcover fabrics also vary with the characteristics of the fiber, construction, dyes and finishes of these articles. While the furniture and slipcover industries are capable of developing care instructions for their products and a few manufacturers are already supplying them, many more fail to do so. Thus, the majority of consumers receive no care information whatsoever with these items. Because consumers have suffered substantial economic injury due to improper care in their absence, consumers, drycleaners and retailers unanimously endorse the concept of care instructions for such products. Consumers are ill-informed about care for upholstered furniture and will use whatever information is provided to their benefit. Since the costs of providing care instructions with upholstered furniture do not compare with the potential cost of replacing an item of furniture or a slipcover damaged because of improper care, staff recommends that care instructions for furniture, furniture fabric and slipcovers be required in the final Rule. While the reasons for permanent labels for furniture and slipcovers are similar to those previously cited for wearing apparel, the appearance of some furniture items (those without cushions, for example) will be adversely affected by these labels. Staff recommends, therefore, that all upholstered furniture and slipcovers be required to have permanently attached labels, except in situations where placement of a label on furniture will have an adverse effect on its appearance when in use. In these cases, a hang tag, securely attached to the item, should be required. Additionally, staff recommends that the life of a label attached to upholstered furniture be keyed to the life of the outer covering of the furniture only and not to the life of the entire item. Finally, staff recommends 1) that care instructions for slipcovers be governed by standards outlined for wearing apparel and 2) that care instructions for furniture apply to those textile components which need regular care or which will be affected by whatever regular care is prescribed. These instructions may address such subjects as vacuuming, "home" cleaning methods or methods to be used by professional cleaning establishments, depending upon the character of the labeled item. The record shows that the industry has already developed instructions which may be suitable. As the record contains little evidence upon which to base a recommendation of specific subjects to be addressed in an instruction for furniture, staff recommends that requirements in this area be general in nature. As with all other products covered by the Rule, staff recommends that the furniture manufacturer be solely responsible for devising such instructions in all cases where that party directs or controls the manufacture of the finished item.

Carpets and Rugs

Carpets and rugs are not covered in the current rule but are proposed to be covered in the final Rule. These products are produced as "rolled goods" and as finished area rugs and are constructed of numerous fibers, yarns, and backings. As such, they need regular care to ensure continued acceptability by their owners; the record shows, however, that carpets and rugs have been the subject of numerous consumer inquiries and grievances. The care traits of carpets and rugs vary in direct proportion to significant differences in fiber content and construction; all carpet cleaning methods are not appropriate for all carpets. While the carpet industry has expended some effort in formulating appropriate care instructions for carpets, these instructions are not available to the consumer on a consistent basis and only rarely are provided the consumer at the point of purchase. Further, care instructions included with carpet cleaning agents and equipment provide no information to the consumer as to the appropriate cleaning method to use and are no substitute for such information. Moreover, these instructions have not prevented consumers from making erroneous assumptions in the absence of manufacturer-supplied care information and from suffering considerable economic injury as a result. Generally, consumers are totally ignorant of proper carpet cleaning methods and are unable to obtain reliable information from any source available to them. Professional cleaners do not fill these information gaps. Staff, therefore, recommends that care instructions for carpets and rugs be required in the final Rule. Staff further recommends that, since carpet manufacturers are the only parties who are aware of the materials and type of construction used in a particular carpet, they should be responsible for devising instructions required.

Permanent labeling, however, is simply not feasible for carpets or rugs because of the likelihood that instructions contained on labels will be inaccessible to the consumer either at the point of sale or at the point of care or both. Manufacturers, however, can provide instructions separately to retailers in the manner recommended for piece goods. Further, affirmative action at the retail level is necessary to ensure that such instructions are obtained by consumers. Mere disclosure of their availability is not enough. Therefore, staff recommends that carpet manufacturers be required to supply a sufficient amount of care instructions to retailers to meet consumer demand and that retailers be required 1) to disclose their availability such that the consumer will be aware of them before the point of sale and 2) distribute them without request at the point of purchase to ensure their availability at the point of care. Pre-sale disclosure of their availability also makes the proposed labeling of carpet samples unnecessary.

Finally, the carpet and rug industry has devised care instructions for carpets and rugs which, in the views of most consumers on record, are inadequate, far too vague and would not operate to prevent the damage previously cited. Care instructions offered by some individual manufacturers, however, are more specific and informative, addressing such topics as vacuuming and appropriate "home" and "professional" cleaning methods. Staff, therefore, recommends that care instructions for carpets be required to include these topics; however, the manufacturer must be allowed some flexibility to decide which agents or methods are most appropriate for any particular carpet or rug. For those bathroom or other small rugs for which washing is prescribed, the standards outlined for instructions for wearing apparel will suffice.

Linens

Linens are not covered by the current rule but are proposed to be covered by the final Rule. Table, bed and bath linens all require regular care for their ordinary use and enjoyment. While most linens are washable, many variations in the standard washing process are required in order to achieve an acceptable result. A few require drycleaning. This is demonstrated by care instructions for linens, now separately supplied by part of the linen industry which, in some cases, are rather complex. Some linen products, however, are not presently accompanied by any care instructions. Further, what care instructions are currently supplied may not be accurate and complete. Consumers cite a definite need for such instructions stating that general knowledge of the care traits of a particular fiber is not sufficient. Many linens of all types have been damaged because of improper care, to the detriment of their owners. As the quality of care information as well as the form in which it is supplied must be improved and the industry has shown little inclination to do so, staff recommends that care instructions for linens be required in the final Rule. While the industry requests that many table, bed and bath linens be automatically exempted from the Rule's permanency requirements because of their size, fragility or sheerness, staff is of the opinion that such an automatic exemption would leave a large loophole in the Rule and undermine the principle of permanency which is fundamental to achieving its desired object. The linen industry can avail itself of exemptions upon request (already contained in the proposed revised rule and recommended to be continued in the final Rule) for those individual linen items which qualify. Staff further recommends, therefore, that care instructions for linens, as a general premise, be transmitted by permanent labels. Finally, staff recommends that care instructions for linens meet the same standards as those outlined for wearing apparel, draperies, curtains, and slipcovers in the recommended final Rule.

Intermediate Components: Retail Components

Neither "intermediate" nor "retail" components are covered in the current Rule; both, however, are addressed in the proposed revised rule. "Intermediate components" are textile component parts of all finished products recommended to be included in the final Rule and are used by the finished product manufacturer in making the finished product. "Retail components" are the same items sold over-the-counter at retail for consumers' use. Both include fabric and yarn, zippers, elastic, buttons, interlinings, tapes, braids, thread and trim as well as other such items. The care traits of these components vary according to their physical characteristics. Intermediate component suppliers have made care information for their components available on request to finished product manufacturers on a haphazard basis. Nevertheless, a substantial amount of consumer injury has frequently occurred because of adverse reactions of specific components to care prescribed for a finished product. While manufacturers of finished products exhibit no crying need for care information with components supplied, staff deduces that the damage outlined above would not have occurred, had finished product manufacturers estimated their care traits correctly. Staff concludes that it is in the public interest to ensure that finished product manufacturers have the information necessary to comply with the requirements of the Rule.

The record shows, however, that the end-use of components fundamentally affects their care performance characteristics; further, many component manufacturers do not know what this end-use will be and cannot supply care instructions appropriate to this end-use. The component industry can provide information, however, on the basic care traits of the components alone for use by finished product manufacturers in producing an end-product of compatible parts. This concept is desirable to the majority of commentors on record so long as the information is made available only on request. Since finished product manufacturers can be expected to request pertinent information to satisfy their needs, staff concludes that information regarding the care traits of components (color-fastness of dyes, dimensional stability, the effects of moisture, heat, mechanical action or a specified cleaning agent) should be required to be supplied to all finished product manufacturers who request it to ensure that those small finished product manufacturers who have not been able to obtain it in the past will not be at a competitive disadvantage in the future. The ultimate effect of such a disclosure will be more complete and accurate care instructions for consumers. Finally, since permanent labels have no value in this particular situation, staff recommends that such information be supplied separately in any manner desired so long as it is effectively communicated.

With respect to retail components (with the exception of piece goods and yarn which are covered separately in the final Rule), the record does not contain enough evidence to justify requiring care information with these items. Further, the burdens in distributing such information may offset any corresponding consumer benefit in disclosing it. Staff, therefore, recommends that retail components (except piece goods and yarn) not be included within the coverage of the final Rule.

Suede and Leather Wearing Apparel

While not included in the current rule, apparel made of suede and leather is proposed to be covered in the final Rule. Although expensive, these products are very popular with consumers. They are easily soiled and require regular care for continued acceptability as is revealed by the present consumer practice of routinely delivering such items to drycleaners for refurbishing. The care traits of suede and leather apparel not only differ substantially from those of textile wearing apparel but also vary among themselves requiring a number of special leather cleaning techniques. Not surprisingly, therefore, consumers and drycleaners indicate a genuine need for care instructions for these products both at the point of sale and at the point of care. In fact, they are less familiar with these products than they are with corresponding textile articles. Consumers have suffered extensive economic injury as a result of improper care. Methods appropriate for textile products are simply not appropriate for leathers and suedes. Drycleaners often require consumers to sign "releases" for such products. While many leather apparel manufacturers now provide some form of care information with these products, these voluntary efforts are not uniform nor is the information provided always accurate or otherwise satisfactory. Moreover, the industry does not oppose a care instruction requirement in the Rule. Staff recommends, therefore, that care instructions for leather and suede wearing apparel be required in the final Rule. For reasons previously outlined, staff further recommends that care instructions for such articles be transmitted to the ultimate consumer via permanently attached labels.

Leather and suede products require specialized cleaning techniques substantially different from textile products covered by the Rule. Variations in individual skins also may dictate variations in leather cleaning procedures. There is not sufficient information on the record, however, to justify requiring the specification of particular leather cleaning techniques, beyond disclosure of the fact that a "leather cleaning technique" must be used. This disclosure is sufficient to advise both consumers and drycleaners that textile methods of drycleaning are not appropriate. Staff therefore recommends that a care instruction to this effect be required in the final Rule.

Compliance

1. Manufacturer; Importer

Staff recommends that the "manufacturer," i.e., that party who directs and controls the manufacture of the product at issue, continue to be responsible for devising care instructions required in the final Rule. The "manufacturer" is the only party in a position to accomplish this task in a knowledgeable manner. Staff also recommends that importers of foreign-made merchandise covered by the Rule be held responsible for complying with the Rule in the same manner as are domestic manufacturers.

2. Exemptions

The current and proposed revised rules contain two opportunities for exemption upon request of the responsible party. Staff recommends first that the exemption based on price and care traits of a product continue to be considered upon request. Because of inflation, staff recommends that the price above which exemptions cannot be granted be raised from a retail price of $3.00 to $5.00 or a wholesale price of $2.50, whichever can be ascertained with certainty. Further, staff concludes that the care traits of such a product must be of a nature that no care instructions are truly needed, i.e., the product must be totally washable, dryable, bleachable, ironable and drycleanable without restriction to qualify. Staff recommends, therefore, that these standards be incorporated into the exemption provision. As a matter of policy, staff concludes that "industry-wide" exemptions without request should not be considered, except in the cases of hosiery, "irregulars or seconds" and remnants of undetermined fiber content, as described herein.

Second, staff also recommends that an exemption from the requirement that care labels be permanent in nature continue to be granted upon request to manufacturers of products which are too small, fragile, or sheer to accommodate permanent labels or whose appearance would otherwise be adversely affected. Under this exemption, however, instructions must still accompany the retail sale of the exempted article.

Finally, staff recommends that exemptions granted under the current rule remain in force so long as the products exempted still meet the criteria upon which the exemptions were based.

3. Waivers

Institutional buyers of products covered by the Rule which are intended for commercial use but not for resale fall within a special category. While these buyers are entitled to care

instructions, they often are not needed. The benefits conferred by care instructions for these products, therefore, may often be exceeded by the costs in providing them. Staff recommends, therefore, that manufacturers and institutional buyers be permitted to execute agreements waiving care instructions for such products, so long as the executed agreements are retained by the manufacturers involved to prove the fact that care instructions required have indeed been waived.

4. Flammability Standards

Staff recommends that requirements for care instructions issued under the Flammable Fabrics Act be given preference over care instructions required by this Rule in case of conflict.

Permanency of Care Labels; Legibility of Care Instructions

Neither the permanency nor the legibility standards of the current rule are being observed by many apparel manufacturers. Currently, care instructions are frequently illegible at the point of sale and fail to provide information on which the consumer can base a purchasing decision. Many labels and instructions are neither permanent nor legible respectively for the useful life of the items to which they are attached, denying the consumer the benefit of care information at the point of care. Frequently, labels fade, fray, or deteriorate severely after garments have been washed or drycleaned only once. Methods do exist, however, for producing labels which are both permanent and legible at little cost. Permanent labels can be made from tapes with two woven edges, from synthetic materials which are cut to size or by coating the label fabric with a substance which "locks" the fibers together, thereby preventing raveling. Labels which are sufficiently legible can also be produced using inks which are absolutely colorfast. Additionally, the record shows that the cost of increasing the quantity of information on a given label is practically nil.

The requirements for legibility and permanency in the current rule, nevertheless, appear adequate and substantial modifications in their language or additional remedial provisions are neither appropriate nor necessary. There are no valid reasons why portions of industry are failing to comply with these requirements. Staff concludes, therefore, that only stricter enforcement is likely to achieve a desirable result in this area and recommends that the final Rule continue to require labels and instructions to be permanent and/or legible for the useful life of the labeled item.

Abrasiveness of Labels

The current rule contains no requirement prohibiting the use of abrasive labels on apparel (labels which tend to cause

inflammation or irritation when placed next to the skin). However, the requirement that permanent labels be placed in accessible locations on wearing apparel has resulted in many comments indicating that abrasive labels are a major problem. Indeed, many consumers often remove irritating labels thus defeating the entire purpose of the Rule. The proposed revised rule provides for relaxation of the accessibility requirements in these cases.

Some materials now used for labels, however, are decidedly smooth to the touch and are indisputedly non-abrasive by any standard. Thus, it is proposed that the Commission require the quality of the material used in labels to match the quality of the garments to which they are attached. The efficacy of such provision, however, assumes the existence of precise definitions and standards for abrasiveness. The record indicates that no acceptable standards currently exist. Further, such a requirement would be prohibitively expensive (costs incurred would invariably be passed on to consumers), highly subjective and probably unenforceable.

Other commentors propose that the Commission designate specific standard locations for the attachment of labels on apparel to avoid skin contact. Staff finds this proposal unfeasible because of the wide variety of apparel designs, fabric selections and construction techniques existing in the apparel industry. No single location would be acceptable. Since the record contains no other potential solution for the problem of abrasiveness, staff recommends that the accessibility requirement for permanent labels on wearing apparel be relaxed to permit apparel manufacturers to attach otherwise abrasive labels to their products in locations where skin contact is unlikely, as proposed. Staff recommends further that parties responsible for labeling apparel be urged to select and place labels in such a manner as to minimize the potential for skin irritation.

Accessibility and Placement of Labels

The current rule requires care labels to be placed on a garment in such a manner as to be readily accessible to the user at the point of sale. Where packaging obscures the label itself, it must be reprinted on the outside of the package or on a tag attached thereto to ensure continued accessibility. Except for concerns about abrasive but accessible labels, the record contains little comment on the proposed accessibility requirement. Many abrasive labels which are accessibly placed cause irritation. Other labels are said to be unattractive on otherwise sheer fabrics. Such objections can be resolved, however, by either requesting an exemption from the permanency requirements of the Rule for such articles or changing the placement

of such labels to another accessible location. Staff does not interpret these comments as advocating elimination of the accessibility requirement.

Further, standard but accessible locations for labels are not feasible to require in a rule because of the numerous variations in fabrics, styles and construction of most included products. Staff, therefore, recommends that manufacturers retain some discretion with respect to placement of labels so long as the location selected will render the instructions contained thereon accessible to the consumer without unreasonable effort. If such a location cannot be designated (in cases where a label will cause skin irritation, for example), the same instructions must be supplied on a hang tag or other device which will otherwise fulfill the accessibility requirements of the Rule.

Symbols

While the current rule does not address the use of symbols in a care instruction, the proposed revised rule permits them so long as appropriate words are also included. Because of the lack of an accepted standardized set of symbols in this country which is universally understood and because of the variety and complexity of care methods available to American consumers, the use of symbols alone in prescribed care instructions is not practical at this time. Therefore, staff recommends that the use of symbols not be required in the Rule. In light of their extensive use internationally, however, staff also recommends that symbols be permitted in care instructions required by the Rule in addition to words so long as the words included fulfill the Rule's requirements, as proposed.

Standardization of Care Instructions

The current rule does not address appropriate terminology and definitions for care instructions. As presently formulated, many such instructions are confusing because of ambiguities in the meanings of terms commonly employed to describe appropriate care procedures. As a result, the record contains a virtual mandate to standardize such terms and definitions to ensure uniform usage. While staff proposed the adoption of a glossary devised by the American Society For Testing and Materials (ASTM D3136-72) to resolve this problem, the record reveals a significant discrepancy between consumers' usage of certain terms listed in the glossary and the manner in which they are defined therein. Specifically, staff finds that the definitions of the terms "machine wash," "hand wash," "home launder," and "separately" and both the terms and definitions used to describe and define bleaching and drycleaning procedures simply do not conform to present consumers' usage and are inherently confusing

and ambiguous. Generally, the definitions are too broad; consumers understanding of such terms and definitions is far narrower in scope. Despite these drawbacks, however, the weight of the record supports adoption of the glossary in the final Rule. Gaps in consumer understanding are reflected in relatively few of the terms and definitions employed; the balance appear satisfactory. Further, the glossary was developed from a consensus of many different interests and is the product of an organization existing solely for the purpose of developing standards such as these. To discard the glossary in toto would place this burden squarely on the shoulders of the Commission. Therefore, staff recommends that, except for those terms and definitions listed above, the glossary (as now comprised) be adopted as a presumptively acceptable standard for compliance with the Rule. Terms and definitions which are not contained therein can be devised by the industry where appropriate. Since staff has devised terms and definitions to be used in lieu of those which the record indicates are unacceptable, staff recommends that these terms and definitions be included in the Rule as appropriate replacements and be required to be used where indicated.

In view of the fact that the glossary is reviewed (and presumably revised) every 5 years, staff recommends that the Commission adopt these revisions automatically, upon 90 days advance notice by ASTM to be placed on the public record and in the Federal Register, except in cases where it finds such revisions to be unsatisfactory. In this event, staff recommends that the Commission (or its delegated authority) reject such revisions publicly therefore within the 90-day period and publish substitutes if desired. Petitions for reconsideration or modification of these decisions can be handled through Section 1.15 of the Commission's Rules of Practice.

Basis for Care Instructions

While neither the current nor the proposed revised rule requires that prescribed care instructions be substantiated, many parties on the record raised the issue spontaneously. As such, the issue was thoroughly considered. Staff finds that test methods which can be used in devising proper care instructions are currently available to all interested parties. While such methods are not standardized, they are rapidly becoming so. These methods address the many and varied care traits of textile and leather products and could be used as a basis for care instructions prescribed under the Rule. In fact, some manufacturers currently use these varying test methods for that purpose. Judging from the prevalence of inaccurate care instructions, however, staff believes that many manufacturers do not utilize any test method in formulating such instructions. It is evident that the price for failing to perform even rudimentary tests is high in terms of damage due to improper care. Because

the record is heavily weighted in support of a "testing" requirement in the Rule, the issue cannot be ignored. Staff recommends, therefore, that the final Rule require responsible parties (manufacturers) to be able to substantiate the content of care instructions prescribed for any particular product. Specifically, staff recommends that manufacturers have a "reasonable basis" for such instructions using whatever testing procedures are available (simulated, actual, or otherwise). Staff also recommends, however, that specific test methods not be set out in the Rule since none are universally accepted and some are duplicative. Staff further recommends that, in lieu of a recordkeeping requirement, manufacturers be required to prove such substantiation in any enforcement proceeding brought by the Commission. Failure to have such proof will create a rebuttable presumption that no reasonable basis for the challenged instruction exists.

Economic Impact on Small Business

The economic effect of the rule on small businessmen will either be favorable or, in a few cases, non-existent. Initially, there will be costs to be borne by the manufacturer in obtaining and/or attaching care labels, devising care instructions, ascertaining their accuracy and distributing them to lower levels in the chain of sellers as well as by retailers in effecting their distribution to the consumer. Indeed, these costs may be passed on to consumers in the form of slightly increased prices. These initial costs, however, will disappear for all practical purposes once a program designed to provide care information is implemented. Further, these costs will be low in comparison to the benefits received. Offsetting tangible benefits may be expected in the form of increased sales resulting from intangible benefits such as increased consumer confidence and customer goodwill. Retailers and drycleaners who often suffer because of inaccurate care instructions devised by the manufacturer will experience a marked improvement in customer relations, assuming the care instructions supplied are accurate and otherwise satisfactory. In sum, the record contains absolutely no evidence that promulgation of this Rule will, in effect, force any firm out of business because of excessive costs. On the other hand, there is much evidence that care labeling of products is regarded as an astute business practice which will benefit all concerned.

Economic Impact on Consumers

While the Rule may cause the retail prices of the items included within its scope to increase slightly, the benefits which inure therefrom will far outweigh such increases. Consumers will be better able to make informed purchasing decisions, avoiding those purchases which do not meet their needs. Further, on the assumption that care instructions

prescribed by the Rule are accurate and are followed, consumers will not suffer needless economic injury through damage because of improper care which might otherwise occur. Further, proper care can prolong the useful life of items covered by the rule. Finally, prescribed care instructions will aid consumer-purchasers in conserving time, money and energy through the selection of products which meet their individual needs. Staff concludes, therefore, that the economic effect of the Rule will be enormously favorable to consumers.

Severability

In order to overcome any presumption that the Rule and its provisions are inseparable and must stand or fall together, staff recommends that a "severability" provision be included as Section 423.14. In staff's opinion, such a provision is particularly appropriate in this situation since, in most instances, the requirements for each type of product are confined in one provision of the Rule.

IV. PRODUCT COVERAGE

A. Preface

One of the principal differences between the current rule and the proposed revised rule is their respective "product coverages." The requirements of the current rule apply only to textile wearing apparel and piece goods used to make textile wearing apparel; the requirements of the proposed revised rule apply to these items, plus piece goods used to make some household furnishings, yarn, draperies and curtains, upholstered furniture and slipcovers, linens, carpets and rugs, intermediate components and leather and suede wearing apparel. Each of these product categories will be considered separately in this Chapter with a view toward resolving the following major issues:

(1) Whether a particular product should be included within the scope of the final Rule, and if so;

(2) How care instructions for the product should be transmitted or distributed to the ultimate consumer or other intended recipient;

(3) What topics such care instructions should address;

(4) What definitional additions or modifications should be made in the Rule to accommodate the product.

With the exception of leather/suede wearing apparel, all items presently covered or proposed to be covered fall within the broad category of "textile products." Thus, a consideration of the Rule's definition of "textile product" will precede the discussion contained in this Chapter. Appropriate definitions for leather and suede products will be considered in Section H.

B. Definition of "Textile Product"

Although seemingly a minor issue, this definition is extremely important to the efficacy of the Rule as a whole as it is included as a prerequisite to coverage in nearly all of the current and proposed revised rules' requirements. The current rule defines a "textile product" as:

> any commodity spun, woven, knit or otherwise made in whole or in part from fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser.[24]

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24 Care Labeling Rule, Paragraph (d)(1).

This definition includes all products which contain textiles as component parts but excludes those not for sale or resale and those which do not need regular care, i.e., disposable products. It was not changed in the proposed revised rule except that the word "primarily" was substituted for the words "in whole or in part" to exclude those items only incidentally comprised of textiles.[25]

The record contains only one comment pertinent to this definition, phrased in the form of a question without opinion, as to whether coated fabrics, i.e., "products consisting of a flexible polymeric material applied to fabric, forming an integrally bonded composite" are intended to be included.[26] On the assumption that the other requirements of the definition apply, staff is of the opinion that coated fabrics are included as fabric is evidently a primary part of such products. Because the record contains no other comments or testimony referring to the definition and staff is not aware of any substantive opposition, staff concludes that the definition is satisfactory and recommends that it be included in the final Rule as proposed.

C. Textile Wearing Apparel

1. Definition

Paragraph (d)(2) of the current rule contains the definition of "finished article of wearing apparel" as follows:

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

Any wearing apparel is covered except a) those articles whose manufacture is incomplete; b) those articles which are customarily used primarily for decorative purposes and not to cover or protect a part of the body (ties, handkerchiefs, belts or patches, for example); c) all footwear besides hosiery; and d) all apparel used exclusively as headwear or handwear (hats, gloves or mittens, for example). The reason for these exclusions is that the record

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25 This change was erroneously omitted from the discussion in the staff report recommending a proposed revised rule. Staff had interpreted the Rule in this matter since its inception.

26 R. 17 at 5, Uniroyal, Inc.

supporting the current rule demonstrated little need for care information for these items.[27] The definition of apparel in the proposed revised rule is identical to that in the current rule for the same reasons.[28] The record developed since the initial notice contains little comment on this definition. A consumer representative argues that headwear and handwear should be included stating that care information is needed for these items.[29] Further, a large retailer advocates exclusion of neckwear from the coverage of the Rule (scarves, for example) because care instructions are allegedly not needed for such items.[30] The record, however, contains neither evidence of damage to any handwear or headwear because of improper care nor evidence of any perceptible consumer demand for care information for these products. On the other hand, the record contains no evidence that scarves and other neckwear do not require the same sort of regular care and maintenance as do other textile apparel items covered by the Rule; they certainly are not "disposable" products. An exemption under section 423.10(a) of the recommended final Rule can be obtained for those items of neckwear whose utility or appearance would be adversely affected by a permanently attached label. As the record contains no valid reasons for excluding such items, staff concludes that they should be retained within the definition to the extent that such items are used for purposes of covering or protecting the neck. Accordingly, staff believes that the definition should remain as written in the final Rule and so recommends.

2. Coverage

As previously noted, one of the main reasons for the promulgation of the current rule was the lack of care instructions on or with wearing apparel and resulting damage due to improper care. Thus, the current rule already includes "finished articles of wearing apparel," as defined, within its scope. Likewise, the staff report recommending the proposed revised rule indicates that there is "no reason to alter the coverage of paragraph (a) with respect to textile items of wearing apparel," citing a substantial degree of compliance insofar as the presence of a label is concerned.[31] Therefore, the issue of whether or not textile wearing

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27 Statement, Chapter VII.A.2.

28 Section 423.6(b).

29 Tr. 2184, E. Kennedy, small retailer.

30 R. 17 at 529, Sears, Roebuck & Co.

31 LeFevre, John F., Lamb, Cynthia S., "Staff Report Recommending Proposed Revised Care Labeling Rule." (June 1975) at 8 (hereinafter Staff Report).

apparel should be included within the Rule need not be considered, having been resolved in previous deliberations. As the record of the instant proceeding contains nothing to justify elimination of apparel from the Rule's coverage and, in fact, supports continued coverage, staff concludes that continued coverage is completely necessary and recommends that textile wearing apparel be included in the final Rule.

3. Transmittal of Care Instructions

In the proceeding to promulgate the current rule, it was determined that care instructions for wearing apparel should be transmitted to the ultimate consumer by means of a label permanently attached to the item.[32] In answering arguments suggesting that mere availability of instructions on a temporary label, tag or invoice would be sufficient, the Commission stated:

> Even if the care instructions are properly disclosed on a tag at the time of sale, such tags are soon destroyed or misplaced. In order for information separately furnished at the point of sale to be available at the point where care is attempted, it must be saved, stored, located and then matched with the product it accompanied. Successful implementation of this approach requires an elaborate filing system that most purchasers are unable to maintain. If furnished as part of the package or container in which the product is sold, the information may be inadvertently thrown away or destroyed by the purchaser upon opening the container.[33]

In conducting the investigation which formed the basis for the proposed revised rule, staff found no evidence to indicate that this requirement should be changed. Staff, therefore, concluded that the permanency requirement should continue to apply to care labels for textile wearing apparel and so drafted the proposed revised rule.[34] As in the issue of coverage, the issue of permanent labels for textile wearing apparel has been previously resolved. Furthermore, the Presiding Officer concludes that, "during this entire proceeding, there was overwhelming approval and support for, with only rare exception, the continued inclusion

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[32] See Care Labeling Rule, Paragraph (a).

[33] Statement, Chapter VI.B.

[34] Staff Report 8.

of the requirement for permanent care labels for textile wearing apparel."[35] Since neither the record developed for the proposed revised rule nor the current record contains any support for modifying or eliminating the requirement, staff recommends that permanent care labels for textile wearing apparel continue to be required in the final Rule as proposed.

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[35] Presiding Officer's Report 19 (Conclusion) and 20 (Footnote 1).

4. Content of Care Instructions

a. Preface

This particular topic is one of the most controversial of the proposed revised rule as it involves wholesale modifications and additions to the current rule. It is also rather complex because it contains many small parts. Requirements for care instructions in the current rule are general and deceptively simple. Notes 1 and 2 provide that care instructions should:

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

2. warn the purchaser as to any regular care and maintenance procedures which may usually be considered as applying to such article but which, in fact, if applied, would substantially diminish the ordinary use and enjoyment of such article.[36]

The Rule's Statement of Basis and Purpose is equally brief in explaining the implications of these two paragraphs, stating only that positive instructions should be emphasized, should be thorough and that promotional information and unnecessarily cautious instructions should be eliminated.[37] A great deal is left to the manufacturer to determine, e.g., what regular care procedures are "necessary to the ordinary use and enjoyment . . ." of a particular article, how they should be expressed and how thorough they should be. Because the Rule confines itself to examples of some care procedures which could apply to a particular article at issue, rather than specify those which must be included on every label, a listing of all possible care procedures which could be safely used is clearly not contemplated by the provision and was not required by the staff in enforcing the Rule. Thus, the word "fully" is to be interpreted in each individual case with particular attention to be given to the care traits of the particular item at issue. Traditional enforcement efforts, however, were difficult because of the inherent ambiguities in the provision. Additionally, staff began to receive more and more complaints indicating that although care instructions were

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36 Care Labeling Rule, Notes 1-2.

37 Statement, Chapter VI.D.1.

being provided, such instructions were either unclear, inaccurate, or incomplete. As outlined in the staff report,38 the prevalence of unsatisfactory instructions was confirmed by the Request for Comment. Therefore, the proposed revised rule contains an entirely new care instruction requirement which tracks the spirit of the existing Rule but is much more specific in terms of what care instructions are required in what circumstances.

The discussion which follows will analyze the record in terms of what washing, drying and ironing instructions are currently being provided and whether such instructions are adequate to prevent damage due to improper care. Although general reference may be made in this section to bleaching and drycleaning instructions as well as the concept of alternative care, because of the size of the record in these particular areas, these subjects will be discussed separately. The applicability of such instructions to products other than wearing apparel will also be considered separately under the appropriate product heading.

b. The Current Situation

The staff report recommending the proposed revised rule concludes on the basis of the information contained therein that "a substantial percentage of existing instructions appear incomplete, inaccurate and far too vague."39 The record developed since that report was published generally confirms this view.

Although the National Retail Merchants Association (hereinafter NRMA) believes that information provided on care labels is generally accurate and informative,40 such testimony is more than offset by a number of other retailers, consumers and drycleaners who state the opposite. A retailer of better women's clothing frequently receives obviously mislabeled merchandise or merchandise which has been damaged due to improper care.41 A representative of the W. T. Grant Distribution Complex states that customers frequently express dissatisfaction with cleaning results, adding that there are many garments containing care

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38 Staff Report 21-23.

39 Staff Report 23.

40 Tr. 1836, National Retail Merchants Association.

41 R. 17 at 92, The Colonial, Seattle, Washington (washable labels on jackets when inner construction not washable; shirts returned because of color bleeding when care instructions followed).

instructions which have not been substantiated by tests.[42] Drycleaners join almost unanimously in complaining about the accuracy of drycleaning instructions: "Many care labels are meaningless because the instructions are not accurate and are misleading. Apparently, some manufacturers are not testing the garments and are just 'putting on the labels' to be in compliance. Many times this is worse than no label at all."[43] Although such instructions do not necessarily appear in the majority of cases, they appear with such frequency as to cause extreme concern. "A relatively small percentage of the total are offenders. But those offenders cause upwards of $4 million to $5 million in claims that are paid by the consumer . . . or the drycleaner, ..."[44] The result is frustration and distrust.

> It is very nice to have a care label in a garment but it is very frustrating to find out the information on the care label is wrong. Our experience with care labels indicates that there are far too many - although certainly not anything near a majority - labels which carry information which bears no relation to the truth. This tends to belittle the entire purpose of the Commission's Care Labeling Rule.[45]

The International Fabricare Institute (hereinafter IFI) echoes these views.[46] The drycleaner is often forced to ignore the label and devise his own method of cleaning because the result would be unsatisfactory otherwise.[47] A relatively notorious example is the case of the five athletic jackets, all identically made by the same manufacturer, containing the following five different sets of instructions:

"Naugahyde. Dryclean only"

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42 R. 17 at 93, W. T. Grant.

43 R. 17 at 179, drycleaner. See R. 17 at 145 ("dryclean only" garments will not clean properly because of components); Tr. 873, Neighborhood Cleaners Association, (hereinafter NCA).

44 Tr. 873, NCA.

45 Tr. 1298, J. Schapiro, Dixo Company.

46 Tr. 1387, International Fabricare Institute, (hereinafter IFI).

47 Tr. 1889, E. B. Smith, drycleaner.

"Drycleanable, do not use chlorinated solvents"

"Machine wash"

"Assembled in Mexico"

"Drycleaning only"

The witness states that at one point all five of these jackets were taken to his drycleaning firm for cleaning. "I made the decision to clean them in our petroleum unit and our leather cleaning process. They all performed beautifully, yet none of the instructions said 'Clean in petroleum solvent'."[48]

Consumers and consumer representatives find care information on many garments to be less than reliable. "Their accuracy is always in question."[49] One cites consistent inaccuracy for both apparel and piece goods.[50] Sometimes they are confusing.[51] The same method of cleaning may be described differently on several different items.[52] Esther Shapiro, Director of Consumer Affairs, Detroit, Michigan, pinpoints instructions which, "confuse and deceive . . ." citing "seven mens' jackets identical in fabric and construction and each marked with a different set of instructions."[53] The results are predictable. The consumer attempts to care for the product, ruins it and blames the retailer.[54] Vivian White, Chairman of the American Society for Testing and Materials' Committee which developed the proposed glossary, also finds confusion among consumers as to the meaning of the simple

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48 Tr. 1881-82, E. B. Smith, drycleaner. For other examples, see Tr. 879, (NCA) citing a label reading "drycleanable" on a garment which is not drycleanable by any method.

49 R. 18 at 630, consumer.

50 R. 20 at 289, consumer.

51 R. 18 at 685, consumer (cites classic example of label stating "Machine Wash and Dry" as being inadequate).

52 R. 20 at 4, Extension Agent, Cooperative Extension Service (hereinafter CES), Florida.

53 Tr. 1350, E. Shapiro, Director, Consumer Affairs, Detroit.

54 Tr. 1779-80, P. Faley, Investigator, Montgomery County Consumer Protection Office, Rockville, Maryland.

word "press."[55] Margaret Dana, Consumer Consultant, in her contact with Consumer Sounding Boards throughout the country, reveals much evidence of inaccurate care instructions and unsatisfactory results. She notes that all too often care instructions do not apply to the garment to which they are attached and questions their reliability generally.[56]

Finally, the studies and surveys submitted indicate inaccurate or confusing labeling to a significant extent. In a study of 82 randomly selected residents in Coosa County, Alabama (hereinafter the Coosa County survey), only 25% indicate clear comprehension of the meaning of care instructions on garments and only 20% of 64 consumers responding indicate that they understand such instructions when buying fabric.[57] While 56% of a senior level textile science class at the University of Washington, Seattle (hereinafter the Seattle survey) see care instructions as being accurate most of the time, 31% see them as accurate only half of the time and 4% only once in a while.[58] A survey of 161 residents of Urbana-Champaign, Illinois (hereinafter Urbana-Champaign survey III) reveals that 20% "usually or sometimes" are confused by care instructions and 14% believe care instructions to be "usually or sometimes" inaccurate.[59] A nationwide survey of 499 households conducted for the American Association of Textile Chemists and Colorists by the Home Testing Institute (hereinafter the Home Testing Institute survey) indicates that, although more than half of the total see care instructions as always accurate, 44% believe care instructions to be accurate "sometimes."[60] Finally, the

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55 Tr. 1795-96. Press means 1) Hoffman press in commercial establishments; 2) touch-up press; 3) Home sewer "pressings."

56 R. 20 at 668-670, 737, M. Dana, Consumer Consultant.

57 R. 20 at 78, Davis, Diane, "A Research Report on Consumer Awareness of the Permanent Care Labeling Rule" (March 1976) (hereinafter Coosa County survey).

58 R. 20 at 668, King, Rosalie R., "Consumer Opinions Concerning Selected Aspects of Care Labeling" (November 1975) (hereinafter Seattle survey).

59 Tr. 1467, Warfield, Carol L., "Survey On All Aspects of Care Labeling" (Fall, 1976) (hereinafter Urbana-Champaign survey III).

60 R. 17 at 1365, Home Testing Institute, "Study of Consumer Response to Care Labeling" (September 1973) (hereinafter Home Testing Institute survey). The number of complaints received are not indicative of the prevalence of inadequate care instructions. "If a care labeled garment failed to perform as expected, 56% of the respondents stated they did not complain to anyone."

nationwide survey of 700 respondents conducted by the Bureau of Social Science Research for the National Consumers Congress (hereinafter the BSSR survey) places current care instructions in a slightly more favorable light. While 77.6% find instructions "never confusing" and 70.9% find them "never incorrect," 22.1% respond that instructions are "usually or sometimes" confusing and 28.3% see them as "usually or sometimes" incorrect.[61]

A related and equally significant issue involves the completeness or thoroughness of care instructions. A care instruction may be accurate and clear but may omit a crucial step. While the record is somewhat mixed in this area, it reveals a decidedly unfavorable trend voiced by consumers and their representatives. Several individual consumers complain of washing instructions without drying or ironing instructions, or without appropriate temperature information.[62] The Department of the Army and Air Force Exchange Service, Dallas, Texas, complains that:

> It is the experience of this office that many care labels are either incomplete or not clear; for example, many care instructions read 'Machine Wash, Tumble Dry.' There are several different ways a garment can be machine washed such as at normal (regular), permanent press, gentle, hot, warm, cold, etc.; and tumble dried at hot, warm or cool temperatures.[63]

Others complain that there is simply not enough information given generally.[64] "From a poll of Good Housekeeping readers and from my own observations, I have learned that incomplete labels are a continuing problem . . .," states a professional home economist who outlines in detail the principal omissions that are typically made (washing, drying and ironing temperatures, for example).[65]

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61 HX 33 at 435, Bureau of Social Science Research, "Care Labeling: A Survey of the Consumer's Use and Understanding of Labels" (January 1977) (hereinafter BSSR survey).

62 R. 18 at 724, consumer; R. 20 at 345, Textile Specialist, CES, Ohio; R. 20 at 479, Extension Agent, CES, North Carolina.

63 R. 20 at 254, Headquarters, Army and Air Force Exchange Service, Dallas.

64 R. 18 at 637, consumer; R. 18 at 330, consumer.

65 R. 18 at 686, consumer.

On the other hand, some of the surveys submitted are less convincing. Of 1943 care labeling questionnaires distributed by the Department of Textiles and Clothing, Colorado State University (hereinafter the Colorado survey), only 29 or 2.27% state that care instructions are incomplete.66 In a survey conducted by Kurt Salmon Associates of 122 domestic apparel producers and retailers (hereinafter the Salmon survey), the results indicate that 99.6% of those apparel items represented in the survey have washing instructions and 94.1% have drying instructions. It is estimated, however, that based on the number of projected units carrying labels, approximately 165 million items of apparel have washing instructions without drying instructions.67 These surveys should be contrasted with the Urbana-Champaign survey III where 30% of 161 homemakers interviewed state that care labels "usually or sometimes" do not have sufficient information and with another related survey conducted by Janis Stone, (hereinafter the Urbana-Champaign survey I) where almost 70% of 93 female college textiles class students state that incomplete information is a problem.68 Finally, the BSSR survey of 700 respondents indicates that while 53.5% state that care instructions are always complete, 42.2% state that "sometimes" there is not enough information and 3.7% state that there is "usually" not enough information.69 The National Consumers Congress concludes that many problems are created by insufficient or incomplete care instructions.70

The record also contains evidence of permanent labeling which is typically inconsistent with separately supplied instructions for the same item.71 This occurrence can take the more

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66 R. 20 at 306, Ward, Annette, "Consumer Attitudes Toward Care Labeling" (Spring 1976) (hereinafter the Colorado survey).

67 R. 17 at 1513, 1516-1526, Kurt Salmon Associates, "Analysis of the Care Labeling Practices of the Apparel and Textile Industries in the U.S." (October 1975-January 1976) (hereinafter the Salmon survey).

68 Tr. 1466-67, Urbana-Champaign survey III; Tr. 1489-90, Stone, Janis, "Survey On All Aspects of Care Labeling" (September 1976) (hereinafter Urbana-Champaign survey I); HX 12 at 154.

69 Tr. 2714, the BSSR survey; HX 33 at 435.

70 Tr. 2737, National Consumers Congress (hereinafter NCC).

71 Tr. 1932, K. Stanton, Consumer Affairs Department, Burlington County, New Jersey.

blatant form of machine washing instructions on a permanent label and drycleaning instructions on an attached tag,[72] or conflicting drying instructions ("tumble dry" on the tag; "line dry and block" on the label).[73] Temperature restrictions, warnings against the use of bleach and the proper use of drycleaning solvents are inconsistently expressed on care labels and tags for the same item.[74] The labeling of multipiece garments sometimes causes confusion when different instructions appear on each piece.[75]

Aside from the damage sustained as a result of inaccurate, unclear, incomplete or inconsistent instructions, record information indicates that while a substantial percentage of care instructions currently appearing on labels are totally adequate to those who use them, an equally significant percentage are not. Washing instructions may be totally unreliable or may omit a procedure essential to complete the process, causing unnecessary confusion. Many drycleaning instructions are not satisfactory even to drycleaners who often discount care instructions at their peril because of previous adverse results. Some industry members state that silence is the answer, i.e., that the absence of statements regarding care is sufficiently unambiguous to indicate that an item may be washed at any temperature or by less vigorous forms of rehabilitation.[76] This unsupported statement is contradicted by the results of the Home Testing Institute survey which reveal that:

> 48% of (499) respondents felt that if a care label did not specifically mention whether to use a certain procedure then, in fact, that

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72 R. 18 at 1036, consumer, ("machine washable" v. "dryclean only"); R. 20 at 407, consumers, ("machine wash" v. "dryclean only"); R. 20 at 625, V. White ("Hand Wash" v. "Drycleanable"); R. 20 at 238, School of Home Economics, University of Arizona, ("Machine Wash Gentle" v. "We recommend drycleaning, wash at your own risk").

73 R. 18 at 94, consumer.

74 R. 20 at 238, School of Home Economics, University of Arizona ("Machine Wash Warm" v. "Machine Wash, Use No Bleach"); R. 19 at 8, Textile Analysis Service, University of Alberta ("Dryclean Only With Petroleum Solvent" v. "Do Not Use Petroleum Solvent").

75 Tr. 1350, E. Shapiro, Director of Consumer Affairs, Detroit (two piece dress with top labeled "Dryclean Only" and bottom labeled "Hand Wash"; both were successfully machine washed).

76 R. 16 at 160, NRMA.

> procedure was safe to use, 33% felt it was not safe to use, while 17% felt that it was an oversight on the part of the manufacturer.[77]

Staff concludes that there is sufficient prima facie evidence of inadequate care instructions under the current rule to warrant consideration of whether the consumer suffers economic injury as a result of such instructions.

Despite evidence of a high degree of compliance by the apparel and piece goods industries insofar as the mere presence of a label is concerned,[78] the record still contains numerous specific examples of damage caused by the lack of care information altogether. Evidence of excessive shrinkage (to a degree that the article can no longer be worn) as a result of both washing and drycleaning continues to outrank all other problem areas. For example, a $78.00 knit two-piece garment shrank out of fit when washed;[79] a $20.00 dress suffered the same results[80] as did one "moderately priced";[81] fabric used to make a crepe formal shrank severely when drycleaned.[82] Such damage may occur despite extreme caution on the part of the owner of the garment:

> A dress I purchased a few years ago did not include care instructions but appeared to be acrylic and washable. The dress was, therefore, washed in lukewarm water, carefully and quickly, but nevertheless shrank to an unwearable size. So, even though a person may know the fiber content of a product, there may be other factors rendering the product unwashable

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77 R. 17 at 1354, 1366, Home Testing Institute survey.

78 Staff Report 8.

79 R. 18 at 87-90, consumer.

80 R. 18 at 552, consumer.

81 R. 18 at 116, consumer.

82 R. 18 at 680, consumer.

> or undrycleanable. Consumers have a right to know this. They can't be expected to know everything about a product's care . . . .[83]

Adverse reaction of dyes to particular care procedures can also cause catastrophic damage and substantial economic loss. A typical example involves a consumer who purchased 15 yards of 100% cotton, screenprint material at $6.95/yard for the purpose of making a bedspread and curtain to match 7 rolls of wallpaper at $10.00/roll. Pre-shrinking in warm water caused severe fading; a subsequent drycleaning of the bedspread and curtain made from the material caused further color bleeding onto white portions of the bedspread. The hapless consumer was unable to obtain redress either from the retailer or the drycleaner.[84] A tan all-weather coat with a printed lining was drycleaned. Excess dye from the print bled and was redeposited on the outer fabric causing severe stains.[85] The red component of a solvent-soluble print on a coral and white shirt bled onto the white during drycleaning, ruining the shirt.[86] For more examples, refer to the footnote.[87] Other evidence of miscellaneous damage due to lack of care instructions (all resulting in total loss of the article) abounds. The list includes ironing damage (melting),[88] stretching totally out of shape during drycleaning,[89] separation of bonding during

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83 R. 18 at 69, consumer. For other wearing apparel examples, see R. 18 at 187-190, 236, 434, 446, 763, 984, consumers; R. 20 at 151, Paul, Christine M., "Survey of Answers to Commission's Call for Comment" (Spring, 1976) (hereinafter Seattle-Pacific survey); R. 20 at 168, Extension Agent, CES, Georgia; R. 20 at 472, consumer.

84 R. 18 at 2521-23, consumer.

85 Tr. 1397, IFI.

86 Tr. 1398-99, IFI.

87 R. 18 at 134, consumer (fading of color during drycleaning); R. 18 at 2410, consumer (color bleeding); Tr. 2356, F. Reid, Office of Consumer Affairs, Orange County, Santa Ana, California (1 - slipcover discolored during drycleaning. 2 - navy blue of 100% cotton draperies ran, draperies faded and lost "finish").

88 R. 18 at 770, consumer.

89 R. 18 at 156, consumer.

drycleaning,[90] fraying,[91] general deterioration or destruction,[92] various carpet calamities (discussed in Chapter IV.F.4.)[93] and other unspecified complaints received by consumer affairs bureaus.[94] Thus, consumers continue to suffer economically as a result of lack of care instructions on articles which require regular care. This was amply shown in the record for the current rule and has been reaffirmed in the instant proceeding.

Justification for modifying the requirements for care instructions contained in the current rule, however, must rest on the adequacy of care instructions appearing as a result of that Rule. Staff has already concluded that a significant portion of such instructions appear either incomplete, unclear or inaccurate. The question remains whether consumers experience economic injury due to these inadequacies. The Presiding Officer concludes that such injury is present.[95] Staff agrees.

Evidence in this record of damage to wearing apparel due to improper care instructions is legion. In a significant number of instances, the washing procedure appears to cause consumers the most difficulty. The record reveals, for example, that the following items shrank excessively or totally out of fit when washed according to instructions: $20.00 slacks,[96] 60-90%

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90 R. 18 at 136, 804A, consumers; Tr. 2365, F. Reid, Office of Consumer Affairs, Orange County, Santa Ana, California.

91 Tr. 2365, F. Reid (corduroy pants).

92 R. 20 at 277, Extension Agent, CES, Ohio (100% polyester fabric at $4.98/yard); Tr. 1352, E. Shapiro, Director of Consumer Affairs, Detroit (imitation suede); Tr. 2360, F. Reid (drycleaning dissolved trim of beads on sweater); Tr. 2363, F. Reid (back literally "fell out" of jacket during drycleaning because of adverse solvent effect).

93 Tr. 2358, F. Reid (carpet shrinkage, discoloration, melting).

94 R. 20 at 286, Department of Consumer Affairs, State of South Carolina (damage to clothing and household furnishings during cleaning processes); R. 20 at 338, Office of Consumer Affairs, Atlanta, Georgia (apparel damage).

95 Presiding Officer's Report 19.

96 R. 18 at 2, consumer.

acetate fabrics made into three blouses and a dress,[97] fabric,[98] ready-made garment,[99] sweaters when machine or hand washed,[100] children's clothing and ladies' pantsuits,[101] sheets,[102] $95.00 lined jacket,[103] polyester knit fabric,[104] long formal 100% polyester dress,[105] shirt,[106] blue jeans,[107] three knit tops,[108] two piece skirt and jacket,[109] 100% polyester skirt,[110] navy blue pants (three inches in length),[111] $20.00 cotton blouse,[112] knits, slacks and a dress,[113] gauze shirt,[114] polyester double knits,[115]

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97 R. 18 at 5, consumer.

98 R. 20 at 107, consumer.

99 R. 18 at 156, consumer.

100 R. 18 at 171, 184, 424, 431, consumers.

101 R. 18 at 302, home economist; R. 18 at 689, consumer.

102 R. 18 at 320, consumer.

103 R. 18 at 345, consumer.

104 R. 18 at 427, consumer.

105 R. 18 at 438, consumer.

106 R. 18 at 445, consumer.

107 R. 18 at 444, consumer.

108 R. 18 at 538, consumer.

109 R. 18 at 706, consumer.

110 R. 18 at 803, consumer.

111 R. 18 at 1076, consumer.

112 R. 18 at 2503, consumer.

113 R. 20 at 126, Extension Agent, CES, Iowa; R. 20 at 163, clothing and textiles instructor; R. 20 at 313, home economist; R. 18 at 129, consumer.

114 R. 20 at 402, consumer.

115 R. 20 at 413, Chairman, Home Economics Department, Daniel Lipscomb College.

and a $45.76 two piece cotton suit and $13.49 slacks.[116] Shrinkage and other damage also occurs in drycleaning;[117] see, for example, cases involving four sweaters,[118] and other ready-made garments[119] [for a further description of drycleaning damage, refer to sub-section 4.c.(5)]. In a majority of these cases, the care instructions range from "machine washable" or "drycleanable," to "machine wash - tumble dry." Very few of these examples cite more detailed instructions.

Non-colorfast dyes cause equally acute problems in washing. The following items were damaged because the care instructions supplied were inappropriate for the quality of dyes used: fabric (faded severely),[120] smock shirt (colors "bled" into material),[121] knit top,[122] dress,[123] 100% nylon navy blue pajamas (blue "ran" over rest of wash),[124] red T-shirt (color still bled after four washings),[125] polyester pantsuit (color ran leaving streaked

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116 R. 20 at 490, Consumer Protection Division, Attorney General's Office, State of Michigan.

117 Tr. 2287, M. Brinson, Associate Professor, Buffalo State College. "In my capacities both as Arbitrator for the Better Business Bureau of Western New York, Inc. and as Director of Buffalo Consumer Action, I have observed repeated instances of manufacturers' supplying inaccurate labeling which becomes apparent only after drycleaning."

118 R. 20 at 42, Department of Consumer Affairs, Orange County, California; Tr. 2363, F. Reid.

119 R. 20 at 46, Extension Agent, CES, Alabama.

120 R. 20 at 107, consumer.

121 R. 18 at 429, consumer.

122 R. 18 at 510, consumer.

123 R. 18 at 708, consumer.

124 R. 18 at 1049, consumer.

125 R. 18 at 2428, consumer. "[The shirt] was not truly 'machine washable.' Had I believed what the label implied as well as what it said, [machine wash only - warm], I would have ruined several loads of clothes. I expected at most that it would require one separate washing to rinse out the excess dye. Had I known the true state of affairs at the point of purchase, I would have reconsidered whether it was a wise choice." [Emphasis added]

garment),[126] multi-colored shirt (bled onto itself),[127] blue and white cotton knit shirt and a red cotton knit tank top,[128] cotton slacks,[129] and various shirts which were returned to the retailer because of crocking or bleeding.[130] Other types of deterioration which have also occurred because of inadequate washing instructions include loss of elasticity, disintegration of padding, loss of pleats in skirt,[131] separation of fabric backing,[132] raveling of seams and loss of applied design,[133] disintegration of jacket lining[134] and loss of finish on cotton fabric.[135]

The record also reveals several instances of damage to items which were improperly dried or ironed because of the lack of or improper drying or ironing instructions. Instances of irons and driers which were too hot for the items being treated are more than occasional, resulting in the melting or scorching of blouses and scarves,[136] permanent wrinkling of a blouse,[137] literal destruction of two blouses and a knit shirt,[138] scorching of wool

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126 R. 20 at 151, Seattle-Pacific survey.

127 R. 20 at 402, consumer.

128 R. 20 at 453, five textiles and clothing instructors.

129 Tr. 1404, IFI. The label contained written instructions for washing and a symbol for drycleaning. IFI laboratories found the garment not colorfast to either care procedure.

130 R. 17 at 92, retailer.

131 R. 18 at 652, consumer.

132 R. 18 at 706, consumer.

133 R. 18 at 787, consumer.

134 R. 18 at 873, consumer.

135 Tr. 2355, F. Reid (care instruction said "wash or dryclean"; when drycleaned, the quilt's polished cotton finish was removed).

136 R. 18 at 238-291, letters from Home Economics Family Clothing Class, University of Wisconsin - Stout; R. 18 at 754, 776, consumers.

137 R. 18 at 428, consumer.

138 R. 18 at 433, 446, consumers.

jumper lining,[139] fusing of blouse material,[140] excessive shrinkage,[141] melting of a zipper,[142] and other miscellaneous damage.[143]

Studies and surveys submitted substantiate these individual consumer experiences. The Home Testing Institute survey reveals that 67.3% of 499 interviewed note loss or change of color in laundered items "sometimes," 72.3% note color bleeding or staining "sometimes" and 67.3% note shrinkage after laundering "sometimes" while broken threads, fraying of garments and loss of "body" in garments occur "sometimes" in approximately 70% of the cases.[144] Two hundred twenty-one persons in this survey state that care information is generally not accurate and cite the following reasons in descending order: shrinkage, fading of color, wrinkles, loss of shape and color bleeding.[145] Students at Hood College cite shrinkage, non-colorfast dyes, and hot dryers and irons as being frequent sources of damage.[146] A survey of 1250 consumers conducted by the Department of Home Economics at Mississippi State University (hereinafter the Mississippi survey) cite fading, bleeding, color migration, fabric deterioration, dimensional change, scorching and discoloration as being representative of general consumer experiences in this area.[147] An informal survey of 80 families conducted by the Cooperative Extension Service, University of Illinois finds that 68% experience shrinkage, stretching and fading in apparel because of improper care.[148] While only 10% of 1943 respondents in the Colorado survey attach

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139 R. 18 at 447, consumer.

140 R. 18 at 930, consumer. "If the label says nothing about not ironing, there is no reason to believe it should not be ironed."

141 Supra, note 136; R. 18 at 426, consumer.

142 R. 18 at 708, consumer.

143 R. 18 at 923, consumer.

144 R. 17 at 1369, Home Testing Institute survey.

145 R. 20 at 1420, Clorox Company.

146 R. 18 at 352-384, letters from students at Hood College.

147 R. 20 at 435, Hill, Caroline, "Survey of Answers to Commission's Call for Comment," (Spring 1976) (hereinafter the Mississippi survey).

148 R. 20 at 461, CES, University of Illinois.

any significance to the problems enumerated above,[149] the weight of the evidence in the record clearly indicates their prevalence.

The American Apparel Manufacturers Association (hereinafter AAMA) does not question the existence of these complaints. "I think there is no question but that there are a lot of garments mislabeled, under labeled, improperly labeled, whatever you have . . . ." AAMA avers, however, that consumers who have such complaints are "looking for errors." A survey of "average consumers" would not reveal such a high frequency of damage.[150] There is not a shred of solid evidence on the record, however, to support the validity of the AAMA's position. Record evidence of damage was obtained in the normal course of staff's investigation of this matter; this evidence was not challenged during the course of the proceeding nor was any attempt made to determine the make-up of an "average consumer." Accordingly, staff must reject this position as totally unsupported by the evidence.

Although consideration has heretofore been given to items presumably capable of being cleaned by some available method, the record also contains a surprising amount of evidence of care-related damage to items, which the record indicates cannot, in fact, be successfully cleaned by <u>any</u> customary or available method, including washing or drycleaning. A substantial amount of this evidence originates from consumer representatives and drycleaners and involves imported leather garments or domestic apparel coated with a "plasticizer." According to the Office of Consumer Protection of the State of Louisiana:

> We have received a number of complaints from consumers concerning garments that can't be cleaned satisfactorily by any method. One common problem has been the typical 'high school' jacket with felt body and vinyl sleeves. Until recently, the jacket body could only be drycleaned but after one or two cleanings, the vinyl sleeves became stiff and brittle, especially where chlorinated solvents were used.
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> The same problem occurs where vinyl is used for trim on items that must be drycleaned.[151]

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149 R. 20 at 304-308, Colorado survey.

150 Tr. 1727, American Apparel Manufacturers Association (hereinafter AAMA).

151 Tr. 1628, M. Knowles, Office of Consumer Protection, Louisiana.

Many imported leather items cannot be serviced even by a leather expert and are damaged when subjected to the simplest leather cleaning process.[152] Unstable dyes contribute to the unserviceability of other apparel items.[153] Items coated with polyurethane or polyvinylchloride (vinyl) may not be drycleanable or washable.[154] It is impossible to clean draperies that have a drycleanable face and a vinyl lining as the plasticizer is removed by the drycleaning fluid. Acrylic or polyester fabric combined with cotton trim presents inevitable cleaning problems because of differential shrinkage.[155] Trims or toppings are often the culprits.[156] For example, a garment with a trim of sequins contains a label indicating that the article is both drycleanable and washable. When the item was drycleaned, the black and orange dye in the sequins bled all over the garment.[157] Herculon slipcovers cannot be washed or drycleaned; cleaning attempts must be confined to surface wiping with a damp cloth.[158] A jacket with a vinyl surface, acetate lining and pressed fabric interfacing can only be handwiped and must be discarded when soiled.[159] Vinyl and wool polyester blend jackets are not washable or drycleanable. If washed, the wool or polyester becomes stiff. Surface wiping will not clean effectively. More often than not, a purchaser of such an item does not really know that the item cannot be cleaned successfully until a year or two after purchase when cleaning is attempted. "If a consumer knew it in advance, there might be a question as to whether he or she would buy it."[160]

The IFI presents several examples of such items. A brown vinyl garment contains a label stating, "Do Not Wash. Do Not Dryclean" but with no positive disclosure of any other care procedures.

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152 R. 17 at 232, cleaner.

153 R. 18 at 1000, consumer.

154 R. 17 at 372, Vol. 6, Daily News Record, No. 65 (Apr. 5, 1976); Tr. 1669, K. Geiken, Lecturer, School of Home Economics, University of Wisconsin.

155 R. 20 at 419, professional home economist.

156 Tr. 752, Neighborhood Cleaners Association.

157 Tr. 2149, F. Reid, supra note 91.

158 Tr. 858-59, NCA.

159 Tr. 2170, E. Kennedy, small retailer.

160 Tr. 865, NCA.

> Sponging with a damp cloth will not remove general ground-in soil from the lining. Such spotting procedures often result in large rings which really is a leave-off [sic] between a soiled or clean area. Customers often bring these garments to the drycleaner and ask that they [clean them] to make them wearable. There is very little we can do with safety.[161]

One consumer witness suggests that such an article be labeled disposable, i.e., meant to be thrown away when soiled.[162] The IFI also presents what it characterizes as a popular item constructed of a white rayon fur-pile fabric with a urethane simulated leather trim. The item contains the care instructions "Dry Clean by the Furrier Method":

> Past experience has shown that a white rayon pile fabric of this type will not clean satisfactorily by the furrier method . . . drycleaning by the immersion process is a very successful way of cleaning rayon fur-pile fabrics. However, if the article is drycleaned, we have a problem because of the urethane trim. The adhesive used to bond the urethane film to the base fabric is affected, causing separation and blistering . . . there is no way to satisfactorily clean the article and return it to the consumer in an acceptable condition.[163]

Bretney Smith, operator of a large drycleaning firm, cites further examples. A small child's nightgown of synthetic nylon treated with flame retardant cannot be washed or drycleaned without removal of the retardant. It must be thrown away when sufficiently soiled. Men's $85-$300 suits are made with interfacing, used for stiffening in the breast area, which is bonded (fused) to the outer fabric. After one or two cleanings, the interfacing inevitably separates from the outer fabric and produces a bubble or blister because the bonding agent used will not survive contact with drycleaning solvents.[164] Leather cleaners have a constant problem with such articles and require consumers to sign "customer releases" before they will clean them. One such cleaner notes

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161 Tr. 1399, 1418-1420, IFI; HX 10 at 129, IFI.

162 Tr. 1504, J. Stone, Textiles & Clothing Instructor.

163 Tr. 1400, IFI.

164 Tr. 1888-1900, B. Smith, drycleaner.

several suede or leather jackets containing an adhesive which bleeds but does not rinse out in cleaning resulting in vast discoloration of the garment. "No known manner exists that will remove the adhesive, and redyeing, complicated by contrast stitching, is not successful." Shrinkage, color loss and separation of fabric lining from leather also occur.[165] In this situation, the cleaner may "take the rap":

> [A] local cleaner came to my office carrying an expensive suit ruined after the first cleaning. According to the [International Fabricare] Institute the dye stuff is soluble both in solvent and water. Both drycleaning and laundering of this garment would result in the color being off.
>
> The consumer was a good customer and insists on reparation. 'Why would they sell it if it couldn't be cleaned'?, he said.
>
> The retailer disclaimed responsibility. The manufacturer is unresponsive. And the cleaner who wants to keep his customer is stuck, and not for the first time.[166]

Consumers also may find themselves with an unserviceable article which becomes totally unusable after cleaning attempts.[167]

The conclusion is inevitable that both consumers and small businessmen (principally drycleaners) suffer economic injury as a result of inadequate washing, drying, ironing and drycleaning instructions as well as the lack of appropriate warnings in these areas. Such instructions continue to appear on apparel being sold in the marketplace as demonstrated in the record. Therefore, staff concludes that there is sufficient justification for Commission action to prevent such injury through modification of the care instructions required under the current rule.

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165 HX 29 at 348-359, 365-66, Kirk's Suede Life, Inc., leather cleaner.

166 Tr. 1349-50, E. Shapiro, Director, Department of Consumer Affairs, Detroit.

167 R. 18 at 1044, consumers. Fifteen bus drivers of Bath, Michigan purchased work jackets and were assured of their washability. After 2 weeks of use, some were washed and some were drycleaned with identical unsatisfactory results; extreme shrinkage occurred causing severe seam separation. The manufacturer ignored their cries of distress.

c. The Remedy

(1) The General Rule

Section 423.5(a) of the proposed revised rule, entitled "The General Rule," tracks Note 1 to the current rule and outlines the proposed rule's principal requirement:

> Instructions for the care and maintenance of any item within the scope of [this Rule] shall conform to the following:
>
> (a) General rule: fully and completely inform the purchaser of such regular care and maintenance procedures necessary to the ordinary use and enjoyment of the item.

Two minor changes were made to clarify its meaning: 1) the words "and completely" were added after the word "fully"; 2) the examples of care instructions contained in the current rule were removed as being superfluous and unnecessarily confusing.

Most of the record comments pertain to the specific parts of section 423.5 discussed below and not to the general rule. Only one comment pertaining to this particular provision was received.[168] The comment indicates that the phrase "ordinary use and enjoyment" should be defined. Although desirable from a theoretical point of view, such a definition would be impossible to devise from a practical standpoint since the provision applies to an extraordinary number of items, all of which have different care and durability traits. Such a definition could not be written to apply to all of these items. Additionally, the manufacturer of a particular article is uniquely qualified to determine what "ordinary use" the product is designed to give in all but the most obvious cases. Such "use" will vary from product to product. Staff, therefore, must reject the suggestion. The provision is designed solely to state in general terms the intent of the Rule insofar as care instructions are concerned. As such, it introduces the specific requirements which follow and provides some degree of continuity with the existing Rule.

A brief reading of the general rule will reveal an overriding philosophy of positive affirmative disclosure in situations where it is needed. Some mention must be made, therefore, of the positions expressed in the record which are generally in opposition to this philosophy. Some industry members feel that care instructions should be required only where a warning is needed, termed "exception labeling," and state that a positive

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[168] R. 20 at 290, consumer.

disclosure can be misleading.[169] If any care procedure can be used, no instructions whatsoever are needed.[170] Others believe that the proposed revised rule, in general, operates to require non-essential information which is counter-productive, unnecessarily increases label size and confuses the consumer by burying otherwise essential information.[171] Still another complains that the instructions required by the proposed revised rule will discourage the development of new technology and care methods and may also increase the cost burden on manufacturers, causing economic hardship leading to higher prices.[172] Staff is unable to discern any hard evidence in the record to support these bold assertions. In view of the fact that more precise versions of these arguments are raised repeatedly during consideration of each particular type of care instruction proposed in the revised Rule, however, they will be addressed infra when each instruction is discussed. Staff sees no need to reiterate such discussions here.

As there were no other comments received on this provision and since the gravamen of this provision is identical to that in Note 1 to the current rule, staff concludes that the record contains no valid objections to the proposal and recommends that it be included in the final Rule as proposed.

(2) Washing Instructions

(a) Preface

In order to reduce the prevalence of unclear or incomplete washing instructions, the proposed revised rule requires that every washing instruction must address at least four different topics (the topic of bleaching instructions will be discussed separately in section (4)). The first of these topics, "(i) Method of Washing and adjectival description of water temperature, e.g., hot, warm, cold"[173] will now be considered.

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169 R. 16 at 160, NRMA.

170 R. 17 at 769, Fieldcrest Mills.

171 R. 17 at 1202, J. C. Penney; Tr. 1836, NRMA.

172 Tr. 1045, 1698, AAMA.

173 Proposed Revised Rule Relating to the Care Labeling of Textile Products and Leather Wearing Apparel, 41 F.R. 3747, § 423.5(a)(1)(i).

(b) Washing Method and Temperature Description

Section b. of this Chapter describes record evidence of damage due to inadequate washing instructions. It is staff's view that the remedy should be designed to prevent such damage. As previously noted, the most frequently expressed types of damage are excessive shrinkage, fading or bleeding of color and general deterioration of a component when washed improperly. It is a commonly known fact that such damage can be caused by water contact, excessive heat or agitation, various adverse chemical interactions or all of these. Although moisture contact can be avoided only by totally disclaiming the washability of an item, the application of heat, agitation, or adverse chemicals can be controlled through the use of more precisely worded care instructions in addition to the word "washable." Thus, the staff has proposed that the "washing method" (machine, hand, or other) be disclosed as well as an approximate description of the temperature to be used (hot, warm, cold). If accurately set forth, such instructions should prevent a considerable amount of the damage cited in the record due to improper care.

The record contains several comments relating to the question of whether the phrase "machine washable," without more, is a sufficient instruction. In the opinion of the International Fabricare Institute, "General instructions, such as 'machine washable' appearing alone do not . . . always supply sufficient information to enable the user to care properly for the items so labeled. More specific information is needed."**174** Consumers want to know (and do not know from the term itself) whether home machines or commercial machines can be used or whether the item can be machine dried.**175** Generally speaking, consumers are uncertain as to exactly what the phrase indicates can be done to an item. In the Home Testing Institute survey, when asked what procedures could be considered "safe" in caring for a garment labeled "100% machine washable," only 62.7% of the 499 respondents believe such an item can be machine washed hot, 13% believe it can be machine washed cold. While 71.3% interpret the phrase as permitting tumble drying, only 54.3% believe that ironing is safe and 46.7% believe that use of an all-fabric bleach is safe.**176** The lack of any really convincing percentages (with the possible exception of "tumble dry"; however, a full 28.7% do not consider tumble drying as safe on a "100% machine washable" garment)

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174 R. 20 at 378, McCullough, Jacquelyn, "An Analysis of Problems Associated with Permanent Care Labeling and Recommendations For Improvement" (Fall, 1976) (hereinafter the McCullough study).

175 R. 18 at 586, consumer.

176 R. 17 at 1366, The Home Testing Institute survey.

indicates that consumers view the term as inherently ambiguous.[177] Others believe, however, that the term is sufficient in certain circumstances, e.g., if a garment is machine washable at a high temperature. This is based on the theory that the absence of other restricting statements indicates that the item may be washed in any manner including those forms of refurbishing which are not as rigorous.[178] Only when "special treatment" is required should more instructions be included.[179] The reasons cited are a) such a term gives the consumer the widest range of options of care; b) it permits the consumer to consolidate washes; c) it curtails use of electricity.[180]

Staff resolves this controversy in favor of a clear unambiguous disclosure. A wide range of options is only an advantage when the consumer knows what the permissible options are. Because a considerable amount of damage has resulted from the use of this term as well as other overly brief instructions and in light of the results of the study, it is evident that consumers are indeed not aware of such options and may, in fact, view the term with suspicion and confusion. Further, washes may be consolidated and energy may be conserved with a more specific disclosure without any consequent injury to the items being treated. In staff's opinion, the term "machine washable," without more, is incomplete per se and, therefore, totally unsatisfactory.

The question of whether temperature descriptions should be disclosed in washing instructions sparks similar controversy. One large manufacturer favors the disclosure as being a necessary adjunct to basic washing instructions.[181] Retailers agree citing their inability to answer consumer inquiries about temperatures: "I have been asked for this information as a salesperson and sometimes it is difficult to give an answer without care instructions."[182] "Sears agrees that the method of washing and a description of water temperature is necessary information which must be disclosed in all care instructions where machine or hand

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177 For a more thorough discussion of what the words "machine wash" mean to consumers, see Chapter V.E., where the Glossary's definition of the term is considered.

178 R. 16 at 159-60, NRMA.

179 R. 17 at 264, Wisconsin Fabricare Institute.

180 Supra, note 178, NRMA.

181 R. 17 at 383, Levi-Strauss, Inc.

182 R. 17 at 434, employee in retail store.

washing are satisfactory washing methods."[183] They also cite returned items which were damaged because of high temperatures: "Many garments state machine wash, but they indicate no temperature. Many things are shrunk up [sic] by too hot a temperature of water. In our store, the most frequent returns of all are shrinkage and colors running, all caused by the improper temperature of water."[184] A panel of community business people, including retailers, cleaners and launderers favor such a disclosure, stating it would enable those in the cleaning business to be more "accurate" in their treatment of clothing.[185]

The vast majority of consumers and consumer representatives in the record support the disclosure for various reasons. It aids in making a purchase selection by helping the consumer to determine the time and money required to maintain usefulness and appearance of an item; ease of care and amount of individual attention required are important factors.[186] Further, many consumers are not aware of proper temperatures for washing.[187] Indeed, washing instructions are not particularly meaningful without temperature information.[188] While moderation in temperature is very important to prevent shrinkage, some fabrics simply do not require high temperatures to clean them successfully.[189]

Studies submitted reinforce the importance of temperature information. In a survey conducted by Walker Research, Inc., (hereinafter the Walker survey) 61% of 152 consumer respondents surveyed rate washing temperature as very important in a washing instruction while 29% rate the disclosure as somewhat

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183 R. 17 at 523, Sears, Roebuck & Co.

184 R. 18 at 731-32, management trainee, large Los Angeles department store.

185 R. 18 at 659, Department of Home Economics, University of Montana.

186 R. 18 at 695, consumer.

187 R. 20 at 426, Professor, Textiles & Clothing, Iowa State University.

188 Tr. 1823, V. White, Associate Professor, Cornell University; Tr. 2610, W. Morck, Instructor, Family and Clothing, Grossmont College.

189 Tr. 1683, K. Geiken, Lecturer, School of Home Economics, University of Wisconsin.

important.[190] One of the principal omissions in care instructions is the lack of water temperatures, according to a poll of Good Housekeeping readers.[191] Another informal survey confirms this view.[192]

Phillips-Van Heusen Research and Development Corporation, however, opposes the disclosure:

> We feel that the inclusion of the adjective hot, warm or cold in (i) method of washing . . . [is] not necessary unless either high temperatures must be used to clean the garment or low temperatures must be used to prevent damage to the garment. It has been our feeling from the start that absence of the adjective implies freedom of choice by the consumer and should in no way damage the garment. The adjective must, of course, be used if damage to or improper cleaning of the garment will occur. This is a small point but one which may prevent the care label from becoming excessively long and a burden to both consumer and manufacturer alike.[193]

Likewise, AAMA believes that no water temperatures need be mentioned if any temperature can be used, saying further that a "hot" water instruction could mislead the consumer into thinking that other temperatures cannot be used. Temperatures, therefore, should be disclosed only as warnings, as under the current Rule.[194] One consumer agrees, but for a different reason, saying

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190 R. 17 at 1263-1265, Walker Research, Inc., "Consumer Attitudes Toward Care Labeling Information; Marketing Research Report for Household Products Advertising" (October, 1975) (hereinafter the Walker survey).

191 R. 18 at 686, Good Housekeeping Magazine, "Institute Report, Garment Care: Facts You Should Know When the Label Is Incomplete" (February, 1975), p. 6.

192 R. 20 at 410, Christenson, Marian J.,"Student Attitudes Toward Care Labeling" (Spring, 1976) (hereinafter Yreka survey). Fifty-one of 55 students and adults consider temperature information desirable.

193 R. 17 at 128, Phillips Van Heusen Research and Development Corporation.

194 R. 17 at 1045; Tr. 1716-1718, AAMA.

that temperatures cannot be regulated and that too many washing loads may be required.[195]

First, staff is of the opinion that the weight of the record supports the disclosure. Second, the implication of "freedom of choice" assumes that such freedom can be exercised responsibly by consumers, which it has already been shown, is not so. There is no question that consumers need such a disclosure to prevent damage resulting from the lack therefrom. Third, it is not likely that the addition of one of the terms "hot, warm or cold" will lengthen the label excessively. Fourth, staff believes that a "hot" water instruction will lead consumers to assume that hot water needs to be used to clean an item successfully but that no significant impairment of the item will occur. If hot water is not needed for satisfactory cleaning, then "warm" or "cold" may be substituted. Finally, the reason that more washing loads may be required is not the care instructions themselves but the varying care traits of the items at issue which the instructions merely reflect. Staff must conclude on the basis of the record that temperature information is entirely appropriate with a washing instruction and is sorely needed by consumers. Since it has been lacking in the past in a large number of cases, it should be required. Therefore, staff recommends that section 423.5(a)(1)(i) be included in the final Rule as proposed.

(c) Drying Method and Temperature Description

Section b. of this Chapter likewise describes record evidence of damage due to the lack of or inadequate drying instructions. As in the case of washing instructions, the remedy should be designed to prevent the shrinkage, permanent wrinkling, scorching or melting that can occur when a machine drier is improperly used due to ignorance on the part of the consumer. Section 423.5(a)(1)(ii) of the proposed revised rule sets forth staff's solution to this problem. In all washing instructions, "(ii) [the] method of drying and, if by machine, [the] adjectival description of temperature, e.g., high, medium, low . . ." must be included.

As previously noted, a significant number of items do not contain drying instructions at all and, if they do, such instructions are often incomplete.[196] This places the consumer who has washed an item in a real dilemma as to the proper drying method.

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195 R. 18 at 910, consumer.

196 R. 18 at 724, 1039, consumers.

> Many labels include only washing instructions, many omitting drying instructions. The lack of drying instructions places the consumer in the position of taking risks. As we all know, some items are more durable if they are line dried while some require different temperature settings if tumbled dry.197

The inclusion of drying instructions in all washing instructions is, with two exceptions, generally favored in the record for various reasons. Sears agrees that it should be included 198 as does Clorox Company 199 and Levi Strauss.200 Consumers favor the proposal generally 201 because it will protect retailers,202 and will aid the consumer in making an intelligent purchase decision (especially one without a machine drier).203 If drying instructions are not set forth, consumers may misunderstand their absence 204 and indeed become totally confused.205 The American Society for Testing and Materials does not include drying in the ASTM glossary's washing definition since drying is a separate procedure requiring separate terminology.206 Thus, washing instructions are not particularly meaningful without drying instructions.207 Further, their absence can cause consumers to make incorrect assumptions based on the washing instructions. Olefins and acrylics can be machine washed but cannot be machine dried.208 The same temperatures cannot necessarily be used in

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197 R. 18 at 1015, consumer.

198 R. 17 at 523, Sears, Roebuck & Company.

199 R. 17 at 1212, Clorox Company.

200 R. 17 at 383-84, Levi-Strauss.

201 Tr. 1625, M. Knowles, Office of Consumer Protection, State of Louisiana; R. 20 at 410, Yreka survey (of 55 students and adults, 46 favor inclusion).

202 R. 18 at 666, consumer.

203 R. 18 at 695, consumer.

204 R. 18 at 2414, consumer.

205 R. 18 at 676, consumer.

206 Tr. 1800, V. White, Associate Professor, Cornell University.

207 Id. 1822-23.

208 Tr. 1018, B. Feather, Clothing and Textiles Specialist, University of Missouri.

both procedures; on the other hand, machine drying an article can be an advantage in some cases.[209] Finally, "the lack of drying instructions has caused me to ruin some garments even though I used low dryer settings on questionable items."[210]

The industry's position, presented in this case by AAMA and NRMA, briefly is that drying procedures should be disclosed only if a warning would otherwise be necessary,[211] i.e., the method of drying should be required only when not all drying methods are satisfactory.[212] Thus, if a high drying temperature will lead to shrinkage, this fact can be stated as a warning.[213] Cross-examination of both parties, however, produced a more positive outlook. AAMA would favor drying instructions stated in a positive manner (as opposed to a negative warning) when needed.[214] NRMA also concedes that drying instructions would be better stated positively ("tumble dry warm" rather than "do not use excessive heat") since drying is necessary for a washed garment. Because drying instructions would allegedly make a care label too large and complicated, however, NRMA clings to its basic opposition to the proposed revision.[215]

Although smaller by comparison, the record in this area reveals a similar stand-off between industry and consumers as occurred when disclosure of washing instructions was considered. In staff's opinion, the weight of the record supports disclosure in light of the evidence of damage due to the lack of appropriate drying guidelines in care instructions. All concede that drying instructions are necessary to enable a consumer to know how to treat an article already washed. Consumer assumptions vary without them and economic injury can and does result. Other than that submitted by NRMA, there is no record comment indicating that drying instructions would make a label too "complicated." In light of the obvious need for such instructions expressed in the record, staff rejects this position as unsupported by the evidence. It is clear that the industry desires to maintain the

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209 Tr. 1362-63, E. Shapiro, Department of Consumer Affairs, Detroit.

210 R. 18 at 923, consumer.

211 Tr. 1837, NRMA.

212 R. 20 at 674, AAMA.

213 Tr. 1700, AAMA.

214 Id. 1717-18.

215 Tr. 1873, NRMA.

status quo and treat drying instructions under the final Rule in the same manner as under the current rule. Record evidence that such treatment is not in the public interest makes this course unjustifiable under the circumstances. Staff, therefore, concludes that drying instructions are necessary and should be required in all washing instructions covered by the Rule.

The question of whether descriptions of drying temperatures should be included with machine drying instructions yielded a relatively small but contentious response. In the Walker survey of 152 consumer-respondents in two states, 55% rate dryer temperatures as very important while 31% rate them as somewhat important.[216] Another survey indicates similar results.[217] A retail salesperson comments that the temperature at which an article is dried can make the difference between success and failure. "One style of . . . curtains that the store carries gave completely different results depending on the temperature they were dried at. They were not labeled sufficiently."[218] Witness Geiken states that temperature is extremely important where shrinkage is concerned. Many items simply do not require high temperatures to dry.[219] This is amply illustrated by record comments containing evidence of damage in the presence of drying instructions without a temperature disclosure. A consumer purchased a set of curtains for $[illegible].00 having the care instructions "Machine Wash. Tumble Dry." She placed them in a dryer for less than 15 minutes. The curtains melted and cannot be used again. The retailer provided no redress, merely acknowledging that the damage was caused by excessive heat. The lack of temperature disclosures in the instruction caused irreversible damage to the curtains.[220] Likewise, a consumer washed a quilted bedspread containing the care instructions "Machine Wash and Dry." Machine drying according to the instructions caused the backing to melt. Excessive shrinkage can also result from an improperly high drying temperature.[221]

The industry position is spearheaded by one association and two retailers. As with other care instructions, AAMA believes that temperature information should only be given as a warning.

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216 R. 17 at 1265, Walker survey.

217 R. 18 at 410, Yreka survey (44 of 55 students and adults favor inclusion).

218 R. 17 at 434, retail salesperson.

219 Tr. 1683, K. Geiken.

220 R. 18 at 407-412, consumer.

221 R. 18 at 757, consumer.

If an item can be dried at any temperature, no such instruction is necessary.[222] A large apparel manufacturer states that it does not produce any products which cannot be machine dried at a hot setting:

> [W]e wonder about the practicality of an adjectival description of machine drying temperature. Contrary to the machine wash situation, our information indicates that most home driers currently in place do not have temperature regulating capabilities. Our general procedure is to assume that most driers are 'hot' either by design or through misuse. We design products and care instructions accordingly. If we were to design and label according to the temperature regulation assumptions of the proposed rule, we would likely market products which could not be cared for in practice. If we could be convinced that drying temperature information is indeed being sought by most consumers, we could adjust. In the absence of that concensus, we believe it would be misleading to do so.[223]

A large retailer believes that a consumer assumes any drying temperature can be used in the absence of drying temperature instructions:

> [A] description of the temperature to be used in drying is only necessary where the lowest temperature setting is required for machine drying because the product may be impaired by medium or high heat. Other products can be machine dried at medium or high temperatures without impairment to the product. Consequently, absence of any reference to the drying temperature of a product would mean that the product could be dried at any temperature setting. Thus, in this case, the absence of drying temperature information would not result in substantial damage to the product and would not cause consumers to act on any erroneous assumption with regard to care procedures which may harm the

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222 R. 17 at 1045, AAMA.

223 R. 17 at 383-84, Levi-Strauss.

product, since consumers would assume any temperature could be used satisfactorily and this would be correct.[224]

Clearly, much of the evidence of drying damage cited in the record is due to excessive heat. If it is assumed that most driers have at least one other setting other than hot (although such a setting may not be expressed strictly in terms of temperature), the consumer does have the power to regulate the temperature of machine driers, if only to a limited extent. Similarly, if all products on the market could be dried at a "hot" setting (as is the case with products made by Levi-Strauss), there would be few, if any, damage complaints. This is clearly not the situation here. Further, the contention that consumers will assume that any temperature may be used in the absence of such information is not supported by the evidence.[225] The evidence does contain many examples of those who made such an assumption and regretted it later because of the impairment that resulted. As the record reveals no evidence of any particular burden that would result in supplying this information and because much of the damage cited is due directly to the use of improper temperature in drying, staff concludes, on balance, that temperature information is absolutely necessary to complete a machine drying instruction, is needed by consumers and is not generally being supplied currently. As such, this information should be required in the final Rule as stated. Staff, therefore, recommends that Section 423.5(a)(1)(ii) be included in the final Rule as proposed.

(d) Use of Iron and Ironing Temperature

Section b. of this report also describes record evidence of damage due to the lack of or inadequate ironing instructions. Any proposed remedy, therefore, should function to prevent the damage cited. Such damage is similar to but may be more catastrophic than that experienced as a result of the drying process. Although ironing does not cause shrinkage, it may cause scorching, burning, or melting which yields a totally unsatisfactory, unusable item. As the object of ironing is to remove wrinkles, when wrinkles do not generally result from washing and drying processes, (for example, in sweaters, knitted items, lingerie and some underwear), ironing is not in fact needed and would not, in staff's opinion, constitute, "regular care necessary to the ordinary use and enjoyment of an item." Thus, section 423.5(a)(1)(iv) of the proposed revised rule requires that all washing instructions

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224 R. 17 at 523, Sears, Roebuck & Co.

225 Supra, note 77.

disclose the, "use of iron and adjectival description of ironing temperature, e.g., hot, warm, cool, when necessary." [emphasis added].

The record indicates that ironing instructions currently appear on care labels much less frequently than do drying instructions. In the Salmon survey of 122 apparel producers and their products, only 29.3% of labels examined supply any ironing instructions whatsoever.

> Ironing instructions are . . . lacking in continuity. Fibers with a low melting point are labeled "Do Not Iron" or "Iron With Cool Iron" by some manufacturers. Others make no reference to ironing at all, although many care instructions such as "Machine wash, tumble dry" seem to give the impression of suitability for all normal home laundry practices. Often these simple laundry instructions appear on textiles which most probably can be ironed only within a very narrow range of low temperatures, if at all. The use of durable press fabrics has undoubtedly reduced the ironing burden, but it has not eliminated all home ironing and many producers include ironing instructions on their durable press garments. In general, however, the consumer who wishes to iron a garment does so without care label guidance.[226]

Similarly, in the Walker survey only 3% of 152 respondents remember seeing ironing instructions on care labels.[227] A substantial majority of a relatively large number of comments in this area would go farther than the proposed revised rule and flatly require ironing instructions to be included in every washing instruction without qualification. One reason is that ironing is as much a part of routine care as washing and is important for consumers to know.[228] A cotton garment, "should be washed in cold water but that doesn't mean it needs a cool iron, in fact, it usually requires a hot iron." "The fact that each fabric composition is unique makes it important that a complete laundering process be explained to the consumer."[229] Finishes and constructions, as well as individual generic fibers, make a difference. Cottons

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226 R. 17 at 1511-12, Salmon survey.

227 R. 17 at 1263, Walker survey.

228 R. 18 at 174, 682A, consumers; R. 20 at 198, Home Economics Instructor, Hutchinson, Kansas.

229 R. 18 at 682A, consumer.

and yarns can be ironed at 400 degrees and more; other fibers must be ironed at low temperatures.[230] Jane Butel, Manager of the Consumers Institute, General Electric Company, agrees:

> Ironing/pressing instructions should be given for all washable fabrics, especially those that could and would be worn as exposed garments on the body. With few exceptions, some touch-up pressing or steaming is required for most outer garments at some point during the life of the garment. This is especially important due to the multitude of fabric blends commonly used in yard goods and ready-to-wear, plus new synthetic fabrics such as ultrasuede (T), where pressing technique (i.e., light pressure) should also be indicated. Ironing/pressing instructions should also be provided for the same reasons for ready-made household linens, curtains, draperies and sheers which are washable and for yard goods which could be used to make these household furnishings.
>
> Home furnishings and wearing apparel which require dry cleaning, but which will need touch-up pressing due to wearing, following storage or when hung after dry cleaning, should carry instructions indicating pressing temperature range and advice regarding steaming.[231]

One consumer indicates a complete lack of knowledge of proper ironing techniques.[232] Thus, it should not be assumed that consumers already are aware of them.[233] Fabric dealers and consumers advise that more specific ironing instructions are eminently desirable.[234] Indeed, washing instructions are not particularly meaningful without them.[235] A county consumer affairs expert

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230 Tr. 1683, K. Geiken.

231 R. 20 at 637, General Electric Company. As it is well known that General Electric Co. manufactures irons, this comment must be weighed accordingly.

232 R. 18 at 766, consumer.

233 R. 18 at 1053, consumer.

234 Tr. 1625, M. Knowles, Office of Consumer Protection, State of Louisiana; R. 18 at 805, 982, consumers.

235 Tr. 1823, V. White, Associate Professor, Cornell University.

indicates that if ironing information had been more prevalent, a significant reduction in consumer complaints would have occurred.[236] P[illegible]hasing decisions are also affected by the presence or l[illegible] ironing instructions. "Labels today do not specify w[illegible]er the garment need(s) a cool iron, a little touch-up after washing or not. Whenever I see a label stating - may need a little ironing - I do not purchase it."[237] By far the most compelling reason given is the risk of damage experienced in the absence of ironing instructions.[238] "Many people iron everything at the same temperature and have found out the hard way that the fabric would not stand it."[239] Melting,[240] scorching and burning[241] and other injuries to the garment[242] are cited. Most of the studies and surveys submitted confirm the importance of ironing instructions in the consumer's eye. The results of the Yreka and Mississippi surveys demonstrate a strong consumer preference for the inclusion of ironing instructions in all washing instructions without exception.[243] Further, surveys of 85 residents in Greeley, Colorado (hereinafter the Greeley survey), 115 residents of Oxford, Mississippi (hereinafter the Oxford survey) and numerous adult consumers in 12 New

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236 R. 20 at 329, Department of Consumer Affairs, Orange County, California.

237 R. 18 at 2403, consumer.

238 R. 18 at 168, consumer.

239 R. 18 at 560, consumer.

240 R. 18 at 732, 841, 905, consumers; R. 20 at 239, Home Economist, University of Arizona (heat-sensitive fibers).

241 R. 18 at 792, 922, consumer.

242 R. 18 at 908, consumer (termed irreparable); Tr. 2519, K. Bourdeau, Department of Consumer Affairs, Los Angeles County. "As . . . ironing errors can be just as damaging to textiles as an incorrect water temperature or cleaning solvent . . . ironing instructions certainly should be included on labels."

243 R. 20 at 410, Yreka survey (76% of students and adults questioned); R. 20 at 435, Mississippi survey (90% of consumers interviewed).

York counties (hereinafter the New York State survey) confirm this preference by a large margin.[244]

Other equally concerned consumers and retailers believe ironing instructions should be required not in all washing instructions but only when necessary to preserve the appearance of the item after washing and/or drying. Levi-Strauss expresses this view:

> We do not feel that ironing instructions are appropriate for garments which have good form retention under the conditions of care specified or which are not normally ironed for reasons of fashion or of care. We assume that the market factors which govern our position on this matter are those which also influenced your qualifying statement 'when necessary.'[245]

Several consumers voice similar opinions saying that ironing instructions are necessary in some cases but not in others. Some items do not need ironing;[246] therefore, ironing instructions are only necessary in certain specified situations.[247]

Much of the industry plus a few selected consumer representatives take the position that such instructions are "necessary" only when a warning would otherwise be required by the current rule.[248] Thus, a positive requirement for ironing instructions

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244 R. 20 at 322A Krosky, Dr. Beverly A., "Informal Survey of Answers to Commission's Call for Comment" (Spring, 1976) (79% favor such inclusion); R. 20 at 256, Alexander, Dr. Patsy R., "Informal Survey of Answers to Commission's Call for Comment" (Spring, 1976) (90% favor such inclusion); R. 20 at 185, Saltford, Nancy C., "Consumer Understanding and Use of Care Labels" (Fall, 1974) (96% of the rural sample and 95% of the urban sample favor inc usion).

245 R. 17 at 384, Levi-Strauss.

246 R. 18 at 341, consumer; R. 20 at 143, Extension Specialist, CES, Michigan State University; Tr. 2610-11, W. Morck, Instructor, Family Studies, Grossmont College.

247 R. 17 at 1-5, Warren Featherbone Co.; R. 18 at 349, consumer. (necessary only when item deviates from normal procedure); R. 18 at 508, consumer (necessary only in cases where extremely low temperature is required).

248 Tr. 1837, NRMA; Tr. 1700, AAMA; Tr. 1018, B. Feather, Textile and Clothing Specialist, University of Missouri; R. 18 at 107, consumer.

should be deleted.[249] The word "necessary" is given a relatively limited interpretation i.e. when needed to avoid damage caused by misuse.[250] On cross-examination, however, NRMA concedes that, strictly speaking, a positive instruction ("Use cool iron") is more informative than a negative one ("Do not use hot iron") which would otherwise be required by the warning section of the Rule.[251] Another industry member states that ironing instructions should be mandated only for those articles that may require special treatment or for those where precautions need to be taken.[252] Fieldcrest Mills suggests that if an article is labeled "permanent press," then it is obvious that no ironing instructions are needed.[253] One consumer states that this is not necessarily true complaining that use of the term "permanent press" is often misleading or false.[254]

Although the weight of the record supports the inclusion of ironing instructions in all washing instructions regardless of the nature of the labeled item, a substantial segment of evidence reveals clearly that all washed items do not have to be ironed in order for the owner to obtain full and unimpaired use therefrom. With respect to those items where there is no bona fide need for ironing instructions, staff believes none should be required. On the other hand, staff disagrees with industry statements that ironing instructions are needed only to prevent damage and should be expressed only as a warning in a negative fashion. Although it is true that prevention of damage at the point of care is one object of disclosure, another equally important object is to provide enough positive information at the point of sale to enable the purchaser to make an informed purchase decision.[255] The record shows that the lack of ironing instructions altogether on items that need ironing often causes consumer confusion especially in the presence of specific washing or drying instructions. The record also shows that silence does not function to communicate

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249 R. 17 at 527, Sears (Sears contends that the only ironing instructions which are necessary are those which will operate to prevent damage to the product).

250 R. 17 at 1047, AAMA.

251 Tr. 1873, NRMA. See Chapter IV.C.4.c.(3) for discussion of the proposed Rule's warning provision.

252 R. 17 at 124, Celanese Corp.

253 R. 17 at 771, Fieldcrest.

254 R. 18 at 531, consumer.

255 Supra, note 14.

anything effectively. As such, ironing instructions are necessary not only to prevent damage but also for the ordinary use and enjoyment of the item in cases where the effective removal of wrinkles is at issue. In most cases there is no difference between a damaged article and one from which wrinkles cannot be removed as far as the consumer is concerned; neither can be put to the use for which it was purchased. In light of the scarcity of ironing information in care instructions at the present time as well as a clear consumer need for such information, staff concludes that ironing instructions should be required to be included in washing instructions where necessary to the ordinary use and enjoyment of the labeled item.

A related question as to whether temperature information should be required to be included with ironing instructions received a paucity of contradictory comments yielding an inconclusive record.[256] Because much of the record evidence of impairment caused by irons relates directly to the temperature at which they are used, however, staff concludes that positive ironing instructions would be per se insufficient as a remedy without temperature information.[257] Staff recommends that section 423.5(a)(1)(iv) be adopted as proposed except that the phrase "when necessary" should be expanded to read "when necessary to the ordinary use and enjoyment of the item" to clarify the intent of the provision.

(3) Warnings

Note (2) of the current rule contains a provision designed to close all loopholes with respect to regular care procedures which are not necessarily required to be positively disclosed but which, if employed, would cause damage to the labeled article. Thus, under the current rule, care instructions must, "warn the purchaser as to any regular care and maintenance procedures which may usually be considered as applying to such article but which, in fact, if applied, would substantially diminish the ordinary use and enjoyment of such article." In practice, warnings are most frequently expressed in a negative fashion ("Do Not" or "No") although they can be expressed positively through the addition of the word "only" (Dry Clean Only) or by addressing the subject in a positive manner ("Use cool iron" rather than "Do Not Use Hot Iron").

The provision in the current rule was redrafted in the proposed revised rule [section 423.5(b)] to broaden its effect and clarify the fact that appropriate warnings should also be included

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256 See R. 17 at 386, 496, consumers; R. 18 at 910, consumer; R. 20 at 122, 167, Extension Agents, CES, Georgia; Tr. 1823, V. White.

257 For further discussion of the kind of temperature information to be supplied, see Chapter V.E.

where a prescribed care procedure might cause the labeled item to damage other items being maintained with the labeled item, e.g., a warning of "wash separately" or "wash with like colors," might be required where washing an item containing non-colorfast dye will cause the dye to bleed over other articles in the same wash load. In this case, the non-colorfast item might not be adversely affected but the accompanying items probably would be. Thus, the redrafted provision prescribes that care instructions must, "warn the purchaser as to any regular care and maintenance procedure which, under all reasonably forseeable circumstances, would damage or substantially impair the item to which the care instructions apply or other articles being cleaned with that item." [changes underlined]

Selected comments in the record aptly point out the defects in this version of the provision. First, the phrase "under all reasonably forseeable circumstances" may be too broad.[258] "It is reasonable to assume, for example, that some consumers might not follow directions on a washing machine or a detergent box."[259] Sears agrees, stating that the wording, "would appear to require warnings about all procedures not included in the care instructions which could forseeably damage the product regardless of whether consumers might assume the procedure could be used."[260] Additionally, Clorox Company rightly states that the provision, as drafted, would require that care instructions for each article include warnings not only of care procedures which would damage the labeled item but also of all care procedures which would independently damage all other unknown articles being cleaned with the labeled item, irrespective of whether the labeled item is adversely affected. For example, the absurd result would be, "Do not wash in hot water with items that cannot be washed in hot water."[261] Staff agrees that the language of the provision should be clarified to eliminate both of these problems.

A large retailer indicates that the warning provision should apply not only to regular care procedures[262] which could be used but to so-called optional procedures as well, presumably including "spot" care and all other procedures which could be employed

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258 R. 25 at 434-436, S. Korzenik, Apparel Industries Inter-Association Committee; R. 25 at 447-48, National Knitted Outerwear Association.

259 R. 17 at 1215-1217, Clorox Company.

260 R. 17 at 528, Sears, Roebuck & Co.

261 Supra, note 259.

262 See Statement, Chapter VI.D.2. for a discussion of the concept of regular care.

at the consumer's option.[263] The record does not support such an expansion of the scope of the provision, nor in staff's estimation, would it be possible for a manufacturer to anticipate in a care instruction all options at the consumer's disposal. The provision is meant to cover all significant restrictions in the application of reasonably anticipated regular (not optional) care procedures to an item including, but not limited to, those already required to be affirmatively disclosed. This acknowledges the fact that there may be some procedures for which disclosure is not specifically required, which now or in the future may qualify as a regular care procedure necessary for the ordinary use and enjoyment of certain articles. If such a procedure can only be employed under certain circumstances, the consumer must be warned appropriately. If, on the other hand, the procedure has already been addressed in the instruction by an affirmative disclosure, it need not again be addressed in the form of a warning. Thus, it is entirely possible that a full and complete positive disclosure of care instructions will obviate the need for any warnings whatsoever.

Because of the obvious confusion in the record about the intent and meaning of this provision, staff has redrafted it completely for purposes of clarification to reflect the concern previously noted. Care instructions must, therefore,

> warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated which would damage or substantially impair the item to which the care instructions apply or cause that item to damage or substantially impair other articles being cared for or maintained with that item. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures.

Staff recommends that this provision be substituted for the proposed provision in the final Rule.

Finally, the record contains considerable evidence of articles being sold in the marketplace which need regular care for their ordinary use and enjoyment but which cannot be cared for or maintained successfully by any commercially available

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263 R. 17 at 526, Sears, Roebuck & Co.

cleaning method.[264] Because of this circumstance, many such articles have been irreversibly damaged through improper care. As "high fashion" may often dictate the construction of many such items having many appealing features,[265] staff must reject any attempt to prevent or limit their production. The importance of such a disclosure to the consumer, however, cannot be overestimated; to the consumer making a purchase, it is critical.[266] This is especially true in light of evidence of consumer assumptions that all articles of this nature are cleanable by some method unless otherwise stated.[267] Various proposals have been made for appropriate disclosures in these circumstances including "cannot be washed or drycleaned,"[268] or, "cannot be successfully cleaned."[269] Although it is true that the labels in some garments already state "do not wash - do not dryclean"[270] and the warning provision, strictly speaking, does require such a disclosure, staff is of the opinion that, from a remedial standpoint, a disclosure of nonserviceability should be made a definite requirement in the final Rule. Therefore, staff recommends that the following sentence be added to the warning provisions proposed supra:

> With respect to those items included within the scope of this part which cannot be cared for or maintained by any cleaning method (including washing, drycleaning or any other commercially available cleaning method) without damage or substantial impairment, care instructions must contain a full and complete disclosure to that effect.

As the record contains no other objections to this provision aside from those already noted, staff recommends that section 423.5(b) of the proposed Rule be included in the final Rule, as modified.

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264 Tr. 2517-18, K. Bourdeau, Department of Consumer Affairs, Los Angeles County.

265 Tr. 1302-3, J. Schapiro, Dixo Company.

266 Tr. 2525, K. Bourdeau.

267 Tr. 2507-08, K. Gragg, Consumer Affairs Representative, Ventura County, California.

268 Tr. 1454, International Fabricare Institute.

269 Supra, note 253.

270 R. 20 at 680, AAMA.

(4) Bleaching Instructions

(a) Preface

Because an extremely large part of this record is concerned with the extent to which bleaching instructions should be disclosed in a washing instruction, this topic has been accorded a separate section in this report. Discussion of this issue will proceed from a short description of the nature of the product through a brief history of the issue vis-a-vis its treatment by Commission staff and a discussion of the present situation with regard to bleaching instructions to a detailed consideration of the remedies proposed and staff's conclusions and recommendations.

(b) The Product

Although there are a variety of bleaching products which are available to those who are aware of them[271] and while there is the ever-present possibility of yet undeveloped bleaches being introduced on the market, those bleaches which now are generally available to consumers fall into two categories: chlorine bleaches and non-chlorine bleaches.[272] Most if not all available non-chlorine bleaches are oxygen bleaches based on monopersulfate or perborate compounds.[273] Chlorine bleaches are available in both liquid and dry states.[274] In terms of bleaching action, the effectiveness of chlorine vs. non-chlorine bleaches varies. Liquid chlorine bleaches are generally the strongest followed by dry chlorine bleaches (where the release of chlorine is controlled). Mistakes from over-bleaching are thus less likely to occur with dry chlorine bleaches. Perborate (oxygen) bleaches are milder bleaches which are less effective than chlorine bleaches but which provide less opportunity for damage due to misuse. Monopersulfate (oxygen) bleaches are more effective than perborates but less effective than chlorine.[275] While oxygen bleaches cannot damage any of the common fibers to any great extent, chlorine bleaches can be

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271 Tr. 1714-15, AAMA. Sodium sulfoxalate formaldehyde, sodium-bisulfites and hydrosulfites, Javel water (forerunner of sodium hypochlorite) to name a few existing bleaching solutions.

272 R. 17 at 1214, Clorox Co.

273 Tr. 1517-18, M. Purchase, Professor, Cornell University.

274 Id.

275 Id.

damaging to cellulosic fibers if not used properly.[276] Therefore, because of the difference among bleaches, statements concerning bleach use must be qualified by identifying the kind of bleach to which the statement refers.[277]

Bleach containers usually are labeled with adequate instructions for the use of bleach. For liquid chlorine bleach, this involves, among other things, the loading and filling of the washer before the bleach touches the fabric to effect proper dilution.[278] Promotional claims are also made in these instructions, however, especially with regard to the "safety" of the bleach to be used. One consumer representative believes that consumers often erroneously focus only on the word "bleach" and do not make necessary distinctions between bleach types and usages.[279]

Liquid chlorine bleach serves many and varied functions in a washing procedure. Chief among these is the apparent elimination of spots and stains[280] where it operates more effectively than detergent alone.[281] The record is practically unanimous on this point. Its disinfectant properties are also highly touted in the

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276 Tr. 2238, R. Galbraith, Dean, School of Home Economics, Auburn University.

277 Tr. 1518, M. Purchase, supra, note 273.

278 Tr. 1520, M. Purchase, supra, note 273.

279 Tr. 2315-16, M. Brinson, Assoc. Professor, Buffalo State College.

280 R. 17 at 1436, Clorox Co. (The Home Testing Institute study indicates that of 293 people who use bleach for colored garments, 70.3% use it specifically to remove stains); Tr. 1497, J. Stone, Textiles and Clothing Instructor. (Similar results are obtained in the Urbana-Champaign survey I where 83% of 97 surveyed indicate such usage); Tr. 1471-72, C. Warfield. (67% of 161 homemakers in the Urbana-Champaign survey III indicate such usage); Tr. 1516, M. Purchase; Tr. 1663-65, K. Geiken, Lecturer, School of Home Economics, University of Wisconsin; Tr. 1914, K. Stanton, Dept. of Consumer Affairs, Burlington County, New Jersey; Tr. 2245-46, R. Galbraith; Tr. 2369, B. Reed, Better Business Bureau, Milwaukee; Tr. 2303, M. Brinson; R. 20 at 695, Clorox Company; R. 18 at 336, consumer.

281 R. 17 at 1238, 1537, Clorox.

record,[282] especially where children's clothes, bed linens and towels are concerned,[283] where use of phosphate detergents is banned[284] and where cold water is used frequently.[285] Use of bleach for disinfecting purposes, however, is considerably less than for stain removal, e.g., only 23.5% of 293 respondents in the Home Testing Institute survey, 35% of 46 who answered the question in the Urbana-Champaign survey I and 34% of 161 responding in the Urbana-Champaign survey III.[286] Such disinfectant properties are also somewhat dependent upon proper water temperature;[287] sanitizing effects are dramatically reduced with a corresponding temperature reduction.[288] Further, there are other commercially available "additives" which have disinfecting properties.[289] As distinguished from chlorine bleaches, oxygen bleaches have no disinfecting effect.[290] Other ancillary functions of both chlorine and oxygen bleaches enumerated in the record include deodorization,[291] partial prevention of fugitive dye transfer (transfer of

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282 Tr. 954-55, R. Mallard, Fairfax County Consumer Affairs; Tr. 1329-32, J. Schapiro, Dixo Co.; Tr. 1516, M. Purchase; Tr. 1914, K. Stanton; Tr. 2245-46, R. Galbraith.

283 R. 20 at 695, Clorox Co.; R. 17 at 765, 781, 791, 794, industry comments.

284 R. 17 at 502, J. Schapiro, Dixo Co.; R. 17 at 804, food broker.

285 R. 17 at 1239, Clorox Co.; Tr. 1663-65, K. Geiken. She cites several families in an apartment building who contracted "Staph" infections using cold water detergent in local coin-operated laundries. She argues that the use of detergent alone is not sufficient to prevent cross contamination of clothing by bacteria and viruses. She alleges that proper amounts of chlorine bleaches would have prevented the spread of infection; Tr. 2369, F. Reid; R. 25 at 374-75, Clorox.

286 R. 17 at 1436, Clorox Co.; Tr. 1497, J. Stone; Tr. 1471-72, C. Warfield, Textiles Instructor, Univ. of Illinois.

287 Tr. 2303, M. Brinson.

288 Tr. 1713, AAMA.

289 Id.

290 Id.

291 R. 20 at 965, Clorox Co., R. 17 at 765, 781, 791, 794, industry comments; R. 17 at 1239, Clorox Co.; Tr. 954-55, R. Mallard, Fairfax County Consumer Affairs; R. 25 at 374-75, Clorox Co.

non-fast dyes from colored items to white items),[292] and prevention of yellowing or staining.[293]

More disputed, however, is the claimed power of bleach to "clean" items being washed in a manner superior to that of a detergent and, therefore, prevent soil "build-up" that may occur over a period of time in fabrics laundered in detergent alone.[294] This "cleaning power" is manifested by the relatively large number of comments indicating that chlorine bleaches (and non-chlorine bleaches to a lesser extent) make whites "whiter" and colors "brighter" (oxygen only).[295] Indeed, surveys show that many consumers use bleach largely for these purposes.[296] The "whitening" power of bleach is mentioned most often; the banning of phosphate detergents is noted as one of the principal reasons for its use in this manner.[297] Part of this "whitening" power is said to be due to the removal of soil accumulation.[298] The record also reveals, however, certain caveats to the absolute power of chlorine bleach to whiten and brighten through soil removal. First, bleach does not operate effectively alone but only with a detergent, i.e., it augments the cleaning power of a detergent in certain circumstances.[299] Second, the degree

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292 R. 17 at 765, 781, 791, 794, industry comments; R. 17 at 1238, 1537, Clorox Co., Tr. 1516, M. Purchase.

293 Tr. 2245-46, 2256, R. Galbraith; Tr. 2303, M. Brinson; Tr. 2369, F. Reid, Dept. of Consumer Affairs, Orange County, California.

294 R. 17 at 1238-40, Clorox Co.; R. 25 at 374-375, Clorox Co.; Tr. 954-55, R. Mallard.

295 R. 25 at 374-5, Clorox Co.

296 R. 17 at 1436, Clorox Co. The Home Testing Institute survey indicates that of 293 bleach users, 43.3% use it to "brighten colors" and 41.3% use it to "get clothes cleaner." In the Urbana-Champaign survey III, 84% of 161 homemakers use bleach to "make clothes whiter" and 53% use it to "make clothes brighter." In the Urbana-Champaign survey I, 97% of 46 users, employ bleach to "make clothes whiter" and 74% use it to make clothes "brighter".

297 Tr. 1299, J. Schapiro, Dixo Co.; R. 17 at 804, food broker; Tr. 1023-24, B. Feather, Textiles and Clothing Specialist, Missouri; Tr. 1516, M. Purchase; Tr. 1663-65, K. Geiken; Tr. 2323, M. Brinson.

298 Tr. 2593-94, W. Morck, Instructor, Family and Consumer Studies; Tr. 2802-03, National Consumers Congress.

299 R. 20 at 695, CLorox Co.; Tr. 1329-32, J. Schapiro, Dixo.

of "whiteness" obtained may not necessarily be related to its soil removing capabilities.[300] Thus, the record indicates some question as to whether bleach actually removes soil; rather, it may cover soil by discoloring (whitening) it.[301] Third, although chlorine bleach is an effective oxidizing agent, there are many types of soils that will not be removed by chlorine bleach.[302] One industry member agrees that on white items, bleach and detergent "clean" more thoroughly but disavows such cleaning ability on colors.[303] It is apparent that removal of soil accumulation is more obvious on white items than on dark or colored items.[304]

It is clearly the view of many bleach protagonists that failure to use bleach will result in premature downgrading of the item with corresponding loss of service life. "When bleach is not used in the wash, stains and soils start to build-up. This can make a garment . . . prematurely unsuitable for its intended use. The consumer will then downgrade the item or discard it altogether. . . ."[305] Presumably because of this and because of the various functions of bleach outlined supra, consumer use of bleach is substantial, ranging from 51% of 93 interviewed in the Urbana-Champaign survey I[306] to 80% of 161 interviewed in the Urbana-Champaign survey III.[307]

The Presiding Officer concludes that, "bleach serves as a stain and soil remover, a disinfectant and deodorizer . . . ."[308] Although staff agrees with these basic conclusions, they should be

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300 Tr. 1023-24, B. Feather.

301 Tr. 1329-1332, J. Schapiro, Dixo.

302 Tr. 2241-42, R. Galbraith.

303 Tr. 1742, AAMA.

304 Tr. 1525, M. Purchase.

305 R. 20 at 695, Clorox Co.; see Tr. 1023-24, B. Feather; Tr. 1540-41, M. Purchase; Tr. 2224, E. Kennedy, small retailer; Tr. 2241-42, R. Galbraith; Tr. 2139, B. Reed. Bleach will prolong the use of a blouse if it is stained or spotted, but it will not prolong its life.

306 Tr. 1497, J. Stone.

307 Tr. 1471-72, C. Warfield.

308 Presiding Officer's Report 80.

appropriately qualified in accordance with record information. Chlorine bleach may act as a disinfectant and deodorizer in the washing solution, the effectiveness of which varies with water temperature. Bleach can also act to prevent some fugitive dye transfer and some yellowing or staining of fabrics in the wash. Bleach augments the cleaning power of a detergent in certain circumstances. Many items appear "cleaner," "whiter" or "brighter" as a result of the proper use of bleach in a wash. Thus, the adverse effect of specific stains and soils on the appearance of such items is reduced. Because of the nature and color of most stains and soils, bleach has a greater positive effect on the appearance of white items then on colored items. Bleach can also function to improve the appearance of some items through the reduction of specific types of stain and soil accumulation when such an accumulation is present. Thus, bleach can make an item more acceptable to its user, depending upon its initial condition. Staff rejects any implication, however, that bleach, unaided by detergent, will remove all stains and all soils from all fabrics; the record does not support this conclusion. Bleach is still an additive to the washing solution.[309] Finally, staff concludes that bleach can act to extend the service life of an item, depending upon the degree to which bleach has a positive effect on its appearance and the individual tastes of its owner.

(c) History

Note 1 to the current rule considers the bleaching process as a mere example of one care procedure which may be necessary to the ordinary use and enjoyment of a specific article along with washing, drying, ironing, drycleaning, or "any other procedure[s] regularly used to maintain or care for a particular article," [emphasis added]. As previously noted in section C.4.a., of this chapter the current rule does not specifically designate which care procedures are necessary to the ordinary use and enjoyment of any particular item; such designation is left to the manufacturer to determine. Further, Note 1 to the current rule does not require all care procedures, now mentioned as examples, to be included in every care instruction. Claims in the record that the current rule requires bleaching instructions to be included in every care instruction are in staff's opinion erroneous.[310] Bleaching (as well as all other instructions mentioned) is considered to be one of many instructions which might, in certain circumstances, be deemed necessary to the ordinary use

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309 Tr. 1808, V. White, Assoc. Professor, Cornell University.

310 R. 16 at 38; R. 25 at 352-354, Clorox Co. Clorox claims that the current rule already requires affirmative disclosure of bleaching instructions in every washing instruction and thus assigns the burden of proving by substantial evidence the need for a change to those who oppose such inclusion.

and enjoyment of a particular article - not to all articles; as such, it is noted along with, "any other procedures" that might fall within this category. Therefore, the question of whether bleaching instructions should be included in any care instructions required by the current rule is left to be resolved by the manufacturer. Likewise, staff rejects any implication in the Presiding Officer's Report that the current rule mandates that bleaching instructions be included in every required care instruction.[311] In staff's opinion, such inclusion is optional, not mandatory.

Routine compliance checks and resulting staff investigations after promulgation of the current rule preliminarily revealed the occurrence of extensive "low labeling" in bleaching instructions (the use of extraordinarily cautious instructions when they are not really needed) in the form of the phrase "Do Not Bleach" or its equivalent on otherwise totally bleachable items, producing a rash of unnecessarily restrictive labels on much apparel covered by the Rule. This was confirmed by the Request for Comment as noted in the staff report.[312] Although not specifically prohibited in the language of the current rule, "low labeling" of any sort is strongly discouraged in its Statement of Basis and Purpose.[313] Additionally, Senator Warren G. Magnuson, Chairman of the Senate Commerce Committee, had indicated his strong disapproval of the practice which the Commission staff then accurately characterized as a violation of the, "spirit and intent of the Rule . . . but . . . not of the general language of the Rule."[314]

Specifically for the purpose of eliminating the practice of "low labeling" in this area, a provision requiring the expression of bleaching instructions in all washing instructions except where all types of commercially available bleaches can be used (in which case no positive bleaching instructions would be needed) was included in the proposed revised rule. Thus, section 423.5(a) (1)(iii) requires disclosure in all washing instructions of, "[u]se and type of bleach when not all commercially available bleaches can be used." The provision is designed to force manufacturers to reevaluate negative bleaching instructions and substitute positive instructions where possible, distinguishing between types of bleach (chlorine vs. non-chlorine) in appropriate circumstances. In situations where all bleaches can be used, however, (and "low labeling" would presumably not be a significant problem), manufacturers retain discretion

311 See Presiding Officer's Report 80.

312 Staff Report 26.

313 Statement, Chapter VI. D. 1.

314 R. 20 at 732-33, 10/28/75 Cong. Rec. S18823-4.

to determine whether bleach is necessary to the ordinary use and enjoyment of the labeled item and, therefore, should be included in care instructions under the general rule.

(d) Analysis of the Record

The record indicates overwhelmingly that the frequency of negative bleaching instructions on otherwise "bleachable"[315] items is great. Clorox Company maintains that

> bleach warnings appear on approximately half the washable apparel being sold at retail. Examination of representative samples of this merchandise indicate[s] that approximately three quarters of it could, in fact, be safely bleached with a liquid chlorine bleach and virtually 100% with a dry, non-chlorine bleach.[316]

Several other commentors arrive at the same conclusion.[317] The Salmon survey finds from examinations of 2500 items produced by 122 apparel manufacturers, that 41.5% of such items contain "Do Not Bleach" instructions on items which are bleachable in non-chlorine bleach.[318] Consumers and consumer representatives support this finding: "There are a number of garments on the market which are labeled with care instructions such as 'washable, do not bleach' when in fact most of the fabrics can be bleached in a non-chlorine bleach without harm to the fabric."[319] Others describe it as occurring, "on more items than not . . ."[320] or on "many."[321] Even the industry acknowledges that, "some instances of 'low-labeling' have occurred in the past . . ." where negative bleaching instructions have appeared on otherwise bleachable items.[322]

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315 For purposes of this report, "bleachable" is defined as able to be bleached without damage or substantial impairment by <u>either</u> chlorine <u>or</u> non-chlorine bleaches.

316 R. 17 at 473, Clorox Co.

317 R. 17 at 765, James Austin Co.; R. 17 at 780, 781, 788, 791, 794, 804, various industry comments.

318 R. 17 at 1234, the Salmon survey.

319 Tr. 2130, B. Reed, Better Business Bureau, Milwaukee.

320 Tr. 1917, K. Stanton, Dept. of Consumer Affairs, Mount Holly, N.J.

321 R. 18 at 2518, consumer.

322 R. 17 at 1046, AAMA.

These general characterizations are supported by specific instances. One consumer regularly uses liquid bleach on infant's clothing (often labeled "Do Not Bleach") with satisfactory results:

> It appears that many manufacturers routinely put information on care labels in a way that will protect them against liability but will ultimately be of little use to the consumer. The colors and fabrics are generally pretty sturdy today and the manufacturer should at least check this out and pass the information on to consumers.[323]

A child's white shirt[324] and a white 100% cotton towel[325] on which bleach was used without adverse effect were labeled "Do Not Bleach." Consumer reaction to this phenomenon is decidedly negative, indicating that such instructions, if inaccurate, deprive consumers of the convenience and benefits of bleach[326] and force them to proceed on a trial and error basis.[327] Some dutifully obey the warning to their expressed disadvantage even though they know the item may be bleachable.[328] Some bleach anyway, hoping for the best.[329] In summary,

> [l]ow labeling further deprives the consumer of beneficial laundering methods and products. In particular, labeling instructions specifying 'do not bleach' or 'no chlorine bleach' are frequently found on goods which could safely be bleached and could actually benefit from bleaching by removing stains, disinfecting and improving color.[330]

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323 R. 18 at 335-337, consumer.

324 R. 18 at 2525, consumer.

325 R. 20 at 642, S. Goldwasser, consultant.

326 R. 18 at 2508, 2513, consumers.

327 R. 18 at 2518, consumer.

328 R. 18 at 2403, consumer; R. 17 at 1235, Clorox Co. Magazine article advises consumers to obey the care label " . . . to be on the safe side . . . ."

329 Tr. 1917, K. Stanton.

330 Tr. 1912-14, K. Stanton.

Clorox Company claims that the result of such widespread "low labeling" is a multitude of confused and misled consumers, aside from the fact that the bleach manufacturing industry is suffering.[331] Senator Magnuson agrees.[332]

The industry responds with a few reasons for the prevalence of the practice. First, consumers cannot really be trusted. "But sad experience teaches that a large number of consumers will pour the bleach full strength onto items and then complain they don't stand up, so those involved, to save themselves problems, often prefer to say 'do not bleach'."[333] Second, industry has not kept pace with the development of non-chlorine bleaches. Until a few years ago, "bleach" meant "chlorine bleach" and "do not bleach" meant "do not chlorine bleach." Therefore, it is unfair to expect industry to change its labels "overnight."[334] Finally, it is easier and less costly for industries which sell items which are both bleachable and non-bleachable to label all such items with negative bleaching instructions.[335]

There is essentially no dispute in the record that the frequency of "low-labeling" with respect to bleach is great and staff so concludes. The Presiding Officer agrees.[336] Both the Clorox Company and the American Apparel Manufacturers Association propose that the final Rule contain an express provision prohibiting the practice.[337] A discussion of this proposal will follow a consideration of other pertinent remedial aspects of the bleach problem.

While it is acknowledged that bleach has the potential for extending the useful life of some items, staff discerns another reason in the record for industry reluctance to provide positive bleaching instructions where applicable. The record contains evidence that chlorine bleach can have a deleterious effect in some circumstances. In contrast to its advantages,

> the most effective bleaches also have the potential for deteriorating some fibers and changing colors.

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331 R. 17 at 1233-36, Clorox Co.

332 R. 20 at 732, 10/28/75, Cong. Rec. S18823-4.

333 R. 17 at 119, B. Norwick, J. Bancroft & Sons.

334 Tr. 170 AMA.

335 Tr. 1147, Linen Trade Association. This is done for tablecloths.

336 Presiding Officer's Report 80.

337 R. 25 at 382-83, Clorox Co.; Tr. 1735, AAMA.

> In many cases, the consumer has no idea that the garment might have lasted longer if [he/she] had used more care in bleaching.
>
> The other parts of laundering other than bleaching do not have opportunities for as much damage per wash as the bleaching does.[338]

The extent of this potential for damage depends upon the bleach in question and the way it is used.[339] The culprit is usually liquid chlorine bleach and damage is usually restricted to either color removal or fiber degradation with resulting strength impairment[340] or both. Sometimes it can be caused by the lack of a warning not to bleach clearly unbleachable items.[341] Yellowing of white items often occurs presumably because of chlorine retention by permanent press finishes.[342] Misuse or mishandling of chlorine bleach on otherwise bleachable items on a one-time basis can also cause adverse changes in the appearance of the item,[343] sometimes in the form of "bleached-out spots."[344] Aside from color changes which are usually immediately obvious, the record contains evidence of the possibility of cumulative degradation of certain fibers and fading of color with repeated use of chlorine bleach over a substantial period of time. Such degradation might not be apparent on a short-term basis.[345] "It is a known fact that most natural fibers including cotton and some man-made fibers are injured by strong

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338 Tr. 1516, 1537, 1538, M. Purchase, Professor, Cornell University.

339 Tr. 1518, M. Purchase.

340 R. 17 at 1175, Ballet Fabrics, Inc. ("From a technical point of view, I am against any kind of chlorine bleach since it is detrimental to most synthetic fibers both from color removal and strength impairment . . . ").

341 R. 17 at 421, American Home Appliance Manufacturers.

342 R. 18 at 423, consumer (white blouse); R. 19 at 8, Textile Analysis Service, University of Alberta (labcoats); Tr. 1148, Linen Trade Association; Tr. 2225, E. Kennedy, small retailer.

343 R. 20 at 730, Professor, Clothing and Textiles, Texas Tech Univ.; R. 23 at 334, National Association of Laundering and Cleaning Council.

344 Tr. 1706, AAMA.

345 Tr. 949-50, R. Mallard, Fairfax County; R. 17 at 1630, Clorox shareholder.

chlorine solutions."[346] This fact is partially acknowledged by the Clorox Company.[347] Cordelan, of which many children's garments are made, is a good example.[348] Although oxygen bleaches are relatively harmless in this regard, chlorine bleaches can injure both pervious and cellulosic fibers.[349] Impairment of the strength of some items can be the inevitable result. Whereas merely washing a 100% cotton fabric over a period of time can produce some loss of strength, washing such a fabric over the same period of time with chlorine bleach can produce considerably greater strength loss.[350] While there are many dyes and finishes that are resistant to chlorine bleach, some are not after prolonged use.[351] The color and integrity of resin treated interlinings will, "dissipate rapidly if repeatedly treated with a liquid chlorine bleach even though the color of the outer fabric would be unaffected."[352] Additionally, the Urbana-Champaign survey III indicates that, of the seventy-three consumers who state that they have experienced problems with the use of bleach, approximately one-quarter state that bleach causes fabrics to wear out more quickly.[353]

The overall effect of the repeated use of chlorine bleach may be a substantial net loss of service life for certain items. "[U]sing [chlorine bleach] once is not terribly damaging to the item, but using it cumulatively over a long period of time can be

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346 Tr. 2285, M. Brinson.

347 R. 20 at 704, Clorox Co. ("100% cotton, 100% rayon, some acetate").

348 Tr. 1001, B. Feather, Clothing Specialist, CES, Univ. of Missouri.

349 Tr. 2238-39, R. Galbraith, Dean, School of Home Economics, Auburn Univ.

350 Tr. 1707-08, AAMA. A 100% cotton fabric was subjected to ten washings with and without chlorine bleach according to standardized test methods prescribed by the American Association of Textile Chemists and Colorists. Washing alone caused strength loss of 23.7% in the warp direction and 17.5% in the filling direction. Washing with chlorine bleach caused strength loss of 41.9% in the warp direction and 30.9% in the filling direction.

351 Id.; Tr. 2238-39, R. Galbraith (these include flame retardant and durable press finishes).

352 Tr. 1709, AAMA.

353 Tr. 1468-69, Urbana-Champaign survey III.

damaging and decrease the service life of the garment and therefore, impair it to the damage of the consumer."[354] Some industry members agree.[355] On the other hand, impairment, to the extent that it occurs, happens in a limited number of instances[356] and may be outweighed by the beneficial effects of bleach.[357] The repeated use of chlorine bleach is obviously not harmful to all items.[358] Further, some local consumer affairs departments have not received any complaints involving the use or misuse of bleach.[359] Clorox Company states that it could not have remained in business for 55 years selling only liquid chlorine bleach if bleach misuse (or use) were a significant problem.[360]

Despite these qualifications, the record is clear that the potential for damage to certain fibers or colors due to the misuse or repeated "proper" use of chlorine bleach exists. At any one point in time, the beneficial effects of chlorine bleach must be weighed against such potential and a determination must be made as to what degree of injury is acceptable and what is not. To a certain extent, this may depend on the values and priorities of the owner of the item at issue,[361] assuming full knowledge of the alternatives involved. A discussion of the effect of the non-disclosure of these alternatives and the extent to which they should be disclosed follows.

It is the contention of the Clorox Company that, along with the plethora of negative bleaching instructions, there are an equal or greater amount of care instructions containing no bleaching information whatsoever.[362] Clorox further contends that the

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354 Tr. 2238, 2255, R. Galbraith. Expected lifetimes of garments may include 50-100 washes.

355 Tr. 1708, 1710, AAMA; Tr. 1843, NRMA.

356 R. 25 at 365, Clorox Co.

357 R. 20 at 704, Clorox Co.

358 Tr. 1856, NRMA.

359 Tr. 942, R. Mallard, Fairfax County; Tr. 2503-04, K. Gragg, Dept. of Consumer Affairs, Ventura County, Cal.

360 R. 25 at 365, Clorox Co.

361 Tr. 1520, M. Purchase; Tr. 1742-43, AAMA.

362 R. 17 at 694, Clorox Co. (52% of all care labels make no reference to bleach).

absence of such instructions, combined with other factors, has resulted in total confusion on the part of the consumer about the use of bleach.[363] The weight of the record supports this conclusion. Studies and surveys concerned with the issue of silence in this area unanimously indicate real consumer uncertainty. The Home Testing Institute survey reveals that only 8.8% of 499 respondents believe that liquid chlorine bleach can be used without substantial impairment on an otherwise 100% washable item. Further, only 47% believe that a non-chlorine bleach can be employed in the same situation. Finally, 34% believe that silence on the issue has a negative implication.[364] The record contains some corroboration of these results.[365] The National Consumers Congress argues that, "consumer surveys show that there is a substantial difference of opinion among consumers as to whether any article labeled washable can be bleached. The great variety of fabrics recently introduced on the market contributes to consumers' confusion about proper care methods."[366]

Consumer surveys directed at the question of what bleaching information is silently communicated to consumers through other more general care instructions reveal the same result. In a nationwide survey conducted for the Clorox Company by the Marketing and Research Counselors, Inc. in April, 1976 (hereinafter the MARC survey), only 21% of 301 respondents believe the phrase "machine wash" to imply bleachability, 20% believe the phrase "home launder" to imply bleachability and 7% believe the phrase "hand wash" to imply bleachability. Correspondingly higher percentages (66%, 64%, and 86% respectively) infer from these phrases that no bleach should be used on items so labeled.[367] An informal survey conducted of sixty consumer-purchasers in Fort Worth, Texas reveals that a "machine wash" instruction impliedly states "no bleach" to 22 of 26 consumers responding.[368] Questioned about the meaning of the term "machine wash" and "hand wash", 79.5% and 91.1% respectively of 699 respondents in the BSSR survey state that such phrases do <u>not</u> mean

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363 R. 17 at 1218, Clorox Co.

364 R. 17 at 473, 1230-31, The Home Testing Institute Survey.

365 R. 17 at 725, Class, University of Puget Sound.

366 Tr. 2743, NCC.

367 R. 17 at 1461, Marketing and Research Counselors, Inc., "Bleachability Terminology Study" (April 1976) (hereinafter the MARC survey).

368 Tr. 2813, Taylor, Ruth, "Selected Aspects of Care Labeling of Piece Goods (Fall, 1976). (Hereinafter the Fort Worth survey).

that any kind of bleach can be used.[369] These studies are supported by individual comments.[370] Consumers use varying standards in making these assumptions. Record evidence indicates that in the absence of bleaching instructions, consumers will assume absolutely that colored items are not bleachable by any bleach.[371] Some industry members proceed on the basis of this assumption. Levi-Strauss omits bleaching instructions on its colored fabrics because the company is confident that consumers will not bleach them with any bleach.[372] Montgomery Ward agrees.[373] Some individuals make the determination on the basis of whether the item "looks sturdy."[374] Others may distinguish between types of bleach in deciding what to do, i.e., no chlorine bleach should be used under any circumstances but non-chlorine bleaches "might" be safely used.[375]

Viewed in its most favorable light, the absence of bleaching instructions clearly produces a state of confusion regarding bleach use.[376] Consumers will, "feel that this has not been tested against bleach and that it is their complete responsibility as to whether . . . they bleach or not."[377]

> There are a substantial number of consumers who assume that accepted bleaching methods can be used . . . . In most cases these are consumers who have some knowledge of fabrics and how to care for them, so they will take their chances. Still, there are others who assume that . . . the garment should not be bleached.[378]

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369 Tr. 2750, NCC.

370 Tr. 2504-05, K. Gragg (confusion); Tr. 2529, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County, Cal. (guesswork); Tr. 2595, W. Morck, Instructor, Grossmont College, Cal. (no bleach).

371 R. 17 at 502, J. Schapiro, Dixo Co.

372 R. 17 at 384, Levi-Strauss.

373 R. 17 at 887, Montgomery Ward.

374 Tr. 2361, 2366, 2370, F. Reid, Dept. of Consumer Affairs, Orange County, Cal.

375 Tr. 953, R. Mallard, Fairfax County; Tr. 974-75, T. Ballew, Merchandise Manager, Fabri-Centers of America.

376 Tr. 2225, E. Kennedy, small retailer.

377 Tr. 1530-31, M. Purchase.

378 Tr. 2130-31, 2137, B. Reed (50-50 split).

It is a strange coincidence that while many consumers and consumer groups assume that silence has a negative implication in this area, a few academic experts and many industry members assume the contrary.[379] Thus, Dr. Wayne St. John asserts that, in the absence of bleaching instructions, consumers will assume that any bleaching method may be used in contradiction to his own informal study in which only 35% of consumers made that assumption.[380] The American Textile Manufacturers Institute indulges in the same assumption, attaching significance to the absence of a warning against bleach use.[381] Dr. Ruth Galbraith states that consumers would have the "right" to make such an assumption but does not state whether they, in fact, do.[382] The rebuttal of Clorox Company contains its response to these arguments and staff concurs with it.[383] The record is clear that, in the absence of bleaching instructions in a washing instruction, consumers either generally assume that no bleach can be used or are totally confused about the issue. The Presiding Officer agrees, at least, in part.[384]

Although the record is clear as to the assumptions made by consumers in the absence of bleaching instructions, the question remains of the extent to which consumers suffer economic injury as a result. The record is decidedly inconclusive on this issue depending upon the commentor's view of the true function of bleach. Clorox Company as well as a Clorox supporter believes that such negative assumptions effectively deprive consumers of the benefits of bleach.[385] Clorox first maintains that the consumer will lose the "social" benefit of having an additional worthwhile option of care from which to choose, thus denigrating their ability to select appropriate regular care for an item. It is the position of Clorox that since consumers want bleaching instructions on care labels, they should have them (consumer preferences in this area are discussed below). Economic benefits derived from the use of bleach constitute the company's second argument which cites the elimination of stain and soil build-up with resulting increase in service life. Finally, Clorox alludes to the disinfecting properties of chlorine

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379 R. 17 at 1627, Association of General Merchandise Chains.

380 Tr. 1588-89, 1591, 1594, Dr. W. St. John, Professor, Southern Illinois Univ.

381 Tr. 1946, 1949, 1951, ATMI. (The Institute has no empirical data to support it).

382 Tr. 2249, R. Galbraith.

383 R. 25 at 357-363, Clorox Co.

384 Presiding Officer's Report 80.

385 R. 16 at 37, Clorox Co.; R. 17 at 794, industry comment.

bleach which eliminate the need for washing in hot water thus conserving energy while maintaining good health.[386] These points are supported in principle by several consumer representatives.[387] Clorox concludes, therefore, that bleaching instructions should be considered equal in importance to washing and drying procedures and should be required to be included in every washing instruction without exception.

On the contrary, the record contains several varied viewpoints which indicate that consumers suffer no damage as a result of such negative assumptions.[388] Montgomery Ward states that the number of complaints involving damage due to the improper use of bleach is virtually nil and will continue to be such under the present practice of silence except when a warning is needed.[389] While acknowledging the "lost option" argument, one consumer representative adds, on cross-examination, that consumers may also suffer lost options to varying extents when the use of fabric softeners, starches and spot cleaning agents is not addressed in care instructions.[390] Dr. Ruth Galbraith states that the consumer will not be damaged by the lack of bleaching instructions but very well might be in their presence (unless they are very detailed), citing the cumulative impairment which could potentially result from the repeated use of chlorine bleach previously discussed.[391]

As the record contains arguments on both sides, staff must resolve this issue. The Presiding Officer tends to support the argument of the Clorox Company.[392] First, there is no recorded evidence aside from the assertions of Clorox, that the use of bleach will, in fact, help conserve energy. Without more specific data, one cannot predict with certainty that consumers, in practice, will abandon the use of hot water in a wash and substitute the use of chlorine bleach. Staff, therefore, must accord little weight to this argument. Second, it is true that the consumer

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386 R. 17 at 1240-44, Clorox Co.

387 Tr. 1531, M. Purchase; Tr. 2370, F. Reid; Tr. 2594, W. Morck; Tr. 2815, R. Taylor, Clothing and Textiles, Texas Christian Univ.

388 Tr. 950, R. Mallard, Fairfax County, for example.

389 R. 17 at 887, Montgomery Ward.

390 Tr. 955-56, R. Mallard.

391 Tr. 2253, R. Galbraith.

392 Presiding Officer's Report 80.

may be effectively deprived of the benefits of bleach, in terms of whiteness and brightness, if such erroneous assumptions are permitted to continue. This argument is partially offset, however, by evidence of corresponding cumulative damage suffered in some cases which would presumably be eliminated if the consumer chooses not to use chlorine bleach. Finally, staff accepts the fact that a viable care option, in effect, will be lost if a consumer desires to use bleach in a wash but does not because of the absence of instructions addressing the issue. Staff realizes, however, that this argument can be used to justify inclusion of any care procedure, no matter how valuable or necessary, in care instructions required under the Rule. Therefore, staff concludes that while negative or erroneous assumptions about the use of bleach may cause consumers to be deprived of the benefits of bleach, the extent of consumer injury caused by such deprivation depends upon the value of the benefits lost and similarly the degree to which such benefits are really needed to achieve a successful result, i.e., whether the use of bleach in a washing procedure is necessary to the ordinary use and enjoyment of articles covered by the Rule for which washing is prescribed. Adherence to this principle (expressed generally in both the current and proposed revised rules) is crucial to avoid mandating a disclosure which is simply not needed to prevent potential economic or other injury to the consumer and which in all probability would not survive a cost/benefit analysis. It is to this subject that staff now proceeds.

By definition, to the extent bleaching action has the potential of improving the overall appearance of an item, bleaching constitutes a "regular care procedure" under the general rule.[393] The Presiding Officer has so concluded[394] and staff concurs to the degree stated above. On the other hand, a determination of the necessity of bleach in a washing procedure is more elusive. Clearly a soiled article which is not drycleanable, must, at present, be periodically washed in some manner to render it acceptable to the owner on a continuous basis. Once it is washed, it must be dried in some manner for continued acceptability. In circumstances where an item is severely wrinkled or otherwise distorted as a result of washing, it may often have to be ironed for the same purpose. The question remains: must such an article be bleached in some manner as a routine part of the washing procedure in order to render it acceptable and able to be ordinarily used and enjoyed by its owner?

The record contains abundant evidence on these issues. The Clorox Company, as well as other commentors, maintains that bleach is necessary to the ordinary use and enjoyment of all washable articles. The long history of bleach use, which predates soaps and

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393 See definition of "regular care," Statement Chapter VI. D. 2.

394 Presiding Officer's Report 80.

may be effectively deprived of the benefits of bleach, in terms of whiteness and brightness, if such erroneous assumptions are permitted to continue. This argument is partially offset, however, by evidence of corresponding cumulative damage suffered in some cases which would presumably be eliminated if the consumer chooses not to use chlorine bleach. Finally, staff accepts the fact that a viable care option, in effect, will be lost if a consumer desires to use bleach in a wash but does not because of the absence of instructions addressing the issue. Staff realizes, however, that this argument can be used to justify inclusion of any care procedure, no matter how valuable or necessary, in care instructions required under the Rule. Therefore, staff concludes that while negative or erroneous assumptions about the use of bleach may cause consumers to be deprived of the benefits of bleach, the extent of consumer injury caused by such deprivation depends upon the value of the benefits lost and similarly the degree to which such benefits are really needed to achieve a successful result, i.e., whether the use of bleach in a washing procedure is necessary to the ordinary use and enjoyment of articles covered by the Rule for which washing is prescribed. Adherence to this principle (expressed generally in both the current and proposed revised rules) is crucial to avoid mandating a disclosure which is simply not needed to prevent potential economic or other injury to the consumer and which in all probability would not survive a cost/benefit analysis. It is to this subject that staff now proceeds.

By definition, to the extent bleaching action has the potential of improving the overall appearance of an item, bleaching constitutes a "regular care procedure" under the general rule.[393] The Presiding Officer has so concluded[394] and staff concurs to the degree stated above. On the other hand, a determination of the necessity of bleach in a washing procedure is more elusive. Clearly a soiled article which is not drycleanable, must, at present, be periodically washed in some manner to render it acceptable to the owner on a continuous basis. Once it is washed, it must be dried in some manner for continued acceptability. In circumstances where an item is severely wrinkled or otherwise distorted as a result of washing, it may often have to be ironed for the same purpose. The question remains: must such an article be bleached in some manner as a routine part of the washing procedure in order to render it acceptable and able to be ordinarily used and enjoyed by its owner?

The record contains abundant evidence on these issues. The Clorox Company, as well as other commentors, maintains that bleach is necessary to the ordinary use and enjoyment of all washable articles. The long history of bleach use, which predates soaps and

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393 See definition of "regular care," Statement Chapter VI. D. 2.

394 Presiding Officer's Report 80.

detergents, is cited as one factor supporting this argument. "The centuries of development and use of bleach show it to be an age-old integral part of the home laundering process. . . ."[395] Consumer practices and viewpoints constitute a second argument. Clorox Company's marketing data indicates that 90% of domestic households use bleach at some point in laundering, 69% of such households use bleach weekly and almost one-third of all washloads are bleached.[396] The Walker survey indicates that of 152 consumer respondents, 73% consider bleaching information "very important" while 22% consider it "somewhat important."[397] Further, Clorox maintains that the current rule treats the bleaching procedure as necessary to all washing procedures.[398] Finally, Clorox contends that since the bleaching procedure is already included in the definitions of "machine washing" and "home laundering" in the glossary developed by the American Society for Testing and Materials (the adoption of which is suggested in the proposed revised rule), the industry equates bleaching with machine washing. Clorox notes that other additives, such as fabric softeners and "pre-soaks" are not included in such definitions.[399] There is a degree of consumer support in the record for these positions. Some consumers state that detergents alone are simply not sufficient for cleaning baby clothes and removing some stains.[400] One consumer representative asserts that while bleaching is less important than washing or drying, it is more important than other additives such as fabric softeners or starches and is part of the washing process.[401] Witness M. Purchase confirms that liquid chlorine bleach is used heavily by consumers to the extent of approximately 1 1/2 cups per week (1 1/2 loads of clothes/week) and that 20-25% of all washloads involve use of liquid chlorine bleach.[402]

A substantial part of the industry as well as some consumer or consumer representatives, however, disagree with the Clorox position. Bleaching is characterized as an "optional," not necessary, procedure.

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395 R. 17 at 1223-1225, Clorox Co.

396 R. 17 at 1225, Clorox Co.

397 R. 17 at 1226, the Walker survey.

398 R. 17 at 1228-29, Clorox Co.

399 R. 17 at 1229-30, Clorox Co.

400 R. 18 at 336, consumer; R. 20 at 725, consumer.

401 Tr. 947-48, 952-53, R. Mallard.

402 Tr. 1516-17, M. Purchase.

> Bleaching is an optional care [procedure] which the consumer may or may not choose to use according to his or her own desires, and is not a procedure required for the regular care and maintenance of a textile product. There are many other optional care procedures and many other such commercial products designed for such use which consumers may elect ot use in addition to the regular care procedures of washing with a soap or detergent and utilizing a drying procedure. For example, the consumer may elect to use pre-soak products, washer or dryer-type softeners, water conditioners, boosters, brighteners, bluing agents, starch, etc., even though these products are not 'maintenance procedures necessary to the ordinary use and enjoyment' of textile products.[403]

It is predicted that the Commission will be inundated with requests from manufacturers of "optional" additives to require mandatory disclosure of the use of their products if bleaching information is so treated.[404] The substance of this contention is reiterated several times in the record.[405] The conclusion is that bleaching is not a procedure necessary to care for and maintain all washable garments.[406] Whether or not it is needed is the consumer's decision.[407] The position of the American Society for Testing and Materials is that, although the majority of individuals who wash at one time or another use bleach, some continue to use it frequently; others discontinue it by choice.[408] The American Apparel Manufacturers Association believes that, "washing requires three things - a detergent, water and agitation. . . ." All other ingredients in the wash are additives and these are not necessary in the context of the Rule.[409] A textile chemist boldly asserts that, since regular use of chlorine bleach may cause consumer injury through cumulative damage to the item, bleaching is not as necessary or useful as Clorox wants

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403 R. 17 at 524-526, Sears, Roebuck & Co.

404 Id.

405 R. 17 at 1045-46, AAMA; Tr. 1704, AAMA.

406 R. 16 at 42, AAMA; R. 16 at 160, NRMA; R. 17 at 1202, J. C. Penney; Tr. 1837, 1856-57, NRMA.

407 Tr. 1588, Dr. W. St. John.

408 Tr. 1566, ASTM.

409 Tr. 1740, AAMA.

it to be.[410] It is her position that 70% of consumers frequently but unnecessarily use chlorine bleach in white washes. She attributes such use to the encouragement they receive from the labeling on bleach bottles.[411]

Clorox's rebuttal concentrates on these "opposition" commentors. First, it cites the lack of evidence on the record for their assertions. Second, it claims that cross-examination reveals their arguments to be contradictory and, in fact, caused some to reverse their positions. Third, it claims that the weight of the record supports the position advocated by Clorox. Fourth, it cites record evidence which indicates that the additional cost of labels containing bleaching as well as other required instructions is negligible. Finally, it accords little weight to claims that bleaching is an optional, rather than a necessary procedure, since no party has urged the inclusion of other additives in instructions required under the Rule as was predicted by these commentors.[412]

A few consumer representatives characterize bleach as necessary for some items or in some circumstances but not in others. Bleach may be necessary and normally used for more durable goods but not "fine washables."[413] Bleach is needed only when the elimination of particularly difficult stains is paramount and not as a routine procedure.[414] In order to get the benefits from bleach, it is necessary only to bleach periodically, i.e., every ten or fifteen washes, over a long period of time.[415] Other comments express varying doubts as to whether the use of bleach is necessary in every wash to render an item acceptable. "I think that with . . . proper water temperature, sufficient detergent and proper sorting, proper wash cycle, that clothing can be maintained with proper care. . . . I do not think bleaching is necessary in every wash cycle."[416] Whether or not bleaching is necessary for acceptability may depend upon the color of the item,[417] or

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410 Tr. 2238, 2250, R. Galbraith.

411 Tr. 2242, R. Galbraith.

412 R. 25 at 367-382, Clorox Co.

413 Tr. 1916, K. Stanton.

414 Tr. 2504, K. Gragg.

415 Tr. 2255-56, R. Galbraith.

416 Tr. 1016, B. Feather, R. 17 at 533, consumer (characterizes the necessity of bleach as propaganda disseminated by bleach manufacturers).

417 R. 17 at 384, Levi-Strauss.

its condition at the point of care.[418] Therefore, bleach may be necessary to eliminate the appearance of soil build-up only occasionally. Soil build-up, "is the kind of buildup that you probably would not object to after one . . . wash [or] after ten . . . washes. . . ." Eventually, depending on the item, the necessity of bleach becomes more apparent. Nevertheless, "[t]here are many things that do not need bleaching regularly. . . ." While the consumer may rely on bleach to "finish the job," Dr. Mary Purchase does not "want to be in the position of telling the consumer to bleach every load of clothes."[419] If bleachability is universally disclosed, some will bleach every time they wash when in fact there is no ground-in-soil and bleaching is not needed.[420] Thus, if it is used, it should not be used in every wash but periodically after several washes without it.[421]

There is also some concern expressed in the record about consumers' frequent and/or indiscriminate use of chlorine bleach[422] and the cumulative damage which could be caused. For example, "[i]n the first washing, hidden dirt would be removed but continued usage would without a doubt leave a faded [colored] shirt.[423] Further, "[one does not] use bleach in every wash. [One] wouldn't want to. [One] would ruin a lot of things if one used it in every wash."[424] Dr. Ruth Galbraith is adamant in warning about cumulative and catastrophic damage which could be caused with frequent use, citing the tendency of the average American to over-bleach and rejecting any claim that it is necessary in every wash.[425] Witness M. Brinson agrees stating that in certain cases, it will accelerate wear abrasion and breakdown of certain fibers. "[T]here are times when it is necessary to use bleach but there are times when [one] can do very

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418 Tr. 1610-11, Dr. W. St. John The witness states that a number of people do not allow items to get soiled enough to necessitate bleach. Its basic function is to whiten. Its effect on color is less; Tr. 2504, K. Gragg (uses it only to remove stains).

419 Tr. 1526-27, 1539, M. Purchase; accord, see Tr. 1812, V. White, Assoc. Professor, Cornell Univ.; Tr. 1589, Dr. W. St. John.

420 Tr. 2138, B. Reed.

421 Tr. 2384, F. Reid.

422 R. 17 at 244, American Home Economics Association.

423 R. 17 at 1630, Clorox stockholder.

424 Tr. 2226, E. Kennedy.

425 Tr. 2238, 2242, 2245, 2255, R. Galbraith.

nicely without it and survive quite well."[426] While the American Home Appliance Association believes bleaching instructions are desirable,[427] other positive statements which address this issue are always qualified in some way, i.e., "[b]leach, in whatever form, is often an essential, and certainly a useful and desirable laundry supply item,"[428] (emphasis added). Thus, there are only some products where regular use of bleach is necessary.[429]

Based on the evidence previously cited, staff has arrived at the following conclusions on the issue of the necessity of the use of bleach in a washing procedure:

a) Bleaching is a regular care procedure under the proposed revised rule;

b) Bleaching is necessary for the ordinary use and enjoyment of some washable articles in some circumstances; however, it is not necessary for the ordinary use and enjoyment of all washable articles in all circumstances;

c) It is not necessary to the ordinary use and enjoyment of washable and otherwise bleachable articles covered by the Rule that bleach be used in every washing procedure to which the article is subjected in order to render it acceptable to its users. The frequency of such use should depend upon the nature of the article, its condition at the point of care and the type of bleach under consideration. Chlorine bleach can, in fact, have a deleterious effect on some items over a period of time if used too frequently.

Staff acknowledges that bleach is popular with consumers and can serve a valuable function in the washing procedure. The weight of the record clearly supports the proposition that bleach can achieve certain results that water, detergent and agitation alone cannot.

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426 Tr. 2317, M. Brinson, Assoc. Professor, Buffalo State College.

427 R. 17 at 421, American Home Appliance Manufacturers.

428 R. 23 at 334, National Automatic Laundry and Cleaning Council.

429 Tr. 1955, ATMI.

The record, however, does not support the contention that washing without bleaching will, in all circumstances, cause an otherwise bleachable item to be unacceptable to its user. Bleaching is not, as Clorox Company would suggest, a required component of every washing procedure. Thus, failure to use bleach will not in all circumstances cause economic injury to the consumer by depriving him/her of the use of the item and can, in some limited circumstances, prevent cumulative damage to the item. To this extent, bleaching is not necessary to the ordinary use and enjoyment of all washable items covered by the Rule.

The Presiding Officer concludes that, "bleaching is a regular care and maintenance procedure necessary (not optional) to the ordinary use and enjoyment of many products" (emphasis added).[430] By implication, the Presiding Officer indicates that bleaching is not essential for all products. Staff would qualify this conclusion still further by limiting such necessity to those products where circumstances dictate that washing alone will be insufficient to render such products acceptable to their users. These circumstances do not necessarily arise whenever a bleachable article is washed, but occur only under certain conditions in the life of a product, e.g., when excessive soil build-up is present. Only under these conditions might the consumer suffer economic injury as a result of an erroneous assumption that bleach cannot be used. Whether such conditions occur depends almost entirely upon the type of use to which the product is subjected. To the extent that the consumer uses bleach when these conditions are not present, such use is unnecessary and may be characterized as wasteful of the consumer's resources and, in the case of chlorine bleach, potentially injurious to some products on a cumulative basis.

Given these conclusions, two questions remain: first, to what extent should bleaching instructions be disclosed in a washing instruction?; second, what effect will such disclosure have on the consumer's use of bleach? A substantial part of both the written comments and the testimony indicate a desire for a disclosure of bleaching instructions in every washing instruction regardless of circumstances dictating the need for bleach.[431] Among the reasons

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430 Presiding Officer's Report 81.

431 R. 17 at 157, Applebaum Tag Co.; R. 17 at 752-765, 774-784, 785-787, 790, 793-796, 798-801, 803, 858-881, consumers; R. 17 at 1213, Clorox Co.; R. 17 at 1311-1313, 1319-20, 1323-324, 1327-1329, 1331, 1338-39, 1341, 1343, Clorox solicited consumer letters; R. 17 at 1325, Dept. of Clothing and Textiles, Florida State University; R. 17 at 1326, Extension Agent, CES, Georgia; R. 18 at 385, 2414, consumers; R. 18 at 173, Extension Agent, CES, Arkansas; Tr. 944, 948, R. Mallard; Tr. 1918, K. Stanton; Tr. 2369, 2388, F. Reid; Tr. 2505-06 K. Gragg; Tr. 2594-95, 2610, W. Morck; Tr. 2744, 2775-76, NCC; R. 25 at 354-356, Clorox Co.

given are that such disclosure would reduce existing confusion about the bleaching procedure in general[432] as well as about the use of chlorine bleach in particular.

> From experience with varied clientele, I feel others prefer to know if a garment can safely be bleached or not be bleached. Behavioral changes do not keep pace with textile technology; often there are misconceptions about the use of bleach. Frequently, it is thought bleach will weaken any fiber when that may not be the case.[433]

It cannot be presumed that consumers know whether and how to use bleach.[434] Witness Kennedy argues that since bleaching procedures are disclosed in Canada and Europe and the proper use of bleach may extend the life expectancy of an item, full bleaching information should be disclosed.[435] The vast majority of consumer comments on the record favor unconditional disclosure of bleaching instructions. The substantiality of the record in this regard is documented by Clorox in its rebuttal.[436]

Others favor disclosure only in cases where not all bleaches can be used (the proposed revised rule)[437] or in other particular situations. Because of the negative assumptions consumers make about bleaching colored items, some believe that disclosure should be required only on colored items[438] or on colored durable press items.[439] If all bleaches can be used, the definition of machine wash in the proposed glossary (which includes bleaching procedures) may be sufficient.[440] Bleaching instructions may only be needed

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432 R. 17 at 1315, Extension Agent, CES, Florida.

433 Tr. 1001, B. Feather.

434 Tr. 2187-88, E. Kennedy.

435 Tr. 2224-25, 2227, 2230, E. Kennedy.

436 R. 25 at 354-56, Clorox Co.

437 R. 17 at 1627, Association of General Merchandise Chains; R. 18 at 611, consumers; Tr. 1664, K. Geiken, School of Home Economics, Univ. of Wisconsin.

438 R. 17 at 502, Tr. 1298, J. Schapiro, Dixo, Co.

439 R. 17 at 1322, Extension Agent, CES, Michigan.

440 Tr. 1800-01, V. White.

when use or non-use of specific bleach types would damage the product. If the bleaching procedure is of no consequence, no instructions are necessary. While it might be desirable to include bleaching instructions on specialized products such as diapers where bleach is now frequently used, ATMI still believes that positive bleaching instructions should be required only where bleach must be used to render an item acceptable to its owner.[441] Similarly, Esther Shapiro,

> would not want something recommended if it didn't make any difference one way or another. I think we tend to overuse products such as spot removers and softeners far beyond the necessity to do an adequate job. I wouldn't want to see people encouraged to use bleach if it was not necessary.[442]

One consumer representative views the problem solely in terms of consumer assumptions. If consumers believe an article cannot be bleached when it can be bleached, disclosure should be made.[443]

Studies and surveys submitted indicate that consumers universally favor disclosure of bleaching instructions in all circumstances (76% in the Walker survey, 95-96% in the New York State survey, 90% in the Oxford survey, 89% in the Greeley survey, 91% in the Yreka survey, 88% in the Mississippi survey, 88% in the Urbana-Champaign survey III, and 96% in the Urbana-Champaign survey I.)[444] The latter survey also finds, however, that the presence or absence of bleaching instructions has little effect on the purchasing decision.[445]

The balance of the record on this issue views bleaching information as appropriate for negative disclosure only, as a warning under the appropriate section of the Rule,[446] or as inappropriate

441 Tr. 1946, 1952, 1954-55, ATMI; R. 17 at 771, ATMI.

442 Tr. 1367, 1377, E. Shapiro, Dept. of Consumer Affairs, Detroit.

443 Tr. 2136-38, B. Reed (one consumer called the witness to determine the bleachability of a white blouse which had no care instructions. The article, in fact could be bleached).

444 R. 17 at 1264, 1269, the Walker survey; R. 20 at 185, New York State survey; R. 20 at 256, Oxford survey; R. 20 at 322A, the Greeley survey; R. 20 at 410, the Yreka survey; R. 20 at 434, the Mississippi survey; Tr. 1472, the Urbana-Champaign survey III; Tr. 1497, the Urbana-Champaign survey I.

445 Tr. 1488-89, the Urbana-Champaign survey I.

446 R. 17 at 124, Celanese Co.; R. 17 at 1202, J. C. Penney; R. 18 at 107, 200, 227, 318, 592, 557, consumers; Tr. 1705, AAMA; Tr. 1837, NRMA.

in any circumstances.[447] Thus, some apparel manufacturers, "believe positive labeling is a redundancy, unnecessarily increases label size, and effectively causes the entire apparel industry to underwrite the advertising of a commercial product."[448] Others further assert that washing instructions imply normal and safe bleaching unless otherwise stated.[449] Bleachability is understood if no instructions appear.[450] Labeling on bleach bottles may be sufficient to instruct consumers as to their options in using bleach.[451] "More detailed instructions regarding bleach and color are available on nearly every bleach product. Leave the consumer the responsibility to interpret those . . . . Why duplicate it at added expense?"[452] A consumer consultant believes that its use should be left to the consumer's judgment.[453] Finally, some industry members and one academic expert assert that bleaching is simply not sufficiently essential or necessary to the washing procedure to warrant positive disclosure in any circumstances.[454] Thus, although they do not object to the communication of bleach ability per se, they do object to such communication being mandated by a Rule.[455] Clorox's rebuttal to these arguments is for the most part repetitive stating that the additional cost and size of labels resulting from such disclosure would be insignificant.[456]

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447 R. 17 at 304, Levi-Strauss ("Labeling to restrict the use of products which are already restricted by common practice is anathematic".)

448 R. 17 at 129, Phillips Van Heusen Co.; Accord, Tr. 1744-45, AAMA; Tr. 1810-11, V. White.

449 R. 17 at 263, Wisconsin Fabricare Institute. Accord, Tr. 1328, J. Schapiro; Tr. 2324-27, M. Brinson.

450 Tr. 1856,1859, NRMA (NRMA maintains that if it is not understood, consumer education will suffice).

451 R. 17 at 1046, AAMA.

452 R. 20 at 425, Professor of Textiles, Iowa State University.

453 R. 23 at 739, M. Dana, Consumer Consultant.

454 R. 20 at 674, AAMA: Tr. 1610, Dr. W. St. John.

455 Tr. 1597, Dr. W. St. John; Tr. 1736, AAMA; Tr. 1877, NRMA.

456 R. 25 at 377-382, Clorox Co.

The crux of the matter at issue may be gleaned from the testimony of two witnesses who are experts on the effects of bleach, Dr. Mary Purchase and Dr. Ruth Galbraith, both of whom have superior qualifications in this area. Although they disagree on the ultimate issue, their concerns are the same. Dr. Purchase favors disclosure of bleaching instructions in all washing instructions as determined by the type of bleach at issue and the kind of fiber and dye used in the item to be labeled. Since there is no standard test which measures the effect of bleach on fiber and color and the extent to which such fiber and color changes affect the "acceptability" of an item to the consumer, distinctions between "bleachable" and "not bleachable" are difficult to make. She acknowledges that this places the garment manufacturer in a dilemma. She still maintains, however, that the issue can be resolved on the basis of the combined judgment of all affected parties. She is concerned with the mandatory nature of such a disclosure but states that, if it were not mandatory, only the major manufacturers would make the disclosure.[457] Dr. Galbraith prefers to disclose bleaching instructions, only in cases where a warning against the use of bleach would otherwise be needed, for the following reasons:

> a) Positive bleach labeling will cloud the clarity and importance of a warning against bleach and consumers will tend to misread or misconstrue the instruction;
>
> b) Positive labeling will encourage over-use of bleach which can be potentially damaging to the item;
>
> c) Negative labeling is consistent with regulations issued under the Flammable Fabrics Act.[458]

Dr. Galbraith has no problem with communicating information about bleach; however, she believes that the dangers of communicating it positively through a label outweigh the benefits. As such, she would rather that consumers err on the side of non-use rather than over-use. Finally, she asserts that disclosure of the word bleach alone would be misleading without additional information denoting the circumstances under which bleach should be used.[459] According to Dr. Galbraith, positive bleach labeling would tend to increase routine use of chlorine bleach in unnecessary instances, would add to laundering expense for the consumer and increase water pollution

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457 Tr. 1521, 1523, 1535-37, M. Purchase.

458 Tr. 2237-38, 2241, R. Galbraith.

459 Tr. 2249, 2253, R. Galbraith. Accord, Tr. 2285, 2299, M. Brinson; Tr. 1806, V. White.

as a result. Positive labeling would also cause the consumer to feel safer about using chlorine bleach, thus encouraging repeated use in an environment where misuse is quite common. She reasserts her belief that repeated use can cause cumulative damage to the item and decrease its service life. As such, she would not be as hesitant about positive disclosure if she knew of a good way of educating the consumer about the proper use of chlorine bleach. "If [you] cannot come up with something which gives absolute[ly] all of the caveats, then I would err on the system which would ensure consumer conservatism in the use of chlorine bleach rather than encouraging it." Thus, Dr. Galbraith would rely on consumer education to supply positive information about bleach.[460] Monica Brinson agrees that positive disclosure, "would reinforce [consumers'] feeling that, in order to get that particular garment clean . . . , you would have to bleach it,"[461] adding unnecessarily to consumers' washing costs.[462] One consumer witness specifically disputes this theory, however, saying that the average consumer is capable of making a proper judgment as to whether the product requires bleach.[463]

Evidence on the record of manufacturers' burdens in providing such positive disclosure of bleaching instructions is sparse and inconclusive. Sears Roebuck and Company states that manufacturers responsible for care labeling of products for which bleach is never likely to be used will waste time and expense to determine the bleachability of such an item. This will ultimately result in increased prices with no corresponding benefit.[464] On the other hand, another industry member states that, "the added cost to the garment manufacturer of providing such information to the ultimate consumer would not likely be significant...." This particular manufacturer adds that the benefits to the consumer would be invaluable.[465] Further, Clorox Company alleges that the cost of adding words on a label and testing for bleachability (using a test method devised by Clorox) are insignificant.[466] The apparel manufacturing industry supplies no specific data on this point.

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460 Tr. 2246-48, 2255, 2260, 2261, R. Galbraith.

461 Tr. 2317, M. Brinson.

462 R. 17 at 525, Sears, Roebuck & Co.

463 Tr. 2389, F. Reid.

464 R. 17 at 526, Sears, Roebuck & Co.

465 R. 17 at 759, Liberty Hosiery Mills.

466 R. 17 at 1236-38, 1529-30, Clorox Co.

Taking into consideration all of the evidence in the record, including that submitted by Clorox and adduced through other consumer witnesses,[467] staff concludes that the record justifies by substantial evidence a positive disclosure of the use and type of bleach in washing instructions required by the proposed Rule in all but the most limited circumstances. This conclusion is based primarily on the following record facts:

1) To the extent that bleach has the effect of improving the overall appearance of an item through the apparent elimination of soil build-up, it constitutes a regular care procedure under the Rule and can in some circumstances act to extend the useful life of an item to the consumer's benefit;

2) Depending upon the extent of such soil build-up, the periodic use of bleach is likely to be necessary to the oridinary use and enjoyment of most washable articles at some point in their useful lives. Such necessity can only be determined by the user of the product;

3) Because of overwhelmingly negative consumer assumptions about the use of bleach in the absence of bleaching instructions, and because of the prevalence of negative, inaccurate bleaching instructions on otherwise bleachable items, a substantial number of consumers are and have been effectively deprived of the use of bleach in situations where bleach is necessary to the ordinary use and enjoyment of an item and, to this extent, have suffered economic injury as a result;

4) The record contains no probative evidence other than a few unsupported general statements, that the benefits of such a disclosure will be outweighed by the burdens involved in making it. In fact, there is no specific evidence of the extent of those burdens, if any.

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467 See R. 25 at 405-407, AAMA. The Association would have staff accord little weight to all testimony and comment adduced by Clorox through independent consumer witnesses because it failed to testify itself and because it manufactures bleach. While it is true that Clorox' comments would be of questionable value, if unsupported or corroborated by other witnesses, that is not the case here. Utilizing its cross examination rights, Clorox fairly and straight forwardly sought opinions from many witnesses, some of whom supported Clorox' position and some of whom did not. There is no basis for according these opinions less weight merely because Clorox was crossexamining. The Association's predictions that Clorox' positions, had it testified, would not have survived cross examination constitute conjecture and speculation upon which nothing can be based. Staff, therefore, rejects this argument in toto. The Presiding Officer agrees. Presiding Officer's Report 79.

Staff also concludes, however, that such a positive disclosure of the use and type of bleach should be expressed in qualified not absolute terms for the following reasons revealed by the record:

1) It is not generally necessary to the ordinary use and enjoyment of most washable and otherwise bleachable products covered by the Rule that they be bleached every time they are washed in order to render them acceptable to their owners. The use of bleach in these circumstances may only be required on an occasional basis depending upon the individual tastes of the owner of the product. Therefore, a bleach disclosure should not function to encourage unnecessary use of bleach and should contain an appropriate caution in this regard.

2) Chlorine bleach has the potential of impairing the strength of certain washable products covered by the Rule on a cumulative basis when used repeatedly over a period of time thus causing a reduction in the service lives of such products.

Staff finally concludes that there may be some washable products for which bleach will never be necessary to their ordinary use and enjoyment, but which can otherwise be bleached without damage or substantial impairment. If such a determination is made by the party responsible for such instructions and a reasonable basis exists therefore, staff is of the opinion that no bleaching instructions need be included in the washing instructions for that particular product. In this case, there is no evidence that the consumer will suffer economic injury due to their absence.

The final topic that must be discussed in this area is the mode of expressing bleaching instructions, consistent with the above conclusions. The Clorox Company proposes that essentially three terms be used:

1) "Bleach-Safe" where all commercially available bleaches can be used without damage or substantial impairment.

2) "Non-Chlorine Bleach Only" where chlorine bleaches cannot be used but non-chlorine bleaches can be used.

3) "Do Not Bleach" where no bleaches can be used.[468]

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468 R. 17 at 1213-14, Clorox Co.

With respect to the term "bleach-safe," the record contains ample evidence that such a term is simply too broad and too vague. "I am afraid 'bleach safe' is too broad ... a term. To many consumers this would mean they could pour straight bleach directly on the fabric. . . I feel some type of 'qualifier' needs to be included."[469] Although there are several studies in the record indicating that consumers generally prefer so-called "bleach-safe" items for various reasons[470] and that consumers interpret such a term to mean "Safe to Bleach" or "Can use bleach/can bleach clothes,"[471] such studies are meaningless for the purpose of determining the implications of the term vis a vis actual consumer practice. When the term is used on bleach bottles, consumers may understandably interpret it to mean that the labeled bleach can be used even in light of a care label saying "No bleach."[472] It tends to imply that no adverse effects can result from any sort of bleach use which the record shows is not necessarily true.[473] Moreover, few items meet such criteria:

> I believe it would carry the connotation to the consumer that an article could be bleached at any concentration that they wish to use at any temperature they wish to use and as many times as they wish to bleach it, without damage to the article.[474]

It also implies a certain level of performance which is affected by temperature and agitation in the wash as well as other factors.[475]

Staff agrees with these opinions as does the Presiding Officer.[476] The American Heritage Dictionary defines "safe" as "not apt or able to cause or incur danger, harm or evil."[477] As this term would presumably be used to signify chlorine bleachability and the record indicates the potential for cumulative damage

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469 R. 17 at 1324, Extension Agent, CES, California.

470 R. 17 at 1247, 1544-1625, the MARC survey.

471 R. 17 at 1464-5, the MARC survey.

472 R. 20 at 216, Extension Agent, CES, Missouri.

473 Tr. 1853, NRMA; Tr. 2227-9, E. Kennedy.

474 Tr. 2240-42, R. Galbraith.

475 Tr. 1806., V. White.

476 Presiding Officer's Report 80.

477 The American Heritage Dictionary of the English Language, Houghton-Mifflin Company (1976).

in some circumstances with repeated use of chlorine bleach, the above definition would not apply. Staff concludes, therefore, that the term "bleach-safe" is inappropriate for use in a bleaching instruction under this Rule.

The record also indicates, however, that a distinction between the two principal types of bleach, i.e., chlorine and non-chlorine bleach, should be made where appropriate.[478] These two types of of bleach are different in many respects and are used for different items.[479] Oxygen (non-chlorine) bleaches[480] are much less apt to damage fibers and are "safer" on many colors than chlorine bleaches.[481] In addition, many consumers have no concept of the difference between the two.[482] The record also indicates that, if a distinction is made, it should be made in a positive manner ("Use non-chlorine bleach") rather than a negative one ("no chlorine bleach"). Otherwise, confusion may result. Thus, one consumer questions the interpretation of a negative bleaching instruction; indicating uncertainty as to whether all bleaches are really meant to be prohibited.[483] Studies reveal that a substantial number of consumers interpret the term "no chlorine bleach" to mean no bleach at all.[484] Indeed, even the meaning of the phrase "do not bleach" has been diluted to "do not use chlorine bleach" because some consumers have discovered that non-chlorine bleaches may be used on items labeled "do not bleach."[485] In view of this confusion, it is extremely important that bleaching disclosures be precise and clearly defined in the Rule.

Accordingly, staff is of the opinion that the following phrases should be employed where appropriate in situations where bleach instructions are required under the Rule. These phrases

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478 R. 18 at 2525, consumer; R. 25 at 384, Clorox Co.; Tr. 2275-6, NCC.

479 Tr. 1531-32, M. Purchase; Tr. 1914, K. Stanton.

480 Tr. 1850, V. White.

481 Tr. 2257, R. Galbraith.

482 Tr. 2316, M. Brinson.

483 R. 18 at 2399, consumer.

484 R. 17 at 1465, the MARC survey (40% of 301 consumers interviewed); Tr. 1470, Urbana-Champaign survey III (40% of 161 homemakers interviewed); Tr. 1498, Urbana-Champaign survey I (44% of 93 students interviewed).

485 Tr. 1663-64, K. Geiken; Tr. 2724, NCC. The BSSR survey indicates that 25.7% of 693 consumer-respondents interpret the phrase in this manner.

have been developed with the distinct possibility of over-use or wasteful use of bleach in mind: 1) "No bleach" - to be included where no commercially available bleaches can be used without damage or substantial impairment to the item (already required under the warning section of the Rule); 2) "Non-chlorine bleach only when needed" - to be included where chlorine bleaches cannot be used without damage or substantial impairment but where non-chlorine bleaches can be so used. The phrase "only when needed" is included to reflect two facts: a) The owner of the item must make the decision as to how frequently bleach must be used, depending upon the condition of the item at the time; b) In any event, caution must be employed to avoid unnecessary or wasteful usage; 3) "Bleach only when needed" - to be included where all commercially available bleaches can be used without damage or substantial impairment to the labeled product. The phrase "only when needed" has been included for the reasons previously cited plus the fact that gradual cumulative damage may be caused by frequent, repeated use of chlorine bleach on certain items.

Staff, therefore, recommends that Section 423.5(a)(1)(iii) of the proposed revised Rule be modified and expanded in accordance with this report to read as follows:

(D) Bleaching method in accordance with the following provisions set forth below:

(aa) Where all commercially available bleaches can be used without damage or substantial impairment to the labeled article, the phrase "bleach only when needed" or its precise equivalent must be included.

(bb) Where not all commercially available bleaches can be used without damage or substantial impairment to the labeled article but some can be so used, the type of bleach which can be used, followed by the phrase "Only When Needed", or its precise equivalent, must be included.

(cc) Where no commercially available bleaches can be used without damage or substantial impairment to the labeled article, an appropriate warning as required by Section 423.2(b)(2) must be included.

(dd) Provided, however, That where the party responsible for care instructions under this part has a reasonable basis for determining that bleach, under all forseeable circumstances, will never be necessary to the ordinary use and enjoyment of an article covered by this section during its useful life (assuming ordinary wear and tear) and a warning against the use of bleach is not appropriate, no bleaching instructions need be included.

(5) Drycleaning Instructions

(a) Preface

In Note 1 to the existing rule, drycleaning is only one of several examples of regular care procedures which may be appropriate for those products which cannot be washed in any manner. As such, the party responsible for providing care instructions under the existing rule must determine (a) whether drycleaning instructions are suitable for the item to be labeled and (b) what such instructions should be. With respect to the latter, the existing rule provides little guidance. On the other hand, section 423.5(a)(2) of the proposed revised rule specifies that, "in drycleaning instructions, the type of solvent to be used must be clearly specified, when not all commercially available solvents can be used." As noted in the Staff Report, this provision was included on the basis of documentation from the record establishing that so-called professional drycleaners are, "often unable to determine the combination of fibers and finishes used in constructing a fabric and, therefore, may be unaware of appropriate care procedures for such fabric."[486] Further, there was evidence that many drycleaning failures result when a fabric or a fabric finish which is not known to a drycleaner is incompatible with a particular cleaning solvent.

This section of the Report will consider the propriety of the proposed rule provision, beginning with a brief explanation of the drycleaning industry and the crucial parts of the drycleaning process. Next, the current practices of the apparel industry with respect to drycleaning instructions will be considered followed by a discussion of several suggested alternative remedies for these practices and, finally, staff's recommendations in this area.

The drycleaning industry may be classified in two categories: (a) so-called "coin-op" drycleaning establishments and (b) so-called "professional" drycleaning establishments. "Coin-ops" can further be divided into those establishments whose drycleaning machines are attendant-operated and those whose machines are customer-operated (self-service). In almost 99% of the cases "coin-op" establishments, whether fully self-service or attendant-operated, use machines which have a fixed cleaning cycle, a fixed temperature drying cycle and a relatively small basket. The majority of these machines use perchlorethylene solvent.[487]

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486 Staff Report 23.

487 Tr. 1431-32, International Fabricare Institute (hereinafter IFI).

With respect to drycleaning machines which are not completely automatic (used in a very few "coin-op" establishments but in a so-called "professional" establishments) the length of cleaning and drying cycles as well as the appropriate temperature of those cycles can be varied and adjusted by the operators. Knowledgeable "coin-op" attendants and "professional" drycleaners can also pre-treat spots on items and vary additives to drycleaning solvents according to the requirements of the items being cleaned. Generally, fully self-service operations do not have finishing equipment such as steam presses which may be available in "coin-op" establishments where there are attendants on duty and in other standard "professional" drycleaning establishments.

No matter what kind of drycleaning establishment is considered or what machine is employed, drycleaners generally use one of three principal drycleaning solvents in the drycleaning process: petroleum, perchlorethylene or fluorocarbon solvent. The record indicates that 72%-74% of all drycleaning plants use perchlorethylene solvent.[488] Moreover, the vast majority of drycleaners (close to 95%) do not employ more than one system of drycleaning, i.e., they use only one solvent.[489] A particular solvent may be used more frequently in one area of the country than another. It is noted that in greater metropolitan New York City, perchlorethylene is used by approximately 95% of all drycleaners.[490] Witness Seitz of the Neighborhood Cleaners Association (hereinafter NCA) states that there are only four drycleaners who use petroleum solvents in the greater New York area.[491] He also states that there are only six or seven cleaning establishments in that area which use fluorocarbon solvent.[492] As further indication of the various solvent amounts used, Witness Schapiro, President of a New Jersey based company which sells drycleaning solvents, notes that his company may buy and resell approximately 1000 pounds of fluorocarbon solvents every 2 to 3 weeks as compared with 40 to 80 thousand pounds of perchlorethylene per week.[493] On the other hand, in the

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488 R. 17 at 1062, IFI; Tr. 889, Neighborhood Cleaners Association (hereinafter NCA); R. 17 at 501, Jerome Schapiro, President, Dixo Co., Inc.; R. 17 at 1, D. J. Schultz, President, Textile Service Corp.

489 Tr. 1292, J. Schapiro.

490 R. 17 at 1062; Tr. 1391, IFI.

491 Tr. 895-96, NCA.

492 Tr. 898-99, NCA.

493 Tr. 1310, J. Schapiro.

southwestern states where oil is more plentiful, approximately 60% of the drycleaners use petroleum solvents.494

These three solvents have different chemical properties and vary in their effect on items being drycleaned. Petroleum solvent is a more gentle solvent and is the preferred solvent for cleaning leathers and suedes.495 Fluorocarbon is also a gentle solvent; perchlorethylene, on the other hand, is the stronger and most active of the three.496 Perchlorethylene can be harsh on woolens497 as well as on vinyls, leathers and pigment prints. "Perc", as perchlorethylene is known in the industry, is a degreasing agent, meaning that the solvent removes oils or grease from the item being cleaned.498 In leather and vinyls, the removal of oils by the cleaning process can cause shrinking and cracking.499 These solvents also differ in other respects. Petroleum solvents are highly flammable. As a result, many state and local regulatory agencies have passed stringent laws which can serve to prohibit or hinder the installation of new petroleum drycleaning plants.500 Additionally, emission standards being considered by the Environmental Protection Agency may serve to make cleaning with petroleum solvents economically unfeasible.501 Similarly, the machinery used in fluorocarbon cleaning plants has been found to be highly inefficient and subject to breakdowns. Such breakdowns cause solvent leakage thereby necessitating the use of greater quantities of the cleaning fluid which increases operating costs.502 Third, the cost of the various solvents differs. In November, 1976, fluorocarbon solvent sold for $8 to $9 a gallon, perchlorethylene solvent for $2.50 per gallon and petroleum solvent for 40 cents to 50 cents per gallon.503

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494 R. 17 at 1062, IFL.

495 Tr. 1879, Bretney Smith, Treasurer, Swannanoa Cleaners.

496 Id.

497 Tr. 2311, Monica Brinson, Associate Professor, Buffalo State College.

498 Tr. 1879, B. Smith.

499 Tr. 1670, Karen Geiken, School of Home Economics, Univ. of Wisconsin.

500 R. 16 at 1-2, J. Schapiro; Tr. 1311, J. Schapiro.

501 Tr. 1292, J. Schapiro.

502 Tr. 1341, J. Schapiro.

503 Tr. 1311, J. Schapiro.

From these facts, it is clear that almost all self-service drycleaning facilities as well as many attended drycleaning facilities employ the strongest solvent now generally available to clean items presented to them. While not necessarily the cheapest, this solvent appears to be the most popular with drycleaners. On the other hand, petroleum and fluorocarbon solvents continue to be used by some drycleaners (predominantly in the West) for various reasons, some of which may be that petroleum solvent is cheaper and more readily available than the others and both solvents are more gentle than perchlorethylene. Additionally, the degree to which the drycleaning process can be altered to fit the item to be cleaned does not necessarily depend on the type of establishment patronized but on the drycleaning machines used and the extent to which such machines are attended by someone other than the customer. These facts are important in a consideration of the adequacy of drycleaning instructions now being supplied to the consumer and the drycleaner by the apparel industry.

(b) Current Labeling Practices

A number of terms are currently used in care instructions to describe the variants in the drycleaning procedures previously enumerated. The record shows that there is much confusion among consumers as well as drycleaners as to the exact meaning of these terms. The record also shows that words such as "commercial," "professional," "coin-op," "dryclean," and "drycleanable," when used alone, may be wholly inadequate to ensure a satisfactory result. For example, while such instructions as "do not use coin-op drycleaners," "commercially dryclean only," and "professionally dryclean" are apparently meant to indicate that variations in the standard drycleaning process are necessary to prevent damage to the item being cleaned, the record indicates that these terms have different connotations to consumers and drycleaners alike which do not conform to the intended meaning.[504] A consumer from California thinks the term, "professionally dryclean only . . . smacks of influence from a drycleaning lobby in Washington, D.C." She believes the term "professionally" is meant to steer consumers away from the use of self-service drycleaning machines which she thinks are exactly the same as all other drycleaning operations.[505] On the other hand, representatives of IFI, an organization specializing in the analysis of drycleaning techniques, state that the word "professional" should only be used when some characteristic of the garment requires that it be given a modified cleaning cycle. Necessarily,

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504 Tr. 2129-30, 2153-54, Barbara Reed, Better Business Bureau, Milwaukee; Tr. 1430-31, IFI; Tr. 2223-24, Evelyn Kennedy, small retailer.

505 R. 18 at 1008, consumer.

therefore, the word should be accompanied by whatever additional information is needed to inform the drycleaner exactly what modification should be made.[506] Bretney Smith, a drycleaner, agrees with this definition.[507] Dr. Vivian White indicates that the latest proposed revision of the ASTM Glossary recommends that the term "professionally dryclean only" be defined as "special handling,"[508] a definition which lends further support to the explanation of this term offered by IFI. Evelyn Kennedy says that the phrase "professionally dryclean" means:

> you are carrying it into someone and paying so much cost per item. They take that item, they will thoroughly cleanse it or restore its natural usable life. They will finish it, with the required steaming or pressing, and for a cost per item they will give it to you, or return to you the totally cleaned goods.[509]

NCA, on the other hand, states that the phrase "professionally dryclean only" means nothing more than "drycleanable" to drycleaners.[510] The California Fabricare Institute also sees no reason for the use of a phrase such as "professionally dryclean only." The Institute believes all drycleaners are professionals in their business and further that the phrase includes coin-operated drycleaning establishments because they use the same solvents and the same type of equipment as other drycleaners.[511] Barbara Reed states that consumers view the phrase "professionally dryclean only" as a warning against using "coin-operated" drycleaners because few consumers distinguish between attendant-operated "coin-op" cleaners and self-service operations.[512] With regard to the use of the term "commercial," Ms. Reed thinks consumers probably assume the term includes the use of coin-operated cleaners, but as with use of the word "professional," consumers do not really know what is meant.[513]

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506 R. 17 at 1061-62, IFI; R. 20 at 690, IFI.

507 Tr. 1893-94, B. Smith.

508 Tr. 1813-14, Dr. Vivian White, Associate Professor, Cornell University.

509 Tr. 2223, E. Kennedy.

510 Tr. 876, NCA.

511 Tr. 2426, California Fabricare Institute (hereinafter CFI).

512 Tr. 2152, B. Reed.

513 Tr. 2153, B. Reed.

The phrases "drycleanable" and "dryclean," which also currently appear in care instructions, have a variety of meanings to both consumers and drycleaners. One consumer states:

> If a label says 'Dry Clean Only' we want to know if we can put the garment in a self service dry cleaning machine or if it has to be professionally dry cleaned. We have refused to purchase articles marked 'Dry Clean Only' due to this uncertainty. We do our dry cleaning at a self service operation.[514]

Additional comments in the record address the use of the term "drycleanable." Mr. Charles Riggott, Acting General Manager of portion of IFI, states that the term "drycleanable" should mean that the item can be cleaned in any of the solvent systems used, i.e., perchlorethylene, petroleum or fluorocarbon (or any other commercially available solvent). He further states that if an item is not drycleanable in perchlorethylene, care instructions should state: "Drycleanable: do not use perchlorethylene." If an item is drycleanable only in fluorocarbon solvent, the label should read "Drycleanable: Use fluorocarbon solvent."[515] Witness Fisher, also from IFI, agrees that the term, "'drycleanable' should mean that the item is drycleanable in the three solvent systems used, namely perchlorethylene, petroleum and fluorocarbon solvents" (emphasis added).[516] He further indicates, however, that the term "dryclean" or "drycleanable" should also mean that an item so labeled can be safely cleaned in a full, normal dry cleaning process, including drying and including systems employed in coin-operated establishments.[517] Mr. Fisher also believes that consumers view the term "drycleanable" as permitting the use of "coin-op" facilities.[518] To add to the confusion, the representative from CFI states that he does not know what assumptions consumers would make about the word "drycleanable." He notes further, however, that the term "drycleanable" should mean that the labeled article can be safely cleaned in perchlorethylene and in "coin-op" machines.[519] Braham Norwick, from Joseph Bancroft & Sons Co., Inc. states that, "when drycleaning is noted as advised or required it should mean that any and all

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514 R. 18 at 2505, consumer.

515 R. 17 at 95, IFI.

516 R. 17 at 1077, IFI; Tr. 1394, IFI.

517 R. 20 at 690, IFI.

518 Tr. 1429, IFI.

519 Tr. 2424-25, CFI.

commonly used procedures in ASTM D.13 test method 3136, 4.5.1 should be followed."[520] Jerome Schapiro states that:

> It has been the custom in the Voluntary Consensus Standards, VCSS, in this country in such organizations as ASTM and AATCC to reference all drycleaning standards to perchlorethylene on the theory that if they were drycleanable in perchlorethylene they were surely drycleanable in both fluorocarbon and petroleum solvent both of which are considered to be somewhat more gentle.[521]

Further, the term "drycleanable" should only be used on items which can be drycleaned in perchlorethylene; Mr. Schapiro acknowledges, however, that items which can only be cleaned in fluorocarbon and petroleum solvents would not be "drycleanable" under this standard.[522] Barbara Reed, formerly a drycleaning attendant and representing the Better Business Bureau of Milwaukee, acknowledges that the terms "drycleanable," "commercially dryclean" and "professionally dryclean" may all have different meanings to the manufacturers and consumers who use them. She suggests that one term should be used for describing drycleaning instructions, but does not specify what that might be.[523] Finally, in the BSSR survey consumers were asked if the term "dryclean" means "commercial drycleaning" only, with 67% agreeing that it does. Only 59% believe that the term includes "coin-op" cleaners with no attendants.[524] The fact that the term "commercial drycleaning" is not defined here tends to further confuse the issue.

The record shows clearly that there is a tremendous amount of confusion and misunderstanding over the terminology currently used in drycleaning instructions. Drycleaners themselves disagree on the meaning of phrases such as "commercially dryclean," "professionally dryclean," "drycleanable," "do not coin-op dryclean."

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520 R. 17 at 115, Braham Norwick, Vice President - Technical Director, Joseph Bancroft & Sons Co., Inc.

521 Tr. 1293, J. Schapiro.

522 Tr. 1305, 1313, J. Schapiro.

523 Tr. 2128, B. Reed.

524 HX 33 at 451-453, BSSR survey. BSSR notes that there was confusion among respondents in answering these questions and that some respondents answered "yes" to both questions: (1) does "dryclean" mean to use only a professional or commercial cleaner and (2) does "dryclean" mean that you can use self-service or "coin-op" drycleaning.

They agree unanimously, however, that the instructions currently provided for drycleaning are inadequate. Damage complaints on the record show that many of these drycleaning instructions, while inadequate are also totally inaccurate and often result in economic injury to the consumer.

Many of the damage complaints are related to the incorrect use of a particular solvent in the absence of solvent specifications in drycleaning instructions. One of the most frequent references in the record to damage caused by perchlorethylene solvent concerns vinyl or polyurethane-coated apparel:

> A friend of mine had an experience with a lightweight coat trimmed with plastic collar, a plastic panel down the front and piping around the pockets and bottom. She was assured at a 'quick' drycleaning establishment that the coat could be cleaned, yet the panels were shriveled and cracked when the coat came out. Surely information about drycleaning solutions and processes is essential.[525]

From another consumer comes this comment about a white fake fur coat with vinyl trim. "The coat stated furrier method of cleaning. The fur was processed beautifully but the vinyl turned pink in color and the coat was ruined. The wrong solvent had been used which turned the vinyl pink."[526] M. Knowles, of the Louisiana Office of Consumer Protection, states: "We have a number of complaints concerning vinyl jackets and 'high school' jackets with vinyl sleeves becoming stiff and brittle when cleaned, especially when the cleaning solvent is perchlorethylene."[527] CFI presents for exhibit a coat of polyurethane-coated fabric which had been damaged beyond repair in the cleaning process. The label on item read "Professionally Dry Clean Only" with no other more specific directions. The coat was ruined when cleaned in perchlorethylene.[528] A team jacket with naughahyde sleeves, prevalent on store racks, has a care label located in a pocket which is overlooked by many drycleaners. Cleaning the garment in perchlorethylene has damaged it in many instances.[529] A jacket constructed of a fabric with a urethane film was damaged in drycleaning

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525 R. 18 at 349, consumer.

526 R. 18 at 665, consumer.

527 R. 20 at 280, Marlys Knowles, Complaints Investigator, State of Louisiana, Office of Consumer Protection.

528 Tr. 2414-2416, CFI.

529 R. 17 at 263, Wisconsin Fabricare Institute.

because the urethane film was not resistant to perchlorethylene.[530] When polyurethane-coated or vinyl-like fabrics are cleaned in perchlorethylene, often the adhesive used to bond the polyurethane film to a fabric base is dissolved.[531] The President of Vinyls International, Ltd. confirms this reaction:

> The cracking of vinyl is not an uncommon phenomenon but is one that commonly occurs when certain types of unsatisfactory proprietary cleaners are used on vinyl covers. These remove the oil content and harden up the coating to a point where cracking can occur on flexing.[532]

Similarly, an imitation suede jacket was also damaged when drycleaned. The suede effect of the garment had been achieved by attaching textile fibers to the backing fabric by means of an adhesive or binder. The adhesive was removed when rubbed with the drycleaning solvent used.[533] The record contains numerous other examples of damage to vinyl, polyurethane and imitation leather because of improper use of solvent in the drycleaning process.[534]

The record also indicates that use of improper solvents in drycleaning often results in the fading or bleeding of colors. Some dyes, especially pigment prints, are soluble in certain solvents. One consumer had a red, white and blue bedspread drycleaned with the result that the red and blue dyes ran onto the white portions of the spread, completely spoiling the item.[535]

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530 Tr. 1398, IFI.

531 Tr. 2414-15, CFI.

532 R. 20 at 284, Vinyls International, Ltd.

533 R. 20 at 327-340, O. J. Butler, Acting Director, Office of Consumer Affairs, Orange County, Calif.

534 R. 17 at 180, drycleaner. "Vinyl trim on jackets is a problem. Some vinyl sleeves on jackets crack although labeled dry clean only"; R. 20 at 316, Muriel M. Smith, Director, City of Atlanta, Office of Consumer Affairs; R. 20 at 491, Assistant Attorney General in Charge of Consumer Protection Division, Michigan; Tr. 857, NCA; Tr. 1403, IFI; Tr. 1659, K. Geiken; Tr. 2141, B. Reed; Tr. 2414-2416, CFI. "A polyurethane type of plastic and these coats are being labeled 'Professionally Dry Clean Only,' and they cannot be dry-cleaned with just that information alone. They require further information relative to the type of solvent that should be used."

535 R. 18 at 2521-2523, consumer.

IFI describes several items of apparel whose appearance has been adversely affected by perchlorethylene. A $245 garment labeled "Dry Clean Only" faded when cleaned in perchlorethylene. The manufacturer disclaimed any responsibility and asserted that the drycleaner used the wrong solvent in cleaning the item. The care label attached to the article made no reference to a preferred solvent for cleaning; therefore, neither the consumer nor the drycleaner knew that a quick drying solvent such as petroleum should have been used in cleaning the article.[536] A tan all-purpose weather coat with a printed lining contained no care instructions. A colorfastness test performed in the IFI laboratory showed that the brown coloring in the print lining was fugitive to perchlorethylene solvent. During drycleaning in "perc," dye from the print lining bled and redeposited onto the outer fabric, causing adverse, irreversible staining.[537] The Institute also presented a print shirt containing a care label which was completely blank. The dye used in printing the label was solvent soluble and had been totally removed during the drycleaning process rendering the label totally useless.[538] Two other garments colored with solvent soluble dyes and labeled either "Commercial Dry Clean Only" or "Dry Clean Only" were ruined when the dyes bled during the drycleaning process.[539] A rust colored cotton leisure suit faded to a pale yellow color in cleaning. The rust dyes were solvent-soluble.[540] The red print on a red and black print dress dissolved during drycleaning.[541] An off-white three piece men's suit was returned from the drycleaners covered with blotchy stains resulting from solvent soluble dyes in the buttons which redeposited on the suit fabric during the cleaning process.[542] Another garment in which the dyes used were soluble in perchlorethylene was drycleaned in "perc" causing the color of the garment to change from orange to green.[543] Perchlorethylene, a "degreaser," removes all of the lubricant from zippers. Lubricant is necessary for the proper operation of the zipper and must be replaced when zippers are cleaned in "perc."[544]

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536 Tr. 1396-97, IFI.

537 Id.

538 Tr. 1398, IFI.

539 Tr. 1402-03, IFI.

540 Tr. 854, NCA.

541 Tr. 855, NCA.

542 Tr. 1348, Esther Shapiro, Dept. of Consumer Affairs, Detroit.

543 Tr. 2141, B. Reed.

544 Tr. 2068, Slide Fastener Association.

Witness Smith, a drycleaner, confirms that there are many items which cannot be successfully cleaned in perchlorethylene such as pigment prints, vinyls, acrylics, and foam backed draperies.[545] Based on this evidence there can be no question that the use of an incorrect solvent can cause irreparable damage and also that such damage does occur frequently when drycleaning instructions do not specify solvent usage.

Solvents, however, are not the only variables in the drycleaning process which can cause injury to an item if not properly used. Incorrect moisture levels and excessive heat can also yield an unacceptable result. Moisture is used in prespotting and in steam pressing machines as well as in the actual cleaning process.[546] Both shrinkage and stretching can result with the improper use of moisture on various fibers and types of construction. Color loss can also result when items dyed with water soluble dyes are cleaned with any moisture, whatsoever. IFI describes a dress labeled "dryclean" on which a spot was pretreated using moisture. The dyes were not colorfast to moisture with the result that the blue dyes bled into the white areas.[547] Likewise, the color in the buttons of a polyester jacket, drycleaned without difficulty, bled onto the surface of the jacket when steam was used in the process.[548] Excessive heat in dry cleaning can also cause shrinkage as well as stretching damage to some fibers. CFI exhibits polyurethane items which, when dried at a temperature above 100 degrees F, stuck together. When the items were pulled apart, the plastic was removed from the base fabric.[549] Witness Gragg also notes a leather-like fabric coat which shrank when an improperly high temperature was used in the drycleaning process.[550] The record contains numerous other references to shrinkage and stretching damage presumably due to heat.[551] Record evidence also indicates a surprising amount of miscellaneous damage which typically occurs as a

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545 Tr. 1890, B. Smith.

546 Tr. 1400, IFI.

547 Id.

548 Tr. 1401, IFI.

549 Tr. 2416, CFI.

550 Tr. 2497, Kay Gragg, Dept. of Consumer Affaris, Ventura County, California.

551 R. 17 at 266-287, Wisconsin Fabricare Institute.

result of incomplete or inaccurate drycleaning instructions.[552]

The International Fabricare Institute submits a bulletin which summarizes the Institute Textile Damage Analysis Statistics for 1974.[553] The report classifies the damage suffered by 98% of the items analyzed in five categories: dimensional change, fabric damage, finish damage, color or design damage, and staining.[554] The following chart lists the kinds of errors which, according to IFI, may cause a drycleaner inadvertently to damage an item.

TABLE 6: KINDS OF PROCESSING ERRORS CAUSING DRYCLEANERS TO DAMAGE GARMENTS

No.	Process error	No. of Cases	% Total
1	Spotting or prespotting errors	607	30.2
2	Poor solvent maintenance	319	15.9
3	Physical mishandling	184	9.2
4	Excessive water	172	8.6
5	Incorrect drycleaning or finishing procedure	145	7.2
6	Carbon in washer	134	6.7
7	Excessive heat	118	5.9
8	Incorrect wetcleaning	61	3.0
	All others	267	13.3
	Total	2,007	100.0

552 R. 17 at 266-287, Wisconsin Fabricare Institute; R. 17 at 505, drycleaner; R. 20 at 8-9, Office of Consumer Affairs, Newport News, Virginia; R. 20 at 37-8, Office of the Govenor, Illinois; R. 20 at 316, Office of Consumer Affairs, Atlanta; R. 20 at 338-340, Office of Consumer Affairs, Georgia; R. 20 at 490-91, Assistant Attorney General, Michigan.

553 HX 10 at 121-137, IFI, "Textile Damage Analysis Statistics for 1974."

554 Supra, note 553 at 122.

Many such errors occur because the drycleaner is provided those incomplete or inaccurate care instructions previously discussed.

The AAMA incredibly claims no knowledge of any garments which will not perform in perchlorethylene.[555] On the other hand, the Association is not aware of any garments having care labels specifiying that the items, "must be cleaned in petroleum."[556] Based on the evidence, therefore, staff concludes that the terminology currently used for drycleaning instructions is unacceptably vague; general terms such as "drycleanable," "commercially dry clean," "professionally dryclean" and "do not use coin-op cleaners" have a host of different meanings to manufacturers, drycleaners and consumers alike. These terms used alone and without further clarification are incomplete and do not provide sufficient information to enable drycleaners to process many items safely. This record shows that a massive number of items have been damaged during the drycleaning process in the absence of this information. Such damage has occurred not only because incorrect solvents were used but also because of the failure of the drycleaner to modify other parts of the drycleaning process (such as moisture levels and temperature) to fit the care traits of the item being cleaned. It is obvious that most of this damage could have been prevented if more complete care instructions concerning required variations in the standard drycleaning process had been provided to the drycleaner.

(c) The Remedy

As previously stated, section 423.5 (a)(2) of the proposed revised rule provides for the specification of the proper drycleaning solvent to be used in a drycleaning instruction when not all commercially available solvents can be used. Many of those in favor of this provision believe that, if solvent information is provided on care labels, drycleaners will make fewer errors and, when errors are made, drycleaners will be unable to claim "ignorance" leaving the consumer the loser in a dispute between the drycleaner and the manufacturer.[557] The record contains many comments from consumers and drycleaners as well as from manufacturers and retailers concerning the desirability of requiring such a disclosure. The following statement is a good example of consumers' beliefs in this area:

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555 Tr. 1722, American Apparel Manufacturers Association (hereinafter AAMA).

556 Tr. 1745, AAMA.

557 R. 20 at 149, F. K. Kramer, Director, Dept. of Consumer Affairs, Fairfax, Va; Tr. 942, R. Mallard, Fairfax County, Va; R. 20 at 276, Office of the District Attorney, Consumer Affairs Division, Colorado.

> A pair of slacks that I recently purchased contain a care label that gives precise instructions for washing, drying, ironing and drycleaning. The drycleaning instructions specify that only petroleum drycleaning solvents may be used. This information is important since my regular drycleaners don't use this type of solvent. A few words on a tiny label may have saved me thirteen dollars and, to a college student, that amount means a lot.[558]

A number of consumer representatives favor solvent disclosure not only as a guide to drycleaners but as a benefit to consumers who wish to buy only those articles for which the specified drycleaning solvent is readily available.[559] Numerous others also advocate solvent specification.[560] Some retailers and manufacturers agree. Levi Strauss Co., one of the world's largest apparel manufacturers, supports solvent disclosure but desires solvent specifications to be limited only to petroleum and perchlorethylene solvents, "since they are the primary cleaning agents used in this country."[561] Sears, Roebuck & Co. and Montgomery Ward Co., both major retailers, favor the proposed disclosure provision.[562] The latter believes that, unlike washing instructions which are directed at the consumer, detailed drycleaning instructions may be properly directed to both consumer and drycleaner.[563]

The record also contains many favorable comments from drycleaners or their representatives concerning this subject. The International Fabricare Institute supports the disclosure of solvent information, noting that while drycleaners are "professionals," they are not necessarily textile chemists. "A drycleaner cannot be expected to recognize or identify every mathematically possible combination of fibers, finishes, constructions, and

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558 R. 18 at 781, consumer.

559 Tr. 2121, 2148-49, 2151-52, B. Reed; Tr. 2526-27, Kathi Bourdeau, Dept. of Consumer Affairs, Los Angeles County, California; Tr. 2744, National Consumers Congress; Tr. 2391, Florence Reid, Dept. of Consumer Affairs, Orange County, California; Tr. 1382, E. Shapiro.

560 R. 18 at 187-190, 523, 538, 659, 666, 679, 689, 739, 751, 771, 781, 882, 891, 1054, consumers; R. 20 at 5, 149, 173, 228, 276, 300, 329, 452, 678, consumer representatives.

561 R. 17 at 384, Levi Strauss Co.

562 R. 17 at 527, Sears, Roebuck & Co.; R. 17 at 887, Montgomery Ward & Co.

563 R. 17 at 887, Montgomery Ward & Co.

trims which could possibly [be] incorporate[d] into a single garment".[564] Given a solvent specification, a drycleaner might successfully care for a garment by modifying his/her own operating procedures or by sending the garment to someone who has the proper solvent.[565] Mr. Thomas Roof, a drycleaner, states: "There are some garments that should be cleaned in a specific solvent due to dye, resin, or fibre construction. These garments are the exception and should be labeled appropriately by naming the solvent, such as petroleum, chlorinated, or fluorinated."[566] Witness B. Smith, also a drycleaner, states that solvent specification will eliminate guessing for the drycleaner provided the item has been tested and is indeed safe in the solvent named.[567] There really is no way for a drycleaner to determine the correct solvent to use on the basis of visual inspection of the item alone.[568] In his testimony, Mr. Seitz of the Neighborhood Cleaners Association states at one point that he believes drycleaners need only fiber identification and knowledge that an item is "drycleanable" in order to successfully clean an item.[569] On further questioning, however, Mr. Seitz acknowledges that solvent information can be extremely helpful to drycleaners in many instances.[570] Other drycleaning associations who comment agree.[571]

In addition, there are surveys on the record which also show strong support for the disclosure of solvent information. The Urbana-Champaign survey III indicates that 65% of 161 homemakers "agree" or "strongly agree" that solvent information should be disclosed in accordance with the proposed Rule provision while 24% do not believe it necessary.[572] Similarly, the Urbana-Champaign survey II shows 70% of those responding "agreeing" or "strongly agreeing" that solvent information should be disclosed.[573] Some apparel industry members as well as a

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564 R. 16 at 175, IFI; Tr. 1395, IFI.

565 R. 17 at 1056, IFI.

566 R. 17 at 109, drycleaner.

567 Tr. 1891, B. Smith.

568 Tr. 1913, B. Smith.

569 Tr. 886-895, NCA.

570 Tr. 900, NCA.

571 R. 17 at 265, Wisconsin Fabricare Institute; Tr. 2410-11, 2414, CFI.

572 Tr. 1474, Urbana-Champaign survey III.

573 Tr. 1493-94, Urbana-Champaign survey II.

minority of the drycleaning industry represented, however, argue forcefully against the disclosure of solvent information in dry cleaning instructions. Witness J. Schapiro, President of Dixo Company, a distributor of perchlorethylene solvent, argues that drycleaners neither need nor want solvent specification in drycleaning instructions. He acknowledges, however, that if a survey of drycleaners shows that they need such information, he will begrudgingly support the inclusion of solvent information on labels.[574] In an article appearing in the April 1976 issue of "Drycleaning News," Mr. Schapiro further acknowledges that, "drycleaners . . . can use and will accept all of the help and advice [they] can get."[575] If a proper drycleaning solvent must be disclosed, Mr. Schapiro submits that it should be perchlorethylene since garments which can be drycleaned in perchlorethylene can be cleaned in all other solvents currently in use in the United States.[576] He believes, however, that disclosure of any solvent information will lead to a practice which he calls "low testing". Knowing that one drycleaning solvent is more gentle in its action upon fabrics, dyes and finishes, manufacturers will limit their testing to that solvent and specify drycleaning in that solvent only as a means of escaping the possibility that the more commonly used solvent - perchlorethylene - may cause harm to such fabric, dye or finish.[577] Staff believes that this argument is speculative at best. There is no evidence that manufacturers currently labeling items with "dry clean only in petroleum solvent" are using unnecessarily cautious instructions or that manufacturers will turn to this form of "low testing" in the future. Indeed, statements on the record indicate that much of the textile industry currently uses perchlorethylene as a standard when testing for drycleanability. Mr. Schapiro also suggests that items which can be cleaned only by petroleum or fluorocarbon solvent should be labeled "not drycleanable" or "special processing needed."[578] Staff maintains that the use of the instruction "not drycleanable" on items which can be safely processed in petroleum or fluorocarbon is false and misleading. Further, while alerting the consumer, the term "special processing" provides no positive information or instructions to the drycleaner who needs them.

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574 Tr. 1321, J. Schapiro.

575 R. 16 at 6, J. Schapiro, article in Drycleaners News (April 1976).

576 Tr. 1295, J. Schapiro.

577 Id.

578 Tr. 1313-1315, J. Schapiro.

ATMI objects to the disclosure of solvent information on the basis that it is impossible for fabric producers or finished product manufacturers to know of all commercially available solvents on the market. The Institute does state, however, that warnings about the use of a specific solvent should be required, if knowledge of possible damage from use of the solvent is known.[579] AAMA opposes solvent disclosure on the grounds that it is of questionable value to consumers and places an unfair burden on manufacturers. The Association argues that not all AAMA members have facilities for testing all solvent types[580] and that drycleaners are in a better position to test the use of various solvents than apparel manufacturers. Thus, in situations where only certain solvents should be used, professional drycleaners should decide.[581]

Staff finds this argument without merit since the drycleaner has no reliable way of discovering pertinent care characteristics of the various components of a garment. The manufacturer, on the other hand, does have knowledge of such characteristics. Further, AAMA states at another point in the record that most clothing manufacturers are now equipped to determine what goods are "fast" to perchlorethylene on the assumption that items which are "fast" to perchlorethylene will be "fast" to the other two solvents.[582] The drycleaner's only means of testing is to clean the item. If the item is damaged, the knowledge gained by the drycleaner in this experiment will be of no use to the hapless consumer and of questionable use to the drycleaner who may never clean a similar item again. Staff, therefore, maintains that the manufacturer, not the drycleaner, is best equipped to determine which solvent should be used to safely clean an item.

Walter Sands, President of Applebaum Tag & Label Company, also objects to solvent disclosure on the basis that consumers will not understand the meaning of the disclosure and need only the instructions "do not dryclean."[583] The record indicates, however, that consumers who do not fully understand such a disclosure will take such items to their drycleaners who will. Solvent disclosure functions to provide valuable information to the drycleaner necessary in many instances to the safe processing

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579 R. 17 at 429, American Textile Manufacturers Institute (hereinafter ATMI); R. 16 at 176, ATMI: Tr. 1947, ATMI.

580 R. 16 at 42, AAMA; Tr. 1701, AAMA.

581 R. 17 at 1047, AAMA.

582 Tr. 1721-1722, AAMA.

583 R. 17 at 158, Applebaum Tag and Label Co.

of a garment. Moreover, the phrase "do not dryclean" is inaccurate in situations where the item can be drycleaned in petroleum or fluorocarbon solvents. Consumer's Research Magazine also opposes solvent disclosure on the grounds that the information is not useful to consumers who allegedly need to know only whether the item can be drycleaned by all methods or must be "professionally drycleaned" where the skilled drycleaner must determine what kinds of processing are necessary for the item.[584] Staff notes, however, that the terms "dryclean" and "professionally dryclean," as they are currently used, are confusing and have no uniform meaning to either consumers or drycleaners. Further, the evidence shows that so-called "skilled" drycleaners are often unable to determine by mere visual inspection the effect of a particular solvent on an item.

One of the principal arguments against disclosure of solvents in the manner proposed is that if the solvent disclosed is petroleum or fluorocarbon (which it presumably will be), then the consumer will assume the solvent to be readily available at the local drycleaners when such may not be the case. In any event, the consumer will suffer great hardship in attempting to find a drycleaner who uses the solvent. It has been previously established that perchlorethylene, petroleum, and fluorocarbon solvents are not equally available in all parts of the country. Petroleum solvents are more prevalent in the midwestern and western oil producing states while perchlorethylene is predominant in the east. The Presiding Officer concludes and the record clearly indicates, first, that consumer-purchasers of a product whose care instructions contain a specification of a drycleaning solvent will indeed assume that the specified solvent is readily available in the vicinity of the consumer's residence.[585] Similarly, the Association of General Merchandise Chains believes that consumers will assume that a solvent included as a part of a drycleaning instruction, will be readily available somewhere in the market.[586] While this view is generally supported by Montgomery Ward, Wards also believes that consumers will ordinarily consult a professional drycleaner to determine the availability of a particular solvent within a given area and that the drycleaner will be able to assist the consumer in locating a plant using the required solvent.[587] Consumer representatives commenting on this point are unanimous in their view that consumers who see a solvent specification on a care label will

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584 R. 18 at 319, F. J. Schlink, President, Consumers Research Magazine.

585 Presiding Officer's Report 87.

586 R. 17 at 1627, Association of General Merchandise Chains.

587 R. 17 at 887, Montgomery Ward & Co.

assume that the solvent is readily available[588] and staff so concludes.

While it is thus agreed that such a disclosure will trigger this assumption, it is not agreed whether the net result of such an assumption will, in fact, be a liability to the consumer. Witness Schapiro argues that a New York City resident will have no means, including the yellow pages of the telephone book, to determine the location of a drycleaner who uses a petroleum solvent.[589] He notes that equal frustration will occur in regard to a fluorocarbon solvent drycleaner, since a fluorocarbon cleaner is listed as a "Valclene" drycleaner, which is the brand name of all fluorocarbon solvent sold in this country.[590] A drycleaner using perchlorethylene will not necessarily know the location of the nearest drycleaner who does not.[591] Even if a consumer can locate the type of drycleaning operation needed to properly dry-clean the garment, "it will normally involve leaving the consumer's neighborhood of residence . . . . . In that case the consumer will be forced to spend monies the consumer had not expected to spend in order to properly process a garment."[592] At least one consumer representative agrees. Students of Dr. Vivian White who visited local drycleaners report that in no case did the person at the drycleaning reception desk know which solvent was used. On the basis of this information, she believes that consumers will have difficulty in locating a plant using an alternative solvent.[593]

Representatives of drycleaners, and some individual consumers, however, take a more positive view. Mr. Seitz believes that consumers who initially buy a garment with a label saying "petroleum solvents only" probably will not purchase garments so labeled again due to the difficulty in locating a petroleum solvent drycleaner. He adds, however, that NCA does maintain a list of petroleum solvent drycleaning plants in the area it services and that this information can be provided to consumers and drycleaners who inquire.[594] IFI believes that although a

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588 Tr. 1801, V. White; Tr. 2129, B. Reed; Tr. 2362, F. Reid; Tr. 1589, Dr. Wayne St. John, Associate Professor, Southern Illinois University; Tr. 2526, K. Bourdeau.

589 R. 16 at 2, J. Schapiro.

590 Tr. 1293, J. Schapiro.

591 R. 16 at 2, J. Schapiro.

592 Tr. 1294, J. Schapiro.

593 Tr. 1817, Dr. Vivian White.

594 Tr. 897, NCA.

consumer may assume, albeit incorrectly, that a specified solvent is readily available in his vicinity, the consumer will not be harmed because the local drycleaner can either locate a plant using an alternative solvent for the consumer or may be able to modify its own drycleaning cycle in order to process the item. In IFI's opinion, non-specification of a solvent will perform a greater disservice to both consumer and drycleaner alike than will a full and complete disclosure.[595] This position is supported by the California Fabricare Institute.[596] Elaborating on this argument, IFI states that several options are available to the consumer purchasing a garment labeled "petroleum solvents only." The consumer can first try to locate the appropriate drycleaner. Second, the item can be taken to the local drycleaner who, as previously stated, may be able to modify his own drycleaning cycle in order to clean the item armed with the information disclosed on the label.[597] If the drycleaner feels that he cannot safely process the item by modifying the perchlorethylene cycle, he can "wholesale the garment" to a petroleum plant in the vicinity. Such a situation is neither new nor unusual and most drycleaners are aware of petroleum plants in their vicinity or can contact their local or state associations, which maintain lists of such plants.[598] Consumers encountering difficulty in this regard (such as finding no petroleum or fluorocarbon plant within 50 miles) might elect not to purchase a garment so labeled again. However, if the solvent specification is eliminated, "the consumer will be flying blind at all times, the first time and succeeding times."[599] This point is confirmed by a drycleaner who states:

> We have a good working relationship with the other cleaners in Norfolk--there are many items on the market today that say "do not use perc" or "do not use petroleum solvents," so when we read the labels we use the correct solvent. Rather than chase the customer all over town we take her coat in and take it to the other cleaner for cleaning only and then we finish it ourselves.[600]

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595 Tr. 1391, IFI.

596 Tr. 2410, CFI.

597 R. 17 at 1062, IFI.

598 Tr. 1416, 1424-1426, IFI.

599 Tr. 1416, IFI.

600 R. 17 at 1632, drycleaner.

Similarly, the California Fabricare Institute states:

> However, given prior knowledge [as] to the advisability of another solvent for processing, knowledge imparted by a care label with solvent specification, the drycleaner may be able to successfully care for the article by modifying his own operating procedures. If in his professional judgment he feels that this would be unsafe, there is a high probability that he is is aware of a petroleum or fluorocarbon plant in the near vicinity which could safely handle the article.[601]

Another consumer representative also believes that consumers will be able to locate a specific solvent without too much trouble by checking with their own local drycleaners.[602]

The Presiding Officer concludes that when a specified solvent is not available, local drycleaners are usually informed about the location of appropriate alternate drycleaning facilities through communication or other sources and do refer consumers to such facilities.[604] Staff finds the record to indicate that location of a drycleaner who uses an alternate solvent system may not be easy for a consumer. Staff, however, agrees with the Presiding Officer's conclusion that finding such an alternate source is possible and concludes that consumers will not be harmed by an assumption of availability. It has been shown fairly conclusively that many drycleaners have access to alternate solvent operations or can vary their own processes to accommodate specialized items. Furthermore, staff believes that consumers would prefer to "search out" the proper drycleaner rather than risk the damage which will occur by having an item cleaned in the wrong solvent.

Finally, in order to determine the possible cost to both consumers and manufacturers of disclosing solvent information, staff, as well as the Presiding Officer, questioned knowledgeable witnesses in order to assure that such information would appear on the record. Witness Schapiro states that there should be no difference in operating costs for each of the three solvent systems, provided each system operates as it should.[605]

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601 Tr. 2411, CFI.

602 Tr. 2150-51, B. Reed.

603 Tr. 2528, K. Bourdeau; Tr. 2744, NCC.

604 Presiding Officer's Report 87.

605 Tr. 1343, J. Schapiro.

Consumers probably will find it necessary to leave their neighborhoods in order to locate drycleaners using alternate solvents and in so doing will be forced to spend monies they had not expected to spend in order to properly process their garments.606 IFI, on the other hand, ascribes no extra cost to cleaning garments in petroleum or fluorocarbon solvents.607 While there might be a minimal additional charge if a local drycleaner must "wholesale out the cleaning of such an item," most consumers who are unable to locate petroleum or fluorocarbon operations in their neighborhoods will not have to go to the expense of seeking such facilities, but can rely on their local drycleaners to do this for them at little or no extra charge. This is a common practice in the industry.608 While AAMA states that solvent specification will be a burden on consumers, it offers no qualification or explanation for this opinion.609 With respect to possible burdens on manufacturers if solvent disclosure is required, Mr. Blagman states that most AAMA members do not have the necessary facilities to test all solvent types.610 Some AAMA members, however, do have the proper testing facilities and most clothing manufacturers are now equipped to determine that goods are "fast" to perchlorethylene.611

The record contains many arguments both for and against the disclosure of solvent information. It has been stated that the test for "drycleanability" should involve only perchlorethylene solvent and ignore all others. Such a criterion would result in negative drycleaning instructions on items which can be safely cleaned in petroleum or fluorocarbon solvents. Staff maintains that such labeling is patently false and should not be countenanced by the Commission. It has also been stated that solvent disclosure will be of no value to consumers. Staff disagrees. Solvent disclosure will benefit consumers who are alert to point of purchase information. An experienced consumer may choose not to purchase an item requiring care involving an uncommon solvent. Such a purchasing option would not be available absent solvent disclosure proposed in the Rule. Moreover, economic injury which has occurred over and over again to consumers because of the

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606 R. 16 at 2, J. Schapiro.

607 Tr. 1424, IFI.

608 Tr. 1424, 1426, IFI.

609 Tr. 1748, AAMA.

610 Tr. 1701, AAMA.

611 Tr. 1701, 1721, AAMA.

improper use of drycleaning solvents by the drycleaner will be largely prevented. Manufacturers argue that solvent specification will be a burden on manufacturers who cannot know of all commercially available solvents and that drycleaners are in a better position to determine the propriety of any particular solvent. Staff notes, however, that theoretically, manufacturers are already testing items in order to determine accurate care procedures. Since there are only three commercially available solvents in general use, the possibility that any manufacturer would not have knowledge of the three solvents or would be unable to find information concerning such solvents seems highly unlikely. Further, the manufacturer is in the unique position of having full knowledge of the care traits of the items he produces. None of this information is available to drycleaners who have little means of obtaining it. Consumers do not deliver items to drycleaners for experimentation purposes. Rather, such items are delivered for a successful and unimpaired cleaning. Staff further maintains that disclosure of solvent information will not result in "low labeling" or "low testing" by manufacturers. There is no evidence on the record to support such a claim. Many manufacturers already test their products in "perc," the most severe of the three commercially available solvents. Additionally, some say that consumers will not comprehend labels which contain solvent specifications. Staff maintains, however, that consumers will understand them sufficiently enough to take the labeled items to their local drycleaners. The record contains no evidence that the drycleaner will not understand such a disclosure. Finally, it is argued that consumers will assume that drycleaners using a specified solvent will easily be found in their neighborhoods when in fact this may often not be true. While staff agrees that consumers may mistakenly assume that a specified solvent will be readily available, staff believes that consumers will not be significantly harmed by this assumption. The record demonstrates that most local drycleaners know of plants in their vicinity using alternate solvents or can obtain this information from professional associations. Staff discerns (and the record indicates) a far greater economic harm which occurs when a garment is ruined through cleaning in an incorrect solvent. Staff, therefore, concludes that when all commercially available drycleaning solvents cannot be used, disclosure of the proper solvent is absolutely essential to avoid damage due to improper care. As such, the record supports Section 423.5 (a)(2) of the proposed revised rule.

(d) Form of Disclosure

As previously noted the record indicates that the drycleaning terminology currently in use is vague and confusing. Manufacturers often employ the same terms in drycleaning instructions for items requiring modifications of standard drycleaning procedures to prevent damage. Therefore, staff believes that, in addition to solvent specification, the Rule should require the use of other clearly defined, standardized terminology in drycleaning instructions.

The term "commercial" which refers to any business engaged in commerce, is vague at best in a drycleaning instruction; all types of drycleaning establishments, i.e., coin-operated, self-service and attendant-operated facilities are commercial operations. The term is misunderstood by consumers as well as by drycleaners. Staff therefore recommends that the term "commercial" be prohibited in drycleaning instructions.

The record also indicates that, according to drycleaners, the terms "dryclean" and "drycleanable" mean that the item so labeled can be cleaned safely in all of the commercially available solvents, using all standard drycleaning procedures. The meaning of the word "drycleanable," however, is vague and implies a certain performance level not related to the care characteristics of the item. The term "dryclean," on the other hand, is a positive statement indicating that an item "should be" drycleaned. Staff therefore recommends that the term "dryclean" be adopted for use to indicate that an item may be cleaned in petroleum, fluorocarbon or perchlorethylene solvents or any other commercially available solvent, using any commercially available drycleaning machine and using a standard drycleaning cycle including the addition of moisture, hot tumble drying and restoration by steam finishing, as defined in Chapter V.E.

The term "professional" also has conflicting meanings. To CFI, NCA, and some consumers, the term "professional" in a drycleaning instruction is synonymous with the word "dryclean." To IFI, a number of drycleaners and consumer representatives, however, the word "professional" means that some special process in a standard drycleaning cycle is necessary to clean an item safely. The ASTM glossary also defines "professionally dryclean only" as "special handling." Staff, therefore, recommends that the phrase "professionally dryclean" be used in drycleaning instructions to indicate the necessity of modifying the drycleaning cycle in some way. When used, this phrase should be accompanied by an explanation of the needed modification such as "use petroleum solvent," "no steam," "tumble cold," "no tumble," or such other explanations as necessary.

With respect to drycleaning instructions other than solvent specification, drycleaners have expressed throughout the record a need for more explicit drycleaning instructions generally. There is almost unanimous support for solvent disclosure. IFI suggests that more detailed drycleaning instructions covering other areas be specifically required for designated items as follows:

CARE LABEL EXAMPLES

DRYCLEAN (OR DRYCLEAN ONLY)

Hard wools; many polyester, rayon, cotton, and other wovens; some polyester knits; most rainwear.

PROFESSIONALLY DRYCLEAN ONLY

MODERATE CYCLE

Many acrylic wovens, and lightweight polyester, rayon and other wovens; some polyester knits; some bonded fabrics; some rayon or napped-pile fabrics.

PROFESSIONALLY DRYCLEAN ONLY

SOFT WOOL CYCLE

Soft wool jackets, sport coats, slacks, and suits; gabardine; some acrylic and modacrylic knits; some velvets; crepes.

PROFESSIONALLY DRYCLEAN ONLY

FRAGILE CYCLE

Angora, cashmere, mohair, and other soft knit wools; articles with bead, sequin, fur, or other delicate trim; articles with metallic yarn; some pleated garments; some acrylic and modacrylic knits; some lace and net fabrics; chiffon, some velvets, satins.

PROFESSIONALLY DRYCLEAN ONLY

DEEP FUR-PILE CYCLE

Deep fur-pile coats and jackets, or garments with deep fur-pile linings or trim.

PROFESSIONALLY DRYCLEAN ONLY

PETROLEUM OR FLUOROCARBON

Many pigment prints; fabrics with dyes or pigments soluble in perchlorethylene.

PROFESSIONALLY DRYCLEAN ONLY

SOFT WOOL CYCLE

CABINET DRY WARM

Many vinyl coated articles; many bonded fabrics; some urethanes.

PROFESSIONALLY DRYCLEAN ONLY

SOFT WOOL CYCLE

CABINET DRY COOL

Most modacrylic draperies.

PROFESSIONALLY DRYCLEAN ONLY

HOUSEHOLD CYCLE

TUMBLE DRY COOL

Acrylic coated draperies.

PROFESSIONALLY DRYCLEAN ONLY

MODERATE CYCLE

NO STEAM

Fabrics containing polyvinyl yarns.

PROFESSIONALLY DRYCLEAN ONLY

PETROLEUM OR FLUOROCARBON

SOFT WOOL CYCLE

CABINET DRY WARM

Many urethanes; garments with leather panels or trim.

PROFESSIONALLY DRYCLEAN ONLY

SOFT WOOL CYCLE

CABINET DRY COOL

STEAM ONLY

Some polyurethane films bonded to fabric; some acetate pile velvet.[612]

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612 R. 17 at 1070-1072, IFI.

While staff supports the concept of full disclosure of drycleaning instructions as set forth above, there is little record evidence that such disclosures are clearly understood or widely used throughout the drycleaning industry. Staff, therefore, cannot recommend their inclusion in the rule. On the other hand, IFI strongly opposes the drycleaning terms in the ASTM glossary saying that the ASTM drycleaning terms are not couched in terminology commonly used within the industry (see Chapter V.E.).

Record evidence, however, clearly supports solvent disclosure as well as the use of the standardized descriptive terminology "dryclean" to indicate that all standard drycleaning processes can be used safely and "professionally dryclean" to indicate that some modification in the drycleaning process is necessary to safely clean the item in question. With regard to those modifications (such as moisture level, temperature, size of load and agitation), the record simply does not support requiring any specific terminology in describing them. In Chapter V.E. of this report, staff has set forth specific terms which may be used by manufacturers in describing such modifications. Staff therefore recommends that section 423.5(a)(2) be modified and expanded as follows [section 423.2(b)(ii)]:

(ii) In any drycleaning instruction, each of the following topics must be clearly disclosed:

(A) the type of drycleaning solvent to be used when not all commercially available drycleaning solvents can be used;

(B) any other modifications to the drycleaning process, as defined herein, when necessary to the ordinary use and enjoyment of the item.

Provided, however, That the words "commercial(ly)" and "drycleanable" may not be used in any drycleaning instruction.

(6) Alternative Care

(a) Preface

At the time the current Rule was promulgated, staff recognized "low labeling," i.e., the use of extraordinarily cautious instructions when they are not, in fact, needed, as a possible problem. The Statement of Basis and Purpose expressly warns against it[613] and assumes that apparel manufacturers will comply with the spirit as well as the letter of the law.[614] The response to the Request for Comment, however, indicates that 54% of those commenting believe that low labeling is prevalent. Complaints received over a period of time show that low labeling occurs with respect to the use of bleach where instructions say "do not bleach" when in fact the item can be safely bleached and with respect to drycleaning, where labels read "dryclean only" when in fact, the item can be safely washed. A form of low labeling also occurs with respect to washing where labels read "do not dryclean" or "wash only" when in fact, the item can be safely drycleaned. As a remedy for low labeling, staff has proposed that more complete and explicit instructions be required on care labels.[615] Staff further proposes in section 423.5(a)(4) of the proposed revised rule that both washing and drycleaning instructions be required in care instructions for outerwear and household furnishings which can be both washed and drycleaned without damage or substantial impairment.[616]

This Section of the report begins with a statement of the incidence of low labeling in care instructions and continues in a discussion of consumers' assumptions about washing items which have only drycleaning instructions as well as drycleaning items having only washing instructions. A statement of the need for alternative care information and the cost of providing it follows with a discussion of a proposed rem dy ending this section.

The current record shows that low labeling continues to occur with some frequency. The Director of Research and Development for Phillips-Van Heusen Co., however, states that laboratory studies show the incidence of low labeling to be small while instances of actual mislabeling or inaccurate labeling are extensive. He theorizes that such inaccurate care instructions often result when

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613 Statement, Chapter VI. D.1.

614 Staff Report 26.

615 See proposed revised rule, § 423.5.

616 See proposed revised le, § 423.5(a)(4).

manufacturers use information supplied by mills without verifying its truthfulness.[617] Regardless of how it is characterized, consumers clearly find overly cautious instructions to be a frequent menace. "I've even wondered if the drycleaners association pays manufacturers to put 'DRY CLEAN ONLY' on many garments that could be washed."[618] Further, another consumer complains: "[I]n a number of instances in recent times, I have found that garments with labels saying 'dry clean only' could be hand or machine washed and ironed without adverse results."[619] Still others believe manufacturers to be too cautious (when recommending drycleaning for 100% cotton garments, for example) [620] and, in fact, have successfully washed such items by hand.[621] The ultimate result can be a successfully cleaned item at a substantial savings to the consumer.[622]

> Many garments which show a fabric content of 100% polyester are labeled as 'dry clean only' when most consumers know that one of the most desirable features of polyester is that it is washable. This practice should not be allowed to continue. Additionally, I recently bought a suit that listed a fabric content of 90% polyurethane and 10% rayon (popularly called 'supersuede') which was labeled 'dry clean only.' Not too long after I purchased that garment, I saw another one with the same fabric content which indicated that it could be either laundered or dry cleaned. Fearful of the consequences of laundering when the manufacturer stated, 'Dryclean only' plus the added question of whether the manufacturer would stand behind his product should something happen during the laundering process, I chose to have it dry cleaned. Considering that the cost of dry cleaning the suit was $3.50 compared to a relative[ly] few cents for home laundering, one can only conclude that this practice is a substantial burden to consumers.[623]

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617 R. 17 at 130, Phillips-Van Heusen Research & Development Corporation.

618 R. 18 at 179, consumer.

619 R. 18 at 201, consumer.

620 R. 18 at 413, consumer.

621 R. 18 at 560-561, textile student.

622 R. 18 at 628, consumer.

623 R. 18 at 718, consumer.

Consumers indicate that their experiences with "low labeling" cause great confusion when trying to determine the appropriate care procedures:

> Many garments have labels saying 'Dry Clean Only' when the garment can be easily washed by hand. From personal experience, I have hand washed a pair of pants with this label and had no problems. As a result, I washed another pair of pants also labeled 'Dry Clean Only' and had problems with shrinkage. This was an expensive experiment. Also, some garments labeled 'Hand Wash' can be safely machine washed.[624]

Another example of the confusion which can result when consumers see inconsistent instructions, resulting in low labeling, comes from a retail clerk in California:

> In my store, we received a shipment of 50% polyester/50% cotton outfits. The care labels said, 'Dryclean Only.' The second shipment said, machine wash warm. The first group had complaints from customers because of the [instructions], 'Dryclean Only' and didn't sell as well.[625]

The Army and Air Force Exchange Service also notes low labeling in the items purchased for resale in base exchanges. It receives many items labeled "dryclean only" which consumer-purchasers machine wash safely.[626] Low labeling may also occur in drying as well as washing and drycleaning instructions.[627] The record contains an

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624 R. 18 at 921, textile student.

625 R. 18 at 730, consumer.

626 R. 20 at 254, Army and Air Force Exchange Service.

627 R. 20 at 164, Extension Agent, CES, Washington.

extraordinary number of comments complaining of the high incidence of low labeling in general.[628]

National Retail Merchants Association (hereinafter NRMA) testifies that it does not perceive low labeling to be a widespread problem, because low labeling is against the manufacturer's own best interest.[629] The record, however, clearly indicates the opposite and staff so concludes.

(b) The Effect of Low Labeling

For various reasons, consumers frequently choose to clean an item using a care procedure (usually either washing or drycleaning) not contained in the care instructions attached to the item. Some consumers, for example, erroneously assume that drycleaning is always an appropriate procedure when only washing instructions appear on the label. "I had a suit completely ruined because the care label said only 'machine washable, tumble dry.' I dry cleaned it because most washable garments can also be drycleaned."[630] It appears that many consumers assume drycleaning

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628 R. 17 at 244, Chairman Extension Section, American Home Economics Association; R. 18 at 120, Extension Agent, CES, Tennessee; R. 18 at 129, 425, 636, 880, 888, 1036, consumers; R. 23 at 738, Margaret Dana, Consumer Consultant; R. 20 at 6, Extension Agent, CES, Iowa; R. 20 at 4, Extension Agent, CES, Alabama; R. 20 at 126, Extension Agent, CES, Iowa; R. 20 at 159, Extension Agent, CES, Mississippi; R. 20 at 160-161, Extension Clothing Specialist, CES, Florida; R. 20 at 249, textiles instructor; R. 20 at 290, 307, textiles graduate students; R. 20 at 415, home economics professor; R. 20 at 428, Extension Agent, CES, Georgia; R. 20 at 471, home economists; R. 20 at 502-504, Council on Wage and Price Stability; R. 20 at 630, 670, Margaret Dana; R. 20 at 694, Clorox Company; R. 20 at 728, Extension Agent, CES, New Jersey; Tr. 850, 859-860, 869, NCA; Tr. 1838, 1844, NRMA; Tr. 2404, 2422, CFI; Tr. 2737-2738, NCC.

629 Tr. 1838, NRMA.

630 R. 18 at 617, consumer.

to be safe in the absence of instructions to the contrary.[631] On the other hand, other comments indicate the opposite assumption. "I feel that both washing instructions and drycleaning instructions should be included on a label when a garment can be processed in either way. When I see either label separately, I do not assume that it can be processed in the other way also."[632] Karen Geiken, Professor of Textiles, points out that although IFI assumes drycleanability from a label containing washing instructions, consumers are not aware of this assumption.[633] Moreover, surveys conducted by cooperative extension services further confirm the fact that consumers simply do not assume garments labeled with washing instructions to be drycleanable unless the care instructions so state.[634] Other consumer representatives agree.[635] Consumers will assume the alternative method of care to be unsafe if that method is not specified on the care label.[636]

Business representatives do not necessarily agree on what consumers' assumptions are in these situations. The NCA representative states that consumers do not assume that items labeled only

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631 R. 18 at 771, 961, consumers; R. 20 at 33, Clothing & Textile Specialist, CES, North Dakota; R. 20 at 474, Extension Agent, CES, New York; R. 20 at 40, Kay Gragg, Consumer Affairs Representative, Ventura, California: "Care Label said, 'HAND WASH COLD WATER.' She sent it to the cleaners the first time it needed to be cleaned, because she tho't they might do a nicer job of finishing it - then she would do it after that. They drycleaned it and the colors ran. This department was told by the owner of the drycleaners that 98% of the clothes that say Hand Wash Cold Water can be drycleaned, so that's what they did. He also told me that if they read all the care labels that came on the garments he would be a patient in a mental institution. The cleaner ignored the label."

632 R. 18 at 974, consumer.

633 R. 20 at 249; Tr. 1665, Karen Geiken, Textiles and Clothing Instructor.

634 R. 20 at 345, Extension Specialist, CES, Ohio.

635 Tr. 2128, Barbara Reed, Better Business Bureau of Milwaukee.

636 Tr. 2528, 2519, Kathi Bourdeau, Dept. of Consumer Affairs, Los Angeles County, Cal.

with washing instructions can also be drycleaned.[637] On the other hand, NRMA[638] and Sears, Roebuck and Company[639] state that, in the absence of a drycleaning instruction, consumers will assume that such an item is drycleanable.

Several surveys on the record address consumer assumptions about alternative care procedures. A survey conducted in upstate New York (hereinafter, the New York State survey) shows that 50% of the rural consumers and 60% of the urban consumers interviewed agree that garments labeled only with washing instructions can be drycleaned.[640] On the other hand, a home economics instructor notes a frequently referenced Purdue University survey which finds that 72.4% of the 962 respondents state that they will not dry-clean a garment labeled 'wash' while 89.3% indicate that they will not wash garments labeled 'dryclean.'[641] In the Urbana-Champaign survey III, 46% of the respondents say that when an item is labeled 'washable,' they do assume the item can also be drycleaned, while 48% say they do not assume such an article can be drycleaned.[642] Similarly, the Urbana-Champaign survey I shows that while 34% of the respondents believe that a washable item can be drycleaned, 42% think that washable items cannot be drycleaned and 23% say that they do not know.[643] An experienced drycleaner sums up the problem:

> I wait on customers [frequently] and I think I am familiar with what they are thinking. There is a great deal of confusion about labels. I don't think we ought to assume anything for consumers or customers. I don't think that we should assume that because there is a 'washable' label in a garment they think it can be drycleaned, or they

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637 R. 17 at 10; Tr. 850, 863, NCA.

638 Tr. 1874, NRMA.

639 R. 17 at 528, Sears, Roebuck & Company.

640 R. 20 at 184, the New York State survey.

641 R. 20 at 378, the McCullough study.

642 Tr. 1473, the Urbana-Champaign survey III.

643 Tr. 1498, the Urbana-Champaign survey I.

> think it cannot be drycleaned. I don't think they are in a position to assume anything. I think they should have the benefit of what the manufacturer knows, what the retailer knows, and what the drycleaner knows. I see no reason to withhold information from a consumer.[644]

Consumer assumptions about "washability" also vary in the presence of a label stating "dry clean only." Some are firm in their beliefs:

> [O]ne does not dare attempt to wash - even though [the] washing machine has temperature and spin controls - an item which has a 'dry clean only' label (many woolen items - those not labeled machine washable - can be washed carefully with success. The same holds true for other materials but at the prices one now has to pay for clothing, one does not dare take a chance if there is only a 'dryclean only' label and no label of material composition.)[645]

Others are confused:

> 2 yrs. ago, I bought a pair of Pendleton wool pants, labeled 'dry clean or hand wash in cold water.' I have done both, [b]ut now wash pants at home satisfactorily. [However,] [t]his past Christmas I bought another pair of Pendleon wool pants. These were labled [sic] 'Dry Clean' (no washing in cold water). . . . I thought that with Woolite, I might just try washing these pants. And I did. They shrank.[646]

In the Urbana-Champaign survey III, 161 respondents were asked whether they assume that items labeled "dry clean only" can also be washed. Ten percent responded "yes" while 91% responded "no."[647] In the Urbana-Champaign survey I, not one of the 93 respondents

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644 Tr. 1891, Bretney Smith, Treasurer, Swannanoa Cleaners.

645 R. 18 at 798, consumer.

646 R. 18 at 829, consumer.

647 Tr. 1474, the Urbana-Champaign survey III.

assume that items labeled "dry cleanable" can be washed.[648] Eighty-six percent of 699 respondents in the BSSR survey believe that items labeled "dry clean" cannot be machine washed and 72% believe that such items cannot be hand washed.[649]

The record clearly shows massive confusion among consumers as to whether the drycleaning procedure can be used for items otherwise labeled "washable." Retailers, drycleaners and consumer representatives are equally divided on what they perceive consumer assumptions to be in such a situation. In point of fact, all washable items cannot be drycleaned.[650] IFI exhibits a garment with polystyrene trim. The fabric was safe to dry clean; however, the polystyrene trim which could be washed safely dissolved in drycleaning solvent. Some dyes are colorfast to washing but will bleed in solvent.[651] Vinyls can also be washed safely, but will be damaged if cleaned in solvent.[652] Other record information from drycleaners and consumers indicates that all washable items cannot be safely drycleaned.[653] Thus, consumer assumptions, in the absence of instructions to the contrary, that all washable items are drycleanable are erroneous; if carried out, such assumptions can cause extensive consumer economic injury in form of damage to garments drycleaned improperly.

With respect to assumptions about the washability of items labeled with drycleaning instructions (the traditional low labeling situation), the record shows that most consumers assume either that such items cannot be washed or are uncertain. The record also shows that such negative assumptions about washability are often incorrect. As a result, consumers are forced by unnecessarily cautious care instructions to employ what may be a more inconvenient and costly care procedure. Those who are confused may inadvertently damage the item in the process by incorrectly assessing what so often appears to be a low labeling situation.

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648 Tr. 1498, the Urbana-Champaign survey I.

649 Tr. 2726, NCC; HX 33 at 451, the BSSR survey.

650 R. 18 at 335, consumer.

651 Tr. 1428-1429, IFI.

652 Id.

653 R. 17 at 106, drycleaner; R. 17 at 226, Cranston Print Works; Tr. 1900-1901, B. Smith; Tr. 2422-2423, CFI.

(c) The Remedy

Alternative care instructions are required in the proposed revised rule to prevent consumers from making these assumptions. AAMA, however, does not believe it will work:

> For those who are low labeling now, there is no reason to believe that they will not continue to low label in the future since the alternative care instruction implies testing of the garment, which if [it] had been done in the first place would not have caused the suggested need of the the alternative instruction.

AAMA further argues that strict enforcement by the Commission is a better solution to low labeling.[654] One consumer impliedly agrees saying that instructions such as "dry clean only" generally represent the manufacturer's best judgment as to how an item should be treated.[655] The record, however, contains many more comments from those who see alternative care as a solution to "low labeling" including those from the labeling industry,[656] educators and consumer representatives[657] and the drycleaning industry.[658] Record surveys also show that consumers believe an alternative care requirement to be an effective deterrent to low labeling.[659]

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654 R. 17 at 129, AAMA; R. 17 at 1048, 1049, AAMA; Tr. 1711-1712, AAMA.

655 R. 18 at 531, consumer.

656 R. 17 at 159, Applebaum Tag & Label Co.

657 R. 17 at 219, Pellon Corporation; R. 18 at 71, consumer; R. 19 at 1, Merchandise Research Laboratories; R. 19 at 6, Textile Analysis Service, University of Alberta; R. 20 at 378, textile instructor; R. 20 at 445, Chairman, Massachusetts Extension Textile Committee; Tr. 1671, Karen Geiken; Tr. 1937, Karen Stanton.

658 R. 20 at 689, IFI; Tr. 1389, IFI; Tr. 2405, California Fabricare Institute; R. 18 at 125, 169, 349, 615, 653, 704, 1007, consumers; R. 20 at 135, 157, 366, 447, consumers; R. 18 at 105, 238, 292, 299, 315, 615, 640, consumers; R. 20 at 16, 173, 216, consumers.

659 R. 20 at 256, the Oxford survey (82% of respondents say alternative care will eliminate low labeling); R. 20 at 434, the Mississippi survey (82% of respondents say alternative care will eliminate low labeling); R. 20 at 322A, the Greeley survey (80% of respondents say alternative care will eliminate low labeling).

Aside from eliminating low labeling, alternative care instructions are also desirable for other reasons. When a clear alternative does exist, consumers want to know in order to be able to make an informed choice of care methods.[660] Many consumers now dryclean items when it is not necessary.[661] On the other hand, many prefer to refurbish a new garment by drycleaning to preserve a finish or set pleats, but will subsequently wash the garment if they know that it will not be damaged.[662] Alternative care instructions will also serve those consumers who have little time to expend on refurbishing or those who have no laundry facilities available.[663] Such instructions may also provide for possible conservation of natural resources and, on an individual basis, for the conservation of human energy.[664] For these and other reasons, surveys on the record overwhelmingly support the inclusion of an alternative care requirement in the Rule (for example, the Oxford survey: 91% for, 9% against;[665] the Greeley survey: 93% for, 7% against;[666] the McCullough study: 77.7% for;[667] the Yreka survey: 96% for, 4% against;[668] the Mississippi survey: 95% for, 5% against;[669] and the BSSR survey: 97% for.[670] Further record evidence in support of alternative care appears in the form

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660 R. 17 at 1212, Clorox Co.; R. 18 at 509, 757-758, 773, consumers; R. 20 at 5, Extension Agent, CES, Florida; R. 20 at 151, textiles instructor; R. 20 at 378, textiles instructor; R. 20 at 359, Dept. of Consumer Affairs, West Palm Beach, Fla.; R. 20 at 445, Chairman, Massachusetts Extension Textiles & Clothing Committee; R. 20 at 670, Margaret Dana; Tr. 1912, Karen Stanton; Tr. 1015, Betty Feather, Clothing and Textiles Specialist, Univ. of Missouri.

661 R. 17 at 386, home economist; R. 18 at 323, consumer.

662 R. 18 at 141, consumer.

663 R. 20 at 157, Professor of Textiles & Clothing.

664 R. 20 at 135, family economist, USDA, Consumer and Food Economics Institute.

665 R. 20 at 256, the Oxford survey.

666 R. 20 at 322A, the Greeley survey.

667 R. 20 at 378, the McCullough study.

668 R. 20 at 410, the Yreka survey.

669 R. 20 at 434, the Mississippi survey.

670 Tr. 2729-2730, 2733, NCC; HX 33 at 455, the BSSR survey.

of 60,000 consumer signatures forwarded by various drycleaners and academicians.[671] The record contains a genuine and overwhelming consumer mandate for such a requirement.[672]

As with consumers, the record response from drycleaners is unanimously in support of alternative care.[673] Both IFI, representing drycleaners, and the National Association of Laundering and Cleaning Council, representing commercial launderers and drycleaners, favor alternative care.[674] According to the American Apparel Manufacturers Association, one reason for such unanimity is that the alternative care proposal will bring greater benefit to drycleaners than to consumers. In a rebuttal submission, AAMA states, "[d]rycleaning is an expensive process,

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671 R. 15 at 12-14, 59 signatures; R. 17 at 15-91, 1594 signatures; R. 17 at 99-103, 85 signatures; R. 18 at 421-506, 81 signatures; R. 18 at 128, 531, 538, 656, 970, 973, 2430, consumers; R. 18 at 1017-1021, 5 signatures; R. 18 at 1025-1031, 6 signatures; R. 20 at 293, 21 signatures; Tr. 853, 60,000 signatures.

672 R. 17 at 489, consumer; R. 18 at 4, 109, 112, 115, 116, 120, 125, 136, 144, 146, 153, 155, 165, 169, 179, 198, 200, 223, 235, 238, 292, 299, 315, 320, 329, 335, 341, 347, 349, 385, 395, 400, 405, 508, 510, 516, 520, 523, 524, 526, 528, 546, 553, 554, 557, 562, 566, 568, 571, 578, 589, 590, 611, 613, 614, 615, 617, 640, 643, 649, 650, 651, 653, 662, 669, 685, 699, 704, 720, 724, 725, 734, 739, 740, 746, 795, 800, 802, 751, 755, 760, 762, 765, 768, 770, 778, 780, 784, 793, 829, 836, 839, 842, 845, 848, 851, 854, 857, 860, 866, 869, 872, 875, 878, 881, 882, 884, 908, 911, 916, 922, 924, 943, 959, 961, 962, 974, 982, 984, 987, 990, 991, 998, 1000, 1001, 1007, 1054, 1065, 2384, consumers; R. 19 at 1, 6, consumers; R. 20 at 12, 16, 18, 20, 43, 45, 93, 118, 122, 125, 126, 129, 134, 138, 139, 145, 160, 162, 164, 169, 173, 175, 191, 193, 197, 198, 206, 209, 213, 216, 224, 225, 228, 239, 242, 245, 247, 248, 252, 254, 261, 274, 276, 291, 293, 313, 315, 345, 352, 354, 356, 362, 366, 413, 419, 425, 427, 428, 431, 440, 447, 452, 471, 484, 548, consumer representatives and extension agents.

673 Tr. 850, NCA.

674 R. 20 at 677, National Automatic Laundry and Cleaning Council; R. 17 at 1054, IFI.

and we do not think that encouragement of drycleaning in situations where clothing is designed to be washed safely should be the function of the Care Labeling Rule."[675] Staff, however, does not believe that the appearance of drycleaning instructions, as well as washing instructions, will necessarily encourage consumers to dryclean rather than wash. Rather, such labeling will provide consumers with a clear choice where none clearly exists. Further, if consumers desire to wash as fervently as the Association believes, the mere presence of drycleaning instructions will make no difference.

Of those opposed to an alternative care requirement in the Rule, Levi Strauss & Co. and others maintain, first, that washing is the method of care preferred by consumers and that the marketing thrust of many apparel manufacturers is predicated on the production of casual apparel which can easily be cared for by home laundering.[676] The record indicates, however, that although many consumers prefer washing, a significant number choose to dryclean for justifiable reasons. Further, the record indicates that not all consumers agree that "home laundering" constitutes "easy care" and express a genuine need for an alternative. Second, it is argued that placing alternative care instructions on labels will greatly increase the label size and that consumers will remove the labels because they are too large.[677] Label manufacturers state, however, that modern technology makes it possible to greatly increase the amount of information on a label without increasing its size or cost.[678] Third, some suggest that consumers will be confused by the appearance of alternative instructions on the same label and will think that drycleaning is a preferred method thereby drycleaning items which they might otherwise have washed.[679] Aside from the fact that the record contains no evidence to support this prediction, the overwhelming response from consumers who want alternative instructions refutes this argument. The record clearly shows that consumers understand that alternative care procedures can be equally applicable depending upon the consumer's situation. Fourth, a dissenting consumer maintains that washing is the most economical means of care

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675 R. 25 at 406-407, AAMA.

676 R. 17 at 385, Levi-Strauss & Co.; R. 17 at 124, Celanese Fibers Marketing Co.; R. 17 at 226-27, Cranston Print Works; R. 20 at 194, Extension Agent, CES, Oregon.

677 R. 17 at 124, Celanese Fibers Marketing Company; R. 18 at 207, consumer.

678 Tr. 2848-49, R. Schwager, Packaging Systems Corp.

679 R. 18 at 207, 789, consumers; Tr. 1701, AAMA; R. 20 at 675, NRMA.

and, since it is to the consumer's advantage to wash rather than dryclean, the consumer does not really need drycleaning instructions.[680] On the other hand, alternative instructions will also provide many consumers with washing instructions where these instructions might not otherwise be available.[681] Furthermore, record evidence shows that washing is not always the most feasible or economical care procedure for a consumer without laundering facilities or access thereto. Fifth, it is alleged that consumers already know that all washable items can be drycleaned safely; therefore, alternative care instructions are not necessary.[682] The record, however, clearly demonstrates that (1) all consumers do not assume that washable items can be drycleaned[683] and (2) in fact, all washable items indeed cannot be drycleaned safely.[684]

One final objection to alternative care is that care instructions should reflect the manufacturer's informed judgment of the best care procedure for an item at the least cost. On the assumption that a "best" care procedure exists in every case, alternative care instructions would, therefore, be superfluous and irrelevant.[685] A similar point has been made by AAMA who questions (1) whether all methods of washing and drycleaning must be safe in order for alternative care instructions to apply and (2) whether the provision in the proposed revised rule applies where either washing or drycleaning is determined by the manufacturer to be a "preferred" method of care for one reason or another.[686] NRMA also argues that the question of whether drycleaning or washing is the best care procedure for a particular item should be left to the discretion of the manufacturer.[687] While

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680 R. 17 at 226-227, consumer.

681 R. 18 at 157, consumer; R. 18 at 174, textile home economist; R. 18 at 188-190, 385, 757-758, consumers; R. 20 at 5, consumer; R. 20 at 157, Professor of Textiles & Clothing; R. 20 at 167, Extension Agent, CES, Georgia; Tr. 1912, K. Stanton, Dept. of Consumer Affairs, Mount Holly, New Jersey.

682 R. 20 at 243, Extension Agent, CES, Georgia.

683 See Part (b) of this Section.

684 See Part (b) of this Section.

685 Tr. 1601, Dr. Wayne St. John, Assoc. Professor, Southern Illinois University.

686 R. 17 at 1048, AAMA; Tr. 1710, AAMA.

687 R. 16 at 162, NRMA; Tr. 1838, NRMA.

section 423.5(a)(4) of the proposed revised rule may so indicate, it is not intended that alternative care instructions be supplied when a single method of care is clearly favored. In staff's opinion, several factors must be weighed in determining whether one method of care is superior to another including (1) the likely effect of the prescribed care on the utility of the item; (2) the likely effect of the prescribed care on the appearance of the item; (3) the initial cost of the item; (4) the cost of the prescribed method of care; and (5) the ease of the prescribed method of care. While there are many items which can be both washed and drycleaned safely, consideration of these factors may indicate that washing or drycleaning is clearly the superior choice. In such a case, it is staff's opinion that alternative care instructions should not be required by the Rule. For example, many silk blouses now on the market are sold for an amount in excess of $100.00. Most of these blouses can be drycleaned safely. Some of these blouses might be safely washed by hand but only with extreme caution and considerable expertise on the part of the consumer. In such an instance, the manufacturer might justifiably balk at placing washing instructions on such an item where the risk of damage would be relatively great. In staff's view, only drycleaning instructions are needed. Further, consider the example of a $25.00 (or less) polyester dress which can be both washed and drycleaned safely. Tests might indicate that drycleaning solvent adversely affects the utility of the dress over a period of time. Taking into consideration the long term effect of drycleaning on the utility of the item, the relatively low initial cost of the item and the relatively high cost of drycleaning, a manufacturer might justifiably determine that the washing procedure is clearly superior to that of drycleaning. In this case, only washing instructions need be supplied. Staff emphasizes that the alternative care provision of the proposed revised rule is meant to apply only to those situations where, after taking the above factors into account, it is determined that neither washing nor drycleaning is superior to the other but both can be accomplished without damage or substantial impairment. While it is not staff's intention to dilute this provision, neither is it intended that every item manufactured in the categories named should be labeled with alternative instructions when in the manufacturer's judgment, one care method may be clearly better than the other.

The cost of providing instructions for both washing and drycleaning is also an important consideration. Some object to an alternative care provision on the grounds that a "dry cleaning testing program" for all "washable" items would have to be undertaken by manufacturers. This testing cost and the cost of increased production time will allegedly cause an increase in the price of such items.[688] On the contrary, many manufacturers who

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688 R. 17 at 226, Cranston Print Works.

now test items in order to determine accurate care instructions apparently do so without incurring a competitive disadvantage. Indeed, staff has difficulty in understanding how a manufacturer can now develop any accurate care instructions without testing the item in question for all currently used care procedures. Additionally, both IFI and CFI believe that alternative care instructions will have minimal impact on manufacturers.[689] Although there is some feeling that alternative care instructions may place some burden on manufacturers, other comments affirming the point are scant. Staff believes that the benefits which consumers will receive in terms of informed choice, time and energy savings and a significant decrease in damage will far outweigh any such initial difficulty which manufacturers might experience and any minimal increase in cost which compliance with such a provision might entail.

In sum, therefore, staff concludes that a provision requiring a statement of alternative care instructions in situations where washing or drycleaning instructions are of equal benefit to the consumer is wholly justified by the record as a remedy to "low labeling" as well as to erroneous consumer assumptions which occur in the absence of such instructions. The Presiding Officer agrees.[690] The record shows that low labeling in the form of instructions stating "dry clean only" occurs frequently and often results in confusion when consumers discover that the labeled article can be safely and effectively washed. On the other hand, those consumers who religiously follow such instructions are effectively deprived of the option of washing the item which may in many circumstances, be a cheaper and easier method. The record also shows, however, that while some consumers often erroneously assume drycleanability (to their detriment) from the presence of washing instructions alone, others assume the opposite. To the extent that either of these assumptions are erroneous, consumers are also injured thereby. Further, staff concludes that the cost to manufacturers of providing alternative care instructions where warranted will be no greater than that required to ensure the accuracy of <u>any</u> care instructions prescribed, since both "washability" and "drycleanability" are fundamental to that determination. Finally, staff accepts industry's argument that alternative care instructions are not appropriate in situations where one procedure is clearly superior to the other, despite the fact that the item is able to survive both. As such, staff recommends that section 423.5(a)(4) of the proposed revised rule be modified in the final Rule, as set forth below, to reflect this fact.

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689 Tr. 1403, 1421-24, IFI; Tr. 1838, CFI.

690 Presiding Officer's Report 96.

Although there is general record support for alternative care instructions for all apparel items, the proposed revised rule limits the applicability of the provision to "outerwear". As such, it excludes all underwear from its scope because of the nearly universal "washability" of such items and the remote likelihood that drycleaning information is needed for such items by consumers. Since there is nothing in the record which specifically indicates otherwise, staff recommends that the provision continue to apply in the area of apparel "outerwear" only and that "underwear" continue to be excluded.

With respect to non-apparel items proposed to be covered for which care instructions provided in the Rule are appropriate (linens, slipcovers, draperies and curtains), the record contains more information. Fieldcrest Mills states that although fibers for linens have changed with the advent of polyesters and other synthetics, the basic laundering properties of fabrics used in ordinary household linen products have not changed materially through the years. Sheets and towels, for instance, are seldom, if ever, drycleaned.[691] The American Textile Manufacturers Institute essentially agrees: "When speaking of non-apparel items such as sheets, pillow cases and towels, the instructions for washing and drying follow the accepted laundering procedures which have become 'tradition' in this country."[692] While ATMI acknowledges that certain household linens, such as bed linens, might have certain "embellishments" which would dictate special care instructions beyond standard washing and drying instructions, it concedes that alternative care methods (in this instance, drycleaning) will rarely, if ever, be used.[693] Staff must agree that, as a practical matter, the need for drycleaning instructions on household linens (i.e., bed, bath and table linens) appears minimal and that alternative care instructions would be of little benefit to consumers. Since there is no specific record support for alternative care instructions for such items, staff must conclude, in its discretion, that such information is not needed and recommends that linens be excluded from the scope of the provision.

While there is no specific record evidence of the need for alternative care instructions with draperies, curtains and slipcovers, staff takes official notice that such items generally have care traits similar to apparel "outerwear" now recommended to be included. There is no question that such items are made of

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691 R. 17 at 771, Fieldcrest Mills, Inc.

692 R. 17 at 1147, American Textile Manufacturers Institute.

693 Tr. 1957-1959, ATMI.

similar fibers and fabrics and can be maintained by similar procedures, i.e., washing or drycleaning.[694] Further, low labeling and resulting erroneous consumer assumptions (or consumer confusion) are as likely to result from care instructions for these items as from instructions for apparel. Staff concludes, therefore, that it would be foolish not to include such items within the scope of the provision, if only as a preventive measure. On this basis, staff recommends that draperies, curtains and slipcovers be required to have alternative care instructions where appropriate in the same manner as is required for apparel "outerwear."

Finally, the proposed alternative care provision does not include any piece goods or yarn used to make such finished products. Logically, however, the need for alternative care instructions with what, in effect, are components of these products is equally great. The fiber, fabrics, finishes and care traits of piece goods and yarn used to make these products are similar to, if not the same as, the products themselves, regardless of whether they are made in a manufacturing plant or in a residence. Staff recommends, therefore, that piece goods and yarn used to make "outerwear," draperies, curtains and slipcovers also be included within the provision.

Based on all evidence in the record, staff recommends that the following modified provision be included in the final Rule for the purpose of requiring alternative care instructions as set forth below:

> (A) In all instructions, where outerwear (coats, suits, jackets, pants, robes, skirts, dresses or sweaters), draperies, curtains, slipcovers or piece goods and yarn made for the purpose of immediate conversion by the ultimate consumer into such finished items may be either washed or drycleaned without damage or substantial impairment, both methods must be disclosed in the manner set forth in this section; Provided, however, that only one method need be disclosed where the manufacturer or importer determines on the basis of a comparison of the likely effect of the two methods of care on the utility and appearance of the item, the initial cost

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694 R. 18 at 650, consumer. "If draperies can be either dry cleaned or hand washed, the consumer has the right to know and make the choice as to which method to use. This could be of economic benefit to the consumer."

of the item, the cost of each method of care and the ease of each method of care, that the method disclosed is clearly superior to the other from the point of view of those likely to purchase the product.

(B) In any action brought by the Federal Trade Commission alleging a violation of this part, the failure of the manufacturer or importer to have records or other documentary proof showing the manner in which such comparisons were made shall create a rebuttable presumption that such party lacked a reasonable basis for failing to disclose the alternative method in the care instruction.

D. Piece Goods

1. Preface

Presently, two categories of textile products are covered by the Care Labeling Rule, one of which is finished articles of wearing apparel.[1] The current rule requires a care label to be permanently affixed to such items when sold in commerce.[2] The other category of textile product presently covered by the Rule is that of piece goods used to make finished articles of wearing apparel. In the Statement of Basis and Purpose, the Commission notes that the piece goods industry is a growth industry, constituting a large part of the wearing apparel industry. Indeed, home-sewn apparel comprises an ever-growing portion of the typical consumer's apparel budget. It was determined that a rule which covers all appropriate wearing apparel must include "piece goods" which are used by the consumer to make finished articles of wearing apparel.[3] Apparel items require regular care regardless of whether the consumer purchases the item ready-made or constructs the garment from piece goods. The current rule also requires that the person or organization which directs or controls the manufacture of piece goods be responsible for providing care labels to accompany the sale of such goods which clearly disclose instructions for their care and maintenance and which can by normal household methods be permanently affixed to the finished article by the ultimate consumer.[4] The responsible party is usually the piece goods manufacturer.[5] Further, attaching labels to piece goods, as is now required for apparel, was believed to be impractical due to the nature of piece goods and the way they are sold. The current rule therefore provides for accompanying labels or tags which can be provided with each purchase of piece goods and can be permanently attached to the article sewn by the consumer. The manufacturer, in effect, has the responsibility of supplying a sufficient number of "accompanying labels or tags" to retailers to meet the needs of each consumer purchaser.

This section of the report will discuss the nature of the "home-sewing" industry and what both manufacturers and retailers

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1 Care Labeling Rule, Paragraph (a). For definition of term "finished article of wearing apparel," see Paragraph (d)(2).

2 Id.

3 Statement, Chapter VI.A.

4 Care Labeling Rule, Paragraph (b).

5 Id. The accompanying labels must be, "provided by the person or organization that directed or controlled the manufacture of such goods."

are currently doing to ensure that consumers receive care labels with piece goods' purchases. The section continues with a discussion of the proposed coverage of piece goods under the Rule and concludes with an analysis of how care instructions for piece goods should be transmitted to the ultimate consumer.

Comments received both in response to the Request for Comment, as well as the proposed revised rule indicate that the home-sewing industry is vast, both in the actual numbers of home sewers as well as the amount of the piece goods yardage which is sold to consumers for the construction of wearing apparel. The Textile Distributors Association, representing a number of piece goods manufacturers and converters (hereinafter TDA), testifies that approximately 25% of the total population of this country (45 million) are home sewers.[6] Further, the Market Research Corporation of America estimates that the total annual market for over-the-counter piece goods is about 2.3 billion dollars.[7] There are roughly 460 million sales transactions at the retail level per year in this market.[8] Home sewers save approximately 70% of the cost of a ready-made garment when they choose to make it themselves.[9] This visible monetary savings has proven a major impetus to the growth of the home-sewing industry.

2. Current Labeling Practices

Following the promulgation of the current rule, members of the TDA together with members of the National Retail Merchants Association (hereinafter NRMA) developed the "triangle system" of labeling in an effort to comply with the current rule. Under this system, which is still in effect, a series of nine numbered care instructions were developed; bolts of fabrics in the retail store are to carry a printed number (1-9), inside a triangle (hence the designation "triangle system") which corresponds to the number of the appropriate care label for that fabric. Retailers are requested to distribute a care label which corresponds to the instructions on each bolt to each consumer purchaser. Since manufacturers of piece goods do not sell their products directly to the ultimate consumer, but rather to the retailer, some provide a discount, usually of 1/8 to 1/10 cent per yard, to retailers. This amount is a reimbursement to retailers for the cost of purchasing care labels directly. Other manufacturers deliver care labels directly to the retailer accompanying fabric orders, either attaching labels to bolt ends or enclosing sheets

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6 Tr. 1037-38, Textile Distributors Association.

7 HX 4, B. Feather, Textile & Clothing Specialist, CES, Missouri.

8 Tr. 962, Fabri-Centers of America.

9 HX 3 at 23-4, Fabri-Centers of America.

of labels within a fold of the fabric or inside packaging around the bolt.10 In order to simplify the distribution of care labels at the retail level, Packaging Systems Corporation, a label manufacturer, devised a label dispenser kit which holds nine rolls of perforated labels, each containing one of the nine care instructions used in the "triangle system." The label dispenser kits (including 9 rolls of labels [2000 labels per roll]) sell from $42-$54 each, the actual price depending on the quantity of kits purchased in any one sale. Additional rolls of perforated labels sell in a range from $3.80/1000 for 10,000 labels (5 rolls) to $2.10/1000 for 100,000 labels or more (50 rolls or more). At the noted prices, the actual cost per label ranges from $0.0038 to $0.0021 per label.11 When the discount which manufacturers now allow retailers for purchasing labels ($0.00125-$0.001 per yard) is compared to the actual cost of the labels, (assuming an average fabric purchase of two or more yards), it is not difficult to understand why many retailers readily accept the discount and purchase labels themselves. Whatever method is used to obtain them, the record indicates that manufacturers of piece goods are indeed providing the cost of care labels or the care labels themselves to retailers. Further, it is estimated that at least 95% of the fabric bolts are labeled with the appropriate care instructions when they leave the textile mill, although, in a few cases, the instructions are not always transferred when the fabrics are rewound on smaller bolts by jobbers and wholesalers for delivery to retailers.12 Manufacturers, however, typically find it difficult, if not impossible, to ensure that the labels eventually end up in the hands of the ultimate consumers.

Despite these efforts, the staff report concludes that piece goods purchases are rarely, if ever, accompanied by a care label as intended by the current rule.13 Although there is evidence that some retailers make an attempt to supply care labels with piece goods purchases, the record indicates that these retailers are rare indeed. Fabri-Centers of America, a chain of more than 400 retail fabric shops, ensures that each of its fabric stores is supplied with rolls of permanent care labels, containing the care instructions developed for the "triangle system," to be placed on display at the counter.14 Two basic traffic flow patterns affect the distribution of these labels. In the first instance, the customer typically brings her fabric

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10 Tr. 141-42, TDA; R. 17 at 427, ATMI; Tr. 1038-1041, 1044, TDA; R. 17 at 494, National Notion Association; R. 17 at 519, Sears, Roebuck & Co.

11 HX 36 at 534-537, Packaging Systems Corporation.

12 R. 20 at 375, Ms. Jacquelyn McCullough, Instructor, School of Home Economics, Eastern Illinois University.

13 Staff Report 8.

14 Tr. 968, Fabri-Centers.

selection on a bolt to a "check out center" which consists of a cutting table and cash register where a clerk completes the entire sales transaction which includes measuring and cutting fabric, allegedly supplying the appropriate care label, writing the sales slip and ringing the sale on a cash register.15 On the other hand, cutting counters in some stores are scattered in as many as a half dozen locations. Consumers bring their fabric selections on the bolts to these locations where a sales clerk measures and cuts the fabric, then writes a sales slip including a numerical designation of 1-9 on the sales slip to indicate the appropriate care label for the fabric. The customer then takes the fabric to the cash register, located at a central point, where she pays for the purchase and is then allegedly given a care label.16 While the representative of Fabri-Centers is confident that in some stores, care labels are actually distributed automatically in the manner described, he concedes that care labels are not given to every customer with every purchase.17 This is so, despite the fact that Fabri-Centers trains its store managers and personnel to discuss care of fabrics in publications and the media, and provides information booklets to consumers containing care information for fabrics.18 While the company provides full refunds on fabrics which are damaged by improper care whether or not the purchaser had received a care label and whether or not the recommended care procedure was followed,19 the record contains no evidence to indicate that this policy is standard throughout the retail piece goods industry.

Evelyn Kennedy, the owner of a retail fabric store, regularly provides one label for piece goods to be used in making a garment or one label per yard of goods if the end-use is not known at the point of sale.20 The National Retail Merchants Association argues that, "to the best of NRMA's knowledge care labels are available for distribution at the time of sale of piece goods and retailers are generally furnishing them to the consumers"21 saying that most consumers get labels if they request them.22 This claim, however, is unsupported by the balance of the evidence on the record.

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15 Tr. 989-90, Fabri-Centers.

16 Id.

17 Tr. 968, Fabri-Centers.

18 HX 3 at 26-7, Tr. 959, Fabri-Centers.

19 Tr. 984-85, Fabri-Centers.

20 R. 17 at 489, Evelyn Kennedy, small retailer.

21 R. 16 at 154, National Retail Merchants Association.

22 Tr. 1870, NRMA.

This evidence indicates that retailers of piece goods are simply not providing labels with purchases of fabric. The Seattle survey shows that 38% of those responding never receive a label with piece goods purchases while 79% of those responding receive labels with such purchases only one-half of the time or less.[23] In the Coosa County survey, 90% of the consumers interviewed do not receive care labels with piece goods purchases.[24] In the Urbana-Champaign survey I, 70% of the 93 consumers surveyed have not received labels with fabric purchases.[25] In the Urbana-Champaign survey III, 80% of the respondents "usually" are not given labels when they purchase fabric.[26] Finally, in the Fort Worth survey, 93% of the consumers interviewed do not ever receive such labels.[27] Comments from state cooperative extension service specialists, professors of textiles and clothing and home economics teachers writing on behalf of the consumers they serve confirm the findings of the staff report as well as the surveys previously noted. Although care labels may indeed be on the premises in fabric stores, the labels are usually out of sight, inaccesssible or completely unavailable and consumers do not see them.[28] Often consumers do not know to ask or, in the confusion of completing

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23 R. 20 at 319, Seattle survey.

24 R. 20 at 72, Coosa County survey.

25 Tr. 1494, Urbana-Champaign survey I.

26 Tr. 1463-64, Urbana-Champaign survey III.

27 Tr. 2806, Fort Worth survey.

28 R. 18 at 311, Home Economics Teacher; R. 18 at 549, 725, 933, 1046, consumers; R. 20 at 19-20, Textiles & Clothing Specialist, CES, Idaho; R. 20 at 33, Textiles & Clothing Specialist, CES, North Dakota; R. 20 at 117, County Extension Home Economist, CES, Georgia; R. 20 at 120, Textiles & Clothing Instructor; R. 20 at 122, County Extension Home Economist, CES, Georgia; R. 20 at 136, County Extension Home Economist, CES, Georgia; R. 20 at 172, Clothing Specialist, CES, Arkansas; R. 20 at 312, Home Economist; R. 20 at 347, Associate Textile Professor, Univ. of Georgia; R. 20 at 407, Home Economist; R. 20 at 418, Asst. Professor of Home Economics; R. 20 at 451, Professor; Tr. 2564, Witness Morck.

a fabric purchase, will forget to request a care label.[29] Retail sales personnel frequently are uninformed and give consumers either the wrong care information or no care information at all.[30] Labels are sometimes given on request, but not automatically.[31] Furthermore, care information does not always appear on bolts. When fabric is rerolled in stores, the wrong care information may be left on a bolt end if the retailer is not cautious.[32] In such cases, the consumer does not even have care information at the point the purchasing decision is made.

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29 R. 18 at 311, Home Economics Teacher; R. 18 at 509, 675, 725, 919, consumers; R. 20 at 19-20, Textiles & Clothing Specialist, CES, Idaho; R. 20 at 33, Textiles & Clothing Specialist, CES, N. Dakota; Tr. 2564, W. Morck.

30 R. 18 at 322, 509, 648, 815, 919, 962, 966, 982, 987, 990,, 1010, 1046, 1069, consumers; R. 20 at 6, Extension Agent, CES, Iowa; R. 20 at 19-20, Textiles & Clothing Specialist, CES, Idaho; R. 20 at 44, Extension Agent, CES, Alabama; R. 20 at 96, State of Hawaii, Consumer Protection; R. 20 at 120, Textiles & Clothing Instructor; R. 20 at 122, Extension Agent, CES, Georgia; R. 20 at 150, Textiles & Clothing Instructor; R. 20 at 165, Extension Agent, CES, Oregon; R. 20 at 194, Extension Agent, CES, Oregon; R. 20 at 210, Textiles & Clothing Specialist, CES, Kentucky; R. 20 at 212, Extension Agent, CES, Idaho; R. 20 at 234, Extension Agent, CES, Ohio; R. 20 at 259, Textiles Graduate Student; R. 20 at 287, Dept. of Consumer Affairs, State of South Carolina; R. 20 at 299, Dept. of Textiles & Clothing, Oregon State Univ.; R. 20 at 302, Textiles & Clothing Specialist, CES, New Jersey; R. 20 at 375, Home Economics Instructot.

31 R. 20 at 172, Clothing Specialist, CES, Arkansas; R. 20 at 177, Extension Specialist, CES, Calif.; R. 20 at 259, Textiles Graduate Student; R. 20 at 312, Home Economist; Tr. 2354-55, Kay Gragg, Dept. of Consumer Affairs, Ventura County, Calif.; Tr. 2564, W. Morck, Instructor, Consumer and Family Studies, Grossmont College; R. 18 at 393, 550, 611, 613, 648, 746, consumers; R. 18 at 795, Home Economics Teacher; R. 18 at 898, 943, 962, 963, consumers; R. 18 at 965, Home Economist; R. 18 at 996, fabric store clerk; R.18 at 1015, consumer; R. 20 at 122, Extension Agent, CES, Georgia; R. 20 at 150, Textiles & Clothing Professor.

32 R. 18 at 648, 720, 962, 990, 1010, consumers; R. 20 at 3, Extension Agent, CES, Kansas; R. 20 at 117, Extension Agent, CES, Georgia; R. 20 at 136, Extension Agent, CES, Georgia; R. 20 at 349, Assistant Professor of Home Economics.

The current record shows and staff concludes that retailers simply are not providing care labels with piece goods purchases. The record shows that retailers receive care labels from manufacturers but do not distribute them to the ultimate consumer. Thus the consumer is paying for the cost of the care label in the cost of the fabric and receiving no benefit for the money expended.

3. Coverage

As with wearing apparel, piece goods are already included within the coverage of the current rule; such coverage is retained in the proposed revised rule and is not truly an issue in this proceeding. Because the record contains some testimony indicating that piece goods should be eliminated from the Rule's coverage, however, staff will briefly address the issue here.

The care characteristics of piece goods are determined by their fiber content, fabric density, dimensional stability and the dyes and finishes applied to them.[33] For example, 5% or less of the fabrics sold in a portion of Fabri-Center's shops require drycleaning. Approximately 80% "are machine washable and dryable and require no further care." The remaining 15% of the fabrics sold by the company, "are also machine washable, but require ironing or, in the case of a very few fabrics, line drying."[34] Most of the company's customers prefer fabrics which can be machine washed and dried, a fact which accounts for the high percentage of "easy-care" fabrics sold through the company's retail outlets.[35] While there is no indication in the record that the high number of sales of "machine washable and dryable" fabrics in this company are representative of the piece goods market as a whole, the fact that customers express such preferences clearly demonstrates the varying nature of the care traits of piece goods generally. Further, the fact that some fabrics are "machine washable and dryable" does not necessarily mean that caring for them is a simple matter. As discussed in Chapter IV.C.4., other variables in the washing and drying processes often affect the result.

Textile Distributors Association and others believe that the home sewer is an unusually sophisticated consumer who has little or no need for care labels.[36] One reason is that a wide array of

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33 Tr. 979, Fabri-Centers.

34 Tr. 960-61, Fabri-Centers.

35 Tr. 981-82, Fabri-Centers.

36 Tr. 1039-40, TDA; R. 16 at 155-56, NRMA; HX 3 at 95, 96, Fabri-Centers of America.

programs and educational materials are allegedly made available to home sewers through public schools, community colleges, commercial sewing schools, sewing machine companies and retailers making care instructions unnecessary.[37] Further, TDA notes a trend toward cold water washing which lessens the chance of damage to garments through washing.[38] In any event, fabric stores already offer a wide choice of fabrics which are considered to be simply "washable" without further complication. Both TDA and NRMA thus believe many consumers do not ask for care labels with piece goods simply because they do not need them.[39]

The weight of the record, however, refutes these claims. Indeed, TDA acknowledges on cross-examination that it is difficult for consumers to determine appropriate care procedures for all fabrics on the basis of visual inspection alone. Textiles and clothing professors, home economics teachers and state extension specialists directly contradict the position that consumers who are home sewers are more knowledgeable in the care of fabrics than others and experience no need for care labels. Home economists who are in the business of educating consumers hear about consumer problems on a daily basis and know that consumers do use care instructions.[40] A textiles student states that, "everyday, new textile products for home use are being developed and even textile students cannot keep up with information on these products."[41] Another consumer acknowledges this need: "I am a sales clerk in a fabric store . . . people may say that they know the washing instructions, but we have gotten so much material returned that was obviously ruined just because the customer didn't wash it properly."[42] When questioned about the knowledge and sophistication of home sewers, witness Morck states that, in her 10 years of teaching experience in textiles and clothing construction, she has not found "home sewers" to be more knowledgeable about the care of fabrics than consumers who do not sew. Indeed, with an extensive background in textiles, she herself must often rely on the questionable knowledge of sales clerks regarding new fabrics with no care information.[43]

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37 Id.

38 Tr. 1041-42, TDA.

39 Tr. 1042, TDA; Tr. 1866, NRMA.

40 R. 20 at 36, Dr. Jessie Warden, Professor, Textiles & Clothing.

41 R. 18 at 714, consumer.

42 R. 18 at 981, consumer.

43 Tr. 2585, W. Morck.

Although consumers might see care instructions on a fabric bolt at the time of purchase, such fabric is often not made up into garments immediately. Indeed, several months or a year might elapse before a particular piece of fabric is used.[44] Care instructions which are available only at the point of sale would be of little use in these circumstances. Drycleaners also strongly support the retention of a care labeling requirement for piece goods. To them, recommended care information is just as important for home-sewn garments as it is for ready-made garments.[45] Many drycleaners in the Southern California area will not accept garments which do not have permanently attached care labels.[46]

Studies and surveys submitted indicate that an overwhelming percentage of home sewers want care labels with piece goods purchases; however, these same surveys show that home sewers do not always sew care labels into the garments which they construct. Of 153 home sewers surveyed in Georgia (hereinafter the Georgia survey), a full 97% want care labels with piece goods purchases.[47] However, the Seattle survey shows 82% of those responding never attach care labels to self-sewn garments.[48] In the Urbana-Champaign survey I and III, 85% - 100% of those interviewed want care labels with piece goods purchases while, at the same time, 40% - 50% do not attach the labels.[49] The Coosa County survey finds that 66% of those interviewed do not attach labels in home-sewn clothes. The author speculates, however, that this negative response relates directly to the fact that a high percentage of the respondents never receive care labels with piece goods purchases and therefore have no labels to attach.[50] In witness Taylor's study of 60 consumer-purchasers at six selected fabric stores in Fort Worth, Texas (hereinafter the Fort Worth survey), approximately 34% who receive labels apparently do not attach them. Of those interviewed, however, 66.6% would use care labels if they received them. The author cites several reasons for this

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44 Tr. 2565, W. Morck.

45 R. 17 at 106, drycleaner.

46 Tr. 2571, W. Morck.

47 R. 18 at 716, Gandy, Sharon G., "Consumer Awareness of Care Labeling of Yard Goods" (Spring, 1976), (hereinafter the Georgia survey).

48 R. 20 at 319, Seattle survey.

49 Tr. 1464, Urbana-Champaign survey III; Tr. 1494, Urbana-Champaign survey I.

50 R. 20 at 68, Coosa County survey.

dichotomy. First, the quality of the labels available in piece goods stores is poor. Second, some may already know how to care for the particular f[illegible] selected or never buy fabrics other than ones which can [illegible]y be machine washed warm and tumble dried.[51]

In summary, record evidence indicates that consumers who manufacture garments at home are not so sophisticated in the field of textiles that their need for care instructions has disappeared since promulgation of the current rule. Indeed even students of textile technology acknowledge this need, especially in view of the wide variety of fabrics typically offered for sale in the over-the-counter trade. The record also indicates that consumers need and use such instructions both at the point of sale (on the ends of fabric bolts) and at the point of care (in the form of care labels) even though they do not always attach the labels permanently to the items they make. Further, there are many reasons why consumers may not specifically request care labels in the fabric store; the record indicates, however, that lack of need is not one of them. In staff's opinion, the industry has not shown sufficient reason to remove piece goods from the Rule's coverage. Staff, therefore, concludes that piece goods should remain within the coverage of the final Rule. Since the record contains no evidence indicating that any party other than the manufacturer or importer of the finished goods should be responsible for devising care instructions for such goods and since the reasons for such responsibility[52] still appear to be valid, staff also concludes that the responsibility for devising such instructions should remain with the manufacturer or importer, as now required in the current rule.

4. Transmittal of Care Instructions

The manner in which care information is supplied by piece goods manufacturers is an issue in this proceeding. Two choices exist: (1) care instructions may be supplied separately in pamphlets, on the end of bolts or in other "impermanent" forms; (2) care instructions may be supplied on labels which can be permanently affixed to the finished product by the consumer, as is contemplated by the current and proposed Rules. The National Retail Merchants Association supports the printing of care instructions on the ends of bolts of piece goods saying that most consumers most frequently look at care information at the point

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51 Tr. 2821, 2822, 2828, Taylor, R. "Selected Aspects of Care Labeling of Piece Goods "(Fall 1976), (hereinafter the Fort Worth survey); R. 20 at 250, Marketing Specialist, Illinois Dept. of Agriculture.

52 Statement, Chapter VI.C.

of purchase.[53] TDA also supports a requirement that manufacturers print care instructions on the bolt end of piece goods, using the standardized instructions developed for the "triangle system."[54] NCC, in expressing support for the triangle system of labeling currently in use, states that manufacturers of piece goods should continue to mark the end of each bolt with a number corresponding to the label bearing the appropriate care instructions.[55] Individual consumers agree. One states that care instructions should always be on the end of the fabric bolt or roll so that sales clerks can check the instructions on the bolt end to ensure that the consumer gets the correct label.[56] Others say that care information on the bolt ends is essential to aid the consumer in making a purchasing decision. The presence of such information also eliminates the necessity for consumers to rely on a sales clerk's limited knowledge concerning the recommended care of the fabric.[57]

In order for consumers to be able to readily compare the care instructions for various fabrics at the point of decision, the care instructions must be readily available with each bolt of fabric being considered. Care instructions on the bolt or roll are the only instructions available to the consumers before the actual purchase is made. If only a number on the end of the bolt is supplied, the consumer will be aided in getting the appropriate care label at the point of sale but will be afforded no information at all before that time when the consumer typically makes his/her purchasing decision. As both consumers and industry agree on the necessity of such information before the point of actual sale, staff easily concludes that manufacturers and importers of piece goods should be required to supply care instructions on the end of each bolt or roll of piece goods in a form where they will be clearly visable and readily available to the purchaser at the time the fabric is inspected.

On the other hand, the record contains references to suggested methods by which the manufacturer can supply care information to consumers in a more permanent form. First, manufacturers might print care instructions at intervals on the reverse side of fabrics.[58] Second, manufacturers might supply care information

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53 R. 16 at 156, NRMA.

54 R. 16 at 143, TDA.

55 Tr. 2400-01, National Consumers Congress.

56 R. 18 at 509, consumer.

57 R. 18 at 141, 143, 176, 792, 1047, consumers.

58 R. 18 at 987, consumer; R. 20 at 133, Extension Agent, CES, New York.

in label form by printing them on a continuous tape which is folded into the fabric as it is wrapped around a bolt or roll. When a piece of fabric is cut from the bolt, a strip of tape of the same length may be cut at the same time. The consumer would then separate the individual labels by cutting the tape.[59] One advantage of this method is that consumers who store fabrics for long periods of time before constructing garments will be assured that the correct care label will remain with the fabric. Further, there will be much less chance of confusing the care labels as sometimes happens when several different fabrics are purchased simultaneously and packaged together with several different unattached labels.[60] This method is currently employed by some manufacturers of interfacing fabrics.[61] The record, however, also contains several objections to the continuous tape system of providing care labels. First, the system may be too costly[62] although, in 1971, "the cost of using tape including labor, packaging, time, etc. [was] less than a penny a yard."[63] There is no record information updating this cost amount. TDA states that the piece goods industry has already tried an "inserted continuous tape system" for supplying care labels at the time the current rule became effective. The system was found to be unusually costly and created problems with certain kinds of fabrics, such as filament fabrics which might be woven tightly and wrapped closely on a bolt or roll (as most fabrics are) and must often be kept in inventory over a long period of time. In this case, a continuous ribbon of non-woven labels leaves a mark on the fabric which might be difficult for the home sewer to remove when cutting, sewing and then pressing a garment[64] and which would interfere with the marketability of the fabric.

Third, a sufficient number of labels containing appropriate care instructions could be stapled or otherwise attached to the end of the bolt or roll holding the fabric or wrapped between the

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59 R. 18 at 746, 935, consumers; R. 20 at 43, 150, consumers; R. 20 at 191, Extension Agent, CES, Georgia; R. 20 at 230, 259, 312, Home Economists; R. 20 at 351, Chairman, Dept. of Textiles & Clothing, Univ. of Arizona; R. 20 at 238, Instructor, Univ. of Arizona; Tr. 1002, B. Feather; Tr. 1501, Janice Stone, Instructor, Textile and Clothing, Univ. of Illinois.

60 Tr. 2567, W. Morck.

61 R. 18 at 746, consumer.

62 R. 18 at 632-33, consumer; R. 20 at 216-17, B. Feather.

63 Tr. 1019-20, B. Feather.

64 Tr. 1060-61, TDA.

bolt and the fabric, enabling the consumer to remove a label as needed at the time the fabric selection is made.[65] Fabri-Centers states, however, that when fabrics arrive with labels wrapped between the fabric and the bolt in this fashion, the labels usually are lost.[66] Fabri-Centers customarily purchases fabric in full rolls and cuts it and rerolls it on new boards or bolts; thus, a relatively good chance for misplacing or losing the labels would exist in this situation.[67] Further, there is a good chance of labels which are attached to a bolt falling off and being lost as consumers and clerks carry the bolts of fabric from one place in the store to another.[68]

Fourth, some fabrics are delivered to retailers already rolled on bolts or boards and wrapped in protective cellophane or plastic. A consumer suggests that sheets of care labels can be inserted between the fabric and the protective wrapping before mailing. Retailers can then remove the sheets of labels and dispense the labels to consumers purchasing the fabric.[69] Indeed, some fabric manufacturers who supply care labels directly to retailers do package labels with fabric in the manner described.

Fifth, the record contains numerous comments suggesting that care information be incorporated in the selvage edge of piece goods. Many consumers believe that either printing or weaving care instructions along the selvage will provide care information

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65 R. 17 at 489, E. Kennedy; Tr. 2213-14, E. Kennedy; R. 18 at 176, 696-97, 783, 943, 965, 1047, consumers; R. 20 at 16, Textiles & Clothing Extension Leader, CES, Georgia; R. 20 at 191, Extension Agent, CES, Georgia; R. 20 at 407, Textile Students.

66 Tr. 991-92, Fabri-Centers.

67 Id.

68 Tr. 2588, W. Morck.

69 R. 18 at 775, consumer.

at the point of sale and that the selvage can be cut and incorporated into garments as labels, thereby providing information at the point of care.[70] Printing instructions or the applicable "triangle" number on the selvage will eliminate the possibility of a sales clerk supplying the wrong label.[71] This method could also eliminate the problems which arise when fabrics are rerolled on different bolts and also could assure that proper instructions accompany remnants.[72] There are a number of comments from home economists and textile manufacturers, however, who oppose the use of the selvage for care instructions. Many fabrics may be totally unsuited to such a process.[73] Some selvage edges are too narrow; others, on diaphanous fabrics, may be too delicate to withstand the process which would require at least one additional manufacturing step and would undoubtedly significantly increase the cost of the product to the consumer.[74] Further, use

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70 R. 17 at 146, consumer; R. 17 at 1626, Association of General Merchandise Chains; R. 18 at 130, 136, 162, 165, 185, 226, 316, 332, 334-35, 343, 391, 393, 332, 638 648, 726, 772, 976, 1015, 1039, 1051, 2425, 2497, consumers; R. 20 at 33, Textiles & Clothing Specialist, CES, North Dakota; R. 20 at 132, Extension Agent, CES, North Dakota; R. 20 at 136, Extension Agent, CES, Georgia; R. 20 at 157, Professor of Textiles & Clothing, Texas Tech. Univ.; R. 20 at 202, Extension Adviser, CES, Illinois; R. 20 at 209, 230, 259, consumers; R. 20 at 287, Department of Consumer Affairs, South Carolina; R. 20 at 312, consumer; R. 20 at 351, Chairman, Dept. of Textiles & Clothing, Univ. of Arizona; R. 20 at 375, Home Economics Instructor; R. 20 at 418, Asst. Professor, Home Economics, Calif. State Univ.; R. 20 at 430, consumer; R. 20 at 459, Extension Agent, CES, Virginia; R. 20 at 470, Home Economist; R. 20 at 480, 484, consumers; R. 20 at 613, NRMA; R. 20 at 725, consumer; R. 18 at 512, 556, 611, 615, 815, 943, consumers; R. 20 at 136, Extension Agent, CES, Georgia; R. 20 at 150, Textiles & Clothing Instructor, Seattle Pacific College; Tr. at 1501, J. Stone; Tr. 1626, Marlys Knowles, Office of Consumer Protection, State of Louisiana; Tr. 2355, F. Reid, Dept. of Consumer Affairs, Orange County, Calif.; Tr. 2567, W. Morck; Tr. 994, Fabri-Centers.

71 R. 20 at 349, Asst. Professor, Iowa State Univ.

72 R. 20 at 420, Textiles Student.

73 R. 17 at 219, Education Director, Pellon Corp.

74 R. 17 at 495, National Notion Association.

of this method will not assure that the customer has instructions available for use on the finished product at the point of care because the selvage is usually removed by the consumer when constructing a garment.[75] There are a number of other reasons why printing or weaving care instructions in the selvage may not be desirable: 1) the printing may be visible and detract from the aesthetic appeal of the fabric; 2) some of the selvage may be cut off or not reached at all in the pattern laying and cutting processes, thereby rendering the instructions incomplete or nonexistent in the garment; 3) it is undesirable to have to turn the entire garment inside out to read the care instructions on the selvage edges; one tag at the neckline or waistline is much easier and quicker to see; 4) a seam finish may be desired, making the care instructions on the selvage illegible; and 5) care instructions would have to be printed continuously along the edge to assure that the information is available on whatever length is cut from the bolt; thus, depending upon the length of the piece goods desired, the message could be illegible as a cut could be made between words on the selvage. The commentor remarks "[w]hy use all that ink . . . for printing on selvages when one small tag (to be attached later) would suffice?" While the labels made from the selvage would have care traits similar to those of the finished product, 1) the consumer may not have any fabric to spare to cut a part of it for a label; 2) the label may be stiff and undesirable to attach to the neckline or waistline; and 3) the selvage may not be wide enough to incorporate the necessary care information.[76]

Witness Kennedy also believes that selvage printing is not practical for similar reasons: 1) the selvage edge is not always incorporated in a finished product; 2) the process will be costly and many small manufacturers might not have the equipment required for such printing; 3) piece goods manufacturers often provide the same fabric to garment manufacturers as well as to retailers selling piece goods. It is unnecessary to print the instructions on the selvage of fabrics sold to garment manufacturers for obvious reasons. Further, it would be very costly to separate the portion of fabric intended for the piece goods trade for the additional printing process.[77] TDA confirms that such a process will be extremely costly, perhaps adding as much as 10% or more to the cost of each yard of fabric because an additional, separate printing process is needed. Additionally, TDA confirms the difficulty of treating fabric destined for

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75 R. 17 at 519, Sears, Roebuck & Company; Tr. 2373, F. Reid; Tr. 2586, W. Morck.

76 R. 18 at 749-50, consumer.

77 Tr. 2163, E. Kennedy.

the over-the-counter trade differently from fabric destined for the garment manufacturer.[78]

The suggestion that permanent labels be stapled or otherwise attached to the selvage at intervals of 1 yard must also be considered. These labels could then be removed by the consumer and sewn into a garment.[79] Stapling labels to the selvage, however, could damage fabrics.[80] Further, labels extending beyond the edge of the fabric could easily be torn off and lost when in transit and when the bolts of fabrics are handled by clerks and customers. Another suggested method for supplying labels through utilization of the selvage is the attachment of heat-sensitive or adhesive-backed strips of labels to the selvage which the consumer can remove by reversing the heat process and reapply by ironing.[81] Although the record contains no comments opposing such heat-sensitive strips, staff believes that the arguments against "continuous tape" are pertinent here. To apply a continuous strip of heat-sensitive labels to a fabric selvage would be extremely costly. Further, if the sets of instructions were printed continuously, many sets would be wasted as the consumer needs only one per finished garment.

While each method of distribution has certain distinct advantages, the disadvantages outweigh the advantages in every case. Except on fabrics which are completely opaque, care instructions printed on the reverse side would be outwardly visible. Inserting a continuous tape in the fabric folds has been attempted by the industry and found costly and damaging to certain types of fabrics. Stapling labels to the ends of bolts poses problems when the bolts are rerolled either by converters or by retailers. Labels attached in this manner can be easily lost, or torn loose and misplaced as consumers and retail clerks handle them. While some manufacturers package sheets of labels with fabrics shipped directly to the retailer, such a method is either extremely wasteful or results in an insufficient number of labels for distribution. Nor are methods of distribution involving the selvage edge of the fabric any better. The selvage

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78 Tr. 1049, TDA.

79 R. 18 at 136, 943, consumers; R. 20 at 122, Extension Agent, CES, Georgia; R. 20 at 242, Home Management Specialist, CES, Delaware; R. 20 at 273, Extension Specialist, CES, Idaho; R. 20 at 361, Textiles & Clothing Specialist, CES, Oregon; R. 20 at 470, Home Economist.

80 Tr. 2823, R. Taylor.

81 R. 20 at 193, Extension Agent, CES, Texas; Tr. 2809-10, R. Taylor.

edge of a fabric is rarely used in garment construction. Further, the care instructions supplied may be too complex or lengthy for inclusion on the selvage or the selvage may be stiff and unable to be used as a source for a permanent label, especially at the waist or neck. Since textile manufacturers often sell the same fabrics to finished product manufacturers as well as to piece goods retailers, separating the fabrics for different buyers according to different distribution requirements would be an unnecessarily costly operation. Stapling care labels to the selvage is unacceptable due to the possibility of damaging the fabric or tearing off the labels in the process of rolling, wrapping and shipping. Finally, attaching a continuous strip of care labels printed on heat-sensitive material to the selvage is costly and would result in more care labels per retail purchase than is necessary. Staff concludes, as does the Presiding Officer,[82] that these alternate methods of distributing permanent care labels to consumers are unacceptable and inappropriate to require in a Rule. As the record contains no other information on this subject, staff further concludes that there does not appear to be any practical method by which manufacturers can transmit permanent care labels directly to ultimate consumers without the aid of an intervening party. Since manufacturers have traditionally supplied labels either directly or indirectly to the retailer with some success, staff now proceeds to a consideration of the methods used in this distribution effort as well as the respective advantages and disadvantages of each.

TDA describes the difficulty of shipping care labels in such a manner that they physically accompany each bolt of fabric. Piece goods are packed by the piece, each of which is generally 15 to 20 yards in length. "Standard orders from individual stores range in size from four to fifty pieces. There are often about ten different fabrics in a fifty piece order and there could be as many as 350." Each of the different fabrics in an order may require a different care instruction label. It is extremely difficult to secure care labels to the pieces because groups of unlike fabrics may be packed in the same carton. Assuring that the appropriate labels remain physically with the proper piece goods until they reach the sales floor is a practical impossibility.[83] Although the average garment length is about 3 yards, the manufacturer has no way of knowing how many separate sales will be made from a bolt of fabric, each sale, of course, requiring a care label.[84] The fabric from a single bolt may be sold in ten units of 10 yards requiring ten care labels or 100 units of 1 yard, requiring 100 care labels. The retailer, says

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82 Presiding Officer's Report 33-4.

83 Tr. 1044-1046, TDA; Tr. 1059-60, TDA.

84 Tr. 1044, TDA.

TDA, is in a position to know the average yardage of his sales and can order care labels to meet his expected needs.[85] TDA argues, therefore, that the manufacturer's obligation to provide care labels in the proposed revised rule should be eliminated and a provision should be substituted requiring the retailer to provide care labels to the consumer upon request.[86] Under this proposal, the cost of providing care labels would be shifted from the manufacturer where it now resides to the retailer, eliminating the price discount method of reimbursement to the retailer which now exists.[87] TDA maintains that, in shifting the cost of providing care labels from the manufacturer to the retailer, the total cost of the system would be less because retailers would be able to gauge the demand for each type of label and stock the labels accordingly, thereby eliminating the excess cost of undistributed labels.[88]

TDA further suggests that if the Commission does not adopt a pre-sale availability system under which the manufacturer's sole responsibility is to mark the bolt ends with care instructions and the retailer's responsibility is to obtain and distribute the care labels on request, then the Rule should incorporate a provision to permit manufacturers to reimburse retailers for care labels purchased by them rather than supplying care labels directly as is presently done.[89] TDA also contends that the "triangle system" should be adopted as a part of the Rule if the manufacturer retains responsibility for supplying the care labels to the consumer.

The record contains a single comment on this matter from the owner of a fabric store, who prefers receiving actual care labels with each shipment of fabrics she receives from the manufacturer. Witness Kennedy feels that it is indeed possible to attach the appropriate care labels to each bolt of fabric before that fabric is shipped by the manufacturer. She opposes the "discount system" saying that 1/8 cent per yard is of no use to the retailer.[90] There is no question that manufacturers must retain the responsibility for devising care instructions for the appropriate fabric produced by them, as retailers are not in a position to do so. The difficulties which manufacturers incur, however, in shipping appropriate care labels in such a manner as to physically

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85 R. 16 at 144, TDA.

86 Id.

87 Id.

88 Id.

89 R. 25 at 247-48, TDA.

90 Tr. at 2210-11, E. Kennedy.

accompany bolts of fabrics are clearly arduous. Ultimately, the manufacturer has little, if any, control over the fabric, or the care labels, if included, once the fabric is wrapped and shipped. There is little the manufacturer can do to assure that the labels will reach the retailer, much less the ultimate consumer, in a condition suitable for appropriate distribution. Nevertheless, manufacturers are presently complying with the current rule by sending a supply of appropriate care labels to retailers with shipments of fabrics. Staff has no objection to this system if it can be made to work; staff, however, cannot recommend requiring it in a rule. On the other hand, other manufacturers (including most of TDA's members) are using the triangle system and reimbursing retailers through a discount for the cost of a sufficient supply of labels to accompany the sale of each manufacturer's goods. This method is apparently effective in ensuring that appropriate labels are obtained by retailers. The Presiding Officer concludes that, "best opinion evidence seems to point towards a system whereby manufacturers and importers of textile piece goods . . . would provide care and maintenance instructions to retailers and retailers would have the responsibility of furnishing matching care labels to consumer purchasers."[91] Staff agrees that not only should manufacturers be responsible for labeling bolt or roll ends with the appropriate care instructions, but manufacturers should remain responsible for providing appropriate care labels to piece goods retailers either by shipping the labels directly or by discounting fabric purchases to enable retailers to purchase the labels as appropriate. Staff has no reason to prohibit either method so long as the method used is effective in ensuring that retailers have enough appropriate labels to fill their needs. On the other hand, the record does not justify forcing manufacturers or retailers to use either distribution system, so long as the system chosen achieves the desired object.

The crux of the matter, however, is what happens to these labels once they arrive at the retail level. Under the current requirement, consumer purchasers of piece goods have not been receiving permanent care labels with their purchases. In fact, the current rule technically does not require retailers to distribute labels to consumers with piece goods purchases but leaves such responsibility in the hands of manufacturers. Neither does the proposed Rule include any form of retailer responsibility for delivering care labels to consumers with piece goods purchases. At the time the proposed Rule was issued, there was insufficient information as to the effect such a requirement would have on retailers. Also, there was a question as to whether the Commission could effectively enforce such a requirement especially against small retailers.[92]

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91 Presiding Officer's Report 33-4.

92 Staff Report 10.

The record contains comments suggesting one of two forms of retailer responsibility in this area. First proposed is a system of pre-sale availability of labels which would require retailers only to provide adequate notice to their purchasers that care labels are available on request and to give labels to those consumers who request them. The second option is a system of automatic distribution which would require retailers to provide the appropriate care label(s) without request with each purchase of piece goods. Both involve varying degrees of retailer responsibility.

NRMA's testimony contains conflicting statements concerning pre-sale availability. It suggests, on the one hand, that a system where consumers are reminded to request labels through conspicuously placed signs and are given labels only on request is the best approach for providing care information with piece goods.[93] At another point, however, NRMA states that such a system is not workable and points to "the fiasco with the triangle system of care labeling," now in use, as evidence of the ineffectiveness of a pre-sale availability system.[94] Indeed, labels now are rarely distributed automatically and some retailers do not even make care labels available to those who request them. The record contains additional comments in favor of pre-sale availability, however, from consumer representatives and several major retailers. J. C. Penney Co., Sears, Roebuck & Co. and Fabri-Centers of America, as well as others, argue that while signs should be conspicuously posted to remind consumers to ask for labels, labels should be supplied to consumers <u>only</u> on request.[95] In Penney's experience, customers who purchase piece goods do not readily accept care labels offered to them without request at the point of sale.[96] It is argued, however, that posting signs which advise consumers of the availability of care labels in fabric stores will not assure that those consumers who want care labels get them. Because of the inevitable confusion which often occurs among the bolts, rolls, notions, display signs and large numbers of people who frequently patronize fabric stores, it would be extremely difficult to effect a complete disclosure by the mere posting of signs; indeed, it

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93 R. 16 at 148, NRMA; R. 16 at 157, NRMA.

94 R. 20 at 612, NRMA.

95 R. 17 at 377, Fabri-Centers; R. 17 at 379, Fabri-Centers; R. 17 at 1199, J. C. Penney; R. 17 at 519, Sears, Roebuck & Co.; R. 20 at 325, Textiles Instructor, Freed-Hardeman College; R. 20 at 612, NRMA; R. 18 at 320, 531, 557, consumers; R. 20 at 298, Asst. Prof., Clothing & Textiles.

96 R. 17 at 1199, J. C. Penney Co.

is highly likely that many consumers might not see such a sign.[97] Further, even if disclosure is accomplished, many prospective purchasers may not know what care labels are and, therefore, will not recognize the significance of the disclosure[98] or may be too timid to ask.[99] Indeed, those consumers who are aware of care labels may easily forget the disclosure in attempting to coordinate the numerous components necessary to make most items covered by the Rule.[100] Under this system, the better informed consumer who may not always need a care label most probably will obtain it, while the poorly informed consumer who has the greatest need may not be sufficiently confident and aware to request it, whether or not an adequate disclosure is effected.[101] TDA and some consumer representatives maintain that a pre-sale availability system will reduce costs to the extent that only consumers who want the labels will ask for them, reducing waste which occurs when consumers discard unwanted labels.[102] Further, other consumers and consumer representatives believe that consumers should bear the entire responsibility for requesting labels when they want them, supporting in part the retailer's claim that the pre-sale

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97 R. 18 at 550, consumer.

98 R. 18 at 794, 961, consumers.

99 R. 17 at 43, ATMI; R. 18 at 105, consumer ("people . . . are shy about asking - people are funny");R 20 at 213, Extension Agent, CES, Georgia.

100 R. 18 at 202, 523, 557, 105, 108, consumers; R. 18 at 311, Home Economics Instructor; R. 18 at 561, Textile Student ("many times when buying fabric I've gone away forgetting to ask for care labels."); R. 18 at 729, 746, 778, 779, 784, 803, consumers; R. 20 at 145; R. 20 at 240, Extension Agent, CES, Kentucky; R. 20 at 23, Extension Agent, CES, Illinois; Tr. 1043-1046, TDA; R. 25 at 245-248, TDA.

101 R. 18 at 174, consumer.

102 R. 16 at 155-157, NRMA; Tr. 1834-1836, NRMA; Tr. 1043-1046, TDA; R. 25 at 245-248, TDA.

availability system would be less costly.[103]

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103 R. 18 at 315, consumer; R. 18 at 143, consumer; R. 18 at 792, 659-60, 833, 910-915, consumers; R. 20 at 138, Extension Agent, CES, Arkansas; R. 20 at 223, Extension Agent, CES, Florida; R. 20 at 336, Assoc. Director of Home Economics, CES, Nebraska; R. 18 at 699, 714, 320, 531, 614, 626, 788, 844, 853, 961, consumers; R. 20 at 139, Extension Agent, CES, Oregon; R. 20 at 164, Extension Agent, CES, Washington; R. 20 at 423, Anna R. Langford, Assistant Professor of Textiles, Iowa State Univ.:

> I do feel the retailer should be given some responsibility with regards to distribution of care instructions. I have earlier commented on the usual practice of having labels available on consumer request. This is a perfectly satisfactory arrangement as far as I am concerned. I do realize that there are some consumers who do not realize the care labels are available on request, I expect there are others who are too shy to request them. If these people need additional encouragement to obtain the labels, or if the rule should clarify what it really means, I think the retailer should be required only to make labels available to the ultimate consumer at the retail level and disclose their availability at the point of purchase. If a stronger measure is desired, yet cost is to be held down, perhaps retailers could be required to verbally offer a label to each consumer. 'Would you like the care label for this fabric, madam?' That would remind the consumer that labels are available during the busy moments of closing the sale. I'm not sure whether that is necessary.

R. 17 at 496, Home Economist and Clothing Consultant; R. 18 at 162, consumer; R. 18 at 204, 589, consumers; R. 20 at 423, Mrs. Anna L. Langford, Assoc. Professor of Textiles, Iowa State Univ.:

> My experience reveals that labels are available for piece goods if the consumer requests them. Often I see 'Machine wash warm, tumble dry' on the

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According to NRMA, however, automatic distribution of labels with every piece goods purchase poses insurmountable difficulties for the retailer.104 Additional personnel and facilities will be required in order to comply. NRMA also notes difficulty in training sales clerks, many of whom work only part-time and have little or no work experience; the turnover rate in such jobs is said to be quite high.105 NRMA's later testimony, however, conflicts with these claims of burden, stating that distributing labels automatically will pose few problems for the retailer.106

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103 (Continued)

> end of the bolt, mentally say, 'No special care required,' and don't request a label. I do not feel the retailer should be required to hand out a care label for every piece of fabric sold. The consumer is the one who must pay for the labels and any additional time such a requirement would cost the retailer. I do not want to pay for labels that I or other consumers may not sew in or may let accumulate at home or may throw away. As a textiles teacher, I often purchase fifteen one quarter or one half yard pieces of fabrics to cut up for my students. Why should I, my students, or consumers in general pay for care labels in this instance? If I am emphasizing care, I will get a label, attach it to the fabric and display it on the bulletin board.
>
> I think consumer protection legislation must expect consumer responsibility. To me, the critical issue is that the information is available. If the consumer uses it, usually their purchase and care decisions will be improved. But they are free to choose not to use it and thereby relinquish their right to complain if improper care damages the item.

104 R. 16 at 154, NRMA; Tr. 1835, NRMA.

105 R. 16 at 154, NRMA.

106 Tr. 1870-71, NRMA.

Aside from the problem of inconsistent testimony, staff questions the need for additional facilities in order to dispense labels automatically since dispensers for labels now available measure less than 12 by 4 inches. Further, if clerks can be trained to measure and cut fabric, write sales slips and operate highly complex cash registers, staff maintains that teaching a clerk to match a number or an instruction on the end of a bolt of fabric with a duplicate number or instruction on a separate care label should be simple indeed. There is also conflict between the written statement and testimony of the Textile Distributors Association on this issue. On the one hand, TDA states that retailers will incur great expense if required to distribute labels automatically.[107] In testimony, however, TDA contends that the 1/8 cent per yard discount now provided to retailers to cover the cost of purchasing and distributing care labels was agreed upon by retailers when the "triangle system" was adopted as an adequate amount to cover the retailers expenses.[108] Further, the amount of this discount has been shown to be sufficient to cover any expenses a retailer might incur under an automatic distribution system.[109] TDA concludes that an automatic distribution system will in no way increase the retailers' costs in providing care labels.[110] Evelyn Kennedy, the owner of a small fabric store, confirms that a requirement to distribute labels automatically will place little, if any, burden on retailers. Indeed, she supports such a requirement.[111] Additional evidence that an automatic distribution system will not cause significant burden to retailers is provided by Fabri-Centers of America. Whether labels are available on request or are distributed automatically will make little difference as far as cost to the retailer is concerned provided retailers are not required to maintain records of such a system and assuming the retailer incurs no penalty for failure to distribute labels.[112] Finally, piece goods retailers who participated in the Fort Worth survey favor the automatic distribution of care labels with piece goods[113] but express concern that

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107 R. 16 at 144, TDA.

108 Tr. 1072, TDA.

109 Tr. 1071, TDA.

110 R. 16 at 144, TDA.

111 Tr. 2165-66, E. Kennedy.

112 Tr. 967, 985-987, Fabri-Centers.

113 Tr. 2819, R. Taylor.

ensuring that clerks and cashiers distribute a label with each purchase will be difficult.[114]

Neither retailers, retail clerks nor consumers can be expected to know the appropriate care for the endless variety of fabrics, fibers and finishes on the market, each having different care characteristics.[115] Consumers now typically rely on care labels with ready-to-wear garments. The same variety in fibers, fabrics and finishes appears in piece goods for the retail market; the record shows that consumers who sew are no more knowledgeable about care than are consumers of ready-to-wear items. Home sewers frequently do not know of the availability of care labels with piece goods, but many consumer educators and consumers alike state that care labels will be used if they are provided.[116] Further, consumers who construct their own garments and household articles invest not only their money but large amounts of time and energy in the items they create. Therefore, the consumer who sews may suffer a much greater loss when a "home-made" article is damaged through improper care than does the consumer who damages a ready-made article. One consumer states: "[I]t is infuriating to spend hours making a garment to have it ruined in the wash."[117] Indeed,many consumers and consumer representatives oppose pre-sale availability and state that care labels should be automatically distributed without request with each sale of piece goods.[118]

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114 Tr. 2808, R. Taylor.

115 R. 18 at 685, 785, consumers; R. 20 at 344, Extension Specialist, CES, Ohio; R. 18 a 1025, consumer.

116 R. 18 at 174, Valerie M. Donahoo, Home Economist. "As consumers become more informed of the necessity of knowing the cleaning procedures for these articles, they will use these care labels more and more. It is only by exposure to these care labels and by mass education by home economists and others that the consumer will become informed." R. 18 at 787, consumer; R. 20 at 172, CES, Arkansas; R. 20 at 355, Office of Consumer Affairs, West Palm Beach, Fla. "The more informed a person is,the more responsibility he will be obligated to assume"; R. 17 at 430, ATMI.

117 R. 18 at 558, consumer.

118 R. 17 at 262, 421, 427, 430, 495, 502, 886, industry comments; R. 18 at 105, 108, 116, 120, 125, 127, 144, 157, 167, 174, 179, 183, 187, 196, 207, 209, 229, 231, 235, 238-291 (7 affirmative comments), 298, 311, 315, 322,329, 347, 395, 400, 405, 421-506 (85 affirmative comments), 510, 524, 528, 538, 543, 546, 551, 554, 559, 570, 577, (Continued)

The record clearly shows that manufacturers are successfully providing care labels for piece goods to retailers either directly by shipping the appropriate labels accompanying the

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118 (Continued)

595, 611, 623, 640, 651, 653, 668, 694, 703, 717, 729, 734, 746, 802, 758, 770, 777, 778, 779, 784, 803, 835, 850, 856, 859, 868, 871, 874, 881, 882, 889, 899, 907, 916, 946, 970, 971, 994, 1000, 1001, 1007, 1017, 1023, 1025, 1042 (7 affirmative comments), 1053, 2422, consumer comments; R. 20 at 3, Extension Agent, CES, Kansas; R. 20 at 6, Extension Agent, CES, Iowa; R. 20 at 12, Office of Consumer Affairs, Camden County, N.J.; R. 20 at 14, Extension Agent, CES, Kansas; R. 20 at 19, Extension Agent, CES, Idaho; R. 20 at 44, Extension Agent, CES, Alabama; R. 20 at 117, Extension Agent, CES, Georgia; R. 20 at 129, Clothing Instructor; R. 20 at 134, Extension Agent, CES, Virginia; R. 20 at 145, Extension Agent, CES, Michigan; R. 20 at 159, Extension Agent, CES, Mississippi; R. 20 at 160, Clothing Specialist, CES, Florida; R. 20 at 162, Textiles & Clothing Instructor; R. 20 at 165, Extension Agent, CES, Oregon; R. 20 at 167, Extension Agent, CES, Georgia; R. 20 at 169, Extension Agent, CES, Georgia; R. 20 at 172, Clothing Specialist, CES, Arkansas; R. 20 at 175, Home Economics Instructor; R. 20 at 176, Textiles Specialist, CES, Kansas; R. 20 at 188, Home Economics Teacher; R. 20 at 191, Extension Agent, CES, Georgia; R. 20 at 194, Extension Agent, CES, Georgia; R. 20 at 197, Home Economics Instructor; R. 20 at 199, Extentsion Specialist, CES, Georgia; R. 20 at 209, Extension Specialist, CES, Texas; R. 20 at 210, Textiles & Clothing Specialist, CES, Kentucky; R. 20 at 213, Extension Agent, CES, Georgia; R. 20 at 216, Textiles & Clothing Specialist, CES, Missouri; R. 20 at 224, Extension Agent, CES, Kentucky; R. 20 at 225, Extension Agent, CES, South Dakota; R. 20 at 232, Extension Agent, CES, Virginia; R. 20 at 240, Extension Agent, CES, Kentucky; R. 20 at 243, Extension Agent, CES, Georgia; R. 20 at 247, Home Economist; R. 20 at 252, Extension Agent, CES, Kansas; R. 20 at 254, Home Economist; R. 20 at 256, Home Economist; R. 20 at 261, Home Economics Professor; R. 20 at 273, Extension Agent, CES, Idaho; R. 20 at 302, Textiles & Clothing Specialist, CES, N.J.; R. 20 at 315; Atlanta Office of Consumer Affairs; R. 20 at [illegible], Home Economics instructor; R. 20 at 347, Textiles Professor; R. 20 at 354-356, Office of Consumer Affairs, West Palm Beach; R. 20 at 360, Textiles Specialist, CES, Oregon; R. 20 at 407, Textiles Students; R. 20 at 410, Home Economist; R. 20 at 413, Chairman, Home Economics Dept., David Lipscomb College; R. 20 at 428, Textiles Specialist,

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fabrics or indirectly by providing a discount to retailers sufficient to cover the cost to the retailer of purchasing and distributing the labels. Retailers, however, are simply not distributing these care labels to consumers even though there is no question that consumers who purchase piece goods need such labels to avoid economic injury due to improper care. It is undisputed that manufacturers and importers of piece goods must retain responsibility under the Rule for devising care instructions for these products; it is further uncontested that these parties be required to label each bolt or roll of fabric with appropriate care instructions, enabling the consumer to make an informed purchasing decision prior to the actual sale. Record evidence, however, shows that this alone is not sufficient as care instructions are needed not only at the point of sale but at the point of care.

Staff further recommends, therefore, that manufacturers or importers of piece goods should additionally be held responsible for ensuring that retailers are able to obtain appropriate care labels by any means available in sufficient amounts to meet consumer demand. The system used to accomplish this is irrelevant so long as it works and so long as the manufacturers assume financial responsibility for the instruction and labels designed for the goods produced by them. The record indicates, however, by substantial evidence, that retailers must assume the responsibility of transmitting these labels to the ultimate consumer. Staff is of the opinion that, if retailers are not held responsible for distribution of these labels, nothing will have been accomplished in this proceeding to remedy a major failure of the current rule. The record contains convincing evidence that a pre-sale availability system of distributing labels on request, with or without disclosure, is unreliable and is not likely to operate consistently to provide consumers with care information at the point of care. Further, the record contains no probative evidence that automatic distribution of

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118 (Continued)

CES, Georgia; R. 20 at 431, Extension Agent, CES, Virginia; R. 20 at 439, New Orleans Office of Consumer Affairs; R. 20 at 444, Textile Specialist, CES, Massachusetts; R. 20 at 446, Home Economist; R. 20 at 446, Home Economist; R. 20 at 492, Home Economics Professor; R. 20 at 453, Home Economist; R. 20 at 507, Council on Wage & Price Stability; Tr. 940, R. Mallard, Fairfax County Va. Office of Consumer Affairs; Tr. 996, B. Feather; Tr. 1462, C. Warfield; Tr. 1661, K. Geiken; Tr. 1905, K. Stanton; Tr. 2166, E. Kennedy; Tr. 2373, F. Reid; Tr. 2368, F. Reid; Tr. 2568, W. Morck; Tr. 2740, NCC; Tr. 2 41, R. Schwager; R. 25 at 442, Knitted Textile Association; R. 25 at 446, National Knitted Outerwear Association.

care labels will involve any significant burdens to retailers. Testimony indicating such a burden is conflicting and is offset by the testimony of other retailers, both large and small, favoring such a requirement. Finally, such distribution will eliminate the tremendous waste (and, for those retailers who have been accepting a discount without distributing labels, windfall profits) incurred in the operation of the present system. It is staff's opinion that record evidence leaves no other alternative but to require retailers to intervene in the distribution chain and, therefore, staff so recommends.

5. Content of Care Instructions

As piece goods frequently are the primary components of several finished products recommended to be covered by the final rule (wearing apparel, draperies, slipcovers, linens and upholstered furniture), the care traits of the goods contribute heavily to the care traits of these products. Thus, staff is of the opinion that the care instructions for such goods should meet the same criteria as those required for the finished products to be made from such goods and so recommends.

6. The Decorative Fabrics Situation

a. Preface

The decorative fabrics industry is composed of a small segment of manufacturers within the textile piece goods industry. Thirty-four of these firms are represented by the Decorative Fabrics Association (hereinafter DFA). They manufacture, among other things, piece goods which are sold to be custom made into draperies or to be used in upholstered furniture.[119] These firms also create "one of a kind merchandise" for professional designers who deal in orders for "customer's own material" (hereinafter COM) for the customers themselves or for museums and restoration.[120] This merchandise is usually sold through showrooms which are not open to the general public and through interior designers, upholstered furniture manufacturers and drapery and upholstery firms.[121] In fact, two-thirds of all sales of decorative fabrics are made to interior designers.[122] The intended ultimate household furnishing which the customer

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119 R. 16 at 15, Decorative Fabrics Association (hereinafter DFA).

120 Tr. 912-914, DFA.

121 Supra, note 119.

122 Supra, note 120.

has in mind is likely to be unknown to the decorative fabric manufacturer, since these firms generally do not sell finished household furnishings.[123]

According to DFA, most such firms carry more than 1,000 different fabrics and some will carry as many as five to ten thousand fabrics in a variety of weaves, fibers, patterns and colors.[124] Cut yardage sold by these firms ranges in average wholesale price from $8.00 to $15.00 per yard, with a substantial portion of the goods selling wholesale for well over $50.00 per yard.[125]

b. Coverage

DFA maintains that consumers of decorative fabrics have "unique behavior patterns" in terms of cleaning methods and do not utilize "do-it-yourself" cleaning methods. Rather, such consumers use the services of professional cleaners who specialize in home furnishings. On the other hand, while so-called "experts" may in some cases be aware of appropriate cleaning procedures for specific items, numerous damage complaints in the record which are the result of mishandling on the part of "expert" cleaners directly contradict such an assumption.[126] In fact, the record contains statements from many "experts" or professional cleaners that they, in fact, need care instructions in order to properly care for many items covered by the Rule.[127]

Evidence throughout the record shows that consumers need care instructions for piece goods used in making draperies, slipcovers and upholstered furniture as well as for piece goods used to make apparel.[128] Such household furnishings comprise the categories for which most decorative fabrics are used. Consumers state that they need such care instructions to avoid costly mistakes. Indeed damage to an item constructed of fabric costing between $15 and $50 per yard constitutes a great

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123 Tr. 913, DFA.

124 Supra, note 120.

125 Supra, note 119.

126 R. 18 at 507, 727, 2521-2523, consumers; Tr. 2356, F. Reid; Statement, Chapter VI. B.

127 R. 17 at 12-14, 15-91, 99-103, 533-34, 566, 766, dry-cleaners.

128 R. 18 at 102, 391, 79, 727, consumers.

loss for any consumer. In view of the fact that professional cleaners acknowledge their need for care instructions, and in view of the fact that the record contains no reason why decorative fabrics should be accorded special treatment insofar as care instructions are concerned, staff concludes that decorative fabrics should be included in the Rule, in the same manner as piece goods sold over-the-counter at the retail level.

c. Transmittal of Care Instructions

The major problem which arises in dealing with care instructions for decorative fabrics is one of distribution methods. DFA states that their members who sell piece goods to finished product manufacturers or to interior designers should not be required to provide permanent care labels with such purchases. Rather, DFA maintains that these products are actually intermediate components and, therefore, should be accompanied only by "clearly stated instructions for the care and maintenance of such components" as required in section 423.4 of the proposed revised rule.[129] (See Chapter IV.G.). In order to determine when, to whom, and in what form care instructions for decorative fabrics should be supplied, it is necessary to define the various ways in which such products are marketed. In instances where DFA members sell fabric directly to finished product manufacturers, for use as part of a finished product recommended to be covered by the final Rule, the fabric is an intermediate component, as defined, and such transactions are clearly covered by section 423.8 of the recommended final Rule. In such cases, the decorative fabric manufacturer or importer is responsible for providing to the finished product manufacturer or importer clearly stated instructions, not labels, for the care and maintenance of such components, upon request. When decorative fabrics are sold to retail piece goods stores who then sell the fabric to an ultimate consumer for conversion to a finished item covered by the Rule, such transactions are covered by section 423.2 of the proposed Rule, (section 423.3 of the recommended final Rule) and the fabric manufacturer or importer must provide to the retailer of such products care instructions on labels which, "can by normal household methods, be permanently affixed to the finished item by the ultimate consumer" in the same manner as for the normal over-the-counter piece goods market.

Frequently, however, the sale of decorative fabrics involves several intermediaries and is not a direct sale to finished product manufacturers, retailers or ultimate consumers. Often such fabric is selected by a consumer but is purchased by an interior designer on behalf of the consumer. Generally speaking, the designer acts as the consumer's agent in such

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129 Tr. 925, DFA.

a transaction. Customarily, the fabric is not mailed to the designer but is sent directly from the decorative fabric manufacturer to a finished product manufacturer (of furniture or draperies, for example) who uses the decorative fabric with other components in constructing a finished item which is then delivered to the ultimate consumer; in some instances the fabric is actually shipped to the designer who in turn forwards the fabric to the furniture manufacturer. In either case, the fabric in question is not sold directly to the ultimate consumer, but rather is sold as an intermediate component to be incorporated into a finished product which the consumer then purchases. In such instances, the fabric need only be accompanied by clearly stated instructions, not labels, for the care and maintenance of the component, upon request of the finished product manufacturer, in compliance with section 423.8 of the recommended final Rule. The upholstered furniture manufacturer would then be responsible for providing a care label for the finished funiture product in compliance with section 423.5 of the recommended final Rule.

To further complicate the matter, there are instances in the manufacture of furniture and draperies where ultimate consumer themselves purchase fabrics (not always decorative fabrics) and forward the COM fabrics directly to the furniture or drapery manufacturer for use in an upholstered furniture or drapery item. In such situations, the fabric is sold directly to the ultimate consumer and no intermediary such as an interior designer is involved.

Several record comments addressing this situation state that under such circumstances, the finished product manufacturer should not bear the responsibility for devising and permanently attaching care labels to the finished product because, with fabric supplied by the consumer, the manufacturer will have no practical way of determining the appropriate care instructions for such products.[130] Aside from the fact that the nature of such fabrics varies widely with the taste of each consumer, manufacturers cannot be assured that consumers will forward appropriate care instructions received with the fabric in any reliable manner. The solution to this problem lies in the determination of who is the "manufacturer" in such instances as the term "manufacturer" is defined. Section 423.6(i) of the proposed revised rule defines a "manufacturer" as any person or organization that directs or controls the manufacture of an item and, therefore, finally determines its care traits. In instances where the ultimate consumer selects, purchases and subsequently forwards a major component of a finished product to a finished product manufacturer and specifies how and where that component is to be used, the consumer, in effect, directs

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130 R. 17 at 191, NAFM; R. 20 at 724, NAFM; R. 17 at 530, Sears, Roebuck & Company.

and controls the manufacture of the finished product. Staff, therefore, concludes that solely in these instances does the consumer bear the responsibility for care labels or instructions for the finished item. Further, the individual or company actually constructing the finished product at the direction of the ultimate consumer bears no responsibility under the Rule for providing care instructions or care labels on the finished prouct. If the consumer purchases the fabric directly from a decorative fabric manufacturer, that manufacturer is responsible under the Rule only for supplying care instructions, not labels, to the consumer manufacturer upon request as if the fabric were an intermediate component.

Care instructions for fabrics purchased for use in reupholstery present another problem. In such cases, decorative fabrics may travel from the fabric house to the designer to the reupholsterer or from the fabric house to the designer to the consumer and finally to the reupholsterer. J. C. Penney proposes that such reupholstered furniture be excluded from the revised Rule because any label obtained by the consumer from the piece goods supplier is unlikely to have care instructions appropriate for the end use of the product which will be reconstructed using many components in addition to the exterior fabric.[131] As in situations where the consumer supplies fabric to finished product manufacturers, staff believes that in instances where fabrics are purchased for use in reupholstering furniture, the ultimate consumer himself assumes the role of "manufacturer" as defined in section 423.6(i) of the proposed Rule, by controlling the selection of components for the end product and by directing the use of these components. The reupholsterer is not the finished product manufacturer because he does not control the manufacture of the finished product, but only follows the consumer's directions. Further, the finished product which is produced does not fall under the definition of "textile product" in section 423.6(a) of the proposed Rule as it is only being reupholstered and is not intended for sale or resale, as defined therein. In such instances (1) the ultimate consumer must be solely responsible for the care instructions or care labels on the reupholstered product; (2) the reupholsterer should bear no responsibility under the Rule; and (3) the responsibility of the decorative fabrics manufacturer applies only in cases where the consumer-manufacturer purchases the fabric directly for use in reupholstering as a component under the Rule, and should be executed in accordance with the requirements for intermediate components.

In summary, therefore, decorative fabrics manufacturers are responsible for providing care information only (not labels), under the provision dealing with intermediate components, in all cases except those where such manufacturers supply piece goods

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131 R. 17 at 1203, J. C. Penney Company.

to retailers for the over-the-counter trade where labels would be required. Likewise, finished product manufacturers under the Rule, as a general principle, are responsible for providing care instructions or labels, as required, in all cases except those where the consumer, without the aid of intermediaries, selects, purchases and subsequently forwards a major component of the finished product (such as fabric) directly to the finished product manufacturer and specifies how that component is to be used. In these cases, the consumer becomes the "manufacturer," as defined, and the finished product manufacturer is absolved from its responsibilities under the Rule. Staff is of the opinion that this concept should be included in all Rule provisions which require furniture, slipcovers and draperies to contain care instructions or labels, as stated, and so recommends. On the other hand, staff sees no need to change the manner in which intermediate components are handled in the Rule, as recommended in Chapter IV.G., because of problems with decorative fabrics. As such, staff believes that decorative fabrics (except where sold over-the-counter) clearly fall within the scope of the components' provision as, "textile product[s] intended to be used as . . . components of a finished product . . . ."

7. Remnants and Trim

a. Preface

The current rule does not address the problem of piece goods "remnants"; as such, they were not considered by the Commission as being any different than all other piece goods. Through interpretation, however, staff in effect excluded them from the Rule's coverage because of evidence that providing care labels with remnants was simply not feasible.[132] The substance of the exclusion is reflected in the definition of "piece goods" in the proposed revised rule [section 423.6(c)] which excludes "remnants" sold at retail, "which are ten (10) yards or less in length and are cut from larger bolts, pieces or rolls at the manufacturing level" and conspicuously identified as such when offered for retail sale. It was again determined that providing labels with remnants is impractical since they are normally sold by the manufacturer in bulk at a discount.[133]

Review of the record developed since the proposed rule was published shows that not only is the question of "remnants" somewhat more complex but that piece goods and rug "remnants" constitute a significant portion of current retail sales of all piece goods and rugs.

The Textile Distributors Association notes that three types of "remnants" are produced in the textile industry:

1) "Pound goods," which are odd lengths of miscellaneous fabrics generally running from 1/4 to 2 yards each and are usually not purchased for apparel purposes but are used as rags, wiping cloths etc.;

2) "Fabrics of undetermined fiber origin," which are generally sold to fabric stores in assorted lengths ranging from 2 to 10 yards and are extremely difficult to classify properly with respect to care instructions;

3) "Assorted remnants," which are generaly sold in assorted lengths ranging from 2 to 10 yards and are appropriately identified as to fiber content.

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132 Staff Report 20.

133 Id.

TDA stresses the fact that "remnants" falling in these categories are of value primarily because they are sold at greatly reduced prices and that the physical task of identifying, sorting and care labeling such items will increase their cost so dramatically that "remnants" would cease to be a bargain source for consumers. (The retail price of the average "remnant" purchased for a dress is well below $3.00.)[134] ATMI confirms the fact that many "remnants" are considered "waste materials" by the manufacturers and that determining the required care for such fabrics is virtually impossible. Witness Litwin agrees.[135]

According to witness St. John, however, many manufacturers now cut fabrics to "remnant" lengths and wrap them to retailers' orders. He states that "remnants" thus created to a retailer's specification are not waste materials and should indeed be covered by the Rule.[136] In further support of Dr. St. John's statement, Evelyn Kennedy, owner of a fabric store, notes that she regularly buys at wholesale first-quality fabrics which have been cut into small quantities of 5 to 7 yards each. These "remnants" are not actually "discards" but are of perfect quality and are sold for full retail value. She goes on to say that some fabrics which are cut in 10 to 20 yard lengths and sold in bulk lots to retailers are not actually remnants, but are cut specifically to retailers' specifications. She proposes that cuttings of only 5 yards or less be considered "remnants."[137] Witness Morck confirms that many discount stores now sell 2 to 3 yard lengths of precut fabrics which have been purchased as "remnants" and, therefore, are not covered by the current rule in spite of the fact that consumers need only 2 to 3 yards of fabric to make a complete suit or dress.[138] Indeed, one consumer claims that the present definition of "remnants" excludes 80% of the stock of local retailers and probably 50% or more of the fabric stock in other places.[139] Others have suggested that all "remnants" should be included in the coverage of the Rule since even small yardages can be used by consumers to make a garment.[140] Still others suggest a compromise and advocate

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134 R. 16 at 145, TDA.

135 Tr. 1959, ATMI; Tr. 1972-73, 1984-1986, Witness Litwin.

136 Tr. 1590, 1612-13, Dr. Wayne St. John.

137 Tr. 2184-85, E. Kennedy.

138 Tr. 2590-91, W. Morck.

139 R. 17 at 2425, consumer.

140 R. 20 at 236, Consumer Fraud & Protection Division, State of Illinois; R. 20 at 425, Textiles Professor, Iowa State Univ.

that remnants of only 1 yard or less in length be excluded from the Rule.[141]

Witness St. John defines "remnants," not on the basis of length but on the basis of where they are created. As such, he believes that pieces produced in retail stores when only a small amount of yardage is left on a bolt are the only "true remnants" which are habitually sold at a discount; these, and only these, should be excluded from coverage under the Rule.[142] Others support this position.[143] Witness Morck notes, however, that such "retail remnants" are rolled, wrapped, marked with the yardage, price and often fiber content. She questions claims of any additional burden incurred by the retailer in inserting an appropriate care label corresponding to the care instructions on the bolt at the time that these bolt end pieces are removed and wrapped as "remnants."[144]

b. Coverage

With the exception of TDA and ATMI, record evidence supports the inclusion of remnants under the Rule without exception, no matter how they are defined. Several individuals rightly state that consumers can make a number of garments from a piece of fabric 10 yards or less in length.[145] Staff notes that indeed many apparel items can be made with less than 3 yards of fabric. Consumers who use "remnants" in an attempt to save money may often be low-income consumers who can ill afford the loss of an item of apparel through damage due to the lack of care instructions. Additionally, the needs of consumers who purchase "remnants" in an attempt to save, are no less than the needs of consumers who purchase piece goods at the full price. Indeed, rug "remnants" should be included under the coverage of the proposed rule for the same reasons.[146]

The record clearly distinguishes between "remnants" created at the manufacturing level and those created at the retail level. Piece goods "remnants" created at the retail level are generally

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141 R. 17 at 1078, IFI; R. 20 at 360, Textile & Clothing Specialist, CES, Oregon; R. 18 at 95, consumer; R. 17 at 96, IFI.

142 Tr. 1590, Dr. Wayne St. John.

143 R. 20 at 20, Extension Agent, CES, Idaho.

144 Tr. 2591, W. Morck.

145 R. 18 at 163, 665, 667, 686, 726, 1046, consumers.

146 R. 18 at 665, consumer.

1 yard or less in length and remain on a bolt or roll after the rest of the fabric has been sold. Retailers frequently reroll and rewrap such "remnants" separately marking the wrapping with the correct yardage, the price and often fiber content information. Under circumstances where the original bolt end containing correct care instructions is readily at hand, the retailer will incur little if any burden in marking the "remnant" wrapper with the correct triangle system number or actually including a care label in the "remnant" package. If there is little or no burden incurred, there should be no adverse financial consequences. As such, staff concludes that "remnants" created at the retail level should remain within the scope of the final Rule.

"Remnants" created at the manufacturing level, however, fall within an entirely different category. Some manufacturers cut fabrics into short lengths, often 10 yards or less, specifically to retailer specification. These fabrics either may be sold by retailers at the full retail price or sold in discount stores and elsewhere as "remnants" at a reduced price. They may be as large as 20 yards in length; as such, they would not be excluded from the coverage of the revised Rule under the proposed piece goods' definition. Staff recognizes the value of the savings available to consumers who purchase "remnants". At the same time, the amount of the savings may be totally negated when the item the consumer constructs is damaged through improper care because of a lack of care instructions. Therefore, in staff's opinion, record evidence supports the inclusion of some "remnants" in the Rule. "Remnants" defined as "pound goods" and "fabrics of undetermined fiber origin" which are created at the manufacturing level in lengths of 10 yards or less would undoubtedly require a substantial amount of time and labor on the part of the manufacturer in separating, identifying and labeling each piece with appropriate care instructions; money spent for such time and labor would force manufacturers to boost prices for these products, negating any savings which would otherwise be received by the consumer. Indeed, it appears likely that manufacturers, rather than expend further time and effort in identifying such "remnants," would seek other outlets for the products, thus obliterating one avenue of savings for consumers. Staff therefore recommends that "pound goods" and "fabrics of undetermined fiber origin" as defined herein, of 10 yards or less in length, be excluded from coverage of the final Rule.

On the other hand, "remnants" known in the trade as "assorted remnants" which are identified as to fiber content, including those "remnants" which are created to retailers' specifications, should be covered in the final Rule. The record contains no evidence that manufacturers will incur any significant burden in providing care labels for such products, as they are already sorted and identified anyway; consumer needs in this area, however, remain the same.

Staff, therefore, recommends that section 423.6(c) of the proposed revised rule be modified in the final Rule as follows:[147]

> "Piece Goods" are textile products sold on a piece-by-piece basis from bolts, pieces, or rolls excepting "trim" five (5) inches or less in width and those pieces, termed "pound goods" or "fabrics of undetermined fiber origin" and conspicuously identified as such when offered for retail sale, which are composed of miscellaneous scraps, rags, odd lots, secondhand materials, textile by-products, or waste materials of unknown, and for practical purposes, undeterminable fiber content which are 10 yards or less in length and which are cut from larger bolts, pieces, or rolls only at the manufacturing level. Pieces, termed "assorted remnants," which are created at the retail level or about which fiber content is known, do not fall within this exclusion.

Further, in accordance with staff's conclusions regarding piece goods, decorative fabrics and "remnants," staff recommends that the following modified provision, applying exclusively to piece goods, be substituted in the final Rule for section 423.2 of the proposed revised rule:

> (a) In connection with the sale of any textile product in the form of piece goods made for the purpose of immediate conversion by the ultimate consumer into a finished item otherwise covered by sections 423.2 & 423.5 in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:
>
> (1) for the manufacturer or importer of such piece goods to fail to:
>
> (i) conspicuously disclose on the end of each bolt or roll of piece goods clearly stated instructions for the care and maintenance of such goods.
>
> (ii) ensure in any manner that the retailer of such goods obtains labels which

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147 The question of inclusion of trim within the Rule is discussed in Chapter IV.G.4 of this report.

(A) clearly disclose instructions for the care and maintenance of such products; and

(B) can by normal household methods be permanently affixed to the finished item by the ultimate consumer.

(2) for the retailer of such piece goods to fail to provide a reasonable number of such labels to the ultimate purchaser of such goods at the time of retail purchase.

(b) Care instructions for such goods must meet the criteria specified in this part for the products they are primarily designed to make.

E. Yarn

1. Preface

The current rule does not cover yarn; however, in response to many complaints of damage caused by improper care to items made of yarn, staff included a question concerning yarn in the Request for Comment. Seventy-six percent of those commenting favored inclusion of yarn in the proposed rule.[1] Staff, therefore, included yarn within its scope in the same manner and in the same paragraph as piece goods (section 423.2).

Yarns currently on the market are composed of natural and synthetic fibers as well as various blends of the two. Craft yarns in the past were composed primarily of the natural fibers, cotton and wool. Just as textile fabric industries have turned increasingly to the use of synthetic fibers, however, so has the craft yarn industry. The National Handknitting Yarn Association, representing yarn producers (hereinafter NHYA), states that approximately 80% of the hand knitting and hand crocheting yarns sold in this country today are made of synthetic fibers, primarily acrylic.[2] Further, written statements as well as oral testimony in the record confirm the fact that yarns as well as fabrics, composed of different fibers, have care characteristics which vary accordingly. Both acrylic yarns and fabrics, for instance, are highly sensitive to heat and require special attention when refurbishing in order to prevent damage.[3] Record evidence indicates that members of NHYA acknowledge this fact. Sample care instructions now being supplied by the industry vary according to the fiber content noted on the label. Staff thus easily concludes that the care traits of yarn vary in the same manner as the care traits of fabric.

NHYA states that every member of that Association currently prints care instructions on a band wrapping each skein of yarn sold.[4] Comments from individual yarn producers support this

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1 Staff Report 15-16.

2 Tr. 2273-74, National Handknitting Yarn Association (hereinafter NHYA).

3 R. 17 at 94, International Fabricare Institute.

4 R. 17 at 160, NHYA.

statement.[5] Examples of such care instructions from several yarn wrappers appear on the record.[6] The care instructions

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5 R. 17 at 238, Needlecraft; R. 17 at 374, Lee Wards Creative Crafts, Inc.; R. 17 at 1626, Association of General Merchandise Chains (hereinafter AGMC).

6 R. 17 at 163, NHYA: A garment made of Wintuk is ideally suited for automatic laundering. The garment acutally stretches when wet to allow for better washing action and then automatically blocks itself when completely dry.

1. MACHINE WASHING & DRYING

Machine wash on 'gentle' or 'synthetic setting' using warm water and any detergent which does not contain bleaching agents. A small amount of fabric softener added to the final rinse will help keep your garments soft and static-free. Machine dry at regular setting. Always machine dry after machine washing.

2. HAND WASHING & DRYING

Wash gently in warm water using any detergent which does not contain bleaching agents. Always support the garment during washing and rinsing and when removing garment from cold rinse bunch together and lift out in both hands. Squeeze out excess water, roll inside a towel, twist and squeeze again while in the towel. Spread sweater to dry on a flat surface, bunch into shape and allow to dry thoroughly before moving garment. Never dry any garment in direct sunlight and never hang garment to dry.

3. PLEASE NOTE:

Wintuk must be absolutely dry to insure automatic blocking. If stretched during wear or washing, wet thoroughly, squeeze and tumble dry in home or coin operated dryer to reshape. Should you experience any problems with this yarn please forward the skein band from each skein used to us with your detailed explanation of your difficulty.

R. 17 at 165, NHYA:

"MACHINE WASHING. - Treat garment as delicate fabric. Turn to wrong side, set machine for delicate or low. Wash using lukewarm water and a mild soap. Spin minimum amount.
HAND WASHING. - Use lukewarm water and mild soap. Rinse with lukewarm water - squeeze out excess water, roll in towel and squeeze.
NOTE: At all times support garment when lifting out of water.

(Continued)

cited are in some cases very explicit. Some include instructions for both hand and machine washing and contain temperatures for washing and drying. Others address the bleaching procedure while still others recommend the use of a specific detergent. These instructions are allegedly intended not merely for the care of the yarn itself, but for the items which consumers may construct from the yarn.[7] Moreover, members of the yarn industry acknowledge that care instructions are of the "utmost importance" to consumers who expend a great amount of time and effort completing items from yarn.[8] While the quantity of information on the record is sparse, it appears that the yarn industry in many cases is supplying care instructions voluntarily. The record further indicates that most of the care instructions contained therein are generally explicit and complete. Staff so concludes.

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6 (Continued)

DRYING. - If you dry by machine, use delicate or low setting and moderate heat. Do not dry longer than 3 to 5 minutes.
HAND and MACHINE DRYING. - Lay flat on smooth surface, until thoroughly dry. DO NOT HANG OR STRETCH GARMENT. KEEP AWAY FROM SUN. DO NOT PRESS."

R. 17 at 167, NHYA:

"TO HAND WASH
1--Hand wash. Rinse with cold water.
2--Roll garment in clean white towel and squeeze out excess water. Do not wring or twist.
3--Dry on flat surface. Do not stretch or hang. Bunch to shape and allow to thoroughly dry."

"MACHINE WASH & DRY
1--Use warm water and mild detergent.
2--Always machine dry after machine wash; remove garment right after cooling.
NEEDS NO BLOCKING
WILL NOT PILL."

R. 17 at 169, NHYA:

"WOOL YARN. HAND WASH TEPID WATER USING GOOD WATER WASHING AGENT. DON'T RUB. SQUEEZE GENTLY TO REMOVE SOIL. RINSE WELL. TEPID WATER. REMOVE WATER. USE LAST SPIN CYCLE WASHER. NO HEAT OR WATER. PLACE ON FLAT SURFACE TO DRY AWAY FROM SUN OR HEAT."

7 Tr. 2265-66, NHYA.

8 Supra, note 5.

2. Coverage

In spite of the fact that many yarn manufacturers now provide detailed care instructions on yarn wrappers, they inconsistently argue that such care instructions will not be applicable to each of the variety of projects for which the consumer may use yarn.[9] Indeed, staff admits that consumers could use the same yarn for a broad range of products such as apparel, rugs and wall hangings. Piece goods, however, are also used in a range of products equally as broad. Further, NHYA later declares that the primary use of yarns is in the construction of garments and that the instructions on bands are designed to apply to such items.[10] Others suggest that such care instructions may be inapplicable to the finished product because knitting techniques (a loosely or tightly knitted stitch, for example) vary and may determine whether the finished item shrinks, puckers in washing or suffers other adverse consequences because of the inapplicability of the care procedure recommended for the yarn alone.[11] NHYA notes, however, that only where an item is so loosely woven that it, "might come apart in washing" could the care instructions on the band be detrimental.[12] Consumers may indeed incorporate two or more types of yarn, having different care characteristics, in a single item; care instructions for each of the yarns used, however, enable the consumer to determine the care procedure which is appropriate for all of the components as combined into the finished item. Without the instructions, the consumer is unable to make such a determination and must guess at which yarns are compatible with which components - a procedure which staff would term a very "high risk venture."

The majority of evidence on the record supports care instructions for yarn. For example, drycleaners express a need for such information. The International Fabricare Institute states that yarns of various fibers require different care techniques and the drycleaner must be told of the appropriate care techniques for an item in order to process the item successfully.[13]

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9 Tr. 2269-70, 2272, NHYA; R. 17 at 207, Home Laundry & Cleaning Council, London, England.

10 Tr. 2273, NHYA.

11 R. 17 at 114, Braham Norwick, Vice President, Technical Director, Joseph E. Bancroft & Sons, Co.; R. 17 at 518, Sears, Roebuck and Co.

12 Tr. 2273, NHYA.

13 R. 17 at 1077, IFI.

Likewise, consumer-purchasers of yarn voice strong support favoring inclusion,[14] citing a desire to avoid damaging finished products made of yarn. Yarn producers themselves admit that consumers need such instructions.[15] Staff believes that this is the reason that instructions are now supplied. Three large retailers, Sears, Roebuck & Co., Montgomery Ward and J. C. Penney all agree that care instructions for yarn are desirable to enable consumers to "comparison shop" at or before the point of sale.[16]

Record evidence of damage to items constructed of yarn further supports these parties. One consumer made a pair of slippers from acrylic yarn. When she washed the slippers, they stretched and were three times too large.[17] Another consumer states, "I completed a tapestry which required many hours of labor. When this article was blocked, the yarn ran. Had a drycleaning label been attached, this disappointing disaster could have been avoided."[18] One comment notes shrinkage of a garment and discoloration which a care label would have eliminated.[19] Another consumer ruined a wallhanging which she

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14 R. 18 at 162, consumer. "[A]ny fiber or combination of fibers will have an optimal cleaning process which will avoid shrinkage, fiber damage and color fading. This applies whether the fiber is already woven into fabric, or is in the form of thread or yarn."; R. 18 at 1007, consumer; Tr. 1903, K. Stanton, Dept. of Consumer Affairs, Burlington County, N.J.; R. 17 at 124, Celanese Fibers Marketing Co.; R. 17 at 244, Chairman, Extension Section, AHEA; R. 18 at 318, F. J. Schlink, President, Consumers Research Magazine; R. 18 at 352-384, consumers; R. 20 at 35, Clothing Specialist, CES, Conn.; R. 20 at 148, Fairfax County, Dept. of Consumer Affairs; R. 20 at 325, Textiles Instructor; R. 20 at 346, Extension Agent, CES, Wisconsin; R. 20 at 348, Asst. Prof. Textiles & Clothing; R. 18 at 185, 194, 202, 313, 414, 579, 643, 651, 665, 668, 694, 768, 810, 910, 918, 924, 941, 959, 967, 984, 1071, 2411, consumers; R. 20 at 212, 431, consumers; Tr. 1661, Karen Geiken, Instructor, School of Home Economics, Univ. of Wisconsin; Tr. 2533, Kathi Bourdeau, Dept. of Consumer Affairs, Los Angeles County; Tr. 1017-18, Betty Feather, Clothing & Textiles Specialist, CES, Missouri.

15 Tr. 2265, NHYA.

16 R. 17 at 518, Sears, Roebuck & Co.; R. 17 at 1200, J. C. Penney Co.; R. 17 at 1626, Montgomery Ward & Co.

17 R. 18 at 510, consumer.

18 R. 18 at 708, consumer.

19 R. 18 at 876, consumer.

had woven.[20] Jeanette Roberts, an extension specialist, cites complaints from several consumers who used embroidery yarn for decorative design on garments. The yarn, which bore no care instruction, was not colorfast and the garments were ruined.[21] The record contains other evidence of damage to items made of yarn which were knitted or woven by consumers.[22] In addition to the money spent by consumers who purchase craft yarns, the time and effort spent in constructing an item damaged due to improper care also contribute to an even greater loss than the consumer would experience in ruining a ready-made item for the same reason. Evidence of damage to such items when care instructions are incomplete or inaccurate, plus the fact that the yarn industry itself acknowledges consumers' need for care instructions

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20 R. 18 at 967, consumer. "As an example of a problem I recently encountered - in a large wall hanging I wove, using a variety of yarns to produce a textured effect, I included a bulky 'Taslan.' After the weaving was finished I steam pressed the piece lightly at a medium temperature and much to my surprise the Taslan yarn became crisp and stiff. Needless to say, it hadn't occurred to me that this yarn would be so sensitive to heat and had a label said so, I would have been forewarned."

21 R. 20 at 172, Extension Clothing Specialist, CES, Arkansas.

22 R. 18 at 1013, consumer.
"My daughter made a wool aryn-knit pullover for herself ... when she was still a teenager and knowing it was wool, I laundered it accordingly. She married and began her own domestic duties and inadvertantly laundered the sweater in a machine with disastrous results. If a care label had been attached to the yarn, she could have sewn it into the sweater and could still be wearing, with the pride of creation, a very beautiful sweater. In the same manner I have ruined many pairs of mittens, knitted for my children by others, because I forgot that everyone does not use synthetic yarns, as I do, in order to make laundering easier."
R. 20 at 41, Kay Gragg, Dept. of Consumer Affairs; Tr. 2356, 2495.

"Consumer purchased orlon yarn, knitted to size a sweater for her husband. She took it to cleaners to be CAREFULLY handblocked. She checked with person at the desk to see if they did knit garments. She was assured they did. She very carefully explained that the garment was exactly the right size and sweater was not to be enlarged at all. The girl said she understood. When sweater was complete it was two sizes too big. Owner of shop scolded the customer for bringing the knit article to his place of business; [he said] that he doesn't like to do knits and he refused any liability for the damage."

for yarn are persuasive. While the record is not large, its substance conclusively favors coverage. The Presiding Officer agrees.[23] As there appears to be no significant opposition to coverage, staff concludes that yarn should be included within the scope of the final Rule.

3. Transmittal of Care Instructions

The issue of the form in which care instructions are to be transmitted to the ultimate consumer is paramount in this area. While many yarn manufacturers now place the instructions on the wrapper which fits around the skein, the records contain evidence which indicates that this may not be sufficient, especially if the instructions appear on the inside of the skein band and are then unavailable to the consumer at or before the point of sale. Those who make this argument typically opt for labels either available on request or distributed automatically with each retail purchase in the same manner as staff recommends for piece goods. In objecting to the label form of transmission, commentors cite reasons similar to those previously mentioned when the issue of coverage was considered. Two large retailers and a small minority of consumers believe that placing care instructions on labels will generate erroneous consumer assumptions at the point of care that such instructions apply to the finished product when such may not be true. They advocate disclosure on the wrapper only for purposes of comparison shopping.[24] It has been noted previously, however, that members of NHYA now print care instructions which are intended to apply to the finished article made from the yarn. Thus, the implication that instructions appearing on labels will be misleading does not appear to have any factual basis. Similarly, a producer of yarn "kits" objects to providing labels for yarn on the grounds that consumers who use more than one type of yarn in making an item will be confused by multiple care labels.[25] Multiple labels having different instructions for several yarns will be no more confusing, however, than multiple wrappers containing similarly different instructions. The fact remains that, if labels are supplied, the consumer will be able to select whichever label is appropriate on the basis of the instructions thereon, attach the label to the finished item and have the instructions available at the point of care when they are needed.

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23 Presiding Officer's Report 33.

24 R. 17 at 1200, J. C. Penney Co.; R. 20 at 217, Clothing & Textiles Specialist, CES, Missouri; R. 17 at 518, Sears, Robuck and Co.

25 R. 17 at 374A, Lee Wards Creative Crafts, Inc.

Nevertheless, a clothing specialist finds instructions on the wrapper to be sufficient because allegedly it is not as difficult to distinguish fibers in yarn as it is in fabrics.[26] Inherent in this argument is the assumption that recognition of the fiber will be sufficient to suggest an appropriate method of care to a consumer, although evidence throughout the record shows not only that consumers and others are unable to identify fiber types on visual inspection alone, but that they often do not know the appropriate care for a particular yarn or fabric in the absence of instructions. Several others also maintain without explanation that care instructions on the skein wrapper are sufficient.[27]

The industry position is predictable. Yarn bands or wrappers can be kept available by the consumer after purchase and use of the yarn; therefore, labels are unnecessary and serve no purpose not already served by the wrappers.[28] Further, NHYA states that the most important time for consumers to have care instructions is at the point of sale; having retailers distribute separate care labels would be impractical. If separate labels are provided with each skein, many would go to waste, since consumers generally use many skeins of the same yarn to construct a single item and only one label would be needed. The others would likely be discarded by consumers who have no use for them.[29] Other yarn manufacturers agree that the labels will not be used and will increase costs to the manufacturer causing "extreme hardship" to the yarn industry. Since the industry operates at a low margin, attaching care labels to each skein of yarn would necessarily increase the price, causing a hardship to the consumer and possibly a reduction in the use of the product.[30] NHYA adds that the paper wrappers currently in use by the industry, "don't cost the consumer anything."[31] Staff questions this statement. It is unlikely that a paper wrapper printed with extensive

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26 R. 20 at 19, Textiles & Clothing Specialist, CES, Idaho.

27 R. 18 at 343, consumer; R. 19 at 1, Merchandise Research Laboratories; R. 20 at 615, Nancy Chasen; R. 20 at 725, consumer; R. 18 at 898; R. 20 at 171, 431, 470, 473, consumers.

28 Tr. 2272, NHYA.

29 R. 17 at 160; Tr. 2266, NHYA.

30 R. 17 at 161, NHYA; R. 17 at 238, Art Needlework by Fixler Bros.; R. 17 at 374, Lee Wards Creative Crafts, Inc.; Tr. 2266-67, NHYA.

31 Tr. 2283, NHYA.

information can actually be attached to each and every skein of yarn without the cost of the wrapper, no matter how small, being included in the total price of the yarn product. Additionally, retention and filing of a number of yarn wrappers by the consumer is not only arduous but would still not necessarily function to make care instructions available at the point of care. Indeed, many consumers construct items made from yarn for gifts.[32] Without a label attached to the item, recipients of such gifts will have no knowledge of the appropriate care for the item. Second, retailers other than Sears, Roebuck & Co. and J. C. Penney allege that the yarn purchaser is "more sophisticated than the typical consumer" and simply does not need labels.[33] The same parties made the same argument against piece goods labeling and staff must reject it for the same reasons. The record contains no evidence of such sophistication; on the contrary, the record contains overwhelming evidence that labels are as necessary for yarn as they are for piece goods, both at the point of sale and at the point of care. A number of consumers and consumer representatives on the record cite their lack of knowledge of proper care for yarn products and their consequent need for such information long after the finished item has been completed.[34] Of those who advocate labels containing care instructions for yarn, some concede that they need

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32 Tr. 2503, K. Gragg.

33 R. 16 at 151; Tr. 1833, 1866-67, NRMA.

34 R. 18 at 162, consumer; R. 18 at 1007, consumer; Tr. 1903, K. Stanton, Dept. of Consumer Affairs, Burlington County, N.J.; R. 17 at 124, Celanese Fibers Marketing Co.; R. 17 at 244, Chairman, Extension Section, AHEA; R. 18 at 318, F. J. Schlink, President, Consumers Research Magazine; R. 18 at 352-384, consumers; R. 20 at 35, Clothing Specialist, CES, Conn.; R. 20 at 148, Fairfax County, Dept. of Consumer Affairs; R. 20 at 325, Textiles Instructor; R. 20 at 346, Extension Agent, CES, Wisconsin; R. 20 at 348, Asst. Prof. Textiles & Clothing; R. 18 at 185, 194, 202, 313, 414, 579, 643, 651, 665, 668, 694, 768, 810, 910, 918, 924, 941, 959, 967, 984, 1071, 2411; R. 20 at 212, 431, consumers; Tr. 1661, Karen Geiken, Instructor, School of Home Economics, Univ. of Wisconsin; Tr. 2533, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County; Tr. 1017-18, Betty Feather, Clothing & Textiles Specialist, CES, Missouri.

only be available on request at the retail level.[35] On the other hand, the record contains more comments from consumers and their representatives who believe that distribution of labels without request is the best method of ensuring that appropriate care information is actually obtained by the consumer.[36] Under a system of pre-sale availability, it is argued that those consumers who need care labels the most will not get them.[37] Further, many consumers do not know that care labels are available[38] and are "at the mercy of the retailers to provide the labels."[39] In the confusion of shopping, consumers for valid reasons may simply forget to request care labels.[40] Finally, two surveys appearing on the record support automatic distribution of care labels with yarn by a large majority. Eighty-five percent of those responding in both the Greeley and Mississippi surveys favor this method.[41]

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35 R. 20 at 275, Office of the D.A., Consumer Affairs Div., Colorado Springs; R. 20 at 299, Head Dept. of Clothing & Textiles; R. 20 at 424, Asst. Prof. Textiles; R. 18 at 614, 699, 714, 750, 792, 833, 838, 844, 847, 853, 877, 910-916, consumers.

36 R. 17 at 262, 421, 430, 1626, industry comments. R. 18 at 120, 125, 163, 174, 179, 235, 238-291, 299, 311, 347, 395, 421-506, 510, 527, 528, 531, 538, 543, 546, 551, 554, 556, 577, 626, 640, 651, 653, 665, 668, 685, 686, 693, 729, 758, 770, 777, 779, 874, 785, 803, 812, 833, 835, 850, 856, 859, 868, 871, 874, 881, 882, 889, 899, 907, 916, 946, 971, 1007, 1017-1021, 1023, 1025-1031, 1053, 1065, 2384, consumers; R. 20 at 44-45, 129, 138, 139, 148, 162, 175, 176, 194, 198, 199, 209, 210, 225, 235, 243, 247, 248, 252, 256, 261, 281, 315, 322A, 356, 360, 366, 423, 439, 444, 446, consumers and consumer representatives.

37 R. 18 at 65, 770, consumers.

38 R. 18 at 907, consumer.

39 R. 18 at 899, consumer.

40 R. 18 at 784, retail clerk.

41 R. 20 at 322A, Greeley survey; R. 20 at 256, Mississippi survey.

It is apparent that the record is divided on this issue. Some believe that the retailer should be made responsible for distributing labels separately with each purchase as is recommended for piece goods, having obtained such labels from the yarn manufacturer.[42] Others, including several retailers, maintain that the manufacturer should be responsible for including a label(s) in each skein of yarn sold, stating that only in this manner will consumers actually receive the labels.[43] Montgomery Ward agrees and will require such labels to be included in all skeins of yarn which it purchases from yarn manufacturers in the future.[44] Such a system would further relieve the retailer of the responsibility of distributing them.[45]

It is staff's task to resolve these conflicting arguments. First, it is staff's opinion that care instructions on the yarn wrapper, without more, are not sufficient to achieve one of the principal objects of the rule, i.e., to ensure that care instructions are available to the consumer at the point of care. It is for this, and other reasons previously noted, that permanent labels are now required to be attached to ready-to-wear garments as well as to accompany the sale of piece goods. In staff's view these reasons also apply to yarn. If the piece goods manufacturing industry is able to handle the distribution of labels (which the evidence shows they are able to do) then there is no reason why the yarn industry cannot perform in a similar fashion. Further, if the yarn industry can successfully supply care instructions on yarn wrappers which it is now doing, then it can supply the same instructions on labels. Staff concludes, therefore, that while care instructions conspicuously disclosed on bands or wrappers enclosing skeins of

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42 R. 17 at 262, Wisconsin Fabricare Institute; R. 17 at 421, Association of Home Appliance Manufacturers; R. 18 at 653, 668, consumers; R. 20 at 198, Home Economics Instructor; R. 20 at 235, Asst. Attorney General, Illinois; R. 20 at 361, Textile & Clothing Specialist, CES, Oregon; Tr. 940-41, Director Consumer Affairs, Fairfax County, Virginia; Tr. 1661, K. Geiken; Tr. 2167, 2208-09, E. Kennedy, small retailer; Tr. 2741, 2757-58, National Consumers Congress.

43 R. 18 at 65, 127, consumer; R. 20 at 288, Dir. of Dept. of Consumer Affairs, Louisville, Ky.

44 R. 17 at 886, Montgomery Ward Co.

45 R. 17 at 1626, AGMC.

yarn are essential to ensure the presence of sufficient care information at the point the purchasing decision is reached, the bands are likely to serve little purpose at the point of care. In accordance with this conclusion, staff recommends that the final Rule require the disclosure of such instructions: 1) on the outside of the skein or other unit in which the yarn is packaged; and 2) on a label suitable for attachment to the item made from such yarn.

In this connection, staff also concludes that required labels must be distributed to the ultimate consumer without request. Pre-sale availability of labels (alone) presents a situation no better than that currently existing with respect to piece goods where consumers are simply not obtaining them. For valid reasons, consumer-purchasers may find it inappropriate or be unable to request such a label in the environment of a typical yarn or fabric store. Since retail establishments who sell fabric often sell yarn as well, staff has no reason to believe that the same situation will not occur with respect to yarn as has already occurred with respect to fabric. As in the case of piece goods, the record contains no evidence that automatic distribution cannot be accomplished feasibly and without significant burden.

The manner in which such distribution may be affected is a different matter. Providing labels to the consumer <u>in each skein of yarn</u> would be the manufacturer's responsibility; one advantage of this method is that it removes all retailer involvement in the distribution scheme. On the other hand, consumers are not likely to need one label per skein as several skeins are typically used to make one finished item. Therefore, this method also involves a considerable amount of waste at perhaps increased cost. The other method proposed is that recommended for piece goods. The manufacturer would be required to assure only that retailers obtain appropriate labels; the retailer would then be required to distribute them to the ultimate consumer. As the record contains little evidence upon which to base an intelligent comparison, staff concludes that both methods might be appropriate, depending upon the individual case. Staff recommends therefore, that manufacturers be given the option of either 1) providing one label per skein of yarn in the skein itself or 2) ensuring that retailers have sufficient labels to distribute to the ultimate consumer, as in the case of piece goods.

The Presiding Officer concurs in requiring care instructions for yarn in the form of labels and in requiring such labels to be distributed without request. While he prefers that care instructions be disclosed at the point of sale <u>via</u> signs

rather than on the skeins themselves, staff believes the principle is the same and characterizes the Presiding Officer to be in substantial agreement with staff on this issue.[46]

4. Content of Care Instructions

As yarn is the primary component of several finished products recommended to be covered by the final rule (wearing apparel, linens, upholstered furniture and carpets, for example), the care traits of the yarn contribute heavily to the care traits of these products. Thus, staff is of the opinion that the care instructions for such yarn should meet the same criteria as those required for the finished products to be made from such yarn and so recommends.

Therefore, in accordance with these conclusions and recommendations, staff recommends that the following provision, applying exclusively to yarn,[47] be included in the final Rule:

(a) In connection with the sale of any textile product in the form of yarn made for the purpose of immediate conversion by the ultimate consumer into a finished item otherwise covered by Sections 423.2 or 423.6, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:

(1) for the manufacturer or importer of such yarn to fail to:

(i) clearly and conspicuously disclose on each skein or other unit of yarn clearly stated instructions for the care and maintenance of such yarn; and either

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46 Presiding Officer's Report 33.

47 Because staff is recommending that yarn manufacturers be given an option in this area and does not so recommend for piece goods, the two products must be separated in the Rule.

(ii) ensure in any manner that the retailer of such yarn obtains labels which:

(A) clearly disclose instructions for the care and maintenance of such yarn, and

(B) can by normal household methods be permanently affixed to the finished item by the ultimate consumer; or, at the manufacturer's option,

(iii) securely enclose such a label in each skein or other unit of such yarn in such a manner that it will remain with the skein or other unit until the point of retail sale.

(2) When care labels have been provided in the manner outlined in Paragraph (1)(ii) above, for the retailer of such yarn to fail to provide a reasonable number of care labels to the ultimate purchaser of such yarn at the time of retail purchase.

(b) Care instructions for such yarn must meet the criteria specified in this part for the products they are primarily designed to make.

F. Finished Household Furnishings

1. Preface

Since the product coverage of the current rule was limited to textile wearing apparel and piece goods used to make textile wearing apparel, household furnishings were not included within its scope. Staff became aware of the apparent need for including selected household furnishings within the coverage of the proposed revised rule after promulgation of the existing Rule. The basis for such inclusion is outlined in the staff report.[1]

Household furnishings as a group are incorporated in section 423.1 of the proposed revised rule and are defined in section 423.6(d). The proposal treats all household furnishings covered (except carpets and rugs) in the same manner as wearing apparel by requiring a label to be permanently affixed containing appropriate regular care instructions for such items. Staff made no attempt in the early stages of the proceeding to distinguish between one household furnishing and another, in terms of what care instructions should be required, because the record at that time contained no evidence upon which to base such a distinction. Thus, the proposed revised rule requires the same instructions for household furnishings as it requires for wearing apparel. The record developed since issuance of the initial notice, however, contains ample evidence that such instructions simply are not applicable to many selected household furnishings and that other specified types of instructions are needed (recommended care instructions for upholstered furniture and carpets and rugs are considered *infra*, sections 3 and 4). This fact became apparent to many commentors who justifiably criticize the basic organizational format of the proposed revised rule.[2] In view of the differences in care instructions required for these products as well as the methods by which care instructions may be transmitted, staff concludes that each category of household furnishings should be treated separately to the extent that the requirements set forth for wearing apparel do not apply. Therefore, staff has eliminated the definition of finished household furnishings, as a group, from its recommended final rule; each product category of household furnishings is given separate consideration in this report and is separately treated in the recommended final rule.

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1 Staff Report 10-13.

2 R. 17 at 424, 516, 526, 530, 1199, various industry comments; R. 20 at 723, consumer representative.

2. Window Coverings - Draperies and Curtains

a. Coverage

Draperies and curtains are included in the proposed revised rule's definition of finished household furnishings and are covered by the Rule in the same manner as wearing apparel. Justification for their inclusion is contained in the staff report.[3] While the Presiding Officer's report does not specifically address the question, the record contains literally unanimous support for such coverage.

Draperies, as all interior "decor" fabrics, require regular care for continued use and enjoyment. The Association of Interior Decor Specialists, Inc., (hereinafter AIDS) recommends scheduling of proper care at regular intervals. "Light, loose soils, of the lint and gritty kind, should be thoroughly vacuumed from draperies . . . at least once a month - more often, if possible." "Lack of proper maintenance will contribute to loss in the potential of an investment...."[4] Embedded soils are also a frequent menace.

> Oily, light-weight soil floating in the air will settle on unprotected furnishings and change the coloring of their fabrics to look yellowish or greyish. The greasy soil may stem from cooking, heating systems, shoes, automobile exhausts or industrial fumes. This kind of soil is usually found near heating and air conditioning vents and windows.[5]

If not removed, such soils will cause light backgrounds to discolor and eventually will deteriorate fibers, rendering the item unacceptable.[6] The BSSR survey indicates that a full 58.1% of the 693 respondents interviewed had cleaned curtains or draperies within the past 2 years. It concludes that, "home cleaning of such items is a very common event."[7]

As with wearing apparel, however, the care traits of draperies and curtains differ in many respects. Many are being manufactured with dyes of varying degrees of colorfastness. The care traits of pigment-printed drapery fabric differ from fabric made from

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3 Staff Report 10-13.

4 R. 17 at 303, Association of Interior Decor Specialists Fabric Care Pamphlet.

5 Id. 304.

6 Id. 306.

7 Tr. 2717, NCC; HX 33 at 439-40.

solution-dyed fibers which resist color changes caused by exposure to adverse effects of the environment such as fading, deterioration and discoloration. Certain colors are more severely affected than others. Soil may hide these color changes until the item is cleaned. However, "mild agitation when cleaning them could result in their falling into shreds . . . and the cleaner is apt to be blamed, perhaps unjustly, for such a result."[8] Further, varying degrees of shrinkage occur in draperies up to an amount of 4% because of moisture contact or humidity.[9] Some can be restretched, some cannot.[10] Some drapery fabrics are made from heat sensitive fibers which have low melting points[11] and which may be relatively difficult to identify. Pressing, otherwise necessary to restore smoothness to a fabric, can distort and melt such fabrics. One drycleaner specializing in drapery cleaning admits that, "even with our knowledge and experience, it is literally impossible to recognize every limitation on every fabric, because of the vast selection of drapery fabrics on the market today." The cleaner also cites the varying characteristics of certain monofilament threads in draperies which may break or dissolve in the cleaning process, for reasons unknown to the cleaner, causing entire hems or seams to come apart. The drycleaner often renews them at his/her expense.[12] Because of these varying care characteristics, professional drapery cleaners clean and finish draperies using a number of different methods, involving water solutions, wet or dry drycleaning compounds and different finishing techniques such as ironing or steaming. Although AIDS recommends that draperies be sent to "reliable" cleaners, it is evident that even reliable cleaners cannot discern the care traits of many drapery components.

Compared to other industries discussed in this report, the drapery industry has made some effort to remedy the problem of lack of care information but such effort has been spotty.

> I have worked in a retail store for the past two years. . . . I spent most of the two years in the Drapery Dept. . . . Most of the draperies did not have care labels attached and the labeling inside

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8 R. 17 at 1, Textile Analysis Service, University of Alberta.

9 R. 17 at 309, AIDS.

10 R. 17 at 310, AIDS.

11 Tr. 999, B. Feather, Clothing and Textiles Specialist, University of Missouri.

12 R. 17 at 242-43, drycleaner (drapery specialist).

> the package was difficult to understand. In the package, the care instructions were listed on a table. They broke them down into various fiber content combinations but none of the combinations seemed to correspond to the fiber content in the drapes. What's a salesperson to do when asked, 'How do I care for this?'[13]

The record contains evidence either of the total lack of any care instructions whatsoever or the presence of care instructions in some cases but not in others.[14] On the other hand, a representative of Montgomery Ward states: "We are working with our suppliers to provide permanent care labels located in the pleat or rod jacket at the top of all curtains and draperies."[15] The BSSR survey indicates that of the 33.7% of 693 respondents who had purchased new draperies or curtains within the past 2 years, 75.2% received some sort of care instructions at the time of purchase. Of those who received them, 32% received instructions attached to the draperies while 65.1% received separate instructions. Thirty-four point two percent (34.2%) of the separate instructions were volunteered by the retailer; 64% were sealed in the package.[16] While some form of care instructions are being supplied by either the drapery manufacturers or retailers in many cases, the evidence indicates that 1) care instructions do not appear consistently but on a haphazard basis and 2) the care instructions supplied may not be adequate or comprehensible to consumers.

Justification for inclusion of draperies and curtains within a mandatory rule, however, must demonstrate that care instructions are necessary to the ordinary use and enjoyment of such products as well as the occurrence of some consumer injury in their absence. Staff maintains that the instant record meets these requirements. Consumer needs in this area are based on several facts. First, draperies are expensive and can represent a substantial investment.[17] Expenditures for one such item could easily equal a

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13 R. 17 at 433, consumer (retail store employee).

14 R. 17 at 757, 799, consumers; R. 20 at 248, Textiles and Clothing Instructor, University of Wisconsin.

15 R. 20 at 599, Montgomery Ward.

16 Tr. 2714-2717, the BSSR survey; HX 33 at 436-439.

17 R. 17 at 12-14, 15-91, 99-103, petitions from consumers and two drycleaning associations containing 1738 signatures; R. 17 at 108, consumer; R. 18 at 159, 622, 891, consumers; Tr. 997, B. Feather.

family's annual clothing budget.[18] The potential for damage because of improper care is onerous to the unknowing consumer or drycleaner.[19] Unlike some apparel, draperies are expected to last with proper care and maintenance;[20] they are also continuously exposed to atmospheric soil as well as fumes from heating and cooking.[21] Consumers as well as drycleaners do not know (nor can they be expected to know) the proper care for all draperies on the market.[22] "Lack of care labeling [makes] it impossible for the consumer to know the correct method for cleaning the item."[23] This is especially true in light of the varying finishes or special care traits inherent in each particular drapery or curtain.[24] It is difficult to discern from the fiber content whether a drapery item can be washed, especially one containing, for example, 50% or more rayon or acetate fibers.[25] Often consumers may be attracted to the elegant or unusual effect in draperies (sheens, dimensionally unstable weaves) which makes them particularly vulnerable to improper care.[26] Information at the point of purchase permits consumers to make an informed selection to reduce this risk as well as the inconvenience and expense in properly caring for an item. In the absence of instructions, consumer assumptions vary; some automatically go to the drycleaners,[27] but others

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18 Tr. 997, B. Feather.

19 R. 17 at 12-14, 15-91, 99-103, petitions containing 1738 signatures; R. 18 at 605, 697, 891, consumers; R. 20 at 450, State of Colorado, Office of Attorney General; Tr. 853, Neighborhood Cleaners Association; Tr. 2558, W. Blackman, consumer education teacher.

20 R. 17 at 108, 605, consumers.

21 R. 17 at 242, drycleaner.

22 R. 18 at 697, 891, consumers.

23 R. 17 at 387, consumer (retail employee). Another consumer cites as an example a purchase of draperies containing an applied design on a polyester background. She has no idea of the proper cleaning method. R. 18 at 710.

24 R. 17 at 387, consumer; R. 18 at 159, consumer.

25 Tr. 1659-60, K. Geiken, School of Home Economics, University of Wisconsin.

26 R. 18 at 697, consumer.

27 R. 18 at 910, consumer.

may erroneously assume washability to their regret.[28] Point of purchase information aids the consumer in being more discriminating in his/her choice of a product for a particular end use.[29] Further, retailers are often not qualified to provide accurate information to customers about care in this situation,[30] even though they receive inquiries about care on a frequent basis.[31] With one exception,[32] every individual consumer who commented acknowledges the importance of this information with draperies.[33] What studies were conducted in this area confirm this result.[34] Clearly, consumers will use the information provided. Sixty-six point nine percent (66.9%) of the respondents in the BSSR survey who had cleaned draperies within the past 2 years consulted some available instructions before cleaning them.[35] "This suggests that those who receive care instructions with their purchase of household items are indeed likely to use them."[36] Point of purchase information is equally important to both "discriminating" and "nondiscriminating" consumers.[37]

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28 R. 18 at 918, consumer; Tr. 1013, B. Feather.

29 R. 19 at 7, Textile Analysis Service, University of Alberta.

30 R. 18 at 392, consumer; Tr. 1014, B. Feather.

31 R. 20 at 4, Extension Agent, CES, Florida; R. 20 at 46, Extension Agent, CES, Alabama.

32 R. 20 at 250, consumer (too expensive).

33 See also R. 17 at 433, consumer; R. 18 at 639, consumer (low income area).

34 R. 20 at 410, Yreka survey. Forty-eight of 55 students and adults acknowledge the need for care information; Tr. 2731, the BSSR survey; HX 33 at 457 (96.1% of 693 respondents characterize drapery care labeling as important).

35 Tr. 2719-20, the BSSR survey; HX 33 at 441-443 (of these, 38.4% consulted attached instructions, 23.7% consulted separate instructions and 32.9% consulted instructions on cleaning agent).

36 Tr. 2720, NCC.

37 Tr. 2729, 2803-04, the BSSR survey; HX 33 at 455 (discriminating - 98.1%; nondiscriminating - 92.9%).

The record also contains evidence of consumer economic injury occurring via damage to draperies because of improper care in the absence of care instructions or in the presence of inaccurate instructions.[38] Comments indicating distortion, melting and other damage due to excessive heat appear frequently in the record presumably because of the prevalence of heat sensitive drapery fabrics.[39] Heat set wrinkles in curtains are a continuing problem.[40] One consumer purchased curtains for $32.98 whose care instructions stated "Machine Wash, Tumble Dry." Placement in a dryer on low heat for 15 minutes caused them to melt. The consumer was unable to obtain redress either from the retailer or the manufacturer.[41] Another consumer had a similar experience with sheer dacron polyester curtains purchased for $35.00. The damage clearly resulted from the improper use of a machine drier.[42] Further, the record contains considerable evidence of shrinkage due to improper care;[43] such shrinkage can be catastrophic for draperies or curtains which are measured precisely to fit a window and can result in extraordinary losses.

> [A] consumer took draperies to cleaners for cleaning. When returned to consumer, they [had] shrunk from 94 inches to 87 inches long. These draperies were made of rubberized insulation backed fabric.
>
> After being contacted by the Board of Fabricare, cleaners offered return of the $17.50 cleaning fee to the consumer. . . the consumer then stated that's inadequate. He paid $540.00 for the drapes so the cleaning fee refund of $17.50, to him, was inadequate.

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38 R. 19 at 14, Textile Analysis Service, University of Alberta; R. 20 at 38, Office of the Governor, State of Illinois; R. 20 at 339-40, Office of Consumer Affairs, Atlanta, Georgia; Tr. 938, R. Mallard, Fairfax County, Office of Consumer Affairs. Few could be favorably resolved. The result was little or no recovery; R. 18 at 443, consumer.

39 R. 17 at 242-43, drycleaner; R. 18 at 634, consumer.

40 R. 20 at 177, Extension Agent, CES, California.

41 R. 18 at 407-412, consumer.

42 R. 18 at 545, consumer.

43 R. 18 at 652, consumer; R. 18 at 1023, consumer; R. 20 at 131, consumer; R. 20 at 422, Assistant Professor of Textiles, Iowa State University.

> The problem here: no care label required on fabric used to make draperies. Cleaner can clean only as he thinks best based on his experience.[44]

Witness Blackman describes a devastating experience in which he made specific inquiry about cleaning methods for his bedroom draperies from a retailer and a specialized drapery cleaner. After cleaning according to their recommendations, the draperies shrank 1 1/2 - 2 inches and the rubber backing on the draperies had perforated. The draperies were custom-made for a bedroom and cost over $500.00. As a result of this recommended cleaning, they no longer fit the windows. Mr. Blackman was unable to obtain redress for the damage. The draperies contained no care instructions.[45] The record contains other cases of excessive drapery shrinkage documented by consumers, consumer representatives and dry cleaners[46] as well as a professor of clothing and textiles.[47]

Other miscellaneous problems with drapery cleaning are cited in the record, including cracking, peeling and disintegration of coated drapery "backs,"[48] removal of the finish leaving draperies

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44 Tr. 2498, K. Gragg, Dept. of Consumer Affairs, Ventura County, California.

45 Tr. 2546-2554, W. Blackman.

46 R. 17 at 179, drycleaner ("Shrinkage is the biggest problem with draperies"); R. 18 at 645, consumer (drapery lining shrank); R. 20 at 490, Dept. of the Attorney General, State of Michigan (custom draperies shrank after drycleaning; $60.00 curtains shrank after drycleaning); R. 20 at 491, consumer (same experience with $40.00 draperies); Tr. 1781, P. Faley, Montgomery County Consumer Affairs (draperies shrank 9 inches after washing - 4 inches after drycleaning); Tr. 2364-65, F. Reid, Dept. of Consumer Affairs, Orange County (two cases of severe drapery shrinkage after washing and drycleaning respectively); Tr. 2517, 2524, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County (shrinkage of draperies and drapery linings).

47 R. 20 at 158, N. Walker, Professor of Clothing and Textiles, Texas Tech University (laundered unlabeled draperies in cool water and mild soap; they shrank 3 inches).

48 R. 17 at 179, drycleaner; R. 18 at 794, consumer (when sun shines through draperies, it looks like a road map).

limp,[49] fading of color[50] and damage to polyvinylchloride custom-made draperies.[51] The consumer is frequently caught between the manufacturer and the drycleaner and may suffer horrendous consequences, as outlined by a commenting consumer:

> Channel 4 News carried a story relating the details of a man who purchased very expensive draperies, had them dry cleaned and they were returned to him ruined. When he tried to seek recourse from the dry cleaner he was told that they could not except [sic] responsibility for the draperies and should take this matter up with the manufacturer. This gentleman then wrote the manufacturer and the manufacturer also denied any responsibility for the draperies. This man was caught in the middle since the law governing care labeling does not include decorator items, and therefore he had to suffer the consequences of ruined draperies costing $1,000.[52]

While the BSSR survey indicates that only about 41 of 404 respondents who had cleaned draperies within the past 2 years expressed dissatisfaction with the outcome,[53] the record as a whole demonstrates a substantial need for care instructions for such items. The record shows that consumers suffer substantial economic injury because of the lack of, or inaccurate, information regarding proper care procedures for draperies. The record also graphically shows that consumers are frequently unable to obtain proper care information, even when extensive inquiry is made, to their detriment. As the record contains

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49 R. 18 at 602, consumer.

50 R. 18 at 645, consumer.

51 R. 19 at 8, Textile Analysis Service, University of Alberta.

52 R. 18 at 2415, consumer.

53 Tr. 2720-2722, the BSSR survey; HX 33 at 444-45 (18.2% complain of spotting or uneven cleaning, 36.4% complain of fading color, 52.3% complain of shrinkage, 61.4% dislike the fabric's appearance and 29.5% complain of melting or disintegration).

absolutely no industry opposition to coverage under the Rule and since there is evidence that industry is able to respond (and, in some cases, is responding) to this need without substantial burden, staff recommends that draperies and curtains (and other window coverings in the nature of draperies and curtains which qualify as a "textile product" and need "regular care" under the Rule) be included within the coverage of the final Rule.

b. Transmittal of Care Instructions

Although the record contains relatively little evidence on the issue of permanent labels vs. separately supplied instructions for draperies, the substance of the evidence is clear. Those who favor permanent labels cite the burden of keeping separate instructions on file,[54] the likelihood that separate instructions will be lost, misplaced or unintentionally discarded with the package,[55] and the fact that permanent labels, by nature, will remain with the draperies through different owners when sold with a home.[56] Those favoring separate instructions state that draperies require less frequent care than apparel, making permanent labels unnecessary[57] and that the application of permanent labels will mean only added cost with negligible benefit.[58] Sears, Roebuck & Co. avers that, as a practical matter, permanent labels can be affixed to such items without undue burden and favors their adoption in this Rule.[59] Witness Kennedy, a small retailer, envisions a compromise through the use of a detachable label of paper or fabric which the consumer could choose to remove or leave attached as desired.[60]

Staff discerns no significant difference between the need for permanent labels on wearing apparel[61] and such need for draperies. The fact that draperies may require less frequent care makes the

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54 R. 17 at 244, American Home Economics Association.

55 R. 18 at 969, consumer; R. 20 at 346, Extension Agent, CES, Wisconsin.

56 R. 20 at 139, Extension Agent, CES, Oregon.

57 R. 18 at 714, consumer; R. 20 at 239, consumer.

58 R. 20 at 234, Extension Agent, CES, Ohio.

59 R. 17 at 516, Sears, Roebuck & Co.

60 Tr. 2162, 2215-16, E. Kennedy, small retailer.

61 See Statement, Chapter VI.B.

possibility of losing care instructions between cleanings even greater than that for wearing apparel. The benefit of having care instructions immediately available at the point of care is worth the small cost involved. As previously shown, portions of the industry support a permanency requirement. With respect to those few draperies where a permanent label would, in fact, impair their utility or appearance, an exemption from the "permanently attached" standard can be obtained, as is currently the case with wearing apparel. As such, staff sees little need to discuss the feasibility of detachable labels here.

For the reasons cited, therefore, staff concludes that care instructions for draperies and curtains should be transmitted by means of a permanent label in the same manner as is now required for wearing apparel.

c. Content of Care Instructions

While the record contains no direct evidence on this point, it is clear from the recitations of appropriate care procedures and resulting damage in the record that regular care of draperies and curtains involves the same basic methods of cleaning as does wearing apparel, i.e., washing, drying, drycleaning, pressing when needed etc. Thus care procedures used to maintain draperies and curtains are likely to be similar to or the same as those recommended for wearing apparel.[62] If other instructions containing different procedures are necessary, they may be added in accordance with the requirements of the general rule. As the record contains no further indications of what such additional instructions should be, staff believes that the minimal requirements for care insructions for wearing apparel should suffice for draperies and curtains, so long as other instructions are added when found to be needed. Therefore, staff recommends that draperies and curtains be included in section 423.2 of the final Rule, now reserved for the "wearing apparel" group. Because the record contains no evidence whatsoever of the need for care instructions on window coverings other than draperies and curtains, staff further recommends that any reference to such items in the Rule be deleted.[63] As redrafted, the pertinent parts of section 423.2 of the final Rule will indicate that "any textile product in the form of a drapery or curtain . . ." must have a permanent label containing suitable care instructions as required. Such

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62 With the possible exception of vacuuming, see R. 17 at 303, AIDS pamphlet.

63 Proposed revised rule, § 423.6(d).

care instructions should be governed by the standards outlined for care instructions for wearing apparel with additions if appropriate. Finally, since the words "drapery or curtain" appear relatively unambiguous, staff sees no need for further definition under the Rule and recommends that none be included.

3. Upholstered Furniture and Furniture Fabric; Slipcovers.

a. Preface

While not covered by the current Rule, both upholstered furniture, furniture fabric and slipcovers are included in the proposed revised rule as they fall within the product groups "household furnishings" and "piece goods" defined therein.[1] The basis for their inclusion is outlined in the staff report and will not be repeated here.[2] While the care characteristics of upholstered furniture, furniture fabric and slipcovers are not the same, they are being considered together in this section because the uses of each are related and the problems which have occurred with these products are similar. The issues of distribution and content of care instructions for furniture fabric, because such fabric falls within the product category "piece goods." are discussed in that Chapter.

b. Coverage

The care traits of these products, as well as their nature (fabric-based) indicate that regular care is necessary for their ordinary use and enjoyment at some point in their useful lives.

> Upholstery fabrics are very vulnerable to perspiration, oily skins, hair oils, soiled hands or clothing, so it is important to clean these fabrics often to ward off any permanent damages from reactions between some of the soils and the fabrics.
>
> Uniform cleaning is necessary when concentration of these kinds of soils becomes extreme.[3]

Twenty-six percent (26%) of 693 respondents interviewed in the BSSR survey had cleaned upholstered furniture within the past 2 years.[4] Indeed, a number of special cleaning techniques have been developed by professional cleaners to meet the demand for care of such products.[5] Such development occurred,

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1 Proposed revised rule, §§ 423.1 and 423.6(d).

2 Staff Report 10-14.

3 R. 17 at 304, Association of Interior Decor Specialists (hereinafter AIDS).

4 Tr. 2717-18, the BSSR survey.

5 R. 17 at 306, AIDS.

at least in part, because of the differences in care traits of many upholstery and slipcover fabrics. As with draperies, many upholstery fabrics and slipcovers are heat-sensitive, such as olefin (polypropylene or polyethylene): "The trouble occurs when the manufacturer uses a fabric that contains a heat-sensitive fiber. Neither the consumer nor the dry-cleaner is aware of its presence. After dry cleaning and drying the heat sensitive covers shrink, so they no longer fit the foam cushions."[6] Few furniture manufacturers, in fact, guarantee upholstery materials against shrinkage because of the large number and variety of different fabrics used.[7] The colorfastness of dyes used in such products also differs. Many slipcovers are being made without fast dye resulting in color bleeding during drycleaning and consequent irreparable damage.[8] "Sometimes linings under the upholstery fabrics have been dyed with colors that bleed when wet out, or the dyes in the fabrics themselves will bleed or the fabrics shrink. . . ."[9]

The National Association of Furniture Manufacturers, representing the furniture industry in this proceeding (hereinafter NAFM), disputes the fact that regular care is needed for furniture and furniture fabrics, especially those made of or covered with vinyl. "Care Labeling instructions are frequently unnecessary for many upholstered furniture coverings such as vinyl . . . ," or other similar upholstery fabrics.[10] NAFM points out that vinyl, which constitutes about 10% of furniture fabrics produced domestically, may be easily maintained using warm water and a mild detergent - a fact allegedly obvious to the consumer. On cross-examination, however, the industry representative acknowledges that use of a cleaning fluid in the nature of a drycleaning solvent on vinyl would have adverse effects.[11] While evidence on this specific point is sparse and despite the testimony of NAFM, there is no question that both textile and vinyl-covered upholstery fabrics, as well as slipcovers are not "disposable"

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6 Tr. 999-1000, B. Feather, Clothing and Textiles Specialist, Missouri.

7 R. 17 at 310, AIDS.

8 R. 17 at 1, drycleaner.

9 R. 17 at 306, AIDS.

10 Tr. 1089, 1113-14, National Association of Furniture Manufacturers (hereinafter NAFM).

11 Tr. 1100-01, 1113-14, NAFM.

and do become soiled during normal use. As such, they do require regular care to remove such overall soil as shown above. The evidence also indicates that, as with other fabrics, the care characteristics of such products differ depending upon construction, finish, dyes and other factors. It is this variety which has the potential of confounding the consumer or drycleaner when cleaning is attempted.

These conclusions are further supported by the fact that the furniture industry itself has demonstrated at least a nodding acquaintance with regular care procedures for upholstery products. Since 1967, NAFM (representing 200 upholstered furniture manufacturers) and the Southern Furniture Manufacturers Association, hereinafter SFMA, (representing 225 corporate members) have sponsored a joint industry upholstery fabric committee which, in 1969, developed and promulgated voluntary care labeling standards for upholstered furniture. These standards have been endorsed by the vast majority of suppliers, manufacturers and retailers in the industry. Additional improvements to these standards are currently being made with the aid of the American Textile Manufacturers Institute with a view toward submission to the American Society for Testing and Materials for inclusion in a separate care labeling glossary for upholstery fabrics.[12] Some manufacturers voluntarily supply care instructions according to these standards; others do not.[13] The prevailing industry view, however, is that the highly competitive and diversified furniture industry will produce the necessary incentive to supply them.[14] One individual furniture manufacturer and retailer verifies the position of the Associations in this regard.[15] Various home furnishings associations (National Home Furnishing Association) (hereinafter NHFA) and the Western Home Furnishings Association, (hereinafter WHFA), both of whom represent retailers of upholstery products, support the effort to provide care instructions.[16] Surveys conducted by these organizations, however,

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12 R. 17 at 186-87, 192-204, NAFM; R. 20 at 723, NAFM; R. 20 at 575-76, Southern Furniture Manufacturers Association (hereinafter SFMA); Tr. 1088-1090, NAFM.

13 R. 20 at 576, SFMA.

14 Tr. 1088-1090, NAFM.

15 R. 20 at 562-564, General Mills, Inc.; R. 20 at 599, Montgomery Ward.

16 R. 23 at 327-330, 337-340, Western Home Furnishings Association (hereinafter WHFA); Tr. 1754-55, National Home Furnishings Association (hereinafter NHFA); Tr. 2434, WHFA.

reveal that 8 years of encouragement has produced little in terms of tangible results. In 1974, only 20% of the furniture products received by the members of the National Home Furnishings Association contained care information; in 1976, 65.9% of its members reported that care information was included with less than 30% of furniture products received.[17] These percentages are confirmed by a companion 1976 study conducted by WHFA in which, of 101 retailers responding, 89 reported receiving care information attached to the product from 30% or less of their furniture sources. Seventy retailers reported receiving it from 5% or less of such sources.[18] NHFA comments:

> Critics may argue that the home furnishings industry has been less than successful in distributing care information in recent years. That criticism is hard to refute. Indeed, the NHFA White Paper research studies reveal that a disappointing proportion of household furniture is accompanied by care label instructions.[19]

While WHFA attempted to dilute the meaning of its own survey on cross-examination by alluding to subsequent "oral" surveys which were conducted, the record contains no documentary evidence of these surveys and no results were submitted.[20] Both associations doggedly assert, nevertheless, that the industry's commitment is rising.[21] Some of the problems cited by furniture manufacturers in implementing a voluntary care labeling program are that retailers tend to remove tags containing care information and the fact that no association keeps records as to which manufacturers are complying and which are not.[22]

Information in the record from consumers and consumer representatives on this question indicates that, while care information may be available in some circumstances, it is not available in the majority.[23]

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17 R. 23 at 614, NHFA.

18 R. 23 at 326, WHFA.

19 Tr. 1756, NHFA.

20 Tr. 2438-2440, WHFA.

21 Tr. 1757, NHFA; Tr. 2434, WHFA.

22 Tr. 1102, 1119, NAFM.

23 R. 17 at 142, furniture cleaner; Tr. 1623, M. Knowles, Office of Consumer Protection, Louisiana; Tr. 2363-64, F. Reid, Dept. of Consumer Affairs, Orange County, California.

> The best example I can cite is two couches upholstered in a beautiful yellow, white and green fabric. Assured by the furniture store it was cleanable, I paid $1400.00 for the set. However, when 'Servicemaster' evaluated my couches, they maintained they would not clean satisfactorily with any solvent they carried. I wish a care label detailing the kind of solvent to use had been attached to the reverse side of the upholstery fabric.[24]

While some manufacturers are providing care instructions, others provide none.[25] It is typically difficult, therefore, for a consumer to obtain care information, even upon inquiry. A survey of 22 stores in Pittsburgh, Pennsylvania conducted by witness Lampone reveals that furniture salespersons are eager to encourage purchases on the basis of style and color but not construction or care. Twenty-three percent (23%) of these salespersons were unable to provide any care information and 59% of the upholstered chairs offered for sale carried no information except price.[26] The BSSR survey confirms the haphazard nature of industry implementation of a care labeling program. Of 147 respondents who purchased upholstered furniture within the past 2 years, 52.4% received no care instructions at the time of purchase.[27]

Staff must conclude, therefore, on the basis of the record, that while the furniture and slipcover industries are capable of developing care instructions for their products and some manufacturers are already supplying them on a regular basis, many more are simply failing to do so. Because the industry's voluntary care labeling program functions on such a haphazard basis, the majority of consumers never receive any care information whatsoever. Further, the record contains no convincing evidence (other than self-serving industry predictions) that the industry commitment to voluntary care labeling of furniture products will be any greater in the future than it has been in the past.

Because care information for upholstery products appears so infrequently, it is not surprising that consumers have, in fact, suffered economic injury due to its absence.[28] A large

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24 R. 18 at 987, consumer.

25 R. 18 at 507, 757, consumers.

26 Tr. 1028-29, Susan Lampone, "Information On Frequency and Availability of Care Instructions for Upholstered Furniture" (Summer, 1975).

27 Tr. 2715-2717, NCC; HX 33 at 437-439, the BSSR survey.

28 R. 18 at 628, consumer (for example).

part of this injury can be traced directly to the mishandling of sofa and chair cushion covers during cleaning resulting in irreparable damage. The fabric in some of these covers,

> contains a synthetic fiber, often olefin, which wears well but is heat sensitive and may distort or shrink in drying. The coating gives it stability and body and tends to bind the seam. But the coating softens in drycleaning solvent. Some of it is removed in cleaning and this causes a raveling of the shallow, unbound seam.[29]

Although these covers have exposed zippers, they are to be removed only at the consumer's peril and, in any event, cannot be drycleaned without damage. "[T]he presence of a zipper often leads the customer to think the cover should be unzipped, removed and sent to be cleaned. Then the cleaner is led to believe he should dryclean it for no label tells him not to . . . ."[30] The result is often severe shrinkage[31] or complete disintegration[32] rendering the cover completely unusable. Improper washing or shampooing also causes damage just as irreversible.[33] Fading, bleeding or other unacceptable color changes

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29 HX 9 at 90, Esther Shapiro (submission from International Fabricare Institute).

30 Id.

31 R. 20 at 96-105, Consumer Protection Office, State of Hawaii; Tr. 2132-33, B. Reed, Better Business Bureau, Milwaukee; Tr. 2517-18, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County.

32 R. 17 at 263, Wisconsin Fabricare Institute; R. 19 at 8, Textile Analysis Service, University of Alberta; R. 20 at 147, Dept. of Consumer Affairs, Fairfax County (Herculon); Tr. 941-42, R. Mallard; Tr. 1910-11; HX 19 at 256-259, K. Stanton, Dept. of Consumer Affairs, Burlington County, New Jersey; Tr. 2163-64, F. Reid, Dept. of Consumer Affairs, Orange County, California; Tr. 2499-2501, K. Gragg, Dept. of Consumer Affairs, Ventura County, California.

33 R. 20 at 106-112, State of Hawaii, Consumer Protection Office; R. 20 at 491, Attorney General, State of Michigan; R. 18 at 189-90, consumer. (washed 100% nylon cushion covers in cold water; shrinkage was so severe that they had to be replaced); R. 18 at 445, consumer.

occur.[34] The direct irreversible consumer loss in these situations can vary from $55.80 or $80.00[35] through $410.80[36] to some $600.00[37] or more.

Upholstered cushion covers are not the only culprits. Adverse reaction of upholstery or upholstery fabric to certain cleaning procedures can cause overall adverse changes in appearance, texture or size.[38] Fabrics containing vinyl may be damaged if not cleaned (cracking, for example) and may be damaged if cleaned improperly (cracking, splitting, peeling) when unsatisfactory proprietary cleaners are used on vinyl covers. These cleaners remove the oil content and harden the vinyl.[39] Complaints involving care of upholstery products occur frequently in the experience of consumer representatives in this proceeding.[40] Slipcovers (as opposed to materials used for upholstery) may suffer similar fates.[41] Shrinkage out of fit is a common problem;[42]

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34 R. 20 at 338, Office of Consumer Affairs, Atlanta, Georgia; R. 20 at 586, B. Longnecker; R. 18 at 451, consumer; Tr. 2164, F. Reid.

35 R. 20 at 491, Attorney General's Office, State of Michigan.

36 R. 20 at 106-112, Consumer Protection Office, State of Hawaii; Tr. 1782, Patricia Faley, Dept. of Consumer Protection, Montgomery County, Maryland.

37 Tr. 2132-33, F. Reid.

38 R. 18 at 1008A, consumer; R. 20 at 338, Office of Consumer Protection, Atlanta, Georgia; R. 18 at 105-06 consumer (shrinkage); Tr. 2163, F. Reid (fabric on arm deteriorated); Tr. 2499, K. Gragg (velvety sheen to rough washboard texture - fabric color and nap removed); R. 20 at 277, Extension Agent, CES, Ohio (upholstery fabric used for pillow covers; potential loss - $300-$400).

39 Tr. 2444-2445, WHFA; Tr. 1623-24, M. Knowles.

40 Tr. 1782, P. Faley; Tr. 1623-24, M. Knowles; Tr. 2517-18, 2524, K. Bourdeau.

41 R. 20 at 586-87, Office of Consumer Affairs, Atlanta, Georgia.

42 R. 20 at 422, College of Home Economics, Iowa State University; R. 18 at 138, consumer; R. 20 at 38, Office of the Governor, State of Illinois; Tr. 858-59, Neighborhood Cleaners Association.

total disintegration after cleaning is another.[43] Esther Shapiro states:

> I brought the slipcover not because it was unique but because it was typical, because many people complained about that. . . .[44]

> I speak to audiences two or three times a week, averaging 100 to 300 people. I would say in every such group at least one or two people came up to complain about slipcovers that should not have been drycleaned or washed. . . .[45]

Most such slipcovers should be shampooed on the furniture or surface cleaned and should not be removed. Because no care instructions are provided consumers, however, they proceed blindly and often suffer the consequences.[46] The International Fabricare Institute agrees. After demonstrating a slipcover damaged due to improper care,[47] its representative stated:

> The consumer certainly spends large amounts of money in decorating the home and the dry cleaner would like to be of service in caring for these articles. There is no way an article of this type can be adequately processed unless it does contain a specific care instruction. . . We have seen a number of similar fabrics in our laboratory which have been damaged in a finishing process just because of the presence of a heat-sensitive yarn almost completely concealed in the weave.[48]

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43 R. 20 at 38, Office of Governor, State of Illinois; Tr. 858-59, Neighborhood Cleaners Association, (herculon slipcover which cannot be drycleaned or washed; fabric will shrink in water and elastic backing will dissolve in drycleaning solvent); Tr. 1346-47, 1357, Esther Shapiro, Dept. of Consumer Affairs, Detroit (coating is not a solvent resistant type in one case; rubber-backing disintegrated in the other).

44 Id., Shapiro at 1354.

45 Id., 1355.

46 Id., 1357-58.

47 HX 10 at 132, International Fabricare Institute.

48 Tr. 1401, IFI.

Finally, the BSSR survey indicates that of those 182 respondents who had cleaned upholstered or slipcovered furniture within the past 2 years, about 30% were not satisfied with the results. Fifty-nine point three percent (59.3%) cited spotting or uneven cleaning as the cause, 24.1% cited color fading, 13.0% cited shrinkage and 66.7% cited unacceptable change in the appearance of the fabric.[49]

It is not surprising, therefore, that consumers and consumer representatives, drycleaners and many retailers almost unanimously endorse the concept of care instructions for these items.[50] Among the reasons given are that such items are relatively expensive initially.[51] "[C]onsumers are taking a chance on a $500-1000 sofa with virtually no information except that which salespersons or furniture manufacturers might provide. In contrast to this situation, a $3.00 blouse . . . will have labels providing information on . . . care instructions."[52] If such an item is damaged or destroyed by improper care, the consumer will suffer a sizable loss.[53] Because these products have varying care traits requiring varying cleaning methods[54] consumers have no way of knowing without care information what procedure to use.[55] "Consumers generally know less [about]

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49 Tr. 2721-22, NCC; HX 33 at 444-45, the BSSR survey.

50 R. 17 at 12-14, 15-91, 99-103, consumers and drycleaners (1738 signatures on petitions); R. 17 at 533-34, 566, 766, drycleaners; Tr. 853-54, Neighborhood Cleaners Association (60,000 signatures on petition).

51 R. 17 at 108, consumer; R. 18 at 159 301, 650, 830, consumers; Tr. 997, B. Feather; Tr. 2574, W. Morck, Instructor, Consumer Studies.

52 R. 18 at 378-79, J. McCullough, School of Home Economics, East. Illinois University.

53 R. 18 at 299, 300, 301, 450, consumers; Tr. 2616, W. Morck; R. 17 at 12-14, NCA.

54 R. 18 at 159, consumer; Tr. 1660, K. Geiken, Instructor, School of Home Economics, University of Wisconsin.

55 R. 18 at 101, young consumer; R. 18 at 300, 352, 378-79, 582, 650, 697, consumers. Fabrics which transmit a special or unusual effect are often quite vulnerable to otherwise common care procedures. See R. 18 at 1008A, 1015, consumers; R. 17 at 179, drycleaner; Tr. 883, Neighborhood Cleaners Association.

how to care for . . . upholstered furniture than how to care for apparel."[56] Further, proper care and maintenance will increase the service life of upholstery products.[57] Because of the expense of professional cleaning,[58] such items may be cleaned less frequently or consumers may choose more inexpensive do-it-yourself methods.[59] Care instructions at the point of purchase will aid consumers in making purchase decisions which can be adapted to these criteria.[60]

> As the price of furniture and fabric and professional services have increased, the consumer has been forced to do more and more tasks on [his/her] own. The manufacturer has an obligation to give the consumer the most for his money by providing the care information that will allow the consumer to use and enjoy his product for the life of the product . . . if it can't be cleaned by the consumer himself, the consumer . . . needs to know this.[61]

Various extension specialists receive numerous inquiries each month about the proper care of upholstered products.[62] Consumer surveys submitted for the record confirm consumer needs in this area.[63] A high reliance on whatever instructions are

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56 Tr. 1590, Dr. W. St. John, Associate Professor, Southern Illinois University.

57 R. 17 at 108, consumer; R. 18 at 616, 650, consumers; Tr. 2571-72, W. Morck.

58 R. 18 at 331, consumer.

59 Tr. 1013, B. Feather; R. 18 at 159, 299-300, 910, consumers.

60 R. 18 at 680, consumer; R. 19 at 7, Textile Analysis Service, University of Alberta.

61 Tr. 2574-75, W. Morck.

62 R. 20 at 4, CES, Florida; R. 20 at 119, CES, Georgia; R. 20 at 165, CES, Oregon; R. 20 at 203, CES, Illinois; R. 20 at 223, CES, Florida; R. 20 at 280, M. Knowles; Tr. 2132-33, B. Reed.

63 R. 18 at 409-10, the Yreka survey. Thirty-nine of 55 students and adults favor inclusion of upholstered products.

available is indicated.[64] Ninety-six point one percent (96.1%) of 693 respondents interviewed in the BSSR survey favor care instructions for upholstered furniture as well as draperies and curtains.[65]

Retailers also see such instructions as an advantage to their businesses. Retailers suffer equally from improper care especially if they take the loss to please their customers.[66] The National Home Furnishings Association remarks, "I think that we feel that customers want them and if they want them then they are needed. After all, our job is making happy consumers if we are successful retailers."[67] This feeling is echoed by the Western Home Furnishings Association in their testimony[68] and in member surveys conducted by both associations.[69] At present, many retailers simply do not have sufficiently reliable care information to satisfy consumers' needs and find themselves in difficult situations as a result.[70]

> If it is worthwhile and important to inform consumers of proper care methods for clothing . . . it should be obvious that care instructions are even more important and necessary for proper care of items that represent an investment of hundreds and sometimes thousands of dollars. . . .[71]

While supporting the concept of care labeling where needed, the upholstered furniture industry opposes mandatory regulations primarily because of cost. "The cost to an individual furniture manufacturer of complying with mandatory as opposed to voluntary

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64 Tr. 2719, NCC; HX 33 at 44, the BSSR survey.

65 Tr. 2730-2732, NCC; HX 33 at 457-58, the BSSR survey.

66 R. 18 at 680, consumer citing home furnishings dealer; R. 18 at 687, consumer.

67 Tr. 1778, NHFA.

68 Tr. 2433, WHFA.

69 HX 28 at 336, WHFA. Seventy of 105 retailers consider care information most important; 24 consider it very important; Tr. 1755, NHFA. Ninety percent of 1400 in 1976 wanted care information provided.

70 R. 18 at 138, 963, consumers; Tr. 1780, P. Faley (large department store).

71 Tr. 1620, M. Knowles.

care labeling regulations is significant.[72] Industry representatives point out that mandatory regulations necessitate recordkeeping procedures for compliance purposes whereas none need be kept under a voluntary system. Under a voluntary system, manufacturers could provide care information where necessary and none otherwise. Further, manufacturers would not be forced to supply care labels to retailers who remove them. Added to recordkeeping costs are the costs of printing labels and costs of production. All such costs would eventually be borne by the consumer.[73] On the other hand, Montgomery Ward states that prices have not increased for its furniture since it began supplying care information for such items.[74] The National Home Furnishings Association states that, "affixing permanent labels on upholstered furniture is a relatively easy procedure. . . ."[75] The Western Home Furnishings Association believes that manufacturers are afraid of "mix-ups in the plant" under mandatory regulations but avers that none have occurred under the voluntary system. The record contains no opposition whatsoever from the slipcover industry.

Staff is of the opinion on the basis of record evidence that the benefits far outweigh the burdens in this area. The record clearly shows that consumers need regular care instructions for such items (which industry generally acknowledges) to avoid sometimes irreparable and extremely costly damage due to improper care.[76] The record also shows that in a majority of cases, consumers simply are not receiving such information under the industry's voluntary system. What care information exists is being distributed on a haphazard basis with little or no self-enforcement by the industry as a whole. While the industry has demonstrated that it is capable of developing care instructions for its products, it has not demonstrated that these care instructions are getting into the hands of ultimate consumers; in fact, the record shows the opposite. The Presiding Officer agrees.[77] Further, staff believes that the costs of

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72 Tr. 1089-90, NAFM.

73 Id.; Tr. 1115-1123, NAFM.

74 R. 20 at 619, Montgomery Ward.

75 Tr. 1759, NHFA.

76 Such instructions are needed for vinyl covered upholstered furniture as well as furniture covered with fabric. See Presiding Officer's Report 44.

77 Presiding Officer's Report 43.

an effective voluntary system of care labeling will be approximately the same as the costs necessitated by a mandatory regulation. The record shows that the cost of printing labels is minimal (see Chapter V.A.); additionally, the proposed revised rule does not require any recordkeeping requirements which are so feared by industry. The record also shows that retailers actually desire care information; this is inconsistent with the industry's claim that retailers remove existing care labels from furniture on a mass basis. To the extent that this does, in fact, occur, the manufacturer's name and care instructions for the item can be placed on the product separately. In any event, the costs of care labeling do not compare to the potential cost to the consumer of a sofa rendered unacceptable through improper care. Staff, therefore, concludes that substantial evidence on the record justifies inclusion of upholstered furniture, furniture fabrics and slipcovers within the scope of the final Rule.

c. Transmittal of Care Instructions

The record contains valid arguments on both sides of the issue of whether care instructions for upholstered furniture should be supplied on a permanently attached label or whether a separate pamphlet or tag would suffice. Those favoring a permanency requirement cite the likelihood of loss of a separate instruction,[78] the necessity for care information at the point of care,[79] and the fact that regular care for upholstered furniture is relatively infrequent and thus easy to forget.[80] Retailers support a permanency requirement because retailer responsibility for distribution of separate care instructions would then be unnecessary.[81] One consumer representative states that either permanent or separate instructions would be sufficient;[82] another advocates a detachable label which will not be lost but which can be removed if desired.[83] Those opposed to a permanency

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78 R. 18 at 159, consumer; R. 20 at 235, Attorney General, State of Illinois; R. 20 at 346, CES, Wisconsin.

79 Tr. 1759, NHFA; R. 25 at 5, American Retail Federation; R. 17 at 179, drycleaner.

80 R. 20 at 235, Attorney General, State of Illinois; Tr. 1783, P. Foley.

81 Tr. 1759, NHFA; R. 25 at 5, American Retail Federation; Tr. 2442, WHFA.

82 Tr. 1909, K. Stanton.

83 Tr. 2215-16, E. Kennedy, small retailer.

requirement aver that, in many cases, a permanent label will of necessity be inaccessible to the consumer at the point of care (e.g., on the bottom of a sofa without cushions),[84] that care instructions for furniture are not appropriate for placement on a permanent label because they are too long and complex,[85] that because care is not needed on a frequent basis, it is not a serious imposition to require reference to separate information[86] and that spot care as well as regular care procedures could be provided separately where such would not be practical on a permanent label.[87] The industry proposes a compromise position which is summarized as follows:

> We believe that furniture should carry a seat deck care label on an upholstered piece which has loose seat cushions and a hang tag on furniture which has tightly fastened seat cushions.[88]

In the opinion of the staff, the position adopted by the industry has merit. As discussed infra, the industry has already devised adequate regular care instructions which can feasibly be placed on a permanent label. As with wearing apparel, the arguments in favor of a permanent label are persuasive especially in light of the willingness of industry to comply at least partially. On the contrary, however, unless such a label is placed in a position where it cannot be seen during normal use, it will impair the appearance of the labeled product. For a product with loose cushions, a label could appropriately be placed under the cushions. For a product without cushions or with fastened cushions, such a label could only be placed on the underside of the item, making the care instructions in some cases totally inaccessible at the point of care. In this situation, the permanency concept conflicts with the accessibility concept and must yield therefore. Because staff has not proposed nor is it recommending that spot care procedures be required under this Rule, considerations of whether and how spot care information should

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84 R. 17 at 1199, J. C. Penney; R. 17 at 516-518, Sears; R. 20 at 423, Professor of Textiles, Iowa State University.

85 R. 17 at 424, NHFA (inconsistent with former position); R. 17 at 1199, J. C. Penney; R. 17 at 516-518, Sears; R. 20 at 423, Professor of Textiles, Iowa State University.

86 R. 17 at 516-518, Sears; R. 18 at 714, consumer.

87 R. 17 at 516-518, Sears, Roebuck & Co.

88 R. 20 at 723, NAFM. See R. 17 at 188, NAFM; Tr. 1091-92, 1095-96, NAFM; see also Tr. 2572, W. Morck.

be provided are irrelevant. Further, a requirement which permits separate instructions would necessitate another provision placing responsibility for distribution of such instructions on retailers. Since such a provision was not proposed, the record contains no evidence regarding it. Staff concludes, therefore, that the industry position should be adopted, at least in theory, in the final Rule. As such, the industry should be required to attach permanent care labels in those situations where such labels:

a) would not impair the utility or appearance of the item; and

b) would be visible or readily accessible to the purchaser at the point of sale and at the point of care without unreasonable effort.

Hang tags should be required in all other situations; in order to ensure that the information contained on the tag is accessible to the purchaser at the point of sale, such a tag should be attached in such a manner that the tag will not become separated from the product before it is purchased by the ultimate consumer.

While the standard of permanency in the existing Rule for care labels attached to wearing apparel is the "useful life" of the article, the upholstered furniture industry insists that this standard should be inapplicable to furniture. It maintains that upholstered furniture is reupholstered or slipcovered every 6 years although the "useful life" of the furniture as a whole may extend to 17 years or longer. Since the original care instructions may not necessarily apply to articles from which the initial covering has been removed, the industry concludes that permanent labels should be required to last 6 years and no more.[89] Staff agrees but only in part. It is true that permanent care instructions for upholstered furniture would be pertinent to the care of the labeled product only so long as the initial covering remains intact. Once the initial covering is removed or changed, the chances are good that the care traits of the product will also change. Some outer coverings, however, will last longer than others depending upon type and use. Thus, staff concludes that, rather than an absolute 6 year limit, the permanency of the label be keyed to the useful life of the outer fabric of the furniture, whatever that may be. Staff therefore recommends that this criterion be incorporated in the permanency requirements of the final Rule for upholstered furniture only.

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89 R. 17 at 189, NAFM.

The record contains little or no probative evidence on the question of transmittal of care instructions for slipcovers. Because of the nature of the item, however, staff concludes that the reasons for requiring permanent labels on wearing apparel, draperies and furniture apply equally to slipcovers. As there is no evidence of any particular burden in attaching such labels, staff recommends that slipcovers be required to contain permanent labels in the same manner as is now required for wearing apparel.

d. Content of Care Instructions.

As previously stated, while the furniture industry generally has not been successful in providing care instructions to the consumer on a voluntary basis, it has expended considerable effort in developing such instructions for, at least, potential distribution.[90] These instructions are based on accepted cleanability tests for upholstered furniture fabric in the areas of dimensional stability and colorfastness.[91] While the instructions proposed by various sectors of the industry are not precisely the same, they emphasize identical areas of concern. For example, all warn against the removal of cushion covers for cleaning, and all distinguish between water-free and water-based solvents. All appear to be designed to prevent the shrinkage, color change, loss and/or deterioration cited supra. As such, staff finds the instructions proposed by the industry to be prima facie satisfactory.

The record, however, contains some indication from inside and outside the industry of the standards such instructions should meet. It is the industry position that care instructions for upholstered furniture, "should apply only to the outer covering of upholstered furniture. . ." except in situations where the recommended care will adversely affect one or more of the product's interior components (welting cord, spring twine, cambric etc.) in which case an appropriate warning would be needed.[92] The industry admits that care instructions for the fabric, as compared with other textile components of furniture, are not necessarily the same.[93] It also concedes that positive care instructions, at minimum, should apply to both the front and

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90 R. 17 at 192, NAFM; HX 7 at 73, NAFM; HX 28 at 340, WHFA; Tr. 1756, NHFA.

91 R. 17 at 194-204, NAFM.

92 R. 17 at 189-90, NAFM; Tr. 1094-95, NAFM; R. 17 at 419, Ludlow Corp.; R. 17 at 518, Sears.

93 Tr. 1111, NAFM.

back sides of the furniture fabric but asserts that such instructions need not apply to any other component of the furniture except to the extent that a warning is required.[94] A consumer representative agrees at least in theory: "The manufacturer should also consider the contents directly beneath the upholstery which could be damaged by certain cleaning methods or any backings which are sensitive to cleaning solvents."[95]

Staff believes that care instructions for upholstered furniture should apply to those textile components which need regular care for their ordinary use and enjoyment. On some furniture products, the upholstery fabric may be the only component falling within this category. On others, there may be other exposed components which require periodic cleaning to ensure their acceptability. Under any circumstances, the care procedure prescribed must be compatible with all components which will be directly affected, including both interior and exterior components. Appropriate warnings may be needed to prevent damage to interior components (such as filling)[96] in certain specified situations depending upon the procedure prescribed. Because the manufacturer is the only party who will be aware of the care traits of the components of each of its products, the manufacturer must make these determinations in each individual case in devising appropriate care instructions.

Aside from industry submissions, the record contains no other evidence of what terminology would be most appropriate for use in a disclosure of care instructions for upholstered furniture. In staff's opinion, the particular industry proposal designated in physical exhibit #7, p. 73, as modified by staff in the footnote, is the most clear and comprehensible from the standpoint of the consumer and would constitute an acceptable beginning in this area.[97] Staff takes this opportunity to reject

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94 Tr. 1128-30, NAFM.

95 Tr.1909, K. Stanton.

96 R. 20 at 578, SFMA.

97 HX 7 at 73, NAFM. Staff has modified some of the terminology for purposes of brevity and clarity and removed references to other information which, while important, are not pertinent to this report.

(Continued)

97 (Footnote Contined)

"W" RECOMMENDED CLEANING INSTRUCTIONS

Vacuum or brush lightly frequently to remove overall soil. Clean, using the foam only from a water-based cleaning agent such as a mild detergent or non-solvent upholstery shampoo product. Apply foam with a soft brush in a circular motion. Vacuum when dry. Pretest small area before proceeding. Use a professional furniture cleaning service when an overall soiled condition has been reached.

CAUTION: Never remove cushion covers for separate drycleaning or washing, even though they do have zippers. Do not use bleach or any tumble method cleaning service as this may destroy the backing of the fabric or shrink or otherwise damage the upholstery fabric.

"S" RECOMMENDED CLEANING INSTRUCTIONS

Vacuum or brush lightly frequently to remove overall soil. Cleaning by a professional furniture cleaning service only is recommended. Clean, using a mild water-free solvent or drycleaning product. Clean only in a well ventilated room and avoid any product containing Carbon Tetrachloride or other toxic materials. Pretest small area before proceeding.

CAUTION: Never remove cushion covers for separate drycleaning or washing, even though they do have zippers. Do not use bleach at any time. The use of steam or water-based cleaners may cause excessive shrinking or staining of this particular fabric. Do not use any tumble method cleaning service as this may destroy the backing of the fabric or shrink or otherwise damage the upholstery fabric.

"S-W" RECOMMENDED CLEANING INSTRUCTIONS

Vacuum or brush lightly to remove overall soil. Clean, with a mild solvent, an upholstery shampoo, or the foam from a mild detergent. When using a solvent or drycleaning product, follow instructions carefully and clean only in a well ventilated room. Avoid any product which contains Carbon Tetrachloride or other toxic materials. With either method, pretest a small area before proceeding. Use a professional furniture cleaning service when an overall soiled condition has been reached.

(Continued)

any implication in the record that upholstery coverings containing vinyl do not need regular care and maintenance. The record does not support this conclusion.[98] In fact, the care booklet published by the National Association of Furniture Manufacturers contains regular care instructions for such products.[99] Finally, for the reasons cited infra, Chapter V.D., symbols, in lieu of words, do not constitute an adequate disclosure of care instructions under this Rule.

The Presiding Officer concludes that not only does the record support a requirement for supplying regular care instructions in this area, it also supports the inclusion of "spot care" within the Rule's scope. While staff may agree that several instances of damage due to improper spot removal techniques are cited in the record and also agrees that the record demonstrates some need for the disclosure of such procedures, staff cannot support from a standpoint of feasibility and

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97 (Continued)

CAUTION: Never remove cushion covers for separate drycleaning or washing, even though they do have zippers. Do not use bleach or any tumble method cleaning service as this may destroy the backing of the fabric or shrink or otherwise damage the upholstery fabric.

"X" RECOMMENDED CLEANING INSTRUCTIONS

Clean this fabric only by vacuuming or light brushing to prevent overall soil. Water-based foam cleaners or solvent-based cleaning agents of any kind may cause excessive shrinking, staining or distortion of the surface pile and, therefore, should not be used.

CAUTION: Never remove cushion covers for separate drycleaning or washing, even though they do have zippers. Do not use any tumble method cleaning service as this may destroy the backing of the fabric or shrink or otherwise damage the upholstery fabric.

98 Tr. 2442-2447, WHFA.

99 R. 20 at 283, M. Knowles (NAFM Care Booklet).

practicality, requiring such a disclosure in a rule. Regardless of what upholstered furniture manufacturers are doing now, the industry makes no pretense of supplying appropriate care procedures to remove all spots from all fabrics and components of upholstered furniture. Further, the record contains no evidence of what spots should or should not be addressed in required care instructions. Any specification in a rule would be totally arbitrary. As with wearing apparel, staff asserts the impossibility of anticipating all conceivable types of "spot damage" which an upholstered product might incur.

Additionally, the record does not support the conclusion of the Presiding Officer that, because regular care instructions are required, all spot care instructions, now being supplied voluntarily to a limited extent, will disappear from the marketplace. Nor does it support the conclusion that spot care for wearing apparel is any more or less important than spot care for upholstered furniture. Finally, the Presiding Officer's conclusion that "spot care" is "regular care" is a contradiction in terms and must be rejected.[100] The record contains no evidence upon which to support unnecessary dilution of the concept of "regular care" which has been critical to the standards of enforcement of the Care Labeling Rule since its inception and to which the Rule must be limited to ensure consistent application for all products covered. It is staff's opinion that a "spot care" requirement would be impossible to fulfill, would be subject to challenge for being vague and overly broad, and would literally render the Rule unenforceable in a large area. Staff recommends against its inclusion in the final Rule.

The record reveals no evidence whatsoever of appropriate care instructions uniquely applicable to slipcovers and furniture fabrics. Because a true slipcover can be removed without damage, however, and need not be cleaned on the product, it lends itself to those care procedures which are prescribed for the "portable" products covered by the Rule, i.e., wearing apparel, draperies, curtains and all piece goods made of similar fibers and fabrics. If any other care instructions are appropriate, the "general rule," as previously described, provides for them. Staff first concludes, therefore, that the care instructions for slipcovers and furniture fabrics sold as piece goods should be governed by criteria now designated for care instructions for wearing apparel, piece goods and draperies, as applicable, and that slipcovers be included in section 423.2 of the final Rule. As piece goods, furniture fabrics will be included in section 423.3.

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100 Presiding Officer's Report at 44.

Upholstered furniture, however, is the first member of staff's original "household furnishings" group for which care instructions designated for wearing apparel are clearly not appropriate. Additionally, staff has concluded that permanently attached labels may or may not be required for upholstered furniture, depending upon the nature of the product. Therefore, staff recommends that upholstered furniture be the subject of a separate section under the final Rule. The record supports this recommendation.[101] The Presiding Officer agrees.[102]

The National Association of Furniture Manufacturers argues that furniture manufacturers be provided a defense in the Rule for good faith reliance on the care instructions obtained from fabric or other suppliers of furniture components. According to NAFM, furniture manufacturers should be absolved from liability under the Rule in cases where such instructions are incorrect or inadequate.[103] Staff disagrees. The current rule places responsibility for care instructions squarely on the party or organization that directs or controls the final manufacture of the labeled item - normally the manufacturer. The finished product manufacturer is the only party who has any degree of control over the care traits of the finished product through selection of components, accessories and through the nature of the manufacturing process itself. If the manufacturer is absolved, who can logically be held responsible to the public under the Rule? A fabric supplier cannot be held responsible for care instructions for a piece of upholstered furniture the manufacture of which is under the exclusive control of another party and the care traits of which may be entirely different. The Association has provided no valid reasons why furniture manufacturers should be viewed in a different light than are apparel manufacturers under the current rule. A manufacturer's obligation stems from its unique position vis-a-vis its product and cannot be escaped or transferred to a supplier who has little or no influence over the character of the product. Likewise, the supplier's obligation must be limited to the product it manufactures and over which it has control. Staff finds no justification for modifying these principles without good reasons therefore. As the Association has provided none, staff recommends that its argument be rejected.

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101 R. 17 at 424, NHFA; R. 20 at 723, NAFM; Tr. 1758, 1775, NHFA; R. 17 at 526, Sears, Roebuck & Co.

102 Presiding Officer's Report 43.

103 Tr. 1106-07, NAFM.

Accordingly, and on the basis of all record evidence, staff recommends that the following new section for upholstered furniture be incorporated into the final Rule:

(a) It is an unfair or deceptive act or practice for the manufacturer or importer of any textile product in the form of a finished article of upholstered furniture to sell, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any such article which does not have a permanent label affixed or attached thereto, which clearly discloses instructions for the care and maintenance of such article; Provided, however, That, where compliance with the accessibility requirements of this section requires placement of the label on the article in such a manner as to substantially impair its utility or appearance, such instructions need not be supplied on a permanently attached label, but must be supplied on a hang tag or other such device which will not become separated from the article before it is purchased by the ultimate consumer.

(b) Instructions for the care and maintenance of any article within the scope of this Section shall:

(1) General Rule: fully and completely inform the purchaser of such regular care and maintenance procedures necessary to the ordinary use and enjoyment of the article, e.g. vacuuming, cleaning agents and methods suitable for use by the ultimate consumer and cleaning agents and methods suitable for use by a commercial establishment specializing in the refurbishing of such products;

(2) Warnings: warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated which would damage or substantially impair the article. Such warnings may be negatively expressed through use of the words "Do Not" or "No" before the

prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those upholstered furniture articles included within the scope of this section which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such an article must contain a full and complete disclosure to that effect;

(3) Accessibility: be visible or easily and readily accessible to the purchaser without unreasonable effort at the point of retail sale; and,

(4) Legibility: remain legible for the useful life of the outer covering of the item when provided on permanent labels.

Paragraph (a) places a limited amount of discretion in the hands of the furniture manufacturer as to whether a permanent label (as opposed to a hang tag) is feasible and appropriate under the circumstances. It is intended to instruct the manufacturer to substitute a hang tag in situations where a permanent label would necessarily have to be inaccessible to the consumer at the point of sale (e.g., on the bottom of a large sofa which has no removable cushions) and in all probability at the point of care. Because staff believes these situations to be relatively clear-cut (as opposed to similar situations with wearing apparel which, because of the great variety in nature, size and shape of garments, can be borderline in nature), staff is content to entrust the furniture manufacturer with the discretion to make such a judgment rather than requiring it to apply to the Commission for an exemption in each individual case (as is now required for wearing apparel). Paragraph (b) incorporates the general principles for care instructions which are already contained in the current rule. The record does not contain sufficient evidence upon which to base a more specific requirement in this regard; such a requirement must await further technological development in the area of upholstery cleaning.

Finally, the definition of "household furnishings" in the proposed revised rule includes only those furnishings, "whose manufacture is complete and which [are] customarily used as . . . interior appointments. . . ."104 Although this category of products has been separated, such overall restrictions should continue to apply to upholstered furniture to exclude such items as outdoor furniture or incompleted products for which there is no evident need for care labeling. Thus, staff recommends that the final Rule incorporate

104 Proposed revised rule, § 423.6(d).

these restrictions by definition in the appropriate section of the Rule as follows:

> A finished article of upholstered furniture is any article of upholstered furniture whose manufacture is complete and which is customarily, although not exclusively, used as an interior appointment.

4. Carpets and Rugs.

a. Preface

The current rule does not include carpets and rugs within its scope. The basis for including them in the proposed revised rule is outlined in the staff report and will not be reiterated here.[1] While the proposed revised rule requires that care instructions for carpets and rugs be devised by the manufacturer and transmitted separately to the retailer of such articles, there is no requirement that the retailer distribute such instructions to the ultimate consumer.[2] As with the case of piece goods a determination as to whether retailers should be subject to such a requirement was postponed until a full rulemaking record could be developed. It should also be noted that carpets and rugs are not included within the definition of "household furnishings" in the proposed revised rule but are included as a separate product type. For reasons outlined in the report, this separation will be maintained in the final rule.

Carpets and rugs are produced at the manufacturing level in essentially two forms: rolled goods and finished area rugs. Rolled goods consist of carpets produced and delivered to the retailer rolled in approximately 100 foot lengths and 12-15 foot widths to be sold generally for wall-to-wall carpeting of dimensions specified by the ultimate consumer or his/her representative. Area rugs, on the other hand, are produced to a specified dimension at the manufacturing level and are sold to the ultimate consumer as produced. These may include accent or decorator rugs, 9' X 12' "ovals", braided rugs, oriental rugs, or other pre-cut carpets or rugs. Area rugs range in size from quite small to large oriental rugs.[3]

Fifteen years ago, wool carpets comprised 95% of the market. Now, less than 1% of all carpets are made of wool; most are made of synthetic fibers such as nylon, acrylic, polyester or polypropylene.[4] While the Carpet and Rug Institute, representing the carpet and rug industry in this proceeding (hereinafter CRI), claims that no new generic fibers have recently been introduced for use by the industry,[5] the record contains evidence

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1 Staff report 16-18.

2 Proposed Revised Rule, Section 423.3.

3 Tr. 839-841, Retail Floorcovering Institute.

4 R. 16 at 80-81, Carpet and Rug Institute; Tr. 2040, CRI.

5 R. 16 at 80-81, CRI.

to the contrary. In 1969, The National Institute of Rug Cleaning published a table, prepared by the Allied Chemical Corporation, which lists 29 major synthetic fibers then used for carpeting. "[T]hese fibers were produced by 15 fiber companies. One of the companies makes at least 44 individual nylon fibers which go into nylon production for carpeting." Mentioned are nylon, acrylic, wool, cotton and jute as well as a proliferation of "new" constructions such as shags.[6] Aside from fiber content, there are as many as 15,000 different carpet styles of varying colors currently being sold,[7] amounting in 1975 to carpeting worth 3.97 billion dollars.[8] When a carpet is purchased, the purchaser pays for the cost of installation, padding and the carpet itself - presently ranging from $5.95 per yard to $100.00 per yard. The great bulk of carpeting sold sells at retail for $8.95 - $13.95 per yard with relatively little selling for over $19.95 per yard.[9]

b. Coverage.

In order for carpets and rugs to fall within the criteria outlined in the proposed revised rule, they must require regular care for their ordinary use and enjoyment.[10] The industry rejects such a claim stating that 1) the average carpet is not cleaned more than once in three years and many are not cleaned at all beyond vacuuming;[11] 2) of those which are, only a portion are cleaned by the homeowner; the remainder are cleaned by professional cleaners using accepted commercial cleaning methods and agents; 3) in the rare circumstance when a consumer cleans his/her own carpet, the consumer uses the instructions on carpet cleaning agents and on equipment rented or purchased for the job.[12] The industry thus argues that it is an extremely unusual situation when a carpet requires "special care" to avoid impairment and "regular care" instructions are certainly not necessary.[13] CRI implicitly acknowledges in its statement, however, that carpets

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6 R. 17 at 319, D. Argo, carpet cleaner, "A Guide to Modern Carpet Cleaning"; Tr. 2330-31, D. Argo.

7 Tr. 2054, CRI.

8 R. 25 at 17, D. Argo, "Industry News".

9 Tr. 2032, CRI.

10 See definition of textile product, supra, Chapter IV.B.

11 R. 16 at 82, CRI.

12 R. 16 at 82-83, CRI.

13 R. 16 at 90-91, CRI.

and rugs do require periodic care of some type to remove overall soil. With one exception,[14] the balance of the record confirms this view. "It has long been recommended by the professional cleaning organizations that a carpet be cleaned (beyond vacuuming) at least once a year."[15] Indeed, the Institute's own Carpet and Rug Care Guide, in a section entitled "regular care", urges that carpets be given regular and proper attention. Carpets will be dulled by an accumulation of soil and color changes will occur. While "soiling is a natural phenomenon", greasy or oily soil will cling to carpet fibers and become extremely difficult to remove.[16]

> Permanent damage can be done to synthetic fibers ... by grease from cooking, furnaces, and oily sprays such as waxes, polishes, hair-grooming preparations and household cleaners.... Man-made fibers are by-products of the petroleum industry so unless the atmospheric type soils are periodically removed from carpeting, the soils can become permanent parts of the fibers.[17]

Cutting and scratching of carpet fibers, loss of luster and color will occur without regular, periodic care.[18] In sum, without regular care, some damage can be expected contributing to the loss of a very large investment.[19]

Additionally, the record demonstrates consumer practices and opinions which reflect the care needs of carpets and rugs. Such products are a demonstrated source of consumer inquiries[20]

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14 R. 16 at 151, NRMA.

15 R. 16 at 90, CRI; Tr. 2000-01, CRI.

16 R. 16 at 111-138, CRI. Carpet and Rug Care Guide.

17 R. 17 at 324, Association of Interior Decor Specialists (AIDS), "Guide to Modern Carpet Cleaning".

18 R. 17 at 303-304, 307, 320, 322, AIDS.

19 R. 17 at 303-304, AIDS; R. 17 at 770, Fieldcrest Mills; Tr. 2218, E. Kennedy, small retailer; Tr. 2684, Western Floor Covering Association. A one page statement published by the Association, captioned "regular care for your carpet" states, "regular care is necessary to remove abrasive soils that can adversely affect the performance of your carpet."

20 R. 20 at 273, extension home furnishings specialist, CES, Idaho.

and grievances.[21] Witness Morck purchased a condominium with the carpet already installed; she knew, "nothing about [the] carpet except that it gets dirty an awful lot."[22] Even the Carpet Manufacturers Association of the West (hereinafter CMAW) acknowledges that most consumers vacuum carpets, care for spots and perform overall types of cleaning regularly.[23] Consumers are aware that, because carpets will be subjected to harsher day-to-day wear than apparel and will likely remain in the home for a longer period of time, regular cleaning is a necessity.[24] Consumers are also acutely aware of the effect of soil on carpets. In 1974, the Retail Floorcovering Institute, representing carpet and rug retailers (hereinafter RFI), sponsored a study on "The American Residential Carpet And Rug Customer" by National Family Opinion, Inc. who surveyed 20,000 households nationwide (hereinafter the National Family Opinion survey). Those who were satisfied with their carpet purchases found the trait "resists soiling" the least satisfactory of eight other care and performance characteristics. Those who were dissatisfied with their carpet purchases found the traits "resists soiling", "ease of cleaning" and "retention of original appearance" the least satisfactory of the care traits listed.[25] The BSSR survey reveals that 58.4% of 693 respondents had cleaned their carpets themselves (not professionally) within the past two years.[26] Finally, the Department of Housing and Urban Development/Federal Housing Administration standard for carpet and carpet certification states that guarantees given by manufacturers to property owners under the program will remain valid only if the property owner "follows an adequate carpet maintenance schedule."[27] Staff concludes that, with the exception of comment by the Carpet and Rug Institute, the record overwhelmingly indicates that carpets and rugs need regular care in order to ensure continued acceptability.

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21 Tr. 2520, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County.

22 Tr. 2579, W. Morck, Instructor, Family and Consumer Studies.

23 Tr. 2674, Carpet Manufacturers Association of the West.

24 R. 20 at 328, Office of Consumer Affairs, Orange County, Cal.; R. 20 at 281, M. Knowles, Office of Consumer Protection, Louisiana.

25 HX 1 at 4, RFI.

26 Tr. 2717-18, National Consumers Congress; HX 33 at 439-40, the BSSR survey.

27 HX 1 at 3, RFI.

While carpets and rugs need regular care, the question of whether the care traits (and thus the required cleaning methods) of carpets vary produced considerable controversy in the record. The industry position may be summarized as follows:

> Regardless of fiber type, the generally recognized and practiced proper carpet cleaning methods do not vary in any significant respect. Any such differences would more likely relate to the condition of the carpet at the time such cleaning is undertaken than to the fiber or construction type involved.... [P]roper carpet care is essentially the same regardless of the face fiber, construction type, color or price range....[28]

Thus, most of the commercially available carpet shampoos, for example, are equally suited for use on all carpet fibers.[29] Cross-examination of industry representatives, however, reveals some notable exceptions to these general principles. For example, ammoniated or alkaline soaps are generally not suited for any carpet and will damage them; soft, not hard, brushes should be used with plush and shag carpets; rugs with jute backings will shrink if soaked or "over-wetted"; rubber-backed carpets should not be drycleaned; acrylic fibers will not absorb liquids as well as wool; white and red bathroom rugs should be washed separately; and "over-brushing" can cause distortion of pile in a rug.[30] As the industry cannot conceive of situations where these distinctions would be significant,[31] it adheres to the theory that, generally speaking, all carpets may be cleaned by the same or similar methods.[32] It concludes, therefore, that care instructions supplied by carpet manufacturers would serve no purpose.

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28 R. 16 at 25, 82, 90, CRI; R. 20 at 569-70, CRI; R. 20 at 580-81, CRI; Tr. 2000, CRI; Tr. 2668, CMAW; R. 25 at 423, CRI.

29 Tr. 2668, CMAW.

30 Tr. 2015-2026, CRI; Tr. 2661-2666, CMAW.

31 Tr. 2042, 2055-56, CRI.

32 Tr. 2668, CMAW.

The record contains considerable evidence in opposition to this view.

> [A]ll man-made fibers have different characteristics and varying reactions to cleaning techniques... The construction of a carpet makes a difference... [Building services contractors] must decide what kind of equipment should be used to clean plush pile carpeting, high-loop pile, a sculptured design, the new shags or a printed pattern.[33]
>
> There is no 'one' method to clean all installations of carpeting; experience dictates how to select methods for cleaning....
>
> Permanent damage may result from improper use of do-it-yourself 'products'.[34]

With respect to fiber contents of carpets and rugs:

> each will give varied service to the owner, would likely be handled differently in dye processing, would react in its own way to various chemicals that might be used ... no two fibers would be exactly the same.
>
> An acrylic fiber produced by one company, will have certain properties which make it different from the acrylics of another fiber-producing company.

The care traits of wool differ from that of nylon or acrylic.[35] Steam cleaning is not proper for all fibers.[36] Different fiber contents require different cleaning procedures.[37]

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33 R. 17 at 318, AIDS. Guide to Carpet Cleaning.

34 R. 17 at 320, AIDS. Guide to Carpet Cleaning.

35 R. 17 at 319, AIDS; Tr. 2219, E. Kennedy.

36 Tr. 2579, W. Morck.

37 Tr. 2379-80, F. Reid, Office of Consumer Affairs, Orange County, Cal.

Construction of carpets may also make a difference in selection of cleaning methods.[38] The type of backing used can be crucial. Foam backings should not be exposed to excessive heat,[39] wetting of the backing yarns can cause shrinkage of 2-10%[40] or, if the backing is jute, can cause severe discoloration as well.[41] The same mechanisms that are used for cleaning low, closely knitted carpet surfaces cannot be successfully used for rugs of shag construction.[42] The Armstrong Cork Company, in its submission for the record of the proposed revised rule, included a chart of various carpet constructions vs. various cleaning methods, with the statement: "As can be seen from the chart, not all types of commercial or do-it-yourself cleaning techniques work with all constructions." In the chart, commercial, do-it-yourself, and aerosol rotary shampoos and dry cleaning granules are prohibited for "plush" type carpets and some shags. Dry foaming is also prohibited for shags.[43] Further, different colors might also dictate different care procedures.[44] In sum, therefore, to the extent that carpet fiber contents, types, colors and constructions vary, cleaning methods must also vary to ensure a successful result.[45]

CRI claims that the testimony of those witnesses who argue that proper care procedures for carpets and rugs do, in fact, differ according to the products' care traits is unsubstantiated and non-expert and is opposed by expert testimony offered by carpet industry representatives;[46] however, it makes no further showing of why such testimony should be considered invalid. Further, with perhaps one exception, no industry representative

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38 R. 17 at 307, AIDS.

39 R. 18 at 826, consumer.

40 R. 17 at 310, AIDS; Tr. 2578, W. Morck.

41 Tr. 1606-7, W. St. John, Assoc. Professor, Southern Illinois University.

42 R. 23 at 738, M. Dana, consumer consultant.

43 R. 215-22-1-14-4 at 6556, Armstrong Cork Co.

44 Tr. 1905-6, K. Stanton, Dept. of Consumer Affairs,, Burlington County, New Jersey.

45 Tr. 2619-22, W. Morck.

46 R. 25 at 415, CRI.

was qualified on the record as an expert in the care and maintenance of carpets and rugs. Finally, cross examination of industry representatives, submissions from the Association of Interior Decor Specialists and the Armstrong Cork Company, in fact, substantiate the testimony of these witnesses and, in so doing, cast serious doubt on the industry's claim that it makes no difference what cleaning methods are chosen since all carpet cleaning methods, as well as all carpet care traits, are the same. Taking all the evidence into consideration, therefore staff must conclude that while some cleaning methods may be appropriate for some carpets, all cleaning methods are not appropriate for all carpets. The care traits of carpets and rugs vary in direct proportion to significant differences in carpet fiber content and construction. Thus, propet cleaning methods must be chosen with these variables in mind to avoid damage or substantial impairment as well as to ensure a successfully cleaned carpet.

Despite CRI's position on this issue, "for many years, the carpet and rug industry has been cognizant of the consumer's interest in carpet care information...."[47] CRI indicates that, with respect to large carpets and rugs, the association sponsors the printing of a Carpet and Rug Care Guide[48] in substantial numbers and makes it available to carpet and rug manufacturers, distributors and retailers. It also supplies care information to the news media, editors of consumer publications and home furnishings specialists for distribution to consumers on an "as needed" basis.[49] Further, it avers that manufacturers of small rugs commonly provide care instructions as part of the promotional material packaged with the rug - "material which describes the product, its beneficial features and is generally visible to the consumer at the time of purchase."[50] CMAW also outlines similar efforts to make the Carpet and Rug Care Guide available to those who need it.[51] Other individual members of the manufacturing and retailing industry and an occasional consumer acknowledge these efforts.[52] Cross examination of members

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47 R. 16 at 75; R. 20 at 565; Tr. 1993, CRI.

48 R. 16 at 111-138; HX 22, CRI.

49 R. 16 at 75-77; R. 20 at 565-66; Tr. 1993-95, CRI.

50 R. 16 at 105, CRI; Tr. 2007, CRI.

51 Tr. 2635-36, CMAW.

52 R. 17 at 770, Fieldcrest; R. 18 at 531, consumer; Tr. 1945, American Textile Manufacturers Institute; R. 20 at 599, Montgomery Ward.

of the manufacturing industry, as well as testimony from carpet retailers, however, reveals that, for various reasons, consumers may not be getting such information. The Institute admits that, if there is an objection to the system, such objection must center around the manner in which the Care Guide is distributed.[53] While the Guide is being shortened to a single sheet for reasons of convenience and cost and to improve distribution[54] and while industry acknowledges its belief that consumers should be given information,[55] there apparently has been little or no concerted effort among retailers, distributors and manufacturers to ensure that the consumer, in fact, receives it. Manufacturers blame retailers for losing it or failing to "follow through" on the manufacturers' efforts;[56] as such, manufacturers do not seem to know what retailers do with the information, if supplied, and whether consumers are, in fact, receiving it.[57] CMAW acknowledges that consumers have not been getting care information because of a "breakdown in communications" and the fact that the system should be improved, but makes no suggestions as to how such improvements should be made. Despite the fact that only about half of existing carpet manufacturers utilize the booklets (presumably out of neglect), CMAW insists that successful distribution is possible on a voluntary basis through "peer pressure" and endorsement of the Association's members in their own enlightened self-interest.[58] Trade associations of retailers confirm the fact that, while some care information is available to retailers separately or on carpet samples on display in the store or on permanent labels attached to rugs, the transmittal of such information has been, at best, a haphazard operation.[59] Some carpet stores, on the other hand, have no available carpet care information.[60] The Carpet and Rug Institute reasserts its continuing willingness to improve the distribution system, stating that, "[the distribution] program will satisfy the public

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53 Tr. 1998-99, CRI.

54 Tr. 2009, CRI; HX 22 (D); R. 25 at 422, CRI.

55 Tr. 2039, CRI.

56 Tr. 2013-15, CRI.

57 Tr. 2044-45, CRI.

58 Tr. 2653-54, 2656-57, CMAW.

59 Tr. 2682, Western Floor Covering Association; Tr. 802, 813-15, Retail Floorcovering Institute.

60 Tr. 815, RFI.

need even on a voluntary basis." As such, it opposes a mandatory rule in this area because, "a mandatory system offers too many opportunities for error and inadvertent violation."[61]

Consumers and consumer representatives approach the past efforts of industry more negatively. Some flatly state that absolutely no care instructions are available or given to the consumer.[62] Witness Reid acknowledges the availability of care instructions in some instances but confirms the fact that ultimate consumers are simply not receiving it in most cases.[63] Where such information is given, its source is usually the salesperson by verbal communication. Further, "satisfactory methods of distribution presently exist for insuring that care instructions are available for purchasers of rugs. However, inadequate provisions exist for such distribution in the case of carpets."[64] While the witness has seen temporary tags attached to smaller rugs and care information "stamps" on throw rugs, she has seen none for room size or larger area rugs.[65] Witness Morck, whose father has worked in the home furnishings industry for forty years and deals with the buying and selling of carpets at all levels, states that visits to several carpet retailers reveal that care information is sometimes available if, and only if, the consumer is relentless in requesting it from the retailer.[66] Finally, surveys indicate a relatively poor record of consumer receipt of care information for carpets and rugs. One informal survey indicates that 80% of those questioned had not received such information.[67] The BSSR survey reveals that 21.9% of the 210 respondents who had purchased carpets and rugs within the past year received some care information and 71% received no information.[68]

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61 R. 25 at 423, CRI.

62 R. 20 at 177, Extension Agent, CES, California; Tr. 1626, M. Knowles; Tr. 2548, W. Blackman, consumer education teacher.

63 Tr. 2381, F. Reid.

64 Tr. 2357, F. Reid.

65 Tr. 2376-78, F. Reid.

66 Tr. 2576, W. Morck.

67 R. 20 at 583, consumer representative.

68 Tr. 2714-16, NCC; EX 33 at 436-38, the BSSR survey.

The record also contains some comment indicating that carpet care instructions which are provided are promotional[69] or inadequate because they are too general, i.e., they direct the consumer to do his/her own testing,[70] or provide no useful information whatsoever.[71] Witness Argo, owner of a carpet cleaning organization herself, believes that the industry is not competent to write appropriate care instructions and promotes obsolescence as a result.[72] The industry submitted several examples of care instructions now in use for small rugs as well as carpets.[73] Staff will analyze these instructions in the appropriate section below.

The conclusion is inevitable that, while the industry has expended some effort in formulating care instructions for carpets and rugs, many of the beneficial results of this effort have been lost, largely because of the failure of the industry to ensure that consumers receive such instructions at the point of sale. The record contains no specific evidence, aside from bland assurances from the industry that "things will get better", that it has embarked on any course which will ensure consumer receipt of care instructions for carpets and rugs. Thus, the industry apparently has no plan for enforcing its own voluntary program or improving its effectiveness, aside from continuing to do what it has done already.[74] The record is clear that care instructions for carpets and rugs are simply not available to the consumer on a consistent basis and only rarely are provided the consumer at the point of sale. Thus, it is staff's

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69 Tr. 1637-38, M. Knowles; Tr. 814-815, RFI. "Looks cleaner when you clean it"; "Long wearing, easy to care for nylon, nylon has been especially blended for rich color and lustre."

70 Tr. 1905-6, K. Stanton.

71 Tr. 2222, E. Kennedy. Comment on Carpet and Rug Institute Care Guide (HX 22).

72 R. 17 at 805, D. Argo. Staff believes that the reason for this opinion may involve the occupation of the witness.

73 HX 22.

74 Revising or shortening care instructions will not ensure their distribution. Staff fails to see the difference between the existing Care Guide and the "one sheet" version in this respect.

opinion that the industry's program, while commendable, has been largely ineffective and shows few signs of improvement. As stated by the representative of the Retail Floorcovering Institute, "[o]ne can only speculate that the industry performance could have been improved, had there been uniform care instructions provided our retail customers. While the industry has made an effort ..., retailers agree with consumers and believe it has not been enough."[75]

The industry maintains, however, that regardless of the success of its care information program, care instructions supplied with carpet cleaning agents are wholly adequate and, in effect, negate the need for manufacturer-supplied instructions. "Although there are many different brands of carpet cleaners on the market today, almost without exception, <u>each is designed as a general purpose cleaner</u>...."[76] Thus, the Institute argues that the mixing and application instructions on cleaning agent labels (which do not differentiate between fiber type or construction) as well as on cleaning equipment supply all information that is needed since all such agents and equipment can be used on all carpets. It is also the Institute's theory that such instructions, combined with the promotional efforts of the manufacturers of such products, will "override" any manufacturer-supplied care instructions to a significant degree, "even in situations where it might be considered appropriate and possible for the carpet manufacturer to distinguish between various competing cleaning agents."[77] Thus, the procedures actually used will, in fact, be those dictated by the instructions on the commercial preparations or equipment.[78]

The record also contains evidence, however, that instructions for cleaning agents do not suffice for all carpets. Foremost is staff's previous conclusion that the same cleaning mechanisms and agents cannot be used on all carpets. Second, there is evidence that such instructions may be promotional[79] and, even when employed properly, may cause damage or unsuccessful

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75 Tr. 804, RFI.

76 R. 16 at 85; R. 20 at 570; Tr. 2001, CRI.

77 R. 16 at 85-87; R. 20 at 570; Tr. 2001, CRI.

78 Tr. 826, RFI.

79 Tr. 2332-36, D. Argo.

after-effects on certain carpets.[80] Further, the instructions may not be clear. One consumer witness cites a "solvent cleaning" method which was recommended by his carpet dealer for use on his high-pile rug. Instructions for using the method, however, stated in very small print that it could not be used on "high pile rugs." The result was complete confusion on the part of this witness.[81] Consumer representatives are generally dissatisfied with total reliance on carpet cleaning agent instructions, stating that they simply are not enough.[82]

It has been established that all cleaning methods are not appropriate for all carpets and that the care traits of carpeting differ in certain respects. It is also clear that the instructions supplied with a cleaning agent or a piece of cleaning equipment address only the method of application for which that particular agent or piece of equipment is designed.[83] For obvious reasons, such instructions do not address other possible competing methods. Thus, once a particular method is selected, carpet cleaning agent or equipment instructions may be adequate, assuming they are followed. It is the selection of the appropriate method which the record indicates may make a crucial difference and for which unique mixing and application instructions provide no information whatsoever. To this extent, herefore, carpet cleaning agents and equipment instructions are not adequate and cannot substitute for information supplied by the carpet manufacturer itself.

Given the fact that manufacturer-supplied instructions are sparse and carpet cleaning agent instructions are simply an inadequate substitute, the question of whether consumers make erroneous assumptions and suffer economic injury as a result of the absence of appropriate and complete carpet

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80 Tr. 1652-53, M. Knowles. Consumer followed instructions on carpet shampoo for nylon shag carpet. Soapy residue remained which could not be removed; Tr. 1678, K. Geiken, School of Home Economics, University of Wisconsin. Hot water extraction method. (Incorrectly, called "steam extraction," Tr. 2332-36, D. Argo).

81 Tr. 2560-61, W. Blackman.

82 Tr. 2379, F. Reid; Tr. 2539, K. Bourdeau. Staff agrees with the rebuttal of CRI (R. 25 at 420) to the extent that these statements are general in nature and not based on any specific information. As such, they represent general opinions only of untested validity insofar as the adequacy of carpet cleaning agent instructions are concerned. Staff considers them valid, however, to support the proposition that consumers need specific instructions for carpet care.

83 R. 16 at 85-87, CRI.

cleaning instructions must be answered. Carpet manufacturers reply in the negative, stating that they have collectively received few complaints about damage to carpets and rugs because of improper care. They conclude that, "total consumer dissatisfaction based upon cleanability problems is infinitesimal when considered in the context of the total amount of carpet sold...."[84] The Carpet and Rug Institute admits, however, that this may not be indicative of the actual number of occurrences involving damage due to improper care since its representatives probably do not hear about all of them.[85] While the representative of the Western Floorcovering Association is not aware of any damage complaints in this area, the representative of the Retail Floorcovering Institute states that he is personally aware of the occurrence of damage in more than one instance because of improper care and maintenance.[86]

It is evident that, in the absence of care instructions, consumers will select whatever method (commercial preparation or professional cleaner) they think will yield a successful result.[87] It is the position of industry that no significant injury has occurred or is likely to occur in this situation, although it acknowledges the possibility:

> While it may be true with respect to some products that some substantial economic injury could or would result from failure of the manufacturer to provide written care instructions, by definition this cannot occur when the care which will normally be employed by the consumer not provided with such information (1) would not harm the product, or (2) would be the same as the care procedures which would have been recommended by the manufacturer, had such information been provided.[88]

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84 R. 16 at 77-78; R. 20 at 567; Tr. 1995-6; R. 25 at 410-11, CRI; Tr. 2635, CMAW.

85 Tr. 2029-31, CRI.

86 Tr. 2692, Western Floorcovering Association; Tr. 816, RFI.

87 Tr. 1932-33, K. Stanton.

88 R. 16 at 91-92, CRI.

The incidence of damage set forth in the record of this proceeding, however, substantially refutes this simplistic theory and graphically demonstrates the impossible situation of a consumer faced with total loss or substantial impairment of a large economic investment due merely to improper care. A brief summary of the contents of the record in this area should suffice. Damage has occurred through improperly machine or hand washing small rugs[89] resulting in the destruction or melting of the backing,[90] excessive or severe shrinkage,[91] complete loss of shape,[92] severe matting rendering rug unsightly and unusable,[93] fading,[94] improperly drying or drycleaning rugs (backings destroyed or melted),[95] deterioration of ornamentation,[96] improper selection of home cleaning method for carpets and rugs such as rug shampoo or other home cleaning agents and/or equipment, resulting in stretching out of shape,[97] adverse effect of water contact,[98] discoloration from backing dye,[99] substantial impairment of fiber appearance,[100] permanent matting,[101] fading and streaking,[102] removal of twist of yarn,[103]

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89 R. 18 at 201, consumer.

90 R. 18 at 316, 386, 913, consumers.

91 R. 18 at 430,753, consumers.

92 R. 18 at 461, consumer.

93 R. 18 at 769, consumer.

94 R. 18 at 913, consumer. ($25.00 scatter rug).

95 R. 18 at 814, consumer; R. 20 at 587, Care Labeling Conference.

96 R. 20 at 490-91, Care Labeling Conference.

97 R. 18 at 443, consumer.

98 R. 18 at 706, consumer. No water should have been used.

99 R. 18 at 708, consumer.

100 R. 18 at 804A, consumer, (followed directions on home foam rug cleaner).

101 R. 20 at 113-115, consumer. Rug was shampooed by vaccuum cleaner salesman. Consumer alleges no redress from either manufacturer or cleaner.

102 R. 20 at 338-9, Office of Consumer Affairs, Atlanta, Ga.

103 R. 20 at 490-91, Care Labeling Conference.

sudden deterioration of carpet generally,[104] dulling due to excessive soap residue,[105] excessive shrinkage,[106] improper selection of cleaning method for carpets and area rugs by professional rug cleaner causing permanent matting,[107] excessive shrinkage,[108] discoloration,[109] ornamentation ruined,[110] substantial impairment of carpet texture ($1200.00 carpet),[111]

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104 Tr. 1605-7, W. St. John. Water, brush and "Mr. Clean", a common household cleaning agent were used on this carpet. Dr. St. John testified that it was the method - not the detergent - that caused the damage. The industry maintains that warning against such methods is above and beyond the call of duty (R. 25 at 413, CRI). Staff disagrees. As the water and brush action was the culprit, a general warning against the use of water or against hard brushing, whichever is appropriate, would have sufficed and have eliminated this damage.

105 Tr. 1641-42, M. Knowles. While this witness presented a number of complaints unrelated to improper care, not all can be so characterized. This is a valid one. The industry suggests in its rebuttal that the residue was removed and no harm resulted. Nowhere in the transcript is this indicated.

106 Tr. 2358, F. Reid. Wall-to-wall carpet pulled out of the floor.

107 R. 18 at 435, consumer.

108 R. 18 at 435, consumer; Tr. 2577, W. Morck.

109 R. 18 at 652, consumer; Tr. 2358, F. Reid; R. 20 at 328, Dept. of Consumer Affairs, Orange County, California.

110 R. 20 at 38, Office of Governor, State of Illinois.

111 Tr. 1661, K. Geiken. (100% wool random sheared carpeting.) While it had been "steam" cleaned successfully prior to this occurrence, it is apparent that successive cleanings by this method reduced its "appearance life." The industry maintains that its utility was not impaired because it was sold with the home (R. 25 at 414, CRI). The witness maintains that what suffered was its appearance for which she had paid dearly. The purchasers of the home were not aware of its appearance prior to cleaning. The witness was.

and soiled soap residue.[112] The record also contains more general evidence of the occurrence of miscellaneous damage due to improper care on a surprisingly frequent basis.[113] At the Better Business Bureau, Los Angeles County, complaints of discoloration, uneven cleaning, separation or fusing of fibers, matting, and shrinkage resulting in puckering or pulling at seams are fairly common. Both professional cleaners as well as ultimate consumers were found ignorant of appropriate care in these situations.[114] Witness Morck's father, a carpet dealer for many years, has replaced carpeting which had been improperly cleaned "an incredible number of times." Not all retailers

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112 Tr. 1786-90, P. Faley, Consumer Protection Office, Montgomery County, Maryland. The carpet manufacturer stated that the cleaner had used an improper material. Care instructions would have prevented this damage.

113 R. 18 at 971-72, consumer (damage due to use of heat to raise nap of carpet); R. 20 at 96, Bureau of Consumer Protection, State of Hawaii. (several complaints during past six months.); R. 18 at 628, consumer. Survey conducted by consumers at the University of Minnesota shows that carpets have a significantly higher percentage of wear and cleaning problems than do draperies, for example; R. 18 at 184, consumer. $200.00 rug shrank; R. 20 at 338-9, Office of Consumer Affairs, Atlanta, Georgia, (several complaints); R. 20 at 450, State of Colorado, Department of Law; Tr. 938, R. Mallard, Fairfax County. Nine of 33 complaints related to carpets or draperies during fiscal 1976. Average dollar amount was $169.00. Average amount recovered was $5.55. It is not the responsibility of the witness, as suggested by CRI in its rebuttal (R. 25 at 413), to devise care instructions for the carpet complained of. The witness cannot be expected to be aware of the care traits of an item made by another party; Tr. 1372, E. Shapiro, Dept. of Consumer Affairs, Detroit. If the wrong procedure is used, stains already on carpets may be set; Tr. 1645, M. Knowles. Failure of backing to hold yarn when vacuumed. Allegedly, the wrong vacuum was used; Tr. 1786-90, P. Faley (receives many complaints about carpets from customers who have used incorrect cleaning methods); Tr. 2517, 2524-25, K. Bourdeau (unraveling, matting and fusing of area rugs). Items might have been successfully cleaned had there been care information restricting use of heat.

114 Tr. 2531-33, K. Bourdeau. CRI's rebuttal suggests that this witness was well out of range of cross examination. The witness testified at the Los Angeles hearings. CRI representatives, as well as other representatives, attended those hearings. Staff believes this point ludicrous.

may be so generous.[115] Finally, the BSSR survey reveals that of those 407 respondents who had cleaned carpets within the past two years [illegible]6.5% found the results "unsatisfactory" or "not complete[illegible]tisfactory", citing spotting or uneven cleaning, fading, [illegible]nkage and unsatisfactory appearance. The National Consumers Congress characterizes these as serious problems which can cause financial loss.[116] While the frequency of economic injury suffered because of cleaning damage to carpets and rugs is not as high as, for example, that for wearing apparel, it is established that carpets are not cleaned as frequently as wearing apparel. Further, when damage occurs, it can result in greater financial loss because of the relatively high initial investment involved in purchasing a wall-to-wall carpet or area rug. Despite the industry's unwillingness to accept most, if not all, the evidence of damage in the record, the record clearly indicates its occurrence on a surprisingly frequent basis in some areas with respect to all aspects of carpet care. It is also clear that the care instructions now available are insufficient to prevent damage which, in many cases, could be prevented. Staff concludes, therefore, that the lack of manufacturer-supplied care instructions for carpets has caused consumers to make erroneous assumptions (based on total ignorance) about carpet care resulting in direct financial loss in the form of a product no longer acceptable to its owner.

Despite this evidence, the industry, with some exceptions, believes that consumers have no need for manufacturer-supplied instructions and that provision of such instructions mandatorily would be unjustified and constitute a wasteful expense. Among the reasons given are that consumers simply do not clean such products frequently,[117] that the witnesses and commentors who favor care instructions are expressing interest only, not absolute necessity or need, and do not know what they are advocating,[118] that consumers simply would not use such instructions,[119] that

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115 Tr. 2578, W. Morck.

116 Tr. 2721-22, NCC; HX 33 at 444-45, the BSSR survey.

117 R. 16 at 90, CRI.

118 R. 25 at 411-12, 415, 417-418, CRI. Witnesses rebutted in this fashion are the Retail Floorcovering Institute, E. Shapiro, W. St. John, K. Stanton, and the National Consumers Congress.

119 Tr. 2702-03, WFCA.

too many problems of implementation of a mandatory rule exist,[120] that such a rule could not be uniformly enforced,[121] that the manufacturer would be unnecessarily exposed to liability in situations outside the manufacturer's control[122] and that such instructions would be "expensive".[123] While The Carpet and Rug Institute believes, in light of its voluntary program, that some information is necessary to fulfill consumer demand, it continues to advocate that "common sense" will guide the consumer in the right direction in the absence of appropriate instructions.[124] CMAW, however, supports the concept but is concerned about impossible distribution requirements.[125] In terms of manufacturer responsibilities, the Association sees no problem in supplying some sort of care information but only to the retailer.[126] A few scattered consumers also believe that there is sufficient information about carpet care already available through professional cleaners and retailers.[127]

The weight of consumer and retailer input in the record,[128] however, is solidly opposed to this view. One of the chief reasons cited is that consumers simply do not know how to clean carpets and have great difficulty obtaining even a modicum of

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120 Tr. 1997-98, CRI.

121 Tr. 2696, WFCA.

122 Tr. 2670-71, CMAW.

123 R. 25 at 428, CRI. No more specific evidence of burden was submitted.

124 Tr. 2039-2047, CRI.

125 Tr. 2638-9, 2658, CMAW.

126 Tr. 2655, 2670-71, CMAW.

127 R. 18 at 779, consumer; R. 20 at 424, professor of clothing and textiles, Iowa State University.

128 R. 18 at 107, consumer; R. 20 at 631; R. 23 at 328, M. Dana; Tr. 1778, National Home Furnishings Association; Tr. 1906-07, K. Stanton; Tr. 2168, E. Kennedy; Tr. 2358, F. Reid; R. 17 at 521, Sears, Roebuck and Co.; R. 17 at 428, 1147; Tr. 1963, American Textile Manufacturers Institute.

information in this area.[129] One witness, stating that professional cleaning never varies and is always unsatisfactory, has inquired of chemical companies and carpet manufacturers for appropriate care information without success.[130] A classic example of a consumer's dilemma in this area is the following hearing dialogue (Tr. at 2554-57, 2559, W. Blackman, High School Consumer Education Teacher):

. . . . .

Q. With regard to the carpet --

A. Yes.

Q. -- how will you proceed? What's your next step?

A. It's a problem. Carpets are two years old. They're the high pile and I've heard three or four different interpretations; one steam clean, one use the regular type of cleaning, the other use a solvent. I've had three different interpretations of what should be done with carpeting and one from a dealer where we bought it who says, "No, don't use water, use solvent," because we have -- it's a polyester or nylon, whatever is high pile. The other one says, "Well, use steam cleaning, but sometimes there might be too much -- that's good because then all the water is taken out." The other says, "Don't use it because there's too much water. Use my approach." You know, one says "Well, use my approach," which is -- I don't know what they call it. They just kind of put the cleaning and cleaning fluid and just kind of, oh, -- I don't know, massage the carpet? I don't know.

Q. Right.

A. But I've had four different -- three different interpretations and I can't make a decision in terms of--I mean --

Q. You really don't have the facts to make a decision.

A. I don't have adequate facts to justify an intelligent decision and I'm not the only person. A friend of mine also has --

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129 R. 18 at 322; Tr. 2580-81, W. Morck; R. 20 at 616-17, care labeling conference.

130 R. 25 at 188, D. Argo.

Q. So it may be that you won't have it cleaned at all as a result or you'll just take a chance?

A. I don't want to take a chance. I've had my experiences.

Q. Right.

A. Well, the carpet is not that -- well, it's dirty but you -- it should be done, but you know, it's not that bad, but it will be done and I just -- I cannot make an honest opinion after my experiences unless I was told initially what I -- what type of cleaning this should -- and I'm not just talking about whether you use bleach or you don't use bleach --

Q. Right.

A. --I'm talking about I want to know the procedure. I want to know, you know, what materials could be used in the cleaning so that I'm satisfied when I go to a dealer and present what I've got that the dealer will say, "Oh, yes, we can do it on this basis and we can guarantee -or we can't." At least they would tell me they can't guarantee something and I would know then; fine. I'll let it go or do something else.

Q. Do you think if carpets had some sort of specific care instructions directing that -- or at least warning against methods which shouldn't be used, such as water, for example, use of water --

A. Yes, or the amount of water.

Q. -- or the amount of water, do you think that would be helpful to you in this situation?

A. Well, I mean -- yes, definitely, or at least if they can't be labeled or attached because of the size of it when the fabric is sold, then at least that should be given to the consumer and even when a person goes to a cleaning store or a cleaning operator, they should have directions or a preliminary evaluation by the cleaner of the fabric, irrespective of the initial manufacturing labeling, that this is the procedure we're going to use and this is what we're going -- this is what we can do and this is what we can predict generally speaking and these are the risks and then I would know.

Q. You haven't gotten that, I take it?

A. Nothing. Nothing at all.

Q. In other words, basically what -- I guess what you're saying is they're selling a process.

A. They're selling a general process which is to the average public, and I don't consider myself that average in the sense of my understanding, I can't understand it, and I would like to know more and I can't and everybody in town is -- you know, anybody can present themselves as cleaning your carpets.

Q. Right.

A. So what? You know, what are they going to do? What's the process? How do you do it? You know. They don't tell you or if they did -- and maybe they don't even know themselves what the correct process is.

Q. In view of these differing opinions you had from professionals, have you thought about trying to clean the carpet yourself with home cleaning methods?

A. Yes. I decided maybe I can do a better job but even then I don't know what to use.

. . . . .

Such knowledge is of considerable concern to consumers because carpets represent a big initial investment,[131] the potential for damage looms large[132] and consumers generally have little or no experience in the field.[133] This is confirmed by record evidence of the continuous stream of consumer inquiries about carpet care.[134] Because the care traits of carpets vary[135] and

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131 R. 18 at 538, 806, 826, consumers; R. 20 at 291, R. Cederborg, University of Minnesota; R. 20 at 616-617, Care Labeling Conference discussion; Tr. 997, B. Feather, Extension Specialist, CES, Missouri; Tr. 1370-76, E. Shapiro; Tr. 1502, J. Stone; Tr. 1620, 1626, M. Knowles; Tr. 2575, W. Morck.

132 Tr. 802, RFI.

133 R. 20 at 291, R. Cederborg, University of Minnesota. "Also, because they are durable goods and purchased and recycled infrequently, the average consumer has less trial-and-error experience on which to rely...."; R. 20 at 378, J. McCullough, Eastern Illinois University; R. 20 at 379, consumer.

134 R. 18 at 556, 665, consumers, retailers; R. 20 at 583, Care Labeling Conference; Tr. 941, R. Mallard, Fairfax County.

135 R. 18 at 643, 778, 806, consumers; R. 17 at 1200, J. C. Penney; R. 20 at 328, Orange County, Santa Ana, California; Tr. 1370-76, E. Shapiro; Tr. 1502, J. Stone.

the number and variety of carpet cleaning methods offered is staggering,[136] consumers have no basis of comparison. Because of the initial price of many carpets and rugs, consumers justifiably expect a long service life and more wear out of the item despite continuous use.[137] "Even if the consumer selects the proper carpet for the consumer's intended use, improper care and maintenance will shorten the service life of the carpet both in regard to wear and to retention of satisfactory appearance."[138] Further, reliable information at the point of purchase, as well as at the point of care, is equally important.

> Potential purchasers of carpets and rugs must know what care procedures are appropriate for various possibilities being considered. Without such information direct economic loss may result because of insufficient means o[r] capability to care for the item in a manner appropriate to avoid damage or substantial impairment. Indirect economic loss may result because pertinent care information would have caused selection of an item more suitable to that person's capabilities and lifestyle.[139]

Because consumers often turn to "self" cleaning methods to reduce cleaning costs,[140] they need such information before they purchase.[141] Indeed, the United States government requires specific carpet care information to be provided by manufacturers for carpets purchased by the United States Navy, including cleaning materials, methods and equipment. NCC remarks:

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136 R. 18 at 106, consumer; Tr. 1370-76, E. Shapiro; Tr. 1922-29, K. Stanton.

137 R. 18 at 806, consumer; R. 20 at 328, Orange County, Santa Ana, California; Tr. 1376, E. Shapiro.

138 R. 17 at 416, Ludlow Corp.

139 Tr. 1588, 1609-10, W. St. John.

140 R. 20 at 275, Office of District Attorney, El Paso, Texas.

141 Tr. 1370-76, E. Shapiro.

> If the United States government, with all the resources at its command, requires specific detailed care information from carpet manufacturers and has felt the need to request additional information in the future, it is clearly incorrect to say that the ordinary consumer has no need for the same information.[142]

In response to the claim that professional cleaners can fill any gaps in consumers' knowledge of appropriate carpet cleaning methods, the record contains direct documentary evidence to the contrary in the form of a "customer release" regularly used by a professional rug cleaner and member of the National Institute of Rug Cleaning, which absolves the cleaner from responsibility for the following types of rug cleaning damage, which the record indicates have occurred during carpet cleaning: shrinkage, dry rot, color fading, discoloration, fading and shading, discoloration and separation of latex backings from carpets. Evidence of the use of such a release from an otherwise "reputable" rug cleaner is a good indication of the degree of confidence of carpet cleaners in their knowledge of proper carpet care. Clearly, professional carpet cleaning under these circumstances offers little protection for the consumer. The National Consumers Congress submits that such releases are common in the industry.[143] Finally, the BSSR survey indicates that 92.9% of those who had cleaned their carpets within the past two years feel the need to consult some kind of instruction, however inadequate, in determining what methods to use. A full 92.7% of all 699 respondents consider carpet care instructions very important. Of the 5.7% who deny its importance, only 37.8% claim previous knowledge of proper care.[144] Staff concludes that, despite the industry's dogged rejection of valid consumer needs in this area, the record strongly supports the inclusion of carpets and rugs within the scope of the final Rule. Without manufacturer-supplied carpet care instructions, consumers are suffering economic injury both at the point of sale and the point of care which such care instructions could prevent. The varying nature of the product as well as the proliferation of carpet cleaning methods have contributed to this development. Care instructions available presently in the marketplace are simply not adequate for many particular types of carpets and leave the consumer in a true dilemma which the industry's voluntary program has not cured. Staff is of the opinion that

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142 R. 25 at 290-91, 294-97, NCC.

143 R. 25 at 289-90, 293, NCC.

144 Tr. 2718-19, 2730-31, NCC; HX 33 at 441, 457, 458, the BSSR survey.

the pre-requisites for the inclusion of carpets and rugs within the scope of the final Rule have been met by substantial evidence on the record and, therefore, recommends that the coverage of the current Rule be extended to include such products. The Presiding Officer agrees.[145]

c. Transmittal of Care Instructions

Because of the unique nature of the distribution system for carpets and rugs as well as the manner in which they are sold, the issue of how manufacturer-supplied care instructions should be transmitted to the ultimate consumer is of extreme importance and deserves careful consideration. Section 423.3 of the proposed revised rule rejects permanent labeling of any carpet or rug and, in lieu thereof, provides for separate instructions to be available at the retail level.[146] As in the case of piece goods, the proposed revised rule does not provide for transmittal of separate instructions from retailer to ultimate consumer because of record inadequacies in this area.[147] As such, this question must be resolved here.

Pertinent to this problem is a description of the "chain of sellers" in the industry. Carpet manufacturers sell their products either to distributors (wholesalers) or directly to retailers. Distributors in turn sell to retailers of whom few are currently known to the manufacturer. Many small retailers rely exclusively on distributors for their source of supply. The retailer receives carpet from the manufacturer or the distributor either in a full roll or in so-called cut orders (less than a full roll). If carpet is sold to a distributor in rolled goods form, the manufacturer must guess at the number of retailers who will purchase carpet from any given roll, depending upon the size of carpets ordered. Those retailers who carry a large inventory of full rolls or rolled goods often sell from carpet samples for convenience and ease of selection. On the other hand, cut-order shipments, prevalent in residential rather than commercial markets, are sold to fit the floor to be covered and installed by the retailer. In virtually all sales, carpets cut to order are delivered to the job site in final form.[148]

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145 Presiding Officer's Report 48.

146 For reasons, see Staff Report 17-18.

147 Staff Report 8-10.

148 R. 16 at 26, 95, CRI; Tr. 816-17, RFI; Tr. 2003, CRI; Tr. 2637, 2641, CMAW; Tr. 2685-86, WFCA.

The record is sparse but relatively conclusive on the question of who should be responsible for devising care instructions to be supplied by the carpet industry.[149] The manufacturer or importer of the carpet at issue is the obvious choice and is generally favored by those who comment,[150] except that The Carpet Manufacturers Association of the West objects to the manufacturer bearing sole responsibility for the distribution of care information.[151] The Retail Floorcovering Institute proposes a two-tiered system of responsibility for devising care instructions, divided between manufacturers and distributors. The RFI representative admits, however, that, while some distributors are large, sophisticated organizations, manufacturers have the technicians and the laboratories and would probably handle the bulk of the responsibility, even under a two-tiered system.[152] In terms of enforceability, staff discerns a distinct disadvantage in assigning shared responsibilities in a rule without specific delineation of the extent of the duties imposed on each party. Therefore, staff must reject the Institute's proposal as being impracticable to require in a rule and concludes that carpet manufacturers are the most appropriate parties to shoulder the responsibility of devising care instructions required.

The question of the distribution of care instructions, however, is a different matter. The desirability of permanent labels on carpets and rugs must be initially considered. CRI generally opposes a permanent label requirement for any carpets or rugs in any form for several reasons. Carpet manufacturers cannot know the dimensions of carpets or rugs made from rolled goods to be cut by carpet distributors or carpet retailers.[153] Likewise, manufacturers of carpet sold on a cut-order basis do not generally know whether or not the carpet will be installed in a wall-to-wall fashion (which is 75-80% of the carpet sold today). If a cut-order carpet becomes a wall-to-wall carpet,

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149 The exception is witness Dorothy Argo (R. 17 at 805). Ms. Argo exhibits a distinct distrust for carpet manufacturers and rug cleaning associations who apparently have declined to recommend the use of Argosheen, the witness' cleaning product.

150 R. 17 at 770, Fieldcrest; R. 17 at 1147, ATMI; Tr. 2357, F. Reid; Tr. 2656, 2661, CMAW.

151 Tr. 2639-40, CMAW.

152 Tr. 809-810, 833-38, RFI.

153 R. 16 at 26-27, CRI.

a permanent label will be of little benefit because it will either 1) impair the appearance of the carpet (if placed on the top) or 2) be inaccessible to the consumer at the point of care and most probably at the point of sale (if placed on the back). As 70-75% of the carpets sold today are sold directly from the roll by the retailer, the problem of distribution of care instructions is magnified to serious proportions. With respect to smaller rugs, the Institute maintains that permanent labels are often removed by the consumer before the point of care; on the other hand, care instructions are easily kept, if separately supplied. Additionally, the accessibility and placement requirements of the Rule would require manufacturers to supply both separate instructions as well as permanent labels at an increased cost with no increased benefit. The Institute points out that separate instructions alone can be updated and, unlike instructions for wearing apparel, would constitute no serious inconvenience to the consumer since care for carpets and rugs is relatively infrequent and is usually unique. Finally, placement of a label on the back of any carpet or rug in a manner sure to be convenient to the consumer would be impossible to achieve. Such convenience depends upon how the carpet is delivered and placed in a room and what furniture or other household items are put on top of it.[154] The Retail Floorcovering Institute, while agreeing with CRI with respect to all rolled goods, advocates permanent labels on all finished area rugs which leave the factory in final form. It states that the industry already permanently labels rugs of this type. The label can be placed on the edge of the rug for easy access.[155] CRI responds that RFI has not demonstrated why a permanent label is more necessary for area rugs than it is for rolled goods.[156] The National Home Furnishings Association (hereinafter NHFA) proposes a third solution. Care labels can easily and economically be heat-sealed on the back of area rugs. Detachable labels for rolled goods can be attached by the manufacturer, using static electricity, about ten to twelve feet apart to ensure one label for each cut. The label could be designed to remain affixed during the cutting and installation process and could be detached according to the wish of the purchaser after that time. NHFA maintains that this procedure will avoid inadvertent mistakes by retailers in handling separate instructions and is already being used in some cases for the Federal Housing Administration.[157] The

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154 R. 16 at 26-27, 100-102, 105, CRI; Tr. 2006, 2048, 2055, CRI.

155 Tr. 806, 809, 820-21, 831-32, RFI.

156 R. 25 at 427, CRI.

157 Tr. 1760, 1766, 1771, NHFA.

Carpet Manufacturers Association of the West avers that the method employed by FHA is impractical to be used "across-the-board" because, in most cases, the required information is stamped on the back of rolled goods used for wall-to-wall carpets which renders the information unobtainable at the point of care. It advocates separate instructions for all carpets and rugs, regardless of form, as does the Carpet and Rug Institute.[158] The Western Floor Covering Association agrees. "The channels of distribution of carpet from manufacturer to retailer to consumer-purchaser practically exclude the use of a label affixed to the carpet by the manufacturer as an effective method of transmitting care instructions to the consumer purchaser." The Association states that manufacturers cannot anticipate the amount of carpet which will be cut from a roll to ensure availability of care information at the point of care. Additionally, unless such information is affixed to the face of the carpet, the purchaser would neither see it nor be able to retrieve it at delivery and installation.[159]

While manufacturers of component products and several retailers of carpets and rugs all oppose permanent labels for goods to be used for wall-to-wall installation, they vary in their remarks regarding area rugs, small rugs and bathroom rugs, advocating, among other things, separate instructions only,[160] permanent labels only,[161] detachable labels[162] for rugs up to a dimension of nine by twelve feet,[163] and separate instructions for all rugs except small bathroom rugs.[164] Drycleaners associations reject permanent labels for goods used for wall-to-wall installation but advocate them for area rugs[165] manufactured to a size of nine by twelve feet or less.[166] Some consumers agree

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158 Tr. 2677-78, CMAW.

159 Tr. 2685-86, WFCA.

160 R. 17 at 521, Sears, Roebuck & Company; R. 17 at 770, Fieldcrest Mills. Constant friction caused by movement over the rug rules out detachable labels.

161 R. 17 at 887, Montgomery Ward.

162 R. 17 at 1627, Association of General Merchandise Chains.

163 R. 17 at 417, Ludlow Corp.

164 R. 17 at 1200, J. C. Penney.

165 R. 17 at 264, Wisconsin Fabricare Institute.

166 R. 17 at 95, 1077, International Fabricare Institute.

saying that a permanent label on area rugs will inure to the cleaners' benefit at the point of care.[167] With few exceptions, most consumers on record reluctantly advocate separate instructions for goods used for wall-to-wall installation,[168] or, in a few cases, detachable labels[169] with the remainder of carpet and rug products, including area rugs, small rugs and bathroom rugs, sporting permanent labels.[170] Recommended maximum sizes which would be appropriate for permanent labels include four by six feet,[171] any dimensions totalling twenty-four square feet or less,[172] or nine by twelve feet.[173] A few consumer representatives see no necessity for permanent labels on any carpet or rug.[174] One

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167 R. 18 at 322, 651, consumers; R. 23 at 334, National Automatic Laundry and Cleaning Council.

168 R. 18 at 185, 318, Consumers Research Magazine; R. 18 at 2405, consumer; R. 20 at 148, Fairfax County; R. 20 at 160, Extension Specialist, CES, Florida; R. 20 at 281, Office of Consumer Protection, State of Lousiiana; R. 20 at 296, Dept. of Textiles, University of Hawaii; R. 20 at 424, Dept. of Textile and Clothing, Iowa State University; R. 20 at 474, Cooperative Extension Sevice, New York State; Tr. 941, R. Mallard; Tr. 1351, E. Shapiro; Tr. 1627, M. Knowles; Tr. 1662, K. Geiken; Tr. 1783, P. Faley; Tr. 1906-7, K. Stanton; Tr. 2365-66, F. Reid; Tr. 2520, 2530, K. Bourdeau; Tr. 2576, W. Morck; Tr. 2742, NCC.

169 R. 19 at 1, Merchandise Research Laboratory; R. 20 at 361, Extension Specialist, CES, Oregon; Tr. 2168-69, E. Kennedy.

170 R. 18 at 185, consumer; R. 20 at 34, Extension Specialist, CES, North Dakota; R. 20 at 148, Fairfax County; R. 20 at 150, Seattle Pacific College; R. 20 at 160, Extension Specialist, CES, Florida; R. 20 at 281, Office of Consumer Protection, State of Louisiana; R. 20 at 361, Extension Specialist, CES, Oregon; R. 20 at 474, Cooperative Extension Service, New York State; Tr. 941, R. Mallard; Tr. 2520, 2530, K. Bourdeau; Tr. 2576, W. Morck; Tr. 2742, NCC.

171 R. 18 at 318, consumer.

172 R. 20 at 424, Dept. of Textiles and Clothing, Iowa State University; Tr. 1662, K. Geiken.

173 Tr. 1359-60, E. Shapiro.

174 R. 18 at 2405, consumer; Tr. 1906-7, K. Stanton.

advocates them for all carpets and rugs because of the difficulty of predicting what sizes of carpets or rugs will be used in a wall-to-wall fashion, whether or not they are actually attached to the floor.[175]

The Presiding Officer concludes that permanent labeling is simply not feasible for any carpet or rug because of the likelihood of extensive care instructions which will not fit on such a label.[176] Staff agrees with this conclusion but for different reasons. The principal object of this rule should be to provide for care instructions which are easily and readily accessible to the ultimate consumer both at the point of sale and at the point of care, without unduly impairing the use or appearance of the product for which care instructions are prescribed. Permanent or detachable labels which are placed in an acceptable location on any rolled goods are unlikely to be accessible at either time. When wall-to-wall carpets are purchased from samples of rolled goods at the retail level, the buyer may never see the actual rolled goods (nor the labels) themselves. After installation of the carpet, in order to ensure the availability of the instructions, the purchaser must remove even a detachable label for safekeeping, thus treating it as if it were a separate instruction. Clearly, a permanent labeling requirement for rolled goods has few advantages and several disadvantages from the purchaser's point of view. Less clear is the problem of the pre-cut area rug or smaller rug finished at the manufacturing level. Except for packaged rugs, a permanent label on the bottom of such a rug could be made reasonably accessible at the point of sale as many record comments indicate. Accessibility at the point of care, however, is crucial and would depend upon the size of the rug, the size of the room in which it is placed, the size and location of articles placed on top of the rug and the location of the label on the rug itself. Three of these variables are determined by the consumer. The record contains no basis for choosing an arbitrary size limitation or label location where permanent labels allegedly would become feasible. It is conceivable that care instructions on a permanent label attached to the smallest rug could become totally unavailable to the consumer depending on which of the above-mentioned circumstances are determinative. Because of these uncertainties, and in spite of heavy support in the record for permanent labeling of finished area rugs, staff must generally conclude in its discretion that the arguments for accessibility of instructions outweigh the arguments for permanent labels on finished area rugs. It is staff's opinion that the chances for consumer realization of the often touted benefits of permanently attached

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175 R. 20 at 236, Attorney General, State of Illinois.

176 Presiding Officer's Report 52.

labels are slim and that instructions supplied in a nonpermanent fashion are more appropriate for this particular category of products.

With respect to separately supplied instructions, it is the position of carpet manufacturers that it would be impossible to ensure receipt of such instructions by the ultimate consumer because of the complexities of the carpet distribution system. Specifically, (1) the manufacturer would not know how many sets of instructions to supply because of the indefinite number of consumer purchases from any given roll; (2) the manufacturer would be dependent on the carpet distributor and/or the retailer for proper distribution of the instructions and thus would be unnecessarily exposed to liability under the Rule; (3) an administrative nightmare would result similar to that which has occurred with piece goods under the current Rule.[177] Thus, carpet manufacturers maintain that they should not be obliged to provide carpet care instructions on an individual basis but merely to supply retailers with a large number of "care information sheets" which would be appropriate for all carpets and rugs sold by the retailer. Such manufacturers would, of course, remain responsible for the instructions contained on those sheets.[178] Manufacturers also maintain that if the retailer were held responsible for distribution of separate care instructions to the ultimate consumer, the problem would be less acute but would still exist in the case where carpet is sold to the distributor and not directly to the retailer.[179] A carpet manufacturer concedes, however, that, if the retailer has some responsibility for distribution, there is no "insurmountable" obstacle to achieving the ultimate purpose of the Rule.[180]

The proposed revised rule requires only that manufacturers supply appropriate care instructions to the retailers of their products - not to ultimate consumers. It is true that if the carpet and rug industry does no more than it is doing now under its voluntary program, a successful distribution system will never be achieved. Despite the protestations of manufacturers, however, staff is not convinced of the impossibility of this venture. Staff admits, on the one hand, that some problems will emerge as is the case with any new program. It is staff's opinion, nevertheless, that carpet manufacturers have presented no evidence of insurmountable burdens or costs that would be

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177 R. 16 at 26, 95-98, CRI; Tr. 2008, 2054-55, CRI.

178 R. 25 at 430-31, CRI.

179 Tr. 2641-42, CMAW.

180 Tr. 2029, CRI.

associated with such a requirement. Staff maintains that carpet manufacturers are capable of determining the average amount of carpet purchased and supplying enough instructions to fulfill this need. Staff further maintains that, with respect to carpet sold through distributors and with the aid of industry trade associations, carpet manufacturers are equally capable of determining who sells their products at the retail level for the purpose of delivering appropriate instructions directly to the retailer, if necessary.[181] Finally, contrary to industry arguments, the evidence indicates that manufacturers of piece goods have successfully overcome all obstacles in delivering care labels to retailers; most of the problems in that area have arisen from the failure of retailers to distribute them to the ultimate consumer. As such, while staff accepts the carpet manufacturers' argument against extension of their responsibility beyond the retail level, staff has no problem with the assignment of such responsibility to manufacturers in those situations over which it has control, i.e., between the manufacturing level and the retail level. Manufacturers' arguments of excessive exposure to Commission action under this system constitute mere conjecture and must be rejected. Staff concludes, therefore, that carpet manufacturers have not demonstrated that a provision requiring carpet manufacturers to supply separate instructions to carpet retailers is unfeasible, overly burdensome or in any way practically impossible to achieve.

If the manufacturer's responsibility for distribution of care instructions ends at the retail level, the issue of responsibility for providing such instructions to the ultimate consumer must be resolved. As in the piece goods area, consideration must be given to record evidence of noncompulsory methods of distribution as well as to compulsory distribution by the retailer, the object being to ensure that the ultimate consumer receives appropriate care instructions at the point of sale which are still available at the point of care at the least possible cost to the industry.

It is the position of the Carpet and Rug Institute on this issue that, "[t]he only feasible way of insuring that care instructions are obtained by consumer purchasers of carpets and rugs is to require the retailer to be responsible for such distribution."[182] The Institute insists that this requirement logically

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181 The proposed revised rule does not require care instructions to accompany the shipment of carpets through the distribution chain but only to be available for distribution at the retail level. This eliminates dependence on the carpet distributor.

182 R. 16 at 71, CRI.

follows from the mandatory distribution requirement for manufacturers already recommended. As such, the Institute finds that it must use retailers to ensure the little success experienced in its voluntary program.[183] Fieldcrest Mills agrees citing the consumer's traditional reliance upon retailers for such information.[184] The American Textile Manufacturers Institute, based on its experience in dealing with piece goods, states that, "manufacturers have no way of controlling the distribution of care instructions after the product is sold to . . . retailers."[185] As such, retailers must be employed to ensure adequate distribution.[186] Other manufacturing organizations, plus a surprising number of retailing parties, support this view.[187] A representative of the Western Floor Covering Association avers that there should be no difficulty in distributing care information in the due course of business via bills of sale or invoices.[188] The Retail Floorcovering Institute advocates clear and conspicuous disclosure of pre-sale availability of care information, in addition to automatic distribution by the retailer, as an enforcement aid.[189] This overall position is supported by the majority of consumers and consumer representatives commenting in the proceeding.[190] "The uninformed consumer often neglects requesting the information";[191] many

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183 R. 16 at 76, 99, CRI; Tr. 2004, CRI.

184 R. 17 at 770, Fieldcrest.

185 R. 16 at 176, ATMI.

186 R. 17 at 1147, ATMI.

187 Tr. 2638, 2677, CMAW. CMAW advocates that the retailer should attach each care instruction to the bill of sale; R. 17 at 887, Montgomery Ward; Tr. 807, Retail Floorcovering Institute; Tr. 1767, National Home Furnishings Association. "We feel that the retailer's responsibility should be to pass through the information the manufacturer supplies."

188 Tr. 2682-83, 2690-91, WFCA.

189 Tr. 806, 812, RFI.

190 R. 18 at 318, 566-67, 814, consumers; R. 19 at 6, Textile Analysis Service, University of Alberta; R. 20 at 474, CES, New York State; Tr. 2513, K. Gragg, Dept. of Consumer Affairs, Ventura County Cal.; Tr. 1502, J. Stone; Tr. 1783, P. Faley; Tr. 1907, K. Stanton.

191 R. 18 at 207, consumer. Likewise, R. 18 at 750, consumer.

consumers are unaware that care instructions can be requested.[192] It is often the consumer who does not know about care information who needs it most.[193] Of those who did receive care information with rugs in the BSSR survey, only 10% requested it; 90% received it voluntarily from the retailer without request.[194] Thus, if care information is available only on request, it may never reach the consumer[195] and result in a self-defeating colossal waste of effort.[196] Some consumers also believe that the relatively high cost of a typical carpet purchase makes care information for that purchase sufficiently important to require its distribution at the retail level,[197] and that the retailer simply cannot be relied upon to distribute such information voluntarily.[198]

In opposition to those advocating compulsory distribution of care information by retailers are those who believe that, "such a requirement is not of sufficient value to warrant the burden to the retailer." In lieu thereof, mandatory pre-sale disclosure of the availability of care instructions upon request is proposed.[199] Disclosure, "by signs reasonably calculated to elicit customers' attention in the store or department store where such products are sold, advising such customers of the availability of such instructions, including details for obtaining them..." is suggested. Retailers would only be required to distribute care information upon request in the manner directed in the disclosure. It is argued that this is the most cost-effective system of getting care instructions into the hands of consumers.[200] Sears Roebuck and Company favors this method

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192 R. 18 at 577, consumer; R. 20 at 446, consumer.

193 R. 18 at 770, consumer.

194 Tr. 2793-94, NCC; HX 33 at 438, the BSSR survey.

195 Tr. 2381, F. Reid.

196 R. 18 at 971, consumer; Tr. 2521-22, K. Bourdeau.

197 R. 18 at 538, 792, 987, consumers; R. 20 at 228, consumer representative.

198 R. 18 at 899, consumer; Tr. 940-41, R. Mallard, Fairfax County.

199 R. [illegible] at 416-17, Ludlow Corporation; R. 16 at 148, National Retail Merchants Association; R. 18 at 626, 844, 847, 853, 877, consumers; R. 20 at 275, Office of District Attorney, El Paso, Texas; R. 20 at 336, consumer.

200 R. 16 at 158-9, NRMA.

because, "carpets and rugs are higher-price merchandise less frequently purchased for which care instructions are more likely to be considered by consumers at the time of purchase."[201] The record contains a degree of consumer support for this system on grounds that a compulsory distribution requirement would be difficult to enforce[202] and the consumer should readily accept the responsibility of requesting care information from the retailer, assuming knowledge of its availability.[203]

Despite these arguments, staff cannot ignore the fact that the vast majority of consumers and consumer representatives, carpet retailers, retailing associations and manufacturers on the record affirmatively support compulsory distribution of care instructions by retailers with or without pre-sale disclosure. The record contains no evidence, aside from unsupported generalized statements by a very few commentors, that the burden of compulsory distribution of care instructions for carpets and rugs will be any greater than that of requiring pre-sale disclosure of their availability and distributing them only when requested. In either case, the record shows it will be small. The record also makes clear that some affirmative action must be taken at the retail level in order to ensure that care instructions are obtained by carpet and rug purchasers; aside from disclosure only, the record contains no proposals other than compulsory distribution to achieve this goal. As with piece goods, it is uncertain whether disclosure could be effectively accomplished initially in the environment of a retail store, and, if so, whether retail employees would be knowledgeable about and respond properly to consumer requests as directed, unless distribution were routinely required with every purchase. The record established by piece goods retailers up to now leaves much to be desired in this regard. While staff concedes that the enforcement of a retailer requirement in this area (whether of disclosure or distribution) may be slightly more difficult, this is little justification for eliminating the requirement. Experience with piece goods indicates that the breakdown of the distribution chain at the retail level renders the efforts of all other parties a wasteful and costly exercise with no corresponding consumer benefit. Such a breakdown should not be permitted at the outset in the area of carpets and rugs. Because staff believes on the basis of substantial evidence on the record that compulsory distribution of

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201 R. 17 at 521, Sears, Roebuck & Co.

202 R. 18 at 833, consumer; R. 20 at 139, Extension Specialist, CES, Oregon.

203 R. 18 at 385, 83., 910-11, 961, consumers; R. 20 at 138, Extension Agent, CES, Arkansas.

care information by retailers is more likely to ensure the transmittal of care information to consumers who might otherwise not see or understand a mere disclosure of their availability, staff concludes, as does the Presiding Officer,[204] that such transmittal should be required at the time of every carpet or rug purchase.

The Presiding Officer also suggests that a copy of care instructions for carpets and rugs be posted in the sales area.[205] Because it is probable that more than one set of instructions will be appropriate with the myriad of carpets now on the market, necessitating disclosure of multiple sets of instructions in no particular order, staff regards this particular requirement as per se unreasonable and potentially confusing to the prospective buyer. In order to ensure that the consumer is aware of the general availability of care instructions for any particular carpet before the point of sale (as opposed to just after the sale is made), however, staff supports (as does the RFI) a general pre-sale availability disclosure requirement, in addition to compulsory distribution at the point of sale, as a means of enabling the consumer to make intelligent comparisons on the basis of care information before the purchasing decision is made. Such a provision would merely require clear and conspicuous disclosure of the fact that care instructions are available upon request prior to actual sale. For those consumers who do not respond to the disclosure for whatever reasons, care instructions for the particular purchase made must be distributed, as per the compulsory distribution requirement, at the time of sale. The record supports the value of the disclosure as a means of making consumers aware of the availability of care information and as an enforcement aid (see Chapter IV.D. for further discussion of the rationale of this requirement). Such a disclosure also makes the proposed labeling of carpet samples (discussed infra) relatively unnecessary. As previously stated, however, staff believes that the disclosure alone is not enough to ensure that consumers have appropriate care information available after the sale is made and especially at the crucial point of care.

An ancillary question raised in the record concerns the desirability of requiring retailers to maintain records demonstrating the system used to distribute the appropriate care instruction with each product purchased. The record indicates a unanimously negative response to this question and staff agrees.

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204 Presiding Officer's Report 52.

205 Id.

The cost of such a system could conceivably equal or exceed the cost of providing the care instructions themselves and, in any event, would add to the cost of the product without any quantifiable consumer benefit.[206] Neither would it aid significantly in enforcement of the compulsory distribution requirement; routine inspections and investigations will clearly show whether retailers are complying with the requirement without the necessity of monitoring or auditing records.[207] Finally, the National Home Furnishings Association reiterates that 92% of its members want care information and are willing to transmit it to the ultimate consumer; little purpose would be served by an additional, far more burdensome requirement.[208] Staff recommends that no recordkeeping requirement be included at the present time; if such a requirement becomes necessary in the future, it can be added to the rule at a later date.[209]

A final question involving transmittal of carpet care instructions is whether carpet samples should be required to be labeled with care instructions in addition to a provision for disclosure and distribution of separate instructions. Carpet samples are designed as display tools provided by the manufacturer to the retailer at little cost. When considering a carpet purchase, prospective buyers normally view a series of samples, especially if the actual carpet or rug is not available or is being custom-ordered. The turnover for samples in a given retail store is low; the same samples may be used for periods as long as five years or more. Samples are normally retained within the physical confines of the retail establishment and are not taken to the homes of prospective purchasers for comparison purposes because of their bulk.[210] The carpet sample, however, can be an important ingredient in a customer's decision to purchase.[211] It is for this reason that the record contains a degree of support for

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206 R. 17 at 417, Ludlow Corp.; R. 17 at 521, Sears, Roebuck & Co.; R. 17 at 1201, J. C. Penney; Tr. 2004, CRI; Tr. 1761, National Home Furnishings Association.

207 R. 17 at 417, Ludlow Corp.; R. 17 at 428, ATMI; R. 17 at 770, Fieldcrest Mills; Tr. 807, RFI; Tr. 1945, ATMI.

208 R. 17 at 424, NHFA.

209 R. 17 at 521, Sears, Roebuck & Co.

210 The retailer obtains smaller swatches of carpet material from another source for purposes of on-site comparison by the consumer.

211 Tr. 2696-2700, 2687-89, WFCA; Tr. 828-9, RFI.

requiring the labeling of carpet samples with care information.[212] That support evaporates, however, when the prospect of duplicative separate information is acknowledged.[213] In opposing such a requirement, the Carpet and Rug Institute states that, "no less than 100 million new samples of carpet are distributed each year for use as sales tools. Considering both the turnover of styles in general and the long life of others, the total number of such samples distributed over time is astronomical." The Institute concludes that sample labeling, in addition to the provision of separate information, would be wasteful and would be impossible to implement in a reasonable time.[214] The Western Floor Covering Association agrees.[215] The Retail Floor-covering Institute favors such a requirement on grounds that it would serve to reinforce care information already supplied.[216]

Staff would agree with the proponents of such a requirement if pre-sale disclosure of the availability of care information were not to be required. In staff's opinion, however, point of sale disclosure of care information will generally be accomplished via the pre-sale availability requirements as well as by compulsory distribution. The effort and cost expended in labeling a large number of samples for the same purpose is superfluous and not worth any small benefit that might be realized in an individual case. Staff recommends, therefore, that the labeling of samples not be required in the final Rule.

d. Content of Care Instructions

As discussed previously, it is the position of the carpet manufacturing industry that, "there are generally no distinctions in the 'proper and valid' cleaning instructions which could be communicated..." for carpets and rugs and that the care instructions supplied by fiber and carpet manufacturers, manufacturers of cleaning equipment and cleaning agents and the actual practices of professional cleaners are all quite similar if not identical. It is the industry's conclusion, therefore, that manufacturer-supplied care instructions make no difference and serve no purpose whatsoever. "The consumer having made the choice as to who will clean the carpet, has also, by that same choice, made the

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212 Tr. 2472, NCC; Tr. 2380, F. Reid; Tr. 941, R. Mallard; Tr. 806, RFI.

213 Tr. 2761-62, NCC; Tr. 828-9, RFI.

214 R. 25 at 429, CRI.

215 Tr. 2684-87, WFCA.

216 Tr. 828-29, RFI.

decision as to what method of cleaning will be utilized.[217] It is staff's position that, while sufficient information may be available concerning the application of any particular method, there is little or no information to aid the consumer in choosing which method to use. The record reveals that the consumer has many different choices beyond customary vacuuming including various home cleaning[218] and professional cleaning[219] methods. Based on previously noted evidence of injury, selection of one method over another may be crucial to avoid impairment of the utility or appearance of a particular carpet or rug; each of these methods possesses different characteristics which will be more appropriate for some carpets than for others.[220] Therefore,

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217 R. 16 at 83-84, CRI.

218 R. 16 at 111-138, CRI Carpet & Rug Care Guide (pp. 4-7).

a) Absorbent powder - used at intervals to prolong periods between wet cleanings to brighten and remove some deposits with a minimum of texture change;

b) Wet methods --use of mild detergents (not soap, ammonia or other alkalis) is essential. Repeated use should be avoided as residue will be left or "overwetness" will result. Brush with soft brush and dry quickly. This procedure is suitable for most types of carpet;

c) Aerosol Foam Spray - a new method for which little guidance is given.

219 Id.

a) Dry Foam - detergent solution containing small amount of water;

b) Hand Absorption - foam applied by hand and removed by sponge absorption;

c) Hot Water Extraction - hot water solution forced into pile at high pressure and vacuumed out;

d) Powder - use of absorbent granules which are worked into pile and vacuumed out;

e) Rotary Brush - detergent solution worked into carpet by a brush and vacuumed out;

f) Plant Cleaning - used for rugs which can be easily removed. Not recommended for wall-to-wall carpet because of shrinkage.

220 Note the difference in water content, whether or not a brush is used, the difference in methods used to remove residue, the fact that plant cleaning should not be used for wall-to-wall carpets, the difference in method of solution application, to name only a few. Selection of one method over another for a particular carpet may avoid 1) water damage,

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it is important that care instructions for carpets make those distinctions which are crucial for the successful cleaning of any particular carpet product.

The industry further contends, however, that if care instructions are to be required, the one-page sheets submitted by the industry for the record are adequate.[221] Aside from spot cleaning instructions, these sheets generally provide the following regular care instructions: 1) vacuum weekly with a vacuum containing a brush or beater bar of properly adjusted height for the type of carpet being vacuumed; 2) be selective of do-it-yourself methods chosen and follow directions; do not overbrush or overwet; pre-test all cleaning solutions on an inconspicuous area; dry rapidly if necessary; and 3) use services of a competent professional carpet cleaner; do not delay necessary cleaning; consult your carpet retailer, rug cleaning establishment or yellow pages for advice. The Carpet and Rug Institute avers that these instructions will suffice for most carpets so long as all caveats are followed,[222] but, in a surprisingly reasonable tone, the Institute also suggests that if such instructions are not sufficient, a mandatory rule could be justified.[223] The Institute argues, finally, that a program for disclosing the "best" method of care for a particular carpet would be "impracticable and a disservice to the consumer" because all methods are equally suitable,[224] and because 1) a consumer in a small town might not have it available; 2) costs would increase; 3) manufacturers would receive complaints from competing cleaning interests and 4) manufacturers would have a tendency to "low-label."[225] The Retail Floorcovering Institute contends that the one page leaflets are readable, comprehensive and inexpensive

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220 (Continued)

shrinkage or discoloration, 2) excessive residue which cannot be removed, 3) adverse effect of a brush on carpet pile and texture or other possibilities unknown to staff at this time. The record contains evidence that these, as well as other conditions, have occurred more than occasionally due to improper selection of a cleaning method.

221 HX 1 at 9, RFI; Tr. 2684, WFCA; R. 23 at 70, 240, CMAW, WFCA; R. 25 at 432-33, CRI.

222 R. 25 at 418-19, CRI.

223 R. 25 at 424, CRI.

224 R. 25 at 425, CRI.

225 Tr. 2053, CRI.

and should be used if appropriate.[226] The Carpet Manufacturers Association of the West has no objections to the addition of more comprehensive warnings if necessary; it acknowledges, however, that no consumers were involved in the development of its proposed one-page care instruction leaflet.[227] Consumer representatives, on the other hand, view the leaflet as per se inadequate. Witness Stanton objects to the testing instruction, stating that the cleaning instructions should have been tested by the manufacturer on the product at issue before distribution. Additionally, testing results on small areas differ from the results when the entire item is subjected to the recommended cleaning procedure.[228] Many witnesses maintain that the instructions are simply too general and tend to shift the burden of determining the proper cleaning method to the consumer.[229] The average consumer cannot determine from the yellow pages or necessarily rely on a salesman or rug cleaner to determine what carpet cleaning method to use.[230] Instructions referring the consumer to these sources are useless since most retailers and carpet cleaners, for reasons of liability, are hesitant to volunteer cleaning information and the yellow pages merely list the names of cleaners without reference to "reliability".[231] All advocate disclosure of the best, most effective or least costly cleaning method, with alternative methods and generic names of specific agents, if appropriate.[232] The Carpet and Rug Institute rebuts such testimony by saying that the witnesses make no specific constructive suggestions, are not qualified to judge and generally do not know of what they are speaking.[233]

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226 Tr. 811, 820, 841-46, RFI. If not appropriate, RFI contends that the manufacturer should be required to supplement them.

227 Tr. 2672-73-74, CMAW.

228 Tr. 1922, K. Stanton.

229 Tr. 2222, E. Kennedy; Tr. 2395, F. Reid.

230 Tr. 2591-92, W. Morck.

231 Tr. 2622-24, W. Morck.

232 Tr. 1632, M. Knowles; Tr. 1922, K. Stanton; Tr. 2578-79, W. Morck; Tr. 2762-65, NCC.

233 R. 25 at 415-16, 420, CRI.

The record contains considerable documentary evidence of carpet care instructions devised by many different but otherwise qualified organizations which contain some of the information the disclosure of which these witnesses so strenuously advocate. Most of these instructions address certain of the following topics which are apparently considered important in carpet care and which, it is argued, should be included in a carpet or rug care instruction, when appropriate:

(a) Vacuuming - frequency of use, type of vacuum to be used and proper height of the vacuum;[234]

(b) "Do-it-yourself" cleaning - type of cleaning agent which should be used,[235] cleaning methods which should be used[236] with particular emphasis on 1) prevention of unacceptable pile distortion or texture change,[237] 2) undesirable residues which will attract soil and dull the carpet especially with repeated application of the procedure,[238] 3) damage because improper mechanical action is used (if employed)[239] and 4) adverse effects of water, heat or the cleaning agent itself on the carpet or its backing such as shrinkage, deterioration, discoloration or color bleeding.[240]

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234 R. 25 at 78-79, D. Argo; R. 25 at 43-44, Allied Chemical Carpet Maintenance Manual; R. 25 at 104-105, CRI Care Guide; R. 25 at 160, 166, Acrilan Carpet Care Manuals by Monsanto; R. 17 at 305, 307, AIDS.

235 R. 25 at 44, Allied Chemical Carpet Maintenance Manual; R. 25 at 81, D. Argo; R. 25 at 107, 109, CRI Care Guide; R. 25 at 130, D. Argo; R. 25 at 160, 168, Acrilan Carpet Care Manuals by Monsanto; HX 22.

236 R. 25 at 45, 54-55, Allied Manual; R. 25 at 80-81, D. Argo; R. 25 at 106-108, 111-112, CRI Care Guide; R. 25 at 131-133, D. Argo; R. 25 at 161-2, 169, Monsanto Manuals; R. 17 at 307-8, AIDS.

237 R. 25 at 45, 55, Allied Manual; R. 25 at 80, 82, D. Argo; R. 25 at 107, 109, CRI Care Guide; R. 25 at 131-2, D. Argo.

238 R. 25 at 44, 53, 55, Allied Manual; R. 25 at 81, D. Argo; R. 25 at 107, CRI Care Guide; R. 25 at 130, D. Argo; R. 25 at 161, 169, Monsanto Manuals.

239 R. 25 at 108, CRI Care Guide; R. 25 at 129, D. Argo; HX 22.

240 R. 25 at 55, Allied Manual; R. 25 at 80-82, 89, D. Argo; R. 25 at 107, 109, CRI Care Guide; R. 25 at 130, 133, D. Argo; R. 25 at 159, 161, 169, Monsanto Manuals; HX 22.

The method most likely to clean the carpet successfully at the least possible cost should be prescribed.[241] If washing is prescribed for area or bathroom rugs, the appropriate method of washing, drying temperature descriptions and the use of bleach should be described in accordance with care instruction requirements for wearing apparel;[242]

(c) Professional cleaning - information of the type outlined in (b) as well as whether such cleaning should be conducted "on-location" or "in-plant"[243] and when it should be used in lieu of "do-it-yourself" methods;[244]

(d) Warnings - any negative information not included in the positive disclosure.

It is clear from the content of carpet care manuals used by the industry that proper selection of carpet care methods, aside from the manner in which the methods are employed, does make a significant difference in the result obtained after cleaning. Some methods, even if used properly, have a much greater likelihood of causing certain carpet or rug damage than others, depending upon the type and construction of the item to be cleaned.[245] Some methods clean less effectively. The carpet manufacturer is the only party in a position to draw whatever compromises are necessary in order to determine what method(s) are most (or more) appropriate for each individual product. Staff, therefore, rejects the industry argument that manufacturer-supplied instructions will serve no purpose and are not needed. Staff also believes that the one-page sets of instructions submitted by the industry are not adequate, especially in the areas of home and professional cleaning because they simply do not provide the information needed by the consumer who is faced with selecting an appropriate carpet cleaning method for his/her carpet or rug. The instructions provide absolutely no guidance upon which

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241 A good description of various cleaning characteristics of several methods is described in R. 25 at 55, Allied Manual.

242 R. 25 at 82, D. Argo; R. 25 at 109, CRI Care Guide; HX 22.

243 R. 25 at 45, Allied Manual; R. 25 at 89, D. Argo; R. 25 at 110, CRI Care Guide; R. 17 at 1147, ATMI; R. 17 at 306-8, AIDS.

244 See generally all carpet care manuals cited.

245 R. 25 at 55, Allied Chemical Carpet Maintenance Manual.

to base an intelligent decision in this regard. It is for this reason that consumers and consumer representatives on the record so unanimously reject them as being per se insufficient. Staff submits that very little if any of the damage cited in the record would have been prevented if these instructions had been followed to the letter.

On the other hand, staff believes that disclosures in the nature of those previously outlined, if accurate, will operate to prevent a large portion of consumer injury on the record. Staff, therefore, concludes that the final Rule should contain a provision which, while permitting a certain amount of discretion on the part of the manufacturer,[246] mandates more specific disclosures than those contained in the one-page industry submissions, including warnings and alternative cleaning methods where appropriate. Since care instructions for carpets and rugs (with the exception of certain bathroom and area rugs) are clearly not at all similar to those for wearing apparel, staff further concludes that such a provision appear separately in the section now allotted for carpets and rugs and that, as in the furniture category, all requirements for carpets and rugs be contained in that section. The Presiding Officer agrees.[247] Carpet and rug products, however, for which washing or any other "apparel" instruction is prescribed (such as certain bathroom or area rugs) while covered in the section designated for carpets and rugs, should contain instructions which meet those minimum standards outlined for the "wearing apparel" group. The Presiding Officer also advocates requiring spot care instructions in the Rule. Staff opposes such inclusion for reasons already explained in Chapter IV.F., Upholstered Furniture.

It is therefore recommended that the following provision, designated Carpets and Rugs, be substituted for Section 423.3 of the proposed revised rule:

(a) In connection with the sale of any textile product in the form of a finished carpet or rug, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:

(1) for the manufacturer or importer of such carpet or rug to fail to insure in any manner that the retailer of such products obtains clearly stated instructions for the care and maintenance of such carpet or rug in a form which can

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246 The large number of different carpets and rugs with different care traits as well as the lack of more specific information on the record regarding, for example, standard testing procedures for carpet cleaning (R. 17 at 805-6, D. Argo) necessitates some discretion on the part of the manufacturer.

247 Presiding Officer's Report 55.

be transmitted to the ultimate consumer at or before the time of retail purchase;[248]

(2) for the retailer of such carpet or rug:

(i) to fail to clearly and conspicuously disclose the availability of such care instructions for carpets and rugs in the area of the retail establishment where such products are displayed; and

(ii) to fail to provide such care instructions to the ultimate purchaser of a carpet or rug at or before the time of retail purchase.

(b) Instructions for the care and maintenance of any article within the scope of this Section shall:

(1) General Rule: fully and completely inform the purchaser of such regular care and maintenance procedures as are necessary to the ordinary use and enjoyment of the article, e.g., vacuuming, cleaning agents and methods suitable for use by the ultimate consumer and cleaning agents and methods suitable for use by a commercial establishment specializing in the refurbishing of such products;

(2) Warnings: warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated, which would damage or

248 The National Home Furnishings Association (Tr. 1762-63) recommends that the phrase "at the time of retail purchase" be changed to "at the time of retail purchase, delivery or installation," to allow retailers more flexibility as to time of distribution of care information. Staff disagrees. The whole purpose of the requirement is to ensure delivery of care instructions at or before the time of sale. Because delivery and installation almost always occur after the customer consummates the sale, care instructions supplied at that time would be of no use at the important time when a purchasing decision is made.

substantially impair the article. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those carpets and rugs included within the scope of this Section, which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such products must contain a full and complete disclosure to that effect;

(3) Provided, however, That care instructions for those carpets and rugs for which care procedures set forth in Paragraph 423.2(b) of this part are prescribed need not comply with the provisions of Paragraph (b) of this Section but must comply with provisions set forth in Paragraph 423.2(b) of this part.

Paragraph (a)(1) is almost identical to Section 423.3 of the proposed revised rule and contains the fundamental requirement that the manufacturer devise appropriate care instructions for carpets and rugs and distribute them to the retailer. Paragraph (a)(2) sets forth distribution and disclosure requirements for carpet and rug retailers as recommended. Paragraph (b) outlines in general terms the standards by which care instructions for carpets and rugs are to be measured. Because the record does not contain sufficient evidence of the details of specific methods of carpet and rug care, staff believes that the manufacturer must be left with some discretion at the outset to devise appropriate instructions so long as the minimum criteria set forth in the paragraph are met. The purpose of paragraph (b)(3) is to extract those carpets and rugs from the scope of the paragraph for which instructions prescribed for apparel and related products are more appropriate; care instructions for such carpets and rugs must, therefore, comply with the standards set forth in the paragraph dealing with care instructions for apparel and related products.

The proposed revised rule does not include a definition for "carpet or rug" and none are contained in the record. As with other items tending to fall within the "household furnishings" group, there is no evident need for care information for products whose manufacture is incomplete or which are designed primarily to be used outdoors. Therefore, staff recommends that the final rule contain the following definition which incorporates these restrictions and clarifies the fact that such items are not intended to be included within the Rule's scope:

'Finished carpet or rug' is any carpet or rug whose manufacture is complete and which is customarily although not exclusively used as an interior appointment.

5. Linens

a. Preface

Linens are not covered by the current rule. Because of numerous complaints received about household furnishings (of which linens are a part) following the effective date of the present Rule, staff included a question regarding the extension of the Rule to cover such items in the Request for Comment. The response was generally favorable with 85% of 3453 comments advocating extension of the Rule to cover household furnishings. Bed linens and other household linens were among the categories of products most frequently mentioned in this response.[1]

The table linen industry produces tablecloths, placemats, napkins, doilies, dish towels and similar items. Generally tablecloths and placemats are sold in sets with matching napkins although such firms may sell napkins alone in open stock.[2] Linen production is basically a "cut and sew" operation where fabric is purchased from mills as finished goods; the goods are cut to size and shape and hemmed; the finished product is then packaged and distributed to retail outlets.[3] A segment of the industry also purchases unfinished piece goods from the mill; the goods are styled, dyed and finished and "cut and sewn" by the producer who then packages and distributes them to the retail outlets as finished products.[4]

Bed and bath linens are produced by manufacturers who frequently make other products as well. Manufacturers of such products were not specifically represented in this proceeding except in an indirect fashion through the American Textile Manufacturers Institute.

The Linen Trade Association (hereinafter LTA) states that its members who are producers of table linens currently provide care instructions with tablecloths on printed labels inserted just below the surface of the transparent plastic bag containers in which the products are sold.[5] Examples of the instructions provided for tablecloths so labeled are: "Machine wash in warm water. Do not bleach, tumble dry; remove immediately from dryer

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1 Staff Report 11.

2 Tr. 1154, Linen Trade Association (hereinafter LTA).

3 R. 17 at 289, LTA.

4 Id.

5 R. 17 at 291, LTA.

at end of cycle. Smooth out by hand and fold neatly;" "Use warm water and mild soap. Do not use bleach. Tumble dry at warm setting. Remove immediately at end of cycle. For hard to remove stains, pre-spot with liquid detergent and launder in normal fashion."[6] It has not been the practice of the industry to provide care instructions of any sort with small pieces such as furniture scarves, placemats, cocktail napkins and regular napkins. Some napkins are now sold, however, with gummed care labels which can be easily removed by the consumer after purchase.[7] Fieldcrest Mills, which produces bed and bath linens, provides care labels for each of its domestic products, although the format of the labeling and the character of the instructions vary from product to product.[8] Approximately 50% of the household linens (towels, sheets, pillow cases, bedspreads, comforters blankets, quilts, mattress pads etc.) sold by Montgomery Ward have permanent care labels affixed. Currently, the company is working with suppliers of these items in order to provide permanent care labels for all such products.[9] With respect to bedspreads, the Carpet and Rug Institute (hereinafter CRI), representing a group of manufacturers who produce tufted bedspreads, states that, as a general practice, manufacturers of these products include written care instructions in the promotional materials packaged with the product but do not attach permanent care labels.[10] In contrast to these representations, however, some consumers and consumer representatives on the record disagree, stating that care instructions are either totally lacking,[11] present only half the time[12] or are unclear,[13] incorrect[14] or incomplete.[15]

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6 Tr. 1135-1136, LTA; HX. 8, 74-82A, LTA.

7 Tr. 1154, LTA.

8 R. 17 at 769, Fieldcrest Mills, Inc.

9 R. 20 at 599-600, Montgomery Ward & Company.

10 R. 16 at 103, Carpet and Rug Institute (hereinafter CRI); Tr. 2033, CRI; R. 25 at 425, CRI.

11 R. 18 at 706, 709, 984, 2387, consumers; R. 20 at 40, K. Gragg, Dept. of Consumer Affairs, Ventura County, Cal.; R. 20 at 51, textiles instructor; R. 20 at 442, Dept. of Commerce.

12 R. 18 at 586, consumer.

13 R. 18 at 645, consumer.

14 R. 18 at 628, 652, consumers; Tr. 1358, E. Shapiro, Dept. of Consumer Affairs, Detroit.

15 R. 18 at 615, 876, consumers.

On the basis of the record information, therefore, it appears that, while the linen industry is supplying some care instructions for tablecloths as well as bed and bath linens, they are not being provided on a consistent basis. Further, they are provided in a variety of forms and may not be sufficient in terms of clarity, accuracy and completeness. Few are permanently attached to the product; most are supplied separately.

b. Definition

In the proposed revised rule, linens are included in the definition of "finished household furnishings" but are not further defined. As previously stated, this definition has been deleted from the recommended final Rule and all product categories included within it have been defined individually. Linens are no exception. Further, the record indicates that the term "linen" is misleading and should be more clearly defined.[16] There are various connotations associated with the term which does not have a specific meaning for consumers.[17] As there appears to be a need for a precise definition of the term, staff recommends the following in accordance with the comments received to be included in the § 423.1 of the final Rule:

> 'Linens' are bed coverings (for example, bed pads, mattress covers, sheets, pillow cases, comforters, blankets or bedspreads) and bath, kitchen and table accessories (for example, towels, shower curtains, doilies, tablecloths, placemats or napkins) whose manufacture is complete and which are customarily used as interior appointments.

c. Coverage

It is the position of the industry, through the Linen Trade Association, that the care traits of table linens are not sufficiently different to justify mandatory care instructions. Table linens are typically washed, using standard washing procedures; no dry cleaning is involved. Further, such linens are said to be made from a limited range of fabrics, primarily cotton, "linen" and synthetics all of which are laundered in much the same way.[18] It is common knowledge, however, that not all cotton and linen fabrics can be cared for in the same manner. The record contains numerous references to the fact that the care characteristics of natural fibers vary as do the care characteristics of many

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16 R. 17 at 1148, ATMI.

17 R. 20 at 426, Asst. Prof. of Textiles, LSU; Tr. 1504-1506, Janis Stone, Textile Professor.

18 R. 17 at 292, LTA; Tr. 1135-1136, LTA; R. 25 at 452, LTA.

synthetics. For example, witness Geiken, a textiles instructor, describes a tablecloth with a fiber content of 50% rayon and 50% polyester, expressing doubt whether a cloth of this particular fiber blend should be washed or dry cleaned.[19] In further support of its position, LTA argues that only two-three percent of the goods produced by its members cannot be safely machine washed in hot water and machine dried on a hot setting.[20] While staff questions this small percentage, it nevertheless demonstrates that consumers are indeed not free to care for all linens in any manner without damage. The consumer risks damaging those linens having different care characteristics, no matter how small, in the absence of care instructions available at the point of care. The industry, however, does not question the fact that table linens do require regular care. LTA acknowledges that tablecloths are usually laundered after each use.[21]

With respect to bed and bath linens, e.g., sheets, bed pads, pillow cases and towels, Fieldcrest Mills also argues that, with certain exceptions, such products can, "be laundered under normal conditions in household laundering equipment."[22] Only "special instructions," such as "no bleach" or "wash colors separately," are needed.[23] Some consumers also believe that only warnings are needed for such items.[24]

Others, however, state that care for such items is not identical, as alleged, and that not all such items can be treated in any manner.[25] ATMI, nevertheless, states that laundering procedures have become "a tradition" for bed linens in this country.[26] The phrases "normal conditions" and traditional "laundering procedures" were not defined.

While record information on the care traits of linens is not extensive, the information available indicates that many, although not all, table linens and bed linens do have similar care

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19 Tr. 1680, K. Geiken.

20 Tr. 1158, LTA.

21 Tr. 1145-1146, LTA; R. 17 at 292, LTA.

22 R. 17 at 777, Fieldcrest Mills, Inc.

23 R. 17 at 771, Fieldcrest Mills, Inc.

24 R. 20 at 323, Extension Advisor, CES, Illinois; R. 20 at 133, Extension Agent, CES, New York.

25 R. 18 at 158, consumer; R. 20 at 278, Extension Agent, CES, Wisconsin.

26 R. 17 at 1147, ATMI.

characteristics. Most of these items apparently can be washed safely in some manner. Examples of care instructions for table linens which appear in the record, however, call for many variations in the laundering procedure such as warm water as opposed to hot, use of a mild detergent, caution against the use of bleach as well as a warm drying temperature and a warning to remove promptly from the dryer.[27] Staff maintains that the language of these instructions calls for substantial variations and caution in the actual washing procedure when compared with current definitions of "machine wash" as noted in Chapter V.E. On the assumption that instructions such as those contained in the examples are the types of care instructions used on linens, staff concludes that care procedures for all linens are not "standard" or identical. Such instructions indicate tnat a number of cautions must be observed by the consumer in caring for these products.

A minority of consumer comments on the record oppose extension of the final Rule to cover linens, stating, along with the industry, that these items are all cared for in a "standard" manner,[28] that only items requiring "exceptional care" should be labeled[29] and that mandatory care labeling will unnecessarily increase the cost of such items.[30] The bulk of the record, however, consists of comments in support of such coverage. Some comments indicate that all linens of whatever nature should be covered.[31] A large majority, however, express a need for care labeling for specific items, such as sheets, bedspreads,

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27 HX. 8 at 74-82A, LTA.

28 R. 18 at 116, consumer.

29 R. 18 at 532, consumer.

30 R. 18 at 910, consumer.

31 R. 18 at 104, 576, 693, 830, 2411, 2502, consumers; R. 19 at 7; R. 20 at 127, Extension Agent, CES, Florida; R. 20 at 166, Extension Agent, CES, Oregon; R. 20 at 203, Extension Agent, CES, Illinois; R. 20 at 346, Extension Agent, CES, Wisconsin; R. 20 at 355, Office of Consumer Affairs, West Palm Beach, Fla.; R. 26 at 737, Margaret Dana, Consumer Consultant.

bed pads, tablecloths and towels.[32] A smaller number state that placemats should also be covered.[33] Household linens are often costly; thus, damaging such items through improper care can also be costly.[34] Since many of these items are bulky or unusually heavy, drycleaning them is expensive. In the absence of care instructions, however, many consumers are uncertain whether washing is safe and may dry clean such items unnecessarily.[35] Additionally, since some fibers may mask as others, consumers cannot always rely on general knowledge of how to treat a particular fiber. Indeed, care for articles of identical fiber content is not always the same.[36] Further, if a slight increase in cost is brought about by a labeling requirement, it will be outweighed by the potential loss of an item damaged through improper care due to the absence of care instructions. It is interesting to note that the industry does not indicate that care labeling of linens will cause such "across-the-board" price increases.

Many comments appear on the record concerning damage to bed, table and bath linens which were cared for improperly by consumers in the absence of instructions altogether or in the presence of incorrect instructions. The trim on a blanket shredded when cleaned;[37] another shrank in the process.[38] Several comments note drastic shrinkage in bed pads when washed.[39]

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32 R. 17 at 433; R. 18 at 156, 158, 159, 160, 178, 180, 195 207, 301, 352, 576, 586, 617, 639, 650, 693, 882, 889, 910, 944, 956, 1034, 2413, 2415, 2481, consumers; R.20 at 4, Extension Agent, CES; R. 20 at 6, Extension Agent, CES; R. 20 at 23, Home Economics Teacher, Iowa; R. 20 at 46, Extension Agent, CES, Alabama; R. 20 at 132, Extension Agent, CES, North Dakota; R. 20 at 143, Extension Specialist CES, Michigan; R. 20 at 155, Extension Specialist, CES, Illinois; R. 20 at 223, Extension Agent, CES, Florida; R. 20 at 234, Extension Agent, CES, Ohio; R. 20 at 313, Extension Agent, CES, Arizona; R. 20 at 349, Textile & Clothing Professor, Iowa State Univ.; R. 20 at 452.

33 R. 18 at 586, 720, consumers.

34 Tr. 1504, Janis Stone; R. 18 at 159, consumer.

35 R. 18 at 586, consumer.

36 Tr. 1659-1660, K. Geiken.

37 R. 18 at 652, consumer.

38 R. 18 at 984, consumer.

39 R. 18 at 386, 628, consumers.

Consumers note shrinkage of bed sheets[40] as well as fading in the washing process.[41] Complaints about bedspreads are numerous. Some note that dyes in bedspreads run or that the colors fade when cleaned.[42] One bedspread melted in the dryer while the backing on another melted for the same reason.[43] A bedspread shrank and the pile melted when dried.[44] The record even contains a damage complaint concerning bath towels decorated with a trim which shrank when the towels were washed.[45] The record contains further notations of tablecloths which have been damaged in cleaning.[46]

Contrary to some industry arguments, the record clearly shows that household linens including sheets, bed pads, bedspreads, towels, tablecloths, placemats and napkins cannot all be cared for in a "standard manner." Indeed the record shows that many such items are damaged by consumers who attempt such "standard" methods of care. Many linens are costly and damage to them clearly causes economic harm to consumers. In light of the fact that the linen industry is now supplying some care information on a voluntary basis (however inconsistently or inadequately), it is apparent that linen manufacturers consider it of some importance. Staff believes, however, that the quality of the information, as well as the form in which it is supplied, must be improved. As the industry has shown no inclination to foster such improvement, staff recommends on the basis of substantial evidence in the record that "linens," as defined, be included within the coverage of the Rule.

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40 R. 18 at 615, 913, consumers.

41 Tr. 1347, 1358, E. Shapiro, Office of Consumer Affairs, Detroit.

42 R. 20 at 151; R. 18 at 2387, consumers.

43 R. 18 at 757; R. 20 at 442, consumers; R. 19 at 8, Chairman, Textiles & Clothing Section, A.H.E.A.

44 R. 18 at 64, consumer; R. 18 at 706, consumer: ("purchased a queensize spread - instructions say 100% polyester-fiber filled. No care label so machine washed-spread shrank to double bed size. Manufacturer would not replace - said entire spread not washable."); R. 20 at 40, K. Gragg, Office of Consumer Affairs, Ventura County, California.

45 R. 18 at 650, consumer.

46 R. 20 at 338-339, Office of Consumer Affairs, Atlanta, Ga.

d. Transmittal of Care Instructions

Because of the nature of the record information with regard to the form in which care instructions should be transmitted, staff will address the issue of transmittal separately with regard to a) table linens, b) tufted bed spreads and c) all other linens within the definition.

With respect to table linens, the major objection of industry to a provision requiring care instructions for such items is the requirement that such instructions be permanently attached. First, LTA argues that all linens which measure less than (1) square yard in area should be automatically exempted, without request from the permanency requirement of the Rule, listing four reasons as follows: 1) cocktail napkins are too small to hold a label of any sort; 2) dinner napkins and placemats will be rendered unsightly by care labels; 3) producing and attaching permanent labels for such items would cause an inequitable economic burden for the producer; 4) permanent labels will impair the appearance of such linens.[47]

Second, LTA maintains that linens constructed of diaphanous materials (laces, sheers and embroideries), as well as reversible tablecloths should be automatically exempted from the permanency requirement on the basis that labels will impair the appearance of such items and, in attempts to remove the labels, consumers may permanently damage the products.[48]

While staff acknowledges the validity of these industry requests in certain specified cases, it cannot recommend, as a matter of policy, that manufacturers be delegated the entire authority for determining whether permanent labels are required. As previously stated in this report and as noted in the Statement of Basis and Purpose of the current Rule, the principle of permanency is basic to its implementation.

> It has been suggested that any deception or unfairness which exists as a result of lack of care labeling instructions would be cured by simply making such information available to the purchaser rather than requiring that this information be "permanently attached" to the garment. Even if the care instructions are properly disclosed

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47 R. 17 at 293-295, LTA.

48 R. 17 at 293-295; Tr. 1138-1142; R. 25 at 452, LTA.

> on a tag at the time of sale, such tags are soon destroyed or misplaced. In order for information separately furnished at the point of sale to be available at the point where care is attempted, it must be saved, stored, located and then matched with the product it accompanied. Successful implementation of this approach requires an elaborate filing system that most purchasers are unable to maintain. If furnished as part of the package or container in which the product is sold, the information may be inadvertently thrown away or destroyed by the purchaser upon opening the container.[49]

Only in cases where, "the utility and appearance of [an article] may not survive a permanently attached label," does the Commission permit an exception to be made.

> It is realized, however, that the utility and appearance of some articles may not survive a permanently attached label. In this connection, the physical characteristics of the article, its shape, size, fragility and sheerness, are relevant. It may be physically impossible to attach a permanent label on a very small or oddly shaped article. Other products might be too fragile to support a label of any kind. The difficulty of attaching a permanent label to such products outweighs any additional benefit the user would derive by reason of permanently attached information. In addition, a permanently attached label readily accessible to the user might so impair the appearance of an article so as to significantly diminish its desirability. There is little purpose in insisting on a permanently attached label if, as a result of the attachment, a potential purchaser would either refuse to buy the article or would remove the label, perhaps damaging the article in the process.[50]

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49 Statement 26-27.

50 Statement 27.

Thus, the current Rule provides an opportunity for exemption on this basis upon request by the manufacturer.[51] (See Chapter IV. I.). Staff submits that these principles as they apply to apparel, apply equally to linens and that the industry has provided no reason to believe otherwise.

First, given the extremely low cost of permanent labels[52] and the relatively high cost of many linen articles, staff seriously questions the argument that providing permanent labels for such items would prove to be an economic hardship to producers. Second, while staff acknowledges that many items of one square yard or less may not survive a permanent label, the record contains no evidence that all such items would so qualify. Further, staff's experiences in handling exemption requests on the basis of "total reversibility" reveals that manufacturers have a tendency to interpret the term far more liberally, in staff's opinion, than is justified under the circumstances. Similarly, staff hesitates to allow manufacturers to determine what is sufficiently diaphanous or lacey to qualify for an exemption and what is not. Clearly, many such items are hemmed or have borders to which care labels of approximately one square inch can be attached. It is staff's opinion that permitting the regulated to substitute their individual judgments for the regulator on such a basic issue is unwise and would eliminate any chance for uniformity of labeling in this product area. As previously stated, Section 423.8(a) of the proposed revised rule provides an opportunity for the industry to request exemptions for all such items on the basis of the fact that a permanent label would indeed substantially impair their utility or appearance. It is through this paragraph that staff believes industry can successfully obtain relief without creating a large loophole in the permanency requirement of the Rule, as it suggests. Finally, Sears, Roebuck & Company, a large retailer, heartily advocates permanent labels for all linens, including table linens, sheets, pillow cases, bedspreads, mattress covers and towels.[53] Others note that removable tags are easily lost or forgotten by consumers.[54] Witness Kennedy suggests that detachable labels can be applied to items such as sheer tablecloths so that consumers who wish to remove the labels can do so easily without damaging the product.[55] Indeed, a permanent but detachable

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51 Paragraph (c)(1).

52 Tr. 2852-2853, Packaging Systems Corporation.

53 R. 17 at 516, Sears, Roebuck & Co.

54 R. 20 at 235, Asst. Attorney General, Illinois.

55 Tr. 2215, E. Kennedy.

label is technologically possible to provide.[56] While detachable labels constitute a viable option for producers in this area, the record does not contain sufficient evidence for requiring their use. On the basis of the record, therefore, including the Commission's rationale for requiring permanent labels contained in the Statement of Basis and Purpose of the current rule, staff concludes that permanent labels for all table linens should be required in the final Rule, subject to exemptions on the merits of each individual case upon request by the manufacturer of the product at issue.

With respect to tufted bedspreads, the Carpet and Rug Institute (hereinafter CRI), representing in part tufted bedspread manufacturers, maintains that permanent labels on such products will be unsightly and will present difficulties for manufacturers in attachment, stating that there is no location on such items where labels could be placed without interfering with their appearance.[57] Staff argues that the construction of bedspreads and the manner in which they are typically placed on a bed (for example, the edge of a bedspread may be folded under the pillow, or otherwise be totally out of sight) provides any number of points for attachment of care labels where such labels will not be obvious when the bedspread is in use. In testimony, CRI admits that, in fact, this can be done.[58] Since staff cannot discern any other reasons why permanent labels would be inappropriate to tufted bedspreads, staff concludes that permanent labels are appropriate and recommends they be required in the final Rule.

With regard to bed linens other than tufted bedspreads (sheets, pillow cases, bed pads, blankets and comforters), no member of the industry advocates that permanent labels would be unsuitable for such items. On the other hand, the record contains many comments from consumers and consumer representatives indicating that transmission of care instructions by permanent labels is the only sensible course.[59] Staff, therefore concludes that permanent labels are also appropriate for these items for reasons stated previously and recommends they be required in the final Rule.

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56 Tr. 2840, R. Schwager, Packaging Systems Corp.

57 Tr. 2005-2006, CRI.

58 Tr. 2037-2038, CRI.

59 R. 18 at 159, 586, 918, consumers; R. 20 at 278, Extension Agent, CES, Wisconsin; R. 23 at 737, M. Dana, consumer consultant; Tr. 1604, J. Stone; Tr. 1659, K. Geiken; Tr. 1909-10, K. Stanton.

e. Content of Care Instructions

Previously cited evidence demonstrates that care instructions for linens, as defined, are similar if not identical, to those prescribed for many items of wearing apparel as well as slipcovers and draperies in some circumstances. It is staff's opinion, therefore, that care instructions for linens should be governed by the same criteria as those recommended for the "wearing apparel" group discussed in Chapter IV.C.4. Any additional instructions which are uniquely appropriate for linens are covered by the "general rule" and the warning provision. Therefore, staff recommends that the standards required by the Rule for care instructions for linens be those recommended for the wearing apparel group in Section 423.2 of the final Rule. Staff further recommends, therefore, that linens be included in that Section, along with apparel, slipcovers and draperies.

G. Intermediate Components; Retail Components

1. Preface

"Intermediate components" under the proposed revised rule are textile component parts of all finished products proposed to be included within the coverage of the final Rule. They are normally provided to the finished product manufacturer by various textile suppliers for use in manufacturing a finished product. As such, the care traits of each component affect to varying degrees the care traits of the finished product and, thus, its care instructions. "Retail components" are the same products sold at retail directly to the ultimate consumer principally for use in home sewing or other activities resulting in a finished product covered by the Rule. Except for piece goods, the existing Rule does not cover either retail or intermediate components.[1] The staff report proposes, however, that all intermediate components, plus one retail component (yarn) be added to to the Rule's coverage in sections 423.4 and 423.2 respectively.[2] The record developed since the report also contains some support for the inclusion of all other retail components as well. As the issues of piece goods and yarn sold as retail components have already been considered, this Chapter of the report is devoted to all intermediate components, including piece goods and yarn, and all retail components, except those two products.

Specifically, section 423.4 of the proposed revised rule requires that manufacturers of textile intermediate components to be used by finished product manufacturers covered by the Rule supply separate care instructions for the component to such manufacturers as if it were a finished product. While the proposal does not require manufacturers to anticipate the end-use of the component in devising such instructions, its primary purpose is to ensure that finished product manufacturers have enough information at their disposal to compose correct care instructions for their finished products, as required.

Because this is the only provision of the proposed revised rule which does not directly involve the ultimate consumer, the record is somewhat ragged in this area. The Presiding Officer notes this condition in his report.[3] Industry was hesitant to

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1 See Presiding Officer's Report 56; Statement, Chapter VI.A.

2 Staff Report 18-20; proposed revised rule, § 423.4.

3 Presiding Officer's Report 56-65.

provide constructive comment on proposed regulations affecting their own members and consumers showed a general lack of knowledge of the state of the "textile" industry vis-a-vis the degree of care information provided by one member of the industry to another. Staff will proceed with a general discussion of the products made by the component industry before considering whether such products should be covered by the Rule and, if so, what the evidence reveals about the nature of such coverage. It should be noted at the outset that the Presiding Officer recommends deletion of the entire component requirement.[4]

2. The Products

Because of the number and variety of components used in the several finished products covered by the proposed Rule, only a representative few will be described here. First, "[t]rim is a component part of a garment and frequently may be as narrow as 1/4 inch . . . . Poor performance of a trim on wearing apparel and household items can limit the serviceability of an item," (emphasis added).[5] Thus, it cannot be excluded from a definition of components.[6] Fabrics of various sorts and types are used as components in making apparel and other products.[7] Zippers would also qualify under the Rule's definition.[8] While yarn used by a fabric manufacturer in making fabric would not be included (since fabric is itself a component of a finished product), yarn used to make carpets and rugs, for example, would be so included,[9] as would such items as elastic and buttons.[10] Tapes and braids of varying lengths, widths and fiber contents are used in

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4 Id. 64.

5 R. 17 at 1078, International Fabricare Institute.

6 R. 20 at 236, Division of Consumer Protection, State of Illinois; Tr. 2506-07, K. Gragg, Dept. of Consumer Affairs, Ventura County, California.

7 R. 17 at 430, American Textile Manufacturers Institute; Tr. 1946, 1961, ATMI; Tr. 2171-72, E. Kennedy, small retailer.

8 Tr. 2060, Slide Fasteners Association.

9 Tr. 2103-2106, American Yarn Spinners Association.

10 Tr. 2506-07, K. Gragg.

constructing apparel.[11] Fusible and non-fusible interlinings (fabrics inserted between the outer cloth and lining of a garment for stiffening, directional stability or resilience, or extra bulk) are used for a wide range of purposes in garments. Fusible interlinings can fail in performance after cleaning for various reasons.[12] Comparatively speaking, the record contains the most information on thread and zippers, which are frequently used in many products proposed to be covered by the Rule, including apparel, draperies, leather goods, upholstery, slipcovers and carpets (thread only).[13] For example, the thread industry produces numerous threads of different physical properties and care traits depending upon how they are made and what finishes and dyes are applied.[14] Thread can be made of several fibers (polyester, nylon, cotton, or silk), can be of several types (spun, continuous filament and core), can be finished by different methods (singed or mercerized), or in different types of finishes (glace or sewing). Thread can also be dyed with varying dyes

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11 R. 17 at 630-632, The Thread Institute. Examples are 100% rayon seam binding, 100% nylon lace seam binding, 100% nylon bias seam tape, 100% cotton bias tape, 100% cotton and 100% acetate taffeta hem facing, 100% nylon wide lace, 100% cotton twill tape, 100% acetate satin blanket binding, fold-over, loop and middy braids, cotton piping, shell braid, and soutache braid of widths from 1/8 inch to 3 inches.

12 R. 17 at 671-674, The Thread Institute. Non-fusible interlinings can be divided into wovens and non-wovens. Fusible interlinings (those which are not sewn-in to the garment but are "fused" to the garment by means of a press and an adhesive agent) are sold as woven, non-woven, or knitted.

13 Tr. 2171-72, E. Kennedy; Tr. 2506-07, K. Gragg; Tr. 2059, SFA; R. 17 at 632A, Wonderthread.

14 R. 17 at 537-554, Robinson Thread Co.; R. 17 at 565-599, Pamphlet by American Thread Co.; R. 17 at 644-647, Coats and Clark, Inc. advertisement.

(commercial, wash fast or vat)[15] and is sold in varying sizes and packaged in varying ways (cones, spools, or straight tubes).[16]

The thread industry admits that the care traits of thread differ widely because of the differing production processes and fiber contents mentioned above. In fact, American Thread, Inc. publishes charts which outline substantial differences in heat resistance, colorfastness, crock fastness, and resistance to bleach, organic solvents and acids as well as general durability to repeated washing and drying with normal household detergents and chlorine bleach.[17] Further, Coats and Clark regularly warns apparel manufacturers against "contrast stitching" (use of thread of a different color than the base fabric in manufacturing a garment) with non-colorfast threads.[18] The thread industry in general apparently makes some effort to inform its customers by means such as brochures, seminars, technical bulletins and sales personnel specializing in thread usage, of the characteristics of various threads and the purpose for which they are designed.[19] Such disclosures often include a description of the care traits of thread such as chemical and shrinkage resistance and colorfastness; specific reference is also made to the care traits of threads of particular fiber contents and types and processed with particular dyes.[20] Some of the documents in the record (addressed to sales personnel only) even recommend

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15 R. 17 at 680-695, Coats and Clark, Inc.; R. 17 at 735-36, 743-749, Threads, Inc. Research Laboratory Technical Service Report. Of the finishes, singeing merely singes off protruding fiber ends; mercerization consists of passing cotton thread through a caustic soda bath causing cotton fibers to swell and become cylindrical and serving to increase strength, luster and dye affinity; glace consists of passing thread through a starch solution and over rotating brushes and serves to smooth and stiffen thread to prevent tangling; application of sewing finishes or lubricants merely reduces friction and increases sewability. Of the dyes, commercial dyes are not warranted against fading, wash fast dyes will withstand moderately hot water and many soaps, and vat dyes resist fading otherwise caused by strong agents such as bleach or heat.

16 R. 17 at 739, Threads, Inc.

17 R. 17 at 600-607, American Thread.

18 R. 17 at 642, Coats and Clark, Inc.

19 R. 17 at 535-36, Thread Institute; R. 17 at 660-679, Coats and Clark, Inc.

20 R. 17 at 701, 707, 709, 713, 719, Coats and Clark, Inc.

specific care instructions for items containing the particular thread at issue, such as "Hand or Machine Wash Only. Do Not Use Chlorine Bleach."[21] Others discuss the effect of bleaching agents on certain threads of certain colors.[22] The record contains no evidence, however, of the extent to which these bulletins are actually distributed to customers. Further, many of these documents make clear that the thread manufacturer has no intention of assuming any responsibility in case of damage:

> Since the condition of use, washing, cleansing, etc. are beyond our control, the users of our threads should determine if the character of the dye selected is suitable for the purpose for which it is intended. We cannot assume the responsibility for the consequential damages. It is the responsibility of the purchaser to appraise the thread and assure himself that it is the proper character of dye for the proposed application.[23]

It is clear, therefore, that the real burden of determining the precise care traits of thread to be used as a component still falls on the manufacturer of the finished product.

The record also contains some evidence of the activities of other component industry members in this area. According to the Slide Fasteners Association,[24] zipper manufacturers provide technical services, seminars, brochures and other customer-oriented guidance to aid customers in the proper selection of zippers.[25] These services are especially valuable to the small finished product manufacturer who often "buys blind" and has little control over what is received, in contrast to the large manufacturer who determines the exact specifications of the zipper and orders

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21 R. 17 at 727-28, Threads, Inc.

22 R. 17 at 732-732A, Threads, Inc.

23 R. 17 at 726, 729-731, Threads, Inc.

24 Tr. 2059, SFA. The Association represents the domestic zipper industry and is composed of fifteen member companies, ten of which are manufacturers of zippers or parts thereof and five of which are suppliers.

25 Tr. 2070, 2091, SFA.

against these parameters.[26] Talon, Inc., a zipper manufacturer, provides information regarding shrinkage of zippers and proper pressing techniques (to prevent melting). There is no evidence in the record, however, as to whether zipper manufacturers provide information regarding colorfastness of zipper tapes, for example.[27] While some component suppliers may not provide care information on a regular basis, they argue that finished product manufacturers need only request technical aid from their suppliers to obtain it.[28] The Carpet and Rug Institute confirms the fact that carpet fiber producers provide care information to various groups at the consumer level.[29] The same is said to be true for fabric producers:

> ATMI contends that it is good business to provide clear care instructions to our customers whereby the utility of the product will not be impaired and complaints will be minimized. Information is made available now . . . to apparel cutters and . . . retail outlets. . . .[30]
>
> Care instructions are currently available from the textile manufacturers either in written form or upon request.[31]

Some retailing associations state that they have no trouble in obtaining care instructions from suppliers although their dealings with suppliers are few in number.[32] The lone industry comment which indicates that care instructions for components are not available to finished product manufacturers is contained in the personal submission of Edward Bilezikian, who is employed as Manager, Product Development, Londontown Manufacturing Company:

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26 Tr. 2080-81, SFA.

27 R. 17 at 617-18, Talon.

28 R. 17 at 418, Ludlow Corp.

29 R. 16 at 76, Carpet and Rug Institute.

30 R. 17 at 427, ATMI.

31 R. 17 at 430, ATMI; Tr. 1968, ATMI.

32 R. 16 at 152, National Retail Merchants Association; Tr. 1847, 1876, NRMA; Tr. 1764-65, National Home Furnishings Association.

"Most mills have well documented test results, but they are usually reluctant to share this information."[33] Mr. Bilezikian was scheduled to testify in the hearings but, for unknown reasons, declined to do so immediately prior to the hearing.

Staff concludes from this sparse record that, while the the care traits of components of finished products covered by the Rule differ greatly, the textile industry has made some effort to disclose these differences to their customers. The record contains no evidence as to whether these disclosures have, in fact, been made except for the existence of documents reflecting instructions to sales personnel. While few finished product manufacturers testified on this point, those that did reaffirmed the general availability of some care information from suppliers upon request. The Presiding Officer concludes, therefore, and staff must agree, that there is little record proof (aside from Mr. Bilezikian's statement) that care information has been deceptively or unfairly withheld.[34] Record evidence does show, however, that the sufficiency of the care information provided varies widely and in some cases is quite general in nature. Further, because of textile suppliers' unwillingness to accept responsibility for consequent damage caused by the reaction of a component to a care procedure, the principal burden of devising accurate instructions still rests with the finished product manufacturer. In many cases, the finished product manufacturer is merely instructed to ensure component compatibility in a particular area of care. This may or may not be adequate depending upon the facilities available to that manufacturer.

Taking this current situation under consideration, staff must determine whether, despite the claimed availability of instructions, consumer injury due directly to a component occurs because of improper care and, if so, who must bear the responsibility for such injury. An analysis of the record reveals a substantial number of instances where a finished product has been damaged (often irreversibly) because of the incompatibility of one

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33 R. 23 at 547, E. Bilezikian.

34 Presiding Officer's Report 64.

particular component.[35] The Presiding Officer agrees.[36] The California Fabricare Institute blames trim for many of these occurrences: "I think we can very definitely state that the majority of all problem complaints involve a trimming material rather than the basic fabric of the garment itself."[37] The record contains numerous examples of damage in washing and drycleaning because of trim colors bleeding onto the main article,[38] trim shrinkage causing puckering or tearing of seams,[39] and general deterioration or dissolution of trim because of an adverse reaction to the washing process or a drycleaning solvent.[40] Linings which are incompatible with the main fabric of a garment are also a frequent cause of injury.

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35 Tr. 2220, E. Kennedy; R. 17 at 421, American Home Appliance Association; R. 18 at 592, consumer; R. 20 at 48, consumer; R. 20 at 489, Attorney General, State of Michigan; HX 4 at 63, B. Feather, Clothing and Textiles Specialist, University of Missouri; R. 19 at 8, Textile Analysis Service, University of Alberta (backing of bedspread); R. 20 at 18, consumer (belt backing); Tr. 1402, IFI; HX 10 at 134 (fabric v. zipper tape).

36 Presiding Officer's Report 57.

37 Tr. 2424, California Fabricare Institute.

38 R. 17 at 113, 264, drycleaners; R. 18 at 238-291, class questionnaire at University of Wisconsin - Stout; R. 18 at 593, 645, consumers; R. 20 at 297, Dept. of Textiles, University of Hawaii; Tr. 857, Neighborhood Cleaners Association; Tr. 1662, K. Geiken, School of Home Economics, University of Wisconsin.

39 R. 17 at 113, drycleaner; R. 18 at 115, 171, 706, consumers; Tr. 1899, B. Smith, drycleaner; R. 18 at 302, home economist; Tr. 2584, W. Morck, Instructor, Family and Consumer Studies (garment had to be ripped apart and repaired at considerable cost); R. 18 at 769, consumer (elastic).

40 Tr. 2288, M. Brinson, Associate Professor, Buffalo State College; R. 18 at 238-291, class questionnaire, University of Wisconsin - Stout; R. 18 at 349, 593, consumer; R. 20 at 316, Office of Consumer Affairs, Atlanta, Georgia; R. 20 at 376, J. McCullough, Eastern Illinois University; Tr. 856, 888, Neighborhood Cleaners Association (beads, sequins and trim); Tr. 2359-60, F. Reid, Dept. of Consumer Affairs, Orange County, California; Tr. 2494-2496, 2511-12, K. Gragg ($300.00 white leather jacket with fur collar; elastic in wasteband of pantsuit). Cleaner refused liability because "they are not responsible for trim items. Elastic is considered trim."

> I have often noted that garments made of washable fabrics are lined with fabrics that cannot be washed. . . . It is distressing to find [an] outfit with pants, skirt or dress that can be safely laundered at home . . . but it is necessary to send the jacket or coat to the drycleaners because of the lining or interfacing used . . . .[41]

As with trim, linings may often shrink excessively,[42] bleed,[43] or disintegrate[44] as a result of a recommended care procedure. The same is true for fusible interfacings or bonded fabrics which often separate from the garment after care.[45] A drycleaner states that there is no way to anticipate this occurrence.[46] Zippers and thread are also culprits in many cases. The Slide Fasteners Association summarizes zipper problems with which it is acquainted, including differential shrinkage, color bleeding, fading of color, heat damage and mechanical damage.[47] The record supports this

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41 R. 20 at 428-29, Extension Agent, CES, Georgia. See R. 20 at 376, J. McCullough, Eastern Illinois University; R. 18 at 115, consumer; R. 18 at 302, home economist.

42 R. 18 at 971, 184, 345, 423, 549, 870, consumers ($95.00 jacket ruined in latter case); R. 18 at 422, (washable jumper with lining; lining shrank such that article became unusable; retailer refused redress); R. 18 at 386, consumer (sibonne lining); R. 20 at 116, Consumer Protection Dept., Charleston, West Virginia; R. 20 at 365, Assistant Professor, Whittier College.

43 R. 20 at 151, Seattle Pacific College.

44 R. 18 at 115, consumer (unserviceable); R. 18 at 444, consumer; R. 18 at 450, consumer (melted with hot iron); R. 18 at 732, retailer, home economist. "We have had things returned merely because the lining is ruined."

45 R. 18 at 596, consumer; R. 20 at 362, Extension Specialist, CES, Oregon; Tr. 889-90, Neighborhood Cleaners Association.

46 Tr. 1899, B. Smith.

47 R. 16 at 34-5, SFA.

statement. Melting,[48] shrinkage of zipper tapes[49] or other damage[50] may result from inappropriately prescribed care. Fabric and thread holding the fabric together must be compatible; otherwise, damage such as bleeding of thread color over the fabric,[51] differential shrinkage causing severe puckering or pulling of seams,[52] fading of thread color[53] and melting[54] can occur. Buttons are a frequent cause of washing or drycleaning damage as the cleaning process employed can cause them to melt or dissolve,[55] bleed or fade onto the main body of the item[56]

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48 R. 18 at 129, 171, 386, 450, 593, 642, 817-18, 830, 879, consumers; R. 20 at 435, the Mississippi survey.

49 R. 18 at 238-291, class questionnaire, University of Wisconsin - Stout; R. 18 at 302, home economist; R. 18 at 386, consumer; R. 18 at 434, 436, 447, 462, 556, 766, 817-18, 821, consumers; R. 20 at 163, Michigan City Area Vocational Schools.

50 R. 20 at 48, consumer; R. 20 at 294, consumer; R. 20 at 316, Office of Consumer Protection, Atlanta, Georgia; R. 20 at 365, Assistant Professor, Whittier College; Tr. 2068, SFA. Perchlorethylene in drycleaning may remove most of the lubricant zippers require. If no detergent or softener is added, many zippers will have to be rehabilitated after drycleaning.

51 R. 17 at 106, drycleaner; R. 18 at 238-291, class questionnaire, University of Wisconsin - Stout; R. 18 at 293, consumer; Tr. 2494-96, K. Gragg (discoloring of white stitching).

52 R. 18 at 141, 143, 434, 436, 652, consumers; R. 20 at 125, CES, University of Missouri; R. 20 at 365, Asst. Professor, Whittier College; R. 20 at 435, the Mississippi survey.

53 R. 18 at 186, consumer.

54 R. 18 at 592, consumer.

55 R. 18 at 238-291, class questionnaire, University of Wisconsin - Stout; R. 18 at 593, 652, consumers.

56 R. 20 at 47, CES, Coosa County, Alabama; R. 20 at 365; Assistant Professor, Whittier College; Tr. 1401-02, IFI; HX 10 at 133. Buttons on a polyester jacket containing a label stating "Dry Clean Only," bled over the jacket when drycleaned. "Drycleaning has no adverse effect on the

(Continued)

or otherwise deteriorate.[57] Examination of the evidence shows that failure of a component of a finished product in a care process has occurred with and without care instructions for the finished product and, in the majority of instances, has caused serious impairment not only to the component itself but to the finished article of which it is a part. Staff concludes, therefore, that the record indicates by substantial evidence that consumer injury has frequently occurred because of adverse reactions of components to care given a finished product.

3. The Remedy; Intermediate Components

Pertinent to a consideration of required care information for components are the views of finished product manufacturers who would supposedly benefit from such a requirement. The record shows these views to be mixed, at best. At one end of the spectrum is the position of the upholstered furniture industry:

> [A] supplier of intermediate components to an upholstered furniture manufacturer, as a matter of practical necessity, must provide and be legally responsible for providing correct care labeling information for such components. An individual upholstered furniture manufacturer uses such a wide variety of components in the manufacture of a final product that he must rely on cleanability information provided by suppliers.[58]

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56 (Continued)

fabric. However, the buttons attached to the garment contain a surface coloring that bleeds because of the steam used in the finishing procedure . . . . Steam finishing is an accepted procedure for handling garments after drycleaning."

57 Tr. 2310-11, M. Brinson; R. 17 at 264, drycleaner.

58 R. 16 at 166, National Association of Furniture Manufacturers - Southern Furniture Manufacturers Association. Similarly, see R. 17 at 188, NAFM and Tr. 1092, NAFM.

Fieldcrest Mills agrees at least in principle citing the importance of constructing garments with compatible components.[59] The apparel manufacturing industry acknowledges the fact that component care instructions would probably benefit most apparel manufacturers. To the extent that such instructions would ease the burden of devising care instructions for the finished product, the American Apparel Manufacturers Association supports the concept.[60] The Association balks at an absolute requirement, however, and proposes that component manufacturers be required to supply care information but only on request from the finished product manufacturer.[61] AAMA's position is supported by the Council on Wage and Price Stability.[62] On the contrary, a large apparel manufacturer independently sees little benefit in such instructions:

> We doubt that we would benefit significantly from the additional general information which might be transmitted by component manufacturers under the proposed rule. Useful component performance information results from consideration of very specific and varied end products. The process of determining the relationship of component to end-product performance is an ongoing marketplace activity. The necessarily generalized labeling which would result from regulation of this activity would cost our industry far more than either we or the consumer would benefit.[63]

Component manufacturers also disagree on the importance of such information. Fabric manufacturers, represented in part by the American Textile Manufacturers Institute, acknowledge the need for information from component suppliers but only in certain circumstances where "special" fabrics are provided and not where "ordinary" components are involved (no definitions

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59 R. 17 at 770, Fieldcrest Mills, Inc.; R. 20 at 239, Statement of Fieldcrest Mills in Women's Wear Daily.

60 R. 17 at 1049, American Apparel Manufacturers Association.

61 Tr. 1724-25, AAMA.

62 R. 20 at 508, Council on Wage and Price Stability.

63 R. 17 at 383, Levi-Strauss.

were supplied).[64] While such information should flow readily between the parties in the context of an ongoing commercial relationship, the smaller manufacturer or cutter may find such information difficult to obtain. Normally, such information is known by the product manufacturer in advance of sale. The Institute does not know, however, whether changes in care traits of "ordinary" fabrics would be disclosed to the finished product manufacturer in the normal course of business.[65] Zipper manufacturers assert, as does ATMI, that finished product manufacturers customarily order zippers of certain performance specifications for a particular end use with which such manufacturers are familiar. Among such known performance specifications are the component's care traits.[66] Yarn spinners agree stating that performance characteristics of yarn (including care traits) are normally specified with great particularity.[67] The only exception is a situation where the finished product manufacturer is unfamiliar with the component sought.[68] Conceptually, the Slide Fasteners Association concedes that such information is important but states that in most cases it is being provided.[69] A manufacturer of hook and eye tapes

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64 This concept is supported by the Carpet Manufacturer's Association of the West.

65 R. 17 at 430, ATMI; Tr. 1945-46, 1961-1963, 1968, ATMI.

66 Tr. 2078-79, Slide Fasteners Association, Talon.

67 Tr. 2119-20, 2121-25, American Yarn Spinners Association. Yarn manufacturers produce against specific orders in the majority of cases. The only exception occurs where the yarn is common and known to be employed for a specific end-use such as underwear or hosiery. It is argued that a finished product manufacturer will not buy unless these performance traits are known.

68 Tr. 2080, SFA, Talon.

69 Tr. 2089, SFA, Talon.

reasserts the fact that it is the finished product manufacturer who prescribes appropriate standards of care which the supplier must meet. Therefore, there is no question that the product manufacturer already knows the care traits of the component.[70] While it is the position of some consumer representatives that finished product manufacturers need care information from their suppliers to devise appropriate care instructions for the whole product[71] and that, in the furniture industry, for example, the few huge mills dictate the terms which small product manufacturers must accept,[72] the component industries argue that: 1) the finished product manufacturer is always capable of obtaining such information on request without needless and wasteful requirements[73] and 2) the upholstery fabrics segment of the textile industry is just as diverse in terms of numbers and size as most other domestic industries and does not consist of a few huge companies as implied.[74]

While product and component manufacturers agree that care information for components is desirable, most (with the exception of the furniture manufacturing industry) state either that it is already supplied, that it is readily available on request or that product manufacturers are inherently aware of it. The record does not contain evidence of a crying need for such information by finished product manufacturers.[75] The only possible exceptions are those product manufacturers who are new to the industry and are unfamiliar with the array of components produced or those who otherwise are unable to exert sufficient economic pressure to pry such information out of their suppliers. If this is so, then the consumer injury noted above must be considered the total responsibility of most finished product manufacturers covered by the Rule. While some consumers believe that finished product manufacturers make incorrect assumptions as a result of the absence of such information[76] the apparel manufacturers deny such an idea.[77] Not

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70 R. 16 at 171, 173, Waldes-Kohinoor, Inc.

71 Tr. 942, R. Mallard, Fairfax County; Tr. 2220-21, E. Kennedy; Tr. 1627, M. Knowles, Office of Consumer Protection, State of Louisiana; Tr. 2383-84, F. Reid.

72 Tr. 1622, M. Knowles.

73 R. 25 at 3, Waldes-Kohinoor, Inc.

74 R. 25 at 347-48, ATMI. One hundred and nine firms produce upholstered furniture fabric.

75 With the exception of the furniture manufacturing industry.

76 R. 18 at 898, consumer; Tr. 2220, E. Kennedy.

77 R. 16 at 41, AAMA. This is, of course, understandable.

surprisingly, drycleaning representatives support such a requirement stating that the manufacturer needs all information available[78] but a component manufacturer responds that such information is already available without a rule,[79] a fact which staff accepts. The record contains no evidence, however, that regular care information gets to those small or otherwise uninformed manufacturers who need it. Nor does the record reveal the reason for the substantial amount of damage to finished products due to failure of a single component under prescribed conditions of care. It is clear that, in some cases, incorrect assumptions about proper care must have been made by those devising care instructions - the finished product manufacturers - or much of the damage would not have occurred. Whether these erroneous assumptions were made because of a lack of information from component suppliers cannot be determined at this time.

Component suppliers have several additional unrelated objections to section 423.4 as written. First, they maintain that care instructions for components are useless unless they are composed with their end-use in mind. In point of fact, it is argued that most component manufacturers do not know what the end-use of most components will be. For example:

> In most instances, the zipper manufacturer has no knowledge of the intended method of application of the zipper by the garment manufacturer. That is, the manufacturer has no knowledge of the specific fabrics with which the zipper will be combined, the specific colors with which the zipper will be combined, what thread will be used to sew the zipper into the garment, nor what tensions will be applied to the thread or to the fabrics at the time of joining.[80]
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> Thread manufacturers have little control over their products once they have left their premises. Despite all the available

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78 R. 17 at 95, 1077, IFI; Tr. 2434, IFI; Tr. 1298, J. Schapiro, Dixo Corp.

79 R. 25 at 3, Waldes-Kohinoor.

80 R. 16 at 34, SFA.

> marketing aids outlined above, all designed to assist the apparel manufacturer, there can be no guarantee that situations will not arise from improper thread usage. Additionally, instructions for use, care, etc. of a finished garment are in the hands of the garment manufacturer, and it is the responsibility of the manufacturer to make an appraisal of the threads available to him, selecting the best thread for the proposed application.[81]
>
> Penney believes that many manufacturers of fabric do not know how garment designers intend to use their material.[82]

Because zipper manufacturers are not aware of a component's end-use, they fear extraordinary risk of liability for consequences of end-use over which they have no control.[83] Consequently, they argue that any care instructions which are required will have to be made "ultra-conservative" as component manufacturers will assume the most restrictive end-use.[84] Some of the characteristics of end-use which would be of concern are the construction of the end-product, the care traits of its components, what threads are used, the method by which the zipper is sewn into an item, whether or not it is hidden (to prevent or conceal bleeding of zipper tape), and how the end-product is likely to be used by the consumer.[85] Further, a particular finished product manufacturer may purchase many different zippers and subject them to a variety of end-uses which cannot be known to the zipper manufacturer:[86]

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81 R. 17 at 536, The Thread Institute, Inc.

82 R. 17 at 1201, J. C. Penney.

83 Tr. 2059, SFA.

84 Tr. 2059, 2061, 2065, SFA.

85 Tr. 2059-2068, SFA.

86 Tr. 2080, 2093-94, SFA.

> Even where the general end-use is known, many dimensions unknown to the original producer can be introduced by the end-user. For example, thread bindings and backings may be added to a piece of fabric. Compatibility is the prime consideration and the end producer is in the best position to synthesize relevant information.[87]

Manufacturers of yarn for use in fabric or carpets, on the other hand, argue not that the end-use of yarn is unknown, but that the care traits of the yarn literally disappear when incorporated into the finished product because of subsequent manufacturing and finishing processes. "Yarn is consumed and loses its identity for the purpose of care labeling when it is woven, knitted or otherwise absorbed in the fabric."[88] This is especially true of yarn that is subsequently dyed or printed.[89]

Presumably because of the position taken by furniture manufacturers on the issue of coverage of intermediate components, they argue, in opposition to all components' manufacturers in the record, that their suppliers can reasonably anticipate the end-use of furniture fabric in the vast majority of cases. If not, the end-use can easily be ascertained.[90] Thus, furniture manufacturers aver that such lack of knowledge cannot be used as an excuse to avoid an otherwise necessary requirement to supply care instructions with upholstered furniture fabric. This position is specifically opposed by the Ludlow Corporation, manufacturers of jute furniture webbing, spring twine, welt cord, button tufting twines, and other interior furniture components. The corporation's argument is similar to those previously outlined, i.e., that the construction and style of furniture to be made from any particular component is not known. Since the character of the end-product must be known in order for Ludlow to prescribe pertinent care instructions, a requirement to do so would be impossible to achieve and irrelevant to the object of the Rule.[91] As outlined above, all components' manufacturers

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87 R. 20 at 508, Council on Wage and Price Stability.

88 R. 17 at 698, American Yarn Spinners Association.

89 Tr. 2103-2106, AYSA.

90 Tr. 1108-09, NAFM; see Tr. 1916, K. Stanton, Dept. of Consumer Affairs, Burlington County, New Jersey.

91 R. 17 at 418, Ludlow Corp. The corporation takes the same position for carpet components.

represented in the proceeding take this position in one form or another. This includes zipper manufacturers,[92] fabric experts,[93] and spinners of yarn for carpets and rugs.[94]

To varying degrees, staff accepts the logic of these arguments. For those components which will be attached in some way to another unknown component of a finished product (zippers, trim, fabric or thread, for example), useful and appropriate care instructions depend to a great extent upon the care traits of accompanying components, the substance of which may understandably be unknown to any particular component manufacturer. While section 423.4 of the proposed Rule only requires component manufacturers to provide care instructions for the component itself (and not as used in the end-product) and, on its face, requires no knowledge of end-use, the usefulness of such instructions will necessarily be limited because of factors, unknown to and outside the control of the components' manufacturer, which will subsequently affect the accuracy and appropriateness of instructions provided for the component alone. For those components, such as yarn, which are subjected to processes which alter their care traits, care instructions for the unaltered component alone will also have limited value for the same reasons. In both cases, the value of care instructions to the finished product manufacturer springs from the extent to which such instructions reveal the care traits of a particular component rather than information regarding actual execution of a care procedure. Staff concludes, therefore, that a rule requiring care instructions for components would be inappropriate and would neither aid finished product manufacturers to any significant degree nor serve to prevent the consumer injury previously cited. Further, such instructions have the potential of causing a finished product manufacturer to make erroneous assumptions about the care traits of a product consisting of several individual components which

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92 Tr. 2061-2067; HX 23 at 276, SFA. "For the Zipper Manufacturer, the problem with care labeling is that the needed care for best performance is determined by a combination of characteristics of the zipper and the characteristics of the garment. The zipper manufacturer does not know and cannot control the garment's characteristics." Testimony included examples of the effects of differential shrinkage on a finished product and a convincing description of how the character of the fabric in a finished product as well as the zipper affect the result of any particular care procedure.

93 R. 17 at 1201, J. C. Penney; R. 20 at 373, J. McCullough, East Illinois University.

94 R. 23 at 699-701, AYSA; Tr. 2107, AYSA.

are compatible when considered individually but incompatible when combined.95

On persistent examination, however, some component manufacturers (as well as finished product manufacturers) acknowledge the existence of care information (as opposed to instructions) about components which can be provided and which will be meaningful to finished product manufacturers without misleading them.

> The [zipper] industry believes, however, that it can generate a standard, or terminology, through the auspices of the American Society for the Testing of Materials, which will permit the giving of meaningful information concerning care and maintenance of slide fasteners incorporated into garments under a mandatory care labeling regulation.96

While care instructions may be inappropriate,97 meaningful data on care performance characteristics of zippers can be provided by zipper manufacturers,98 including the colorfastness of dye used in zipper tape,99 the drycleanability of a particular zipper with special emphasis on the effect of individual drycleaning solvents,100 and information regarding a zipper's dimensional stability for purposes of assessing its shrinkage potential.101 It is apparent that such data would be equally meaningful for other components such as trim or thread, as well.102 The Slide Fasteners Association asserts its willingness to provide such information on request.103 Similarly, yarn producers acknowledge that while some of the care

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95 See R. 17 at 1049-50, AAMA; R. 17 at 1201, J.C. Penney.

96 R. 16 at 34, SFA.

97 Tr. 2082, SFA.

98 Tr. 2083, SFA.

99 Tr. 2086-87, SFA.

100 Tr. 2068, 2086-87, SFA.

101 Tr. 2624-2629, W. Morck. Witness Morck asserts that Talon, a zipper manufacturer, already provides such information voluntarily in some situations.

102 Id.

103 Tr. 2091, SFA.

traits of yarn, as produced, are modified by subsequent manufacturing processes, some will inevitably be wholly or partially retained. Thus, wool will always absorb moisture more readily than man-made fibers. Effects of heat on a particular yarn will in all likelihood be carried over into a finished carpet or rug. Shrinkage characteristics of the fiber, while affected by carpet construction, may also be retained to varying degrees. Colorfastness of dyed yarn will definitely affect the care traits of a finished carpet or rug.104 While yarn producers persist in arguing that they have nothing of value to contribute,105 staff submits that the above information is extremely important in determining the care traits of, and care instructions for, a finished carpet or rug. Finally, representatives of the upholstered furniture industry, in responding to arguments of the furniture fabric industry, point to established specifications of colorfastness and dimensional stability for furniture fabric which are considered extremely significant by the furniture industry and which manufacturers of furniture fabric can provide.106 Even the vacillating apparel industry concedes the importance of care performance traits of various components in relation to other components in manufacturing a finished garment.107 It is for these reasons that the National Consumers Congress concludes that, while care instructions serve little benefit, care performance traits for components are totally appropriate for a manufacturer of finished products. The Congress suggests that colorfastness, tensile strength, reaction to heat, reaction to moisture and reaction to chemicals be addressed.108

In principle, staff agrees with NCC. The industry has successfully shown the irrelevance and the potential problems of a provision requiring the transmittal of consumer-oriented care instructions for components to finished product manufacturers. In doing so, however, the industry has acknowledged the feasibility of providing more basic care information which is relevant to the dilemma faced by product manufacturers in producing a finished garment of compatible components. Staff concludes, therefore, that care performance characteristics

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104 Tr. 2114-2119, AYSA.

105 Tr. 2121, AYSA.

106 R. 17 at 193-204, NAFM-SFMA.

107 R. 16 at 41; R. 17 at 1049-50, AAMA.

108 Tr. 2743, 2765-2769, NCC; HX 33 at 499, the BSSR survey.

of components are appropriate and useful for inclusion in any requirement of the Rule in this area. In doing so, staff rejects industry arguments that components should not be covered by the Rule because no meaningful, relevant information can feasibly be provided. Staff also rejects industry arguments that components should not be included because their end-use is not known by the component producer. Significant care characteristics of components, which are meaningful to the finished product manufacturer, can be provided without knowledge of the ultimate uses to which such components will be put.

It having been established that component manufacturers are capable of providing meaningful and appropriate information to finished product manufacturers with little evidence of burden on the record, three questions to be answered remain: a) should they be required to do so in a Rule?; b) if so, what information should be provided?; and c) how should it be provided? With respect to a), as pointed out by the Presiding Officer,[109] the record does not contain direct evidence that selected care information has been generally unavailable to those who want it or that finished product manufacturers feel an urgent need for such information. Finished product manufacturers, however, do not necessarily wholly represent the ultimate public interest in this proceeding. The object of any such requirement would be to ensure that finished product manufacturers have enough information of high quality to devise accurate and complete care instructions for products which are purchased, used and cared for by ultimate consumers. The public interest in this area which the Commission is empowered to express lies in the prevention of economic injury to such consumers due to improper care resulting from the lack of or inaccurate care instructions supplied by the industry. Thus, it is the mandate of the Commission to ensure in every way possible that this interest is upheld by, in turn, ensuring that finished product manufacturers are able to comply with the Rule. The record shows conclusively that some apparel and piece goods manufacturers have supplied minimally and often totally unacceptable information to consumers. Further, from the evidence submitted by components' manufacturers, what care information has been supplied to finished product manufacturers is in many cases limited, inadequate, or provided on a haphazard basis. The record also shows that a substantial part of the consumer injury which has resulted is due directly to the failure of one particular component (in conjunction with another) to survive a care procedure. Circumstantially, therefore, it may be inferred that finished product manufacturers either a) do not have appropriate care information for components of their products, or b) are aware of its availability but choose to ignore it. In either

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109 Presiding Officer's Report 64.

case, the chance for acceptable care instructions is minimized. Staff cannot assume the latter which would be tantamount to deliberate non-compliance with the intent of a federal regulation. On the assumption, therefore, that manufacturers customarily make a good faith attempt to comply, it is in the public interest to ensure that they have sufficient information at their disposal to make such attempts successful if they need it for the consumers' benefit and that this information is consistently available to all product manufacturers covered by the Rule, large and small alike, regardless of the amount of economic pressure brought to bear. Compliance with a Rule ideally should not be dependent on the size and influence of its benefactors. Component manufacturers do not claim that all finished product manufacturers have been supplied with such information as a matter of policy. It is staff's view that those manufacturers who do not have such information are at a distinct disadvantage in complying with the Rule which may well be reflected in care instructions for their products. Based on these facts and arguments, therefore, staff concludes in the public interest that component manufacturers should be required to supply selected information regarding the care performance traits of components of finished products covered by the Rule to finished product manufacturers under certain prescribed circumstances. This conclusion reflects the overall remedial character of the Rule which is designed to prevent inaccurate, incomplete or otherwise inappropriate care instructions resulting in consumer injury due to improper care.

The circumstances under which such information should be disclosed received little discussion in the record. As previously noted, several companies propose that such information be available but only on request by a finished product manufacturer.[110] Staff concludes that this proposal is appropriate for the following reasons: There is no evidence that all finished product manufacturers truly need such information, especially those that are well equipped to test components them selves. Staff has no desire to force the distribution of information which is not needed and believes such a policy would be wasteful and provide no quantifiable benefits. On the other hand, those product manufacturers who do not have extensive testing facilities, or, for other reasons, find such disclosures necessary to comply with the requirements of the Rule, should be able to obtain them on request.[111] Further, staff assumes that such

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110 See also R. 17 at 420, Ludlow Corp.

111 R. 17 at 502, J. Schapiro; R. 17 at 522, Sears, Roebuck & Co.; Tr. 2220-21, E. Kennedy.

manufacturers will know what information they need and request that information only. Since finished product manufacturers are engaged in a business and, as such, may be expected to have the requisite knowledge and confidence to make pertinent requests, staff has reason to believe that requests will be made when needed. As previously discussed, this is not necessarily the case with ultimate consumers. With respect to the form in which such instructions should be transmitted, the record contains no objections to the form contained in section 423.4 of the proposed revised rule, i.e., "separately by invoice or other means reasonably calculated to communicate the information." Having no reason to believe this method to be unsatisfactory, staff recommends that it be retained in the final Rule.

The record contains considerable evidence as to the content of meaningful care information about the care traits of components which may be provided. Its appropriateness will depend upon what is requested as well as its relevancy to the particular product at issue. Since there are many different components which can be combined into many different finished products, staff does not believe that a specific, absolute requirement in the Rule is necessary or suitable. The record reveals certain general subject areas, however, about which requests for information are likely to be made (and about which the industry is already providing information on a sporadic basis) for all textile components of products covered by the Rule (see notes 98-102, 104, 106-110). These include colorfastness of dyes, dimensional stability, the effects of moisture and/or heat, the effects of a particular type of cleaning agent (not all cleaning agents), and the effects of specified types of agitation or other mechanical action on the component itself. Staff proposes that component manufacturers address these areas only when requested to do so. To the extent that the value of such information is dependent upon the end-use of the component, this fact should be disclosed along with the other information given. It is staff's opinion that disclosure of care characteristics such as these will place all finished product manufacturers on an equal basis in terms of their relative ability to comply with the requirements of the Rule and remove some of the burdens involved in devising care instructions for their finished products. The ultimate effect of such a disclosure will be more complete and accurate care instructions for consumers.

4. The Remedy; Retail Components

Before proceeding to the drafting of a specific requirement, staff must resolve one final issue dealing with the disclosure of care information with "retail components," as previously defined. Piece goods (fabric, linings, interlinings and interfacings) and yarn sold at the retail level fall within this category and, under staff's proposal, are already required to be accompanied in some form by care instructions under the recommended piece goods and yarn provisions. Thus, this discussion

will apply to all those textile components of products covered by the Rule which are sold at retail to the ultimate consumer, other than piece goods and yarn. The proposed revised rule does not cover such components and the record contains very little comment on these items, mostly from consumers who favor coverage in the Rule.[112] Thread, zippers, trim, linings and buttons are mentioned most often. Predictably, consumers are worried about potential damage to the final product which can be caused by a component in conjunction with another,[113] compatibility of care traits of components generally[114] and purchasers' ability to make a correct purchasing decision on the basis of information supplied.[115] Colorfastness and dimensional stability appear to be the care traits about which consumers are most concerned.[116] The two surveys on record which address this question show less strong support[117] and, in one, negative support.[118] There is no question that these are valid arguments in support of such a requirement, especially in view of the fact that a) staff has already concluded that product manufacturers, who probably know more about their finished products than do ultimate consumers, should receive information about care traits of components on request and b) piece goods and yarn, which fall within the category of "retail components," are already covered under staff's recommended final Rule. As previously discussed, failure of a component can cause catastrophic

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112 See, e.g., R. 20 at 281, M. Knowles; R. 18 at 632, consumer; Tr. 2171, E. Kennedy. See also one negative comment at R. 18 at 725, consumer.

113 R. 18 at 78, consumer; R. 20 at 299, School of Home Economics, Oregon State University; Tr. 1502, J. Stone, Teacher, Textiles and Clothing, University of Illinois; Tr. 1587-88, W. St. John, Assoc. Professor, Southern Illinois University; Tr. 2569-2571, 2582-83, W. Morck.

114 R. 20 at 352, School of Home Economics, University of Arizona; R. 18 at 676, retailer; R. 18 at 2425, consumer; Tr. 1625, M. Knowles; Tr. 1663, K. Geiken; Tr. 2360, F. Reid; Tr. 2581, W. Morck.

115 R. 18 at 629-30, consumer; R. 18 at 676, retailer; Tr. 1502, J. Stone; Tr. 1587-88, W. St. John; Tr. 2360, F. Reid.

116 Tr. 1663, K. Geiken; R. 18 at 78, consumer.

117 R. 20 at 410, the Yreka survey (38 of 55 students would support coverage).

118 R. 20 at 307, the Colorado survey (nine of 1943 respondents would support coverage).

damage in a homemade item as well as an item purchased ready made. The problem lies in the state of the record on this subject. The record contains little evidence of the occurrence of actual damage to items made by the ultimate consumer due to failure of a component other than piece goods and yarn. Because the issue of "retail components" was raised for the first time late in the hearings, there is little testimony from manufacturers or retailers as to the feasibility or costs of such a requirement, including what is involved in the transmittal of such information as well as its content. It is clear that ultimate consumers cannot be treated as finished product manufacturers are treated because of their relative levels of sophistication in the field as well as the fact that component manufacturers are inaccessible to consumers at the time such an item is purchased at retail. While the record contains information indicating what care instructions are necessary for piece goods or yarn, which almost always constitute the principle part of a home-made item, the record contains almost none with respect to other components such as trim, braid, zippers, or thread. Further, there is serious question, as in the case of intermediate components, whether care instructions (as opposed to performance characteristics) would serve any useful purpose. On the other hand, staff cannot assume that the typical consumer possesses the requisite knowledge to evaluate care performance traits alone or to compare them with care instructions for fabric which presumably will be selected first. Additionally, the transmittal of such instructions could pose problems at the retail level far greater than those discussed and overcome in the piece goods area. Clearly, permanent labels would not be appropriate for such items as trim, braid, zippers, or thread which not only are too small to accommodate such a label but for which a label is simply not needed. The consumer will obtain such a label with the fabric or yarn purchased. Distribution of separate and in many cases substantively different information for the myriads of spools of thread, zipper packages, tapes, braids, laces, and trim that are typically sold in a retail piece goods establishment could pose a substantial burden on the retailer far greater than that for the relatively few types of fabrics and yarn that are sold. It is staff's opinion that in many cases, the cost of distribution might exceed the cost of the item itself. Because of these potential problems and because the record contains virtually no information which could serve to enlighten staff on these issues, we must reluctantly recommend, despite our belief that care information for these products is needed, that they not be included within the coverage of the final Rule. There is simply not enough evidence in the record to justify bringing them within the Rule's scope.

In accordance with these conclusions, therefore, staff recommends that the following provision regarding intermediate components be included in the final Rule as section 423.8:

(a) In connection with the sale of any textile product intended to be used as an intermediate component of a finished product covered by sections 423.2, 423.5 or 423.6 of this part, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for the manufacturer or importer of such component to fail to provide to the manufacturer or importer of such finished product, upon request of that party, clearly stated information regarding the care performance characteristics of such component. Such information may be provided separately by invoice or other means reasonably calculated to communicate the information, Provided however, That the requirements of this section shall not apply when the component is manufactured to the precise specifications of the finished product manufacturer or importer;

(b) Information regarding the care performance characteristics of a component within the scope of this section shall fully and completely address the effects of moisture, heat, a specified type of cleaning agent or a specified type of agitation or mechanical action on the performance of the component (1) where applicable to the component at issue and (2) when specifically requested by the finished product manufacturer or importer. To the extent that the effects listed above are dependent upon the manner in which the component is used, this fact should also be disclosed.

Paragraph (a) sets forth the basic requirement of providing information upon request regarding the care performance traits of components to manufacturers of finished products covered by the Rule. It also allows the components' manufacturer flexibility in determining what method of transmittal shall be used. The proviso excludes from the benefits of the provision those finished product manufacturers who, in effect, direct or control the manufacture of the component and thus direct or control the component's care performance characteristics which, on that basis, will already be known by such manufacturer. Paragraph (b) sets forth general subject areas which must be addressed in information provided 1)

where applicable and 2) when specifically requested by the finished product manufacturer. If information about any subject area contained in the paragraph is not specifically requested, it need not be given. If the efficacy of information provided may be affected by the end-use of the component, such fact must be disclosed as an important qualification for the finished product manufacturer to consider.

The record contains one comment which directly affects the definition of intermediate components set forth in the proposed revised rule, other than those discussed in Chapter IV.D. relating to decorative fabrics. This comment indicates that the word "used" should be substituted for the word "sold" to ensure that this section cannot be interpreted to cover suppliers of component manufacturers as well as component manufacturers themselves, e.g., a sheep farmer who sells wool to a component manufacturer to be used in the manufacture of a component.119 It is staff's intention to cover only those component manufacturers whose components are sold directly to or used by a finished product manufacturer in the making of a finished product covered by the Rule as the record indicates no need for further coverage. Staff, therefore, recommends that this concept be incorporated into the definition of components as follows:

> Intermediate component is any piece goods, yarn, lining, interfacing, trim, thread, zipper, tape, braid, or other such item manufactured by a component manufacturer to be sold to or used by a finished product manufacturer or importer as part of a finished product. This definition does not include those products which are supplied to a component manufacturer for use as part of a component, as defined herein.

119 Tr. 2769-70, National Consumers Congress.

H. Suede and Leather Wearing Apparel

1. Preface

In the current rule, coverage is limited to textile wearing apparel and piece goods used to make such items; suede and leather wearing apparel are not covered. An extensive number of complaints received from both consumers and drycleaners regarding these items following the promulgation of the Rule, however, led to the staff's consideration of coverage of such items in the proposed revised rule. Response to the Commission's Request for Comment indicates that 94% of those commenting favor extension of the Rule to cover suede and leather apparel.[1] Staff notes that the average purchase price of suede and leather items is in excess of $100.[2] The record also contains examples of suede and leather items, however, whose purchase prices greatly exceed this amount, e.g., a leather ensemble selling for $450 and other items selling at retail for $750, $1500, $5000, and $2500.[3] The fact that these amounts represent sizeable investments for consumers and indeed a very costly loss when such items are damaged through improper cleaning clearly explains the favorable response to the Commission's proposal to require permanent care labels for such items.

Between 11 and 13 million suede and leather garments were predicted to be sold in the U.S.A. in 1977.[4] The record developed since the proposed revised rule was issued indicates that some of these are already labeled with brief care instructions.[5] Indeed, possibly 75% of the leather and suede items being produced

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1 Staff Report 14-15.

2 Tr. 2482, Kirk's Suede Life.

3 HX 29 at 368, 370, 372, 373, Kirk's Suede Life.

4 Tr. 2463, Kirk's Suede Life.

5 R. 17 at 231, National Outerwear and Sportswear, Inc. (a majority of Association members already supply care instructions); R. 18 at 731, retail clerk: "Manufacturers often supply the stores with information or even send representatives"; Tr. 1879, Bretney Smith, Swannanoa Cleaners. Most of the labels on leather items which he sees direct the consumer to a professional leather cleaner; Tr. 1658, Karen Geiken. The witness presents an example of a leather jacket with a permanent label having the name and address of a firm specializing in leather cleaning where the jacket can be sent for appropriate care; R. 20 at 599, Montgomery Ward & Co.; this company now requires permanent care labels on all suede and leather apparel; Tr. 2469-70, Kirk's Suede Life. The representative also notes that his company (Kirk's Suede Life) does pre-market testing for suede and leather manufacturers to determine the serviceability of items to cleaning procedures before the garments are ever put on the market for sale.

today carry such instructions. General phrases such as "dryclean only" or "use only chlorinated solvents in drycleaning" are typically employed.[6] On the other hand, about one-third of such items being sold today have care labels instructing consumers to proceed to a suede or leather drycleaner without further direction.[7] As will be seen, there is some question as to whether these voluntary efforts are sufficient to protect consumers from economic injury.

This section of the report deals with the question of whether suede and leather apparel should be covered by the Rule, followed by a discussion of how care information for such items should be transmitted and finally what care instructions are appropriate.

2. Coverage

The issue of whether suede and leather apparel actually require regular care, a characteristic basic to coverage under the Rule, must be resolved.[8] The body of the record indicates that not only are such items easily soiled, but that they are regularly sent to drycleaners by consumers for refurbishing.[9] The record further indicates that not only do the care traits of suede and leather products differ substantially from those of textile products but also that the traits of leather and suede garments vary among themselves, requiring a motley of special cleaning techniques.[10] Some leathers are washable while others must be drycleaned; dye stuffs and finishes are as varied as the animal skins in the product.[11] Each animal skin is unique;

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6 Tr. 2477, Kirk's Suede Life.

7 Id.

8 R. 16 at 151, National Retail Merchants Association.

9 R. 20 at 288, Minx K. Auerbach; Tr. 2464, Kirk's Suede Life.

10 R. 17 at 94, IFI; Tr. 1413, IFI; R. 17 at 263, Wisconsin Fabricare Institute; R. 17 at 380, Tanner's Council of America, Inc.; Tr. 1879, Bretney Smith, Treasurer, Swannanoa Cleaners; Tr. 1315, Jerome Schapiro, President, Dixo Co.

11 R. 20 at 157, Textiles & Clothing Professor, Texas Tech. University.

its care traits with regard to shrinkage and color retention are also unique. Indeed, the care characteristics which apply to textile fibers cannot be applied to leathers and suedes. In fact, leather will react unpredictably to leather cleaners and other chemicals.[12] Care of these products is further complicated by the fact that a leather tanner's procedure is often a closely guarded secret. Further, the type of care procedure selected can greatly (and adversely) affect the reaction of the leather to the cleaning process.[13] Kirk's Suede Life, a leather cleaner, states that there is no means by which a drycleaner who normally processes textile fabrics can properly and satisfactorily clean and refinish suede and leather garments.[14] Indeed, the cleaning of leather and suede has become highly specialized with the development of as many as eighteen (18) variables in the cleaning process, all devised to accommodate changes in the way suedes and leathers are manufactured.[15] The effect of minor variations in the cleaning process can be devastating. For example, a leather garment cleaned in clear perchlorethylene drycleaning solvent and tumbled dry shrank 4 1/2% whereas an identical garment cleaned in the same solvent but allowed to air dry shrank only 7/10 of 1%.[16] In many cases, cleaning removes the natural oils from leathers and suedes, causing the skins to dehydrate and resulting in shrinkage and cracking.[17] Knowledgeable leather cleaners will add oils to the cleaning solvent to counteract this effect.[18] Such items are also greatly affected by temperature extremes as well as wetness and dryness and can dry out when stored without air circulation.[19] Further, cleaning not only removes natural oils but can also remove dyes or cause severe color changes in the hides.[20] Often leather and suede garments must be surface dyed and refinished after cleaning.[21] Finally, many manufacturers have succeeded in

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12 R. 17 at 231, National Outerwear and Sportswear Association, Inc.

13 Id.

14 Tr. 2472, Kirk's Suede Life.

15 Tr. 2473-74, Kirk's Suede Life.

16 HX 29 at 362-64, Kirk's Suede Life.

17 Id.

18 Tr. 2480, Kirk's Suede Life.

19 HX 24 at 281-82, Barbara Reed, Better Business Bureau of Milwaukee.

20 Tr. 2480, Kirk's Suede Life.

21 Supra, note 19.

duplicating the appearance as well as the hand of suede and leather items with the use of man-made materials. The record contains many notations of the fact that consumers often cannot distinguish between the real and imitation products.[22] Many of the man-made "look alikes" can be successfully cleaned by washing in a machine whereas most garments made of genuine suede or leather will be ruined by this care method.[23] There is little question that not only do leather garments require regular care, but that the care traits of these products vary from one item to the next and are totally different from the care traits of textiles. Staff so concludes. Indeed, such differences have necessitated the development of entirely new and different processes of cleaning such products.

For these reasons, consumers are overwhelmingly in favor of requiring care instructions for suede and leather wearing apparel. Of the hundreds of comments received on this point, only six were negative. The Director of the Department of Consumer Affairs for the State of Virginia argues that owners of suede and leather items can use "common sense" in caring for these items and that care labels are not necessary.[24] The other five believe the cost of permanent labels to be too high or cite no reason whatsoever for their opinions.[25] In contrast to these opinions, many note that there is a great lack of general knowledge about suede and leather and most consumers simply do not know how to care for such items.[26] One consumer notes:

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22 R. 18 at 770, 1051, consumers; R. 20 at 36, Professor, Textiles & Clothing, Florida State University; R. 20 at 238, Home Economist; R. 20 at 280, M. Knowles; R. 20 at 313, Extension Agent, CES, Arizona; R. 20 at 351, Chairman, Textiles & Clothing and Interior Design, Univ. of Arizona; Tr. 1351, E. Shapiro, Consumer Affairs Dept., Detroit; Tr. 1503, J. Stone, Textiles & Clothing Professor, Univ. of Ill. at Urbana-Champaign; Tr. 1908, Karen Stanton, Consumer Affairs Dept., Burlington County, N.J.

23 R. 20 at 360, Textiles & Clothing Specialist, CES, Oregon.

24 R. 20 at 480, Director of Consumer Affairs, Dept. of Agriculture and Commerce, Commonwealth of Virginia.

25 R.18 at 315, 421-506, consumers; R. 20 at 322A, consumer.

26 R. 17 at 124, Celanese Fibers Marketing Company; R. 18 at 132, Extension Specialist, CES, Missouri; R. 18 at 331, consumer; R. 18 at 590, Home Economist; R. 18 at 770, 891, consumers; Tr. 2161, Evelyn Kennedy, small retailer; Tr. 2464, Kirk's Suede Life.

> During the winter months Bob Wards Clothing Mart in Missoula, Montana sold over 200 suede and leather coats and the majority of customers buying leather or suede for the first time questioned the cleaning method. They assumed any drycleaner would do it correctly. Missoula has thirteen drycleaners and of this number possibly two I'd trust in cleaning my suede coat.[27]

Leather and suede garments are fragile and the cleaning procedures for these items differ greatly from the cleaning procedures used on textile fabrics.[28] Therefore, care information for these items is sorely needed in order to enable consumers to make an informed decision at the point of purchase.[29] A home economist from Alaska notes that since there are no reputable leather cleaning establishments in his vicinity, all leather garments must be sent to the "south 48": "If . . . buyer[s] knew how to care for the suede or leather garment when purchased, it might influence their decision to purchase."[30] Consumers often expect sales clerks to be able to answer questions about the care of particular garments; as such, they will often ask for such information before making a purchasing decision. Unfortunately, few sales clerks can provide accurate care information for suede and leather garments; of the information provided, little is reliable.[31] A textiles professor notes: "Probably more questions on the care of leather goods are asked of home economists than any other items. . . ."[32] As previously noted, suede and leather garments are expensive.[33] As such, they are often once-in-a-lifetime" purchases that soil easily and quickly and must be cleaned before the soil saturates the animal skin.[34]

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27 R. 18 at 665, consumer.

28 R. 17 at 1076, IFI; R. 18 at 156, 729, 891 consumers.

29 R. 18 at 331, consumer. "[I]f more labels with care instructions were included with these items consumers would be better prepared to shop more intelligently on the basis of the information given ..."; R. 20 at 256.

30 R. 18 at 590, Home Economist.

31 Id.

32 R. 20 at 36, Professor, Clothing & Textiles, Fla. State University.

33 R. 18 at 156, Ruth Needle; Tr. 1620, Marlys Knowles, Office of Consumer Protection, Louisiana.

34 R. 18 at 696, consumer.

It is not surprising that consumers expect to wear such items for many seasons.[35] Consequently, even though care labeling might increase the price of the garment in the long run, most consider the information on the label worth the increase by a large margin.[36] Care instructions for suede and leather are important not only at the point of purchase but also at the point of care.[37] An extension clothing specialist notes that many consumers, not knowing how leather garments should be cleaned, will resort to harmful and dangerous cleaning products which not only might damage the leather garment but could also cause personal injury.[38] The conclusion is inevitable that consumers and their representatives see a clear and present need for such instructions.

Drycleaners, unanimously in favor of requiring care instructions for suede and leather,[39] note that without such instructions consumers will not know whether such items are commercially launderable or drycleanable, whether self-service drycleaning is appropriate or whether a leather specialist must be used.[40] These drycleaners, including many specializing in leather care, need instructions in order to be able to properly care for suede and leather items because the variety of tanning procedures used by manufacturers result in leather products having varying care traits making proper cleaning procedures difficult to determine by visual inspection alone.[41]

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35 R. 18 at 127, 347, 668, 729, consumers; R. 20 at 280, M. Knowles.

36 Supra, note 34.

37 R. 18 at 107, 729, 891, consumers.

38 R. 20 at 171, Extension Clothing Specialist, CES, Arkansas.

39 R. 17 at 10, 106, 112, 131, 144, 174-178, 181-82, drycleaners; R. 17 at 262, Wisconsin Fabricare Institute; R. 17 at 382, 534, 766, 884, Neighborhood Cleaners Association; R.17 at 1076, IFI; R. 18 at 343, consumer; R. 20 at 344, Extension Clothing Specialist, CES, Ohio; Tr. 850, NCA; Tr. 2456 Kirk's Suede Life.

40 Tr. 2464, Kirk's Suede Life.

41 R. 20 at 157, Textiles Professor; R. 17 at 231, National Outerwear and Sportswear Association.

Presumably because of these difficulties and uncertainties, the record contains numerous complaints about suede and leather items damaged during cleaning. Much of this damage occurs when drycleaners attempt to clean suede and leather garments by methods appropriate for textiles. First, the leather skins may shrink more than 2% with simultaneous color loss. Second, the color of the leather may bleed to the lining fabric. Third, leather skins will suffer a change in hand resulting in a harsh texture. Fourth, burnt areas appear which are caused when the leather or suede comes into contact with the hot metal drum of the cleaning machine. Fifth, the leather or the lining fabric may distort dimensionally in drycleaning or laundering.[42] The record confirms the actual occurrence of injury to leather and suede garments in each of these areas.

Witness Smith, a leather care specialist, presents a brown suede jacket which was damaged beyond repair by improper dry-cleaning procedures.

> The enclosed brown suede jacket is an example of what can happen when a leather garment is handled improperly. The jacket was drycleaned in a non-leather system, which pulled most of the natural animal oil from the coat. With the oil removed, the coat immediately shrank and became stiff during steam finishing. This will not happen when a suede garment is professionally cleaned by a suede and leather expert.
>
> This coat was sent to us for restoration by an out of state drycleaner. Unfortunately, this condition cannot be reversed and the cleaner had to pay for the coat.[43]

Additional examples of damage in the record are almost too numerous to mention. Some examples are: removal of the nap from a suede coat during cleaning;[44] cracking of leather after cleaning;[45] matting and discoloration of dark green leather trim after cleaning;[46] improper use of a recommended suede cleaning product on a jacket, leaving a mark which could not be removed;[47] discoloration and spotting of a suede coat after drycleaning;[48] crocking of dye from a burgundy leather coat, discoloring white

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42 R. 17 at 132, Kirk's Suede Life.

43 R. 17 at 183, B. Smith.

44 R. 18 at 548, consumer.

45 Id.

46 R. 18 at 585, consumer.

47 R. 18 at 777, consumer.

48 R. 20 at 38, Consumer Advocate, Office of the Governor, Illinois.

stitching, accompanied by loss of the coat's natural oils after drycleaning;[49] loss of natural oils causing a suede coat to become stiff and brittle;[50] fading;[51] discoloration and fading of a pigskin coat;[52] excessive shrinkage of at least two sizes;[53] discoloration of a collar on a suede coat caused by adhesive migration during drycleaning;[54] and a mocha calfskin skirt and jacket, purchased as dyed-to-match items, turned two entirely different, nonmatching colors following drycleaning.[55] The record contains numerous other instances of damage to suede and leather apparel items caused by improper care.[56]

Another complaint voiced by consumers and consumer representatives alike concerns drycleaners who will not take responsibility for suede and leather items accepted for cleaning, often requiring consumers to sign a release for the items.[57] One such consumer was forced to wear a soiled pale pink leather jacket because the drycleaner refused to clean the item.[58]

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49 R. 20 at 422, Kay Gragg, Department of Consumer Affairs, Ventura, Calif.

50 R. 20 at 365, home economics professor.

51 R. 20 at 442, Administrator, Consumer Service Division, Dept. of Commerce, Oregon.

52 Tr. 858, NCA.

53 Tr. 1781, P. Faley, Montgomery County Consumer Protection Office, Maryland.

54 Tr. 2465, Kirk's Suede Life.

55 Tr. 2467-68, Kirk's Suede Life.

56 R. 18 at 343, home economist; R. 18 at 437, 680, 684, 731, 988, consumers; R. 20 at 37, Consumer Advocate, Office of the Governor, Illinois; R. 20 at 147, Director, Department of Consumer Affairs, Fairfax County, Va.; R. 20 at 150, home economics professor; R. 20 at 338-339, Administrator, Office of Consumer Affairs, Georgia; R. 20 at 450, Assistant Attorney General, Colorado; Tr. 1880, B. Smith; HX 29 at 367-373, 375-379, Kirk's Suede Life.

57 R. 20 at 37-8, Office of the Governor, Illinois; R. 20 at 422, K. Gragg; R. 20 at 147, Dept. of Consumer Affairs, Fairfax County, Va.; HX 29 at 357, Kirk's Suede Life; Tr. 2494-2497, K. Gragg.

58 R. 18 at 682, consumer.

Another consumer who worked for a drycleaning company for over a year comments that, during that time period, she saw, "numerous leather articles damaged due to the lack of a permanent care label."[59] Witness Reed states that about 40 percent of the drycleaning claims she receives in the Better Business Bureau of Milwaukee during the fall and winter months concern suede and leather garments with skin discoloration and fading occurring most frequently.[60] The representative of Kirk's Suede Life emphasizes that seven to ten percent of the work coming into his plant consists of suede and leather garments which were damaged when cleaned by "fabric methods." These items are sent by drycleaners to his plant for rejuvenation, if possible.[61]

There is no question that suede and leather apparel are easily soiled and do require regular care. The care traits of such items vary far more widely than the care traits of textile items, requiring complex and highly specialized techniques for safe and effective refurbishment. While these expensive items become more available and grow in popularity each year, consumers are not aware of proper care for them, nor are many textile drycleaners informed as to appropriate leather cleaning techniques. Although many manufacturers now provide some form of care information with leather and suede apparel, these voluntary efforts are not uniform throughout the industry nor is the information provided always accurate and adequate. For these reasons, staff concludes that suede and leather apparel should be covered by the final rule. The Presiding Officer agrees.[62]

3. Transmittal of Care Instructions

Of those supporting extension of the Rule to cover suede and leather apparel, many advocate that care information be transmitted on permanently attached labels. Only with a permanency requirement will consumers be assured of having appropriate care instructions at the point of care. Consumers typically are perplexed about cleaning such articles: "Many consumers buy leather and suede garments without thinking about the care requirements, and when the garments become soiled are at a loss for what to do. Certainly, permanent care labels attached to such garments would be very helpful."[63] During the winter months, an extension

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59 R. 18 at 634, consumer.

60 Tr. 2133-34, B. Reed.

61 Tr. 2480-81, Kirk's Suede Life.

62 Presiding Officer's Report 37.

63 R. 18 at 509, consumer.

clothing specialist on record receives inquiries weekly from consumers who want to know how to care for leather and suede garments. She maintains that permanent care labels will answer most consumers' questions about cleaning.[64] Drycleaners universally favor permanent care labels for suede and leather garments in order to avoid inadvertently damaging them. Major retailers also advocate that care instructions for such articles be transmitted by permanent labels. Montgomery Ward and Co. currently requires permanent care labels on all leather and suede apparel sold in their stores.[66] Sears and J. C. Penney also agree that suede and leather apparel should have permanent labels.[67] Indeed, the Tanner's Council of America, representing 100% of the leather manufacturers in the United States, supports the Commission's proposal to require the disclosure of care information to be permanently attached to leather items.[68] Only one consumer in the record objects to a permanency requirement, stating simply that permanent care labels are unnecessary for suede and leather garments; in lieu thereof, this commentor advocates tags for point of purchase information only.[69] The argument has previously been made, however that the difficulty in saving and filing loose tags is prohibitive. Often when a consumer is ready to clean a garment, the tag is completely lost or forgotten.[70]

The weight of the evidence is practically unanimous on this point. Consumers need care information at the point of sale in order to make informed purchasing decisions. Complete assurance of effective cleaning without damage, however, can only be achieved if care instructions are available at the point of care. Staff therefore recommends that care instructions for leather and suede apparel be transmitted through the use of labels permanently attached to such articles. Any increase in the price of these items brought about by such a requirement will be more than offset by the damage such labels will prevent.

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64 R. 20 at 16, Extension Program Area Leader, Clothing & Textiles, CES, Georgia.

65 R. 18 at 174, Textile & Clothing Home Economist; R. 18 at 590, home economist; R. 18 at 665, consumer; R. 20 at 36, Professor of Textiles and Clothing, Florida; R. 20 at 414, Assistant Professor, Home Economics, Indiana University.

66 R. 20 at 599, Montgomery Ward & Co.

67 R. 17 at 511, Sears, Roebuck & Company; R. 17 at 1198, J. C. Penney Company.

68 R. 17 at 380-81, Tanner's Council of America.

69 R. 18 at 835, consumer.

70 R. 18 at 347, consumer.

4. Content of Instructions

It has been stated previously that the care characteristics of both finished and unfinished suede and leather are varied and unique, often necessitating specialized leather cleaning procedures. Methods of care for leather and suede totally depart from care procedures designed for textiles. Indeed, comments on the record from textile drycleaners as well as from leather and suede cleaning specialists support including "special" care instructions on labels for leather and suede apparel. The major problems encountered in drycleaning and refinishing suede and leather articles are color loss, shrinkage, poor hand (rough texture) and excessive time and labor for processing.[71] The removal of natural oils in cleaning has an adverse effect on all the physical properties of leather and suede, particularly the appearance and dimensional stability of the items.[72] Conventional drycleaning processes remove a high percentage of these oils[73] and also cause noticeable color loss necessitating redyeing,[74] an imperfect procedure which rarely succeeds in duplicating the original color of the items. Shrinkage in suedes is generally attributed to improper drying procedures.[75] Even at low temperatures, however, shrinkage often occurs.[76]

Physical characteristics of skins, such as wrinkles, vein marks and scar tissue also become potential problems in cleaning.[77] For example, when salts used in the tanning process are not thoroughly rinsed from the skin, hardening and separation of the skin layers can result. Garments containing skins from these areas are quite weak. Such skins do not always dye evenly, resulting in light and dark tones of the basic color.[78] Scar tissue resulting from attacks by parasites on the animal will repel dye stuff. While many tanners attempt to cover these blemishes by using a chalk-like material, even proper cleaning will always remove it. The drycleaner then must attempt to redye or color the affected area.[79] Vein marks and spine wrinkles may react

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71 HX 29 at 383.

72 Id. 388.

73 Id. 385.

74 Id. 382.

75 Id. 387.

76 Id. 382.

77 Id. 389.

78 Id. 391.

79 Id. 392.

irregularly to dyes necessitating recoloring after cleaning.[80] The soft skin areas are more fragile and may separate or tear when subjected to unusual stress in the cleaning process.[81]

Recognizing these requirements for special care, many textile drycleaners and leather specialists recommend special care instructions for leather and suede, such as: "DO NOT LAUNDER! DO NOT DRYCLEAN BY TEXTILE PROCEDURE! LEATHER OR SUEDE SHOULD BE CLEANED ONLY BY A PROFESSIONAL LEATHER SUEDE CLEANER."[82] The International Fabricare Institute suggests that instructions for suede and leather apparel might state: "CLEAN - LEATHER - SUEDE METHOD,"[83] with the addition of special instructions when such items require variations in standard leather cleaning procedures.[84] Kirk's Suede Life recommends that care instructions for all suede and leather should read: "DO NOT LAUNDER! DO NOT DRYCLEAN BY COIN-OP METHOD! DO NOT CLEAN BY TEXTILE FABRIC METHOD. HAVE (ITEM) CLEANED ONLY BY A PROFESSIONAL[LY] EQUIPPED AND TRAINED SUEDE AND LEATHER CLEANER."[85] The representative of Kirk's Suede Life also suggests that specific cleaning methods might be designated through the use of a numbering system such as: "HAVE CLEANED ONLY BY A LEATHER-SUEDE SPECIALIST USING METHOD G-2 (OR C-6 OR F-5). DO NOT LAUNDER, COIN-OP DRYCLEAN OR DRYCLEAN BY ANY OTHER METHOD."[86] These special cleaning procedures, designated by a numbering system, however, appear to be proprietary in nature[87] and are not necessarily available at all drycleaners or even to all suede and leather specialists. On the other hand, AAMA recommends that care instructions for leather and suede only state, "professionally clean by a leather refinisher."[88]

Record information indicating that leathers require specialized cleaning is clear. The record also indicates that variations in individual skins may dictate variations in leather cleaning procedures. Several conclusions may be drawn. First,

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80 Id. 393.

81 Id. 394-396.

82 R. 17 at 173, 174, 175, 176, 177, 178, 181, 182, 221, 222, 233, 234, 235, 282, drycleaners.

83 R.17 at 1076, IFI.

84 Id.

85 R. 17 at 132; Tr. 2471, Kirk's Suede Life.

86 Tr. 2471, Kirk's Suede Life.

87 HX 29 at 382, Study by National Institute of Dry Cleaning, July 1970.

88 R. 17 at 128; Tr. 1703, AAMA.

staff agrees with the Presiding Officer that the record, at minumum, supports instructions which simply direct consumers to leather care experts and warn against the use of conventional drycleaning and laundering.[89] As previously stated, however, IFI further recommends that manufacturers should also disclose appropriate instructions for techniques which differ from standard leather cleaning methods.

In staff's opinion the record does not support the requirement of such a specific disclosure. Except for the testimony of one leather cleaner, there is not sufficient information in the record to justify it. Indeed, much of the damage which is noted on the record has occurred, not because of errors in the leather cleaning process but because textile methods were improperly used on a product made of leather. In staff's opinion, therefore, care instructions for leather and suede apparel need only disclose the fact that leather or suede cleaning methods must be used or warn against the use of textile cleaning methods which will damage the item. These instructions (or their equivalent) will advise both the consumer and the drycleaner that a special (different) method of care is necessary to refurbish the article. Additionally, where notice of special or unusual cleaning techniques is required to safely clean a leather or suede item, instructions to this effect should be disclosed. Finally, as recommended in staff's discussion of drycleaning instructions, use of the terms "commercial[ly]" or "drycleanable" must be prohibited as they are inherently ambiguous and unclear.

Because care instructions for leather and suede apparel are substantially different from those recommended for textile apparel, staff recommends, in accordance with the above conclusions, that leather and suede apparel be included in a separate section of the final Rule as follows:

(a) It is an unfair or deceptive act or practice for the manufacturer or importer of any suede or leather product in the form of a finished article of wearing apparel to sell, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any such article which does not have a permanent label affixed or attached thereto, which clearly discloses instructions for the care and maintenance of such article.

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89 Presiding Officer's Report 37.

(b) Instructions for the care and maintenance of any article within the scope of this Section shall:

(1) General Rule: fully and completely inform the purchaser of the cleaning method to be used for such article, i.e., leather, textile or other appropriate method and any other regular care and maintenance procedures necessary to its ordinary use and enjoyment, Provided, however, That, if a textile method is prescribed, such as washing or drycleaning, the criteria set forth in paragraph 423.2 (b) of this part shall govern;

(2) Warnings: warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated which would damage or substantially impair the article to which care instructions apply or cause that article to damage other articles being cared for or maintained with that article. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those suede and leather articles included within the scope of this section which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such an article must contain a full and complete disclosure to that effect;

(3) Legibility: remain legible for the useful life of the item.

(4) Accessibility and Placement: except as hereinafter provided, be visible or easily and readily accessible to the purchaser without unreasonable effort at the point of retail sale; Provided, however, That:

(i) Where articles are packaged, displayed or folded in such a manner that the care instructions on the permanent label are not readily accessible as required, the same instructions must be imprinted on the exterior of the package or on a hang tag securely attached to the item;

(ii) Where the permanent label is coarse or abrasive in character, placement of the label on such apparel may be relocated to minimize irritation to the skin so long as the requirements of paragraph (4)(i) are met.

I. Compliance

1. Responsibility

a. Manufacturer

The existing Rule contains no definitions of "manufacturer" as the responsible party under the Rule but instead refers in all applicable provisions to, "the person or organization that directed or controlled the manufacture of the finished article . . ."[1] In the Rule's Statement of Basis and Purpose, the Commission describes this phrase as affecting any party who happens to fall within its scope, including finished product manufacturers, jobbers, retailers or whoever is the last party involved in the manufacture of the product, as the case may be[2] and staff so interpreted the phrase in enforcing the Rule. Section 423.6(i) of the proposed revised rule incorporates this phrase as a definition of the word "manufacturer" and sections 423.1 through 423.4, for purposes of brevity, use only the word "manufacturer," to describe such parties. No substantive changes are intended.

The record contains only one comment regarding this definition, objecting to the fact that the term "manufacturer" would include parties involved in individual handcrafting of textile products, such as rug weavers and blanket, shawl and poncho makers: "Many of these craftspeople live in isolated areas; often they do not speak English. The proposed rule does not seem particularly appropriate to this group and the exemption process would be almost as arduous for them as compliance."[3] While acknowledging the need for care labeling of handcrafted products, the commentor suggests that the burden of care labeling be placed on the retailer in these situations.[4] While staff understands the predicament of individual handcrafters, it cannot, as matter of policy, recommend that individually handcrafted products be excluded entirely from the Rule. Indeed, some may not fall within the Rule's requirements anyway because of jurisdictional considerations.[5] The

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1 Care Labeling Rule, Paragraphs (a) and (b).

2 Statement, Chapter VI.C.

3 R. 20 at 189-90, Office of Attorney General, State of New Mexico.

4 Id.

5 If these sales are purely local, "commerce" may not be affected.

retailer, however, is not in a position to devise care instructions for an item produced by another party. There is no question that handcrafted products, which are becoming increasingly popular, need care information as much or more than mass-produced products. The producer is the only party who knows how and of what such products are made. While determining the care traits of a product may be more difficult for some parties than others, staff cannot recommend the exclusion of an entire array of articles solely because of this fact. As the commentor has not shown any burden which, in staff's estimation, cannot be overcome through assistance from the appropriate parties, staff has no alternative but to conclude that such products and their producers should remain within the confines of the Rule. As the record contains no other comments regarding this definition, staff recommends that it be included in the final Rule as proposed.

b. Importer

The current rule does not refer explicitly to importers as responsible parties under the Rule; its Statement of Basis and Purpose, however, makes it clear that importers are intended to fall within its scope.[6] Because staff, nevertheless, has found it necessary to clarify this fact through interpretation, the proposed revised rule names them specifically as responsible parties throughout its text. While the record indicates no opposition to this modification, staff believes their specific inclusion merits a brief discussion.

As domestic manufacturers are deemed responsible parties under the Rule, importers of foreign-made merchandise must be also. Aside from the fact that exclusion of importers from the coverage of the Rule would be unfair to competing domestic manufacturers as well as consumers purchasing imported merchandise, the record contains some evidence that care instructions with such merchandise may be either non-existent or sadly lacking in content.[7] Dry-cleaners and leather cleaners complain of the unserviceability of imported items, despite care instructions indicating the opposite.[8] Staff discerns no reason why importers should not

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6 Statement, Chapter VI.A.

7 R. 18 at 740, 1000, consumers; R. 20 at 670, M. Dana, Consumer Consultant.

8 R. 17 at 94, 1076, IFI; R. 17 at 232, National Outerwear and Sportswear Association, Inc.; Trouser Institute of America; R. 17 at 505, drycleaner.

be included and the record reveals none. Staff concludes, therefore, that importers of foreign-made merchandise should be held responsible for complying with the rule in the same manner as are domestic manufacturers.

2. Exemptions on Request

a. Price and Care Traits

Paragraph (c)(2) of the current rule provides a basis for total exemption of certain classes of apparel products from the coverage of the Rule by petition from the manufacturer of such products. These products must be intended to be sold at retail for $3.00 or less per unit and be, "completely washable under all forseeable circumstances." The Commission's rationale for allowing this opportunity is that, "the advantages of permanent labeling - whether it be in terms of avoiding the risk of improper care or to facilitate comparison shopping - are not commensurate with the possibly disproportionate increase in consumer costs."9 The staff report outlines the modifications made to Paragraph (c)(2) in the proposed revised rule [section 423.8(b)], viz., the theory of the exemption has not been changed but the proof required to obtain it has been more precisely specified. 10 "Completely washable under all forseeable circumstances" is interpreted to mean capable of being "machine washed with hot water and machine dried at a high setting without damage or substantial impairment to the product itself or to other items with which the product is washed and dried."11

The record developed since the initial notice contains few pertinent comments with regard to the substance of the exemption. Most concern the retail price limit of $3.00 above which exemptions of this nature cannot be granted, regardless of the "washability" of the product. Predictably, those from industry, plus the Council on Wage and Price Stability, advocate that the price should be raised to reflect the inflation rate since the rule was promulgated in 1972.12 Suggested new prices range from $5.0013 to $15.00.14

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9 Statement, Chapter III.B.

10 Staff Report 31-33.

11 Proposed revised rule, § 423.8(b).

12 R. 17 at 532, Sears, Roebuck & Co.; R. 17 at 772, Fieldcrest Mills; R. 17 at 1050; Tr. 1703, AAMA; R. 20 at 504, Council on Wage and Price Stability; Tr. 1943, ATMI; R. 16 at 106, CRI; Tr. 2008, CRI.

13 R. 17 at 532, Sears; R. 17 at 772, Fieldcrest Mills.

14 R. 17 at 1050, AAMA; Tr. 1703, AAMA. This is based upon the fact that § 701.3(a) of the Commission's regulations (Continued)

Other industry members state that the manufacturer cannot realistically ascertain the mark-up taken by the retailer on applicable products and, thus, cannot predict the retail prices of such products. Although some retailers will tend to sell certain items at a specified known price, others will vary mark-ups dramatically depending upon market conditions.[15] In lieu of retail price, these parties propose that the manufacturer's wholesale price be utilized. $2.00-$2.50 per unit is proposed.

One consumer, however, challenges the entire theory of the exemption:

> I work for a magazine and we get a lot of questions from consumers. One of the biggest problems is cheap merchandise. If you buy from a reputable store or a chain, you're pretty well covered. It's the woman who is on a tighter budget who doesn't get protected, and that $3 garment or $5 garment, or $25 rug is a bigger chunk out of her budget than maybe somebody else paying $500, and she is the one who is not getting protected.[16]
>
> Also I don't see why manufactured goods selling for $3.00 or less should be exempt from being properly labeled. People who buy inexpensive things need to take care of them just as much as people who buy expensive garments which they throw out anyway after a short time.[17]

It is evident that these consumers would recommend eliminating the exemption entirely because they feel that those who buy inexpensive merchandise are not being protected. Witness Kennedy supports this recommendation but states that, if the exemption is to be retained, "bleachability" should be added to the list of criteria used to determine whether a product qualifies for exemption under the paragraph.[18] Finally, the Carpet and Rug Institute argues that the

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14 (Continued)
under the Magnuson-Moss Warranty Act exempts all products costing less than $15.00 from warranty disclosure requirements.

15 R. 17 at 296, Linen Trade Association; Tr. 1153, 1156-57, Linen Trade Association; R. 17 at 429, ATMI; Tr. 1943, ATMI; R. 17 at 772, Fieldcrest Mills.

16 R. 20 at 618, consumer.

17 R. 18 at 935, consumer.

18 Tr. 2187, E. Kennedy, small retailer.

standards for exemption should be modified to incorporate small rugs which can be cleaned by all reasonably anticipated methods without damage or substantial impairment.[19]

The record as a whole amply demonstrates that silence with respect to care procedures for a product covered by this Rule typically gives rise to erroneous consumer assumptions about the care of the product. Often these assumptions result in the unnecessary use of "overly cautious," more expensive care. Silence also effectively prohibits comparison shopping. This is true regardless of the care traits of the item at issue. Thus, it is staff's opinion that, as a matter of policy, exemptions should be granted only in circumstances where the costs of providing care information clearly exceed the benefits or are clearly disproportionate to the cost of the item. This is consistent with the original intent of the Commission as expressed in the current rule's Statement of Basis and Purpose. Logically, therefore, an exemption of the type contemplated by section 423.8(b) becomes more difficult to justify when the price of the item at issue is relatively high.

While the record contains little information upon which to base a change in the current price limit of $3.00, staff concedes that inflation has taken a severe toll in this area. Therefore, staff recommends that the price above which exemptions cannot be granted be raised to a retail price of $5.00 per unit or, if an intended retail price cannot be determined with certainty, a manufacturer's selling price of $2.50 per unit. Staff also recommends that this price be reviewed periodically for the purpose of inflationary adjustments, if necessary. Staff realizes that these prices may operate to exclude entirely from the paragraph many items covered by the Rule. In light of the previous discussion, however, staff cannot recommend raising this price further. Such an action would "open the door" to exemption of higher-priced items where the cost of care information is <u>not</u> disproportionate to the cost of the items and would not exceed the benefits of disclosure conferred thereby. This would be in direct violation of the Commission's rationale for including the exemption initially. The record contains no valid reasons why this rationale should be changed.

Similarly, the record contains little evidence upon which to base a change in the exemption's qualification requirements. In view of staff's conclusions regarding the necessity of including bleaching, ironing and drycleaning instructions in a washing instruction, however, and in light of the fact not all "completely washable" items are completely "bleachable," "ironable" or "drycleanable," as now defined in staff's recommended definitions, it is staff's opinion that complete "bleachability," "ironability" and "drycleanability" should be added to the list of criteria which

19 I. 16 at 106, CRI.

must be met before the exemption can be granted. This is consistent with the prevailing philosophy of the paragraph which authorizes exemption only in cases where any forseeable care can be given the item without damage or substantial impairment. In any other case, the need for care information far outweighs cost and price considerations. Further, staff does not see the need for adding specialized cleaning procedures to the list of exemption criteria for carpets, rugs, upholstered furniture or leather apparel since it is extremely unlikely that such products will initially be eligible for exemption because of the $5.00 retail price limit. If staff receives evidence in the future that such products do sell at a price below $5.00 per unit and might otherwise qualify for this exemption, appropriate modifications or interpretations can be made to accommodate such products.

The record also contains some comment which advocates that the Commission, instead of granting individual exemptions upon request, should grant industrywide exemptions when requested by a trade association or where it receives two or more individual petitions for exemptions for the "same" item.[20] This proposal has some industry but no consumer support.[21] Among the reasons given are 1) that the requesting party who receives an exemption has an unfair advantage over the rest of the industry who manufacture similar products but have failed to request an exemption and 2) that the burden to the Commission in administering the Rule would be decreased.[22] Staff disagrees. First, the record contains ample evidence that the care traits of the "same" items often differ; obvious physical characteristics, such as fiber content, are often overshadowed from the point of view of care by the dyes, finishes and "invisible" manufacturing processes applied to the product. As stated in the staff report, "a pair of cotton underwear made by one manufacturer may have different care traits than another pair, seemingly identical, made by another manufacturer."[23] Thus, the granting of an industrywide exemption for hundreds of products on the basis of one, two or even a group of petitions from manufacturers requesting individual exemptions for the "same" or similar products cannot be justified without creating a large loophole in the Rule. Assumptions about the care characteristics of one product do not necessarily appply to another "seemingly identical" product made by a different manufacturer. Further, every manufacturer has the same obligation to be aware of applicable federal regulations. Every manufacturer also has the same opportunity to request an exemption under the Care Labeling Rule. A provision of a published Rule cannot be deemed "unfair" merely because one

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20 R. 17 at 532, Sears, Roebuck & Co.

21 R. 17 at 772; Tr. 1944, ATMI; R. 17 at 1050; Tr. 1702, AAMA; R. 17 at 295; Tr. 1142, LTA.

22 Id.

23 Staff Report 33.

manufacturer is sufficiently astute to take advantage of opportunities for exemption while another, for whatever reason, chooses not to do so. Third, staff concedes the administrative burden in processing a large number of exemption requests. On the other hand, staff believes that shouldering this burden is preferable to permitting a large number of products to be sold without care instructions which may be otherwise needed. Staff concludes, therefore, (with three exceptions)[24] that the opportunity for "industry-wide" exemptions is not appropriate for inclusion within the final Rule. For the reasons stated above, staff also rejects comments that advocate total exclusion of products clearly recommended to be covered by the Rule.[25] Finally, as stated in one industry comment, publication in the Federal Register of all exemptions, correspondence, plus a list of products exempted, is a desirable objective.[26] These materials are now placed on the public record of the Rule but not published further. Staff is not in a position to make recommendations regarding this procedure at this time, but will consider them if and when a final Rule is promulgated. Staff sees no necessity for inclusion of such procedural requirements in the language of the Rule itself.

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24 One exception is hosiery, which because of unusual similarities in care characteristics, is currently the subject of an industrywide exemption in certain uniformly specified cases, to be evaluated by each hosiery manufacturer. While there is some disadvantage to this policy in situations where no permanent labels are required (See Tr. 2188-89, E. Kennedy), the record also contains a degree of support for this policy. R. 17 at 532, Sears; R. 20 at 300, Dept. of Clothing and Textiles, Oregon State University; R. 20 at 426, A. Langford, Iowa State University; R. 20 at 480, Office of Consumer Affairs, State of Virginia. Staff recommends that hosiery remain in its present status under the proposed rule's "grandfather" clause. The second exception involves "irregulars" or "seconds" which staff has determined on the basis of the record should be given an "industry-wide" exemption from the permanency requirement. The third exception is remnants of undetermined fiber content, as defined, for which care instructions do not appear to be justified from the point of view of cost.

25 R. 17 at 1050, AAMA (any product which can be machine washed and dried at high settings); Tr. 2007-08, CRI (any product which can be washed or cleaned by all reasonably anticipated means without damage or substantial impairment).

26 R. 17 at 532, Sears, Roebuck & Co.

In accordance with this discussion, the following provision is recommended for inclusion as section 423.10(b) of the final Rule:

> The Commission shall consider, upon written petition to be placed on the public record, addressed to the Secretary of the Commission, any request for exemption from this part of any specific product or product 'line' intended to be sold at retail for $5.00 or less (per unit) or, if the intended retail price cannot be ascertained, having a manufacturer's selling price of $2.50 (per unit) and which can be machine washed with hot water (as defined), machine dried at a high setting (as defined), bleached with any commercially available bleach according to manufacturer's directions, ironed at a hot setting (as defined) and drycleaned with any commercially available solvent without damage or substantial impairment to the product itself or to other products with which it is maintained. Such a request must be accompanied by a statement of the intended retail price(s) or manufacturer's selling price(s) of the product or product 'line' for which exemption is requested, whichever is applicable, and a documented test report from an independent laboratory summarizing the tests conducted to determine whether the product or product 'line' satisfies the above requirements and stating the results thereof.

b. Utility or Appearance

Paragraph (c)(1) of the current rule also provides a basis for exemption of certain classes of apparel products, but only from the requirement that such products contain permanently attached labels. Apparel exempted under this paragraph must still be accompanied by separate care instructions at the point of retail sale. The Commission's rationale for permitting such an exemption is that the physical characteristics of some apparel, e.g., shape, size, fragility or sheerness, in effect make attachment of a permanent label virtually impossible or otherwise undesirable because of its adverse effect on the product's utility or appearance.[27] The staff report outlines the modifications made to paragraph (c)(1) in the proposed revised rule [section 423.8(a)], viz., the theory of the exemption has not been changed but the proof required to obtain it has been more precisely specified.[28]

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27 Statement, Chapter VI.B.

28 Staff Report 31-33.

Except for problems raised by the linen industry (which were resolved in Chapter IV.F.5), the record developed since the initial notice contains no comments or testimony regarding this exemption. Staff therefore concludes in its discretion that section 423.8(a) appears to be acceptable as written and recommends that it be retained in the final Rule without modification as section 423.10(a).

c. The "Grandfather Clause"

Paragraph (c) of section 423.8 of the proposed revised rule states that all exemptions previously granted will remain in effect so long as the products exempted still meet the criteria upon which they were based. If they do not, the exemptions should be considered automatically revoked. As stated in the staff report "[t]he sole purpose of the paragraph is to prevent the inevitable confusion and unnecessary expenditure of resources which would result from staff's having to re-evaluate all exemptions previously given."29 The record contains no comments on this provision. Staff, therefore, recommends that it be retained in the final Rule as proposed in section 423.10(d).

3. Industry-wide Exemptions

a. Irregulars and Seconds

Products having manufacturing imperfections and sold regularly at "discount" prices are termed "irregulars" or "seconds" in the trade.30 Neither the current rule nor the proposed revised rule deals specifically with these products; thus, they are treated as if they were first quality goods for purposes of compliance. The American Textile Manufacturers Institute, however, believes that "irregulars" or "seconds" should be exempted from the permanency requirements of the Rule and that care instructions need only accompany such products. The Institute maintains that "irregular" products are frequently sold at discount prices which afford a form of recovery for the manufacturer and at the same time a savings for the consumer. One method to ensure further savings to the consumer would be to require that care instructions be included with, but not necessarily attached to, such products. The consumer will then receive the same care labeling information, but at an added savings since the "joining" operation involved in attaching permanent labels could be omitted.31 ATMI further submits that the repetitive

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29 Staff Report 33.

30. R. 17 at 1148, ATMI.

31 Id.

sewing operation involves some extra cost to the manufacturer which becomes comparatively significant in the case of "irregulars" since such items are usually sold at a loss. Because each savings in cost is important in providing a "bargain" for the consumer as well as a convenient outlet for disposal of such items by the manufacturer, ATMI recommends that "irregulars" and "seconds" not be required to be permanently labeled.32 Staff agrees with this argument so long as such products are clearly designated as "irregulars" or "seconds" when sold by the manufacturer and so long as appropriate care instructions are securely attached to the product (not on a permanent basis) in such a manner as to be available at the point of sale. Because such products are purchased primarily because of their low prices, the benefits of the permanency requirement in this particular situation are outweighed by the potential savings in omitting it. Although such products consist mostly of apparel items, there may be other articles which staff recommends be included in the final Rule which are also sold with minor imperfections or defects and would fall within a similar category. Therefore, staff recommends that all such products be exempted from the permanency requirement via an "industry-wide" exemption to be included within the exemption section [section 423.10(c)] of the final Rule as follows:

> Products otherwise included within the coverage of this part which are designated 'irregulars' or 'seconds,' by the manufacturer, as defined herein, are exempted from Sections 423.2, 423.5 and 423.7, except that the information required by these Sections must be securely attached to such products whenever they are sold in commerce as 'commerce' is defined in the Federal Trade Commission Act. Attachment must be made in such a manner as to ensure the availability of such information at the point of retail sale but need not be permanent in nature.

Staff also recommends that the following definitions of the terms "irregulars" and "seconds" be included within the definitional section of the Rule (section 423.1):33

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32 Tr. 1943, ATMI.

33 This definition is taken from the definitions of the terms "irregulars" and "seconds" included in § 152.4(c) of the Commission's Trade Practice Rule for the Hosiery Industry, 16 CFR 152.

'Irregulars' or 'seconds' are all products included within the scope of this part which are not of first quality or which contain imperfections or defects in material, construction or finish.

b. Hosiery

See Section 2.a of this Chapter, Note 24.

c. Remnants of Undetermined Fiber Content.

See Chapter IV.D.7. of this report

4. Waivers

The current rule does not explicitly provide any opportunity for buyers of products covered by the Rule to waive their rights to required care instructions even though such buyers may not be "ultimate consumers" but various institutional users who utilize such products in their businesses and do not resell them to ultimate consumers.[34] The Rule's Statement of Basis and Purpose explains the rationale:

> [T]here is no reason for distinguishing, for example, between a 'consumer-purchaser' who buys one uniform and a uniform supply company that buys many. Each needs to be informed as to the care and maintenance necessary to be applied to these products. The Rule protects those who obtain an article of wearing apparel by purchase without regard to the category into which these purchases might fall.[35]

As outlined in the staff report,[36] however, it became evident during the period following the Rule's promulgation that some institutional buyers clearly have no need for care instructions of

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34 These may include rental service companies, hospitals, nursing homes, colleges and universities, local, state and federal institutions, hotels, motels and bulk purchasers of uniforms and employee work clothes. See R. 20 at 509, Council on Wage and Price Stability.

35 Statement, Chapter VI.A.

36 Staff Report 33-34.

the type required by the Rule. Staff, through liberal interpretations of the Rule, permitted sellers of such products to ignore the Rule's requirements with respect to such products so long as the buyers agreed and evidence of such agreement was filed with the Commission. Section 423.9 of the proposed revised rule reflects this action and permits manufacturers of wearing apparel and linens sold to rental service companies, hospitals, nursing homes and other similar institutional users to waive the Rule's requirements in the manner described.

While several commentors favor the rationale of the provision,[37] the record also contains several objections to it. First, the filing requirement is regarded as burdensome, overly bureaucratic, unnecessary and too expensive to implement for a large number of products.[38] Second, the coverage of the provision with respect to potential institutional buyers is ambiguous[39] and, in any event, too restrictive. It is argued that the provision should also apply to universities, colleges, local, state and federal institutions, hotels, motels and bulk purchasers of uniforms and employee work clothes, in addition to rental service companies, hospitals and nursing homes.[40] For example, institutional buyers purchased over a million dozen sheets in the second and third quarters of 1975 (12% of U.S. production). It is alleged that the cost of labeling these articles far exceeds the benefits.[41] Third, it is argued that section 423.9(b) should be extended to cover other products besides wearing apparel and linens.[42] Fourth, a drycleaning representative opposes the provision altogether because drycleaners will be deprived of care information with products received for refurbishing for which care instructions have been waived.[43] Thus, while some parties favor deleting the entire section and providing no waivers whatsoever,[44] others favor extending

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37 R. 17 at 501; Tr. 1297, J. Schapiro, Dixo Co.; Tr. 2189-90, E. Kennedy, small retailer; Tr. 1944, ATMI.

38 R. 20 at 237, Attorney General, State of Illinois; R. 20 at 509, Council on Wage and Price Stability; R. 17 at 122-23, Will Ross, Inc.; R. 17 at 532A, Sears, Roebuck & Co.; R. 17 at 773, Fieldcrest Mills; Tr. 1944, ATMI.

39 R. 17 at 532A, Sears, Roebuck & Co.

40 R. 20 at 509, Council on Wage and Price Stability; R. 17 at 122-23, Will Ross, Inc.; R. 17 at 191, NAFM; Tr. 1096-97, NAFM; Tr. 2189-90, E. Kennedy.

41 R. 20 at 509, Council on Wage and Price Stability.

42 R. 17 at 191, NAFM.

43 R. 17 at 501; Tr. 1297, J. Schapiro.

44 R. 20 at 237, Attorney General, State of Illinois.

the meaning of the phrase "institutional buyer" to include any party other than the "ultimate consumer," as defined.[45] On the other hand, Sears, Roebuck & Company favors excluding institutional buyers entirely from the benefits of the Rule through a "preface" to its provisions.[46] The Presiding Officer agrees with Sears.[47] Both cite the burden of unnecessary paperwork. The Presiding Officer urges that the buyer-seller relationship will accomplish the successful transfer of necessary care information.[48]

Staff agrees with the general premise that the industry should not be forced to engage in superfluous paper shuffling. Staff also agrees that limiting the operation of the provision to rental service companies, hospitals and nursing homes may be far too restrictive and appear arbitrary. It does not follow, however, that because of these incongruities, the entire provision should be deleted. Staff remains cognizant of the fact that the original intent of the Commission was to include all institutional buyers within the Rule's beneficiaries. Now, as then, the record contains no comment or testimony from such buyers indicating otherwise. On the other hand, staff also recognizes that some institutional buyers for valid reasons simply do not need instructions of the character required by the Rule. In these cases, as pointed out by the Council on Wage and Price Stability, the costs of providing care instructions would far exceed the benefits. Staff believes that a compromise is in order which would eliminate some of the burdens and apparent arbitrariness of the proposed provision while retaining the basic opportunity to waive care information in certain situations by agreement. Therefore, staff proposes that the provision be extended to include merchandise purchased by all institutional buyers for commercial use only (as opposed to individual personal use) and not for resale;[49] however, staff also proposes that the filing requirement should be eliminated. Further, manufacturers of such merchandise can be given the option of retaining a copy of any waiver agreement to be used as a defense in any enforcement proceeding by the Commission. Thus, manufacturers selling products covered by the Rule to institutional

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45 R. 20 at 509, Council on Wage and Price Stability; R. 17 at 122-23, Will Ross, Inc.; R. 17 at 191, NAFM; Tr. 2189-90.

46 R. 17 at 532A, Sears.

47 Presiding Officer's Report 107-08.

48 Id.

49 Such buyers normally possess all the characteristics of an "ultimate consumer," as defined, except that the products purchased are not for the buyer's own individual or personal use in the home, for example, but for use in the buyer's business or enterprise, either for rental or other commercial purposes not involving the sale of the product. See R. 17 at 532A, Sears; Presiding Officer's Report 108.

buyers must abide by the Rule's requirements unless such buyers waive their rights are information and the manufacturer can prove this fact in enforcement proceeding for apparent violation of the Rule. Staff recommends the following language to accomplish this purpose to be included in section 423.11:

> Manufacturers or importers of products covered by this part which are sold to institutional buyers exclusively for their own commercial use (as opposed to individual personal use) but not for resale are still required to comply with the requirements of this part with respect to those products, <u>except</u> that such manufacturers or importers will be considered exempt from such requirements with respect to such products when:
>
> 1) such insitutional buyers agree to waive their rights to care information for these products; and,
>
> 2) such manufacturers or importers can demonstrate the execution of such waiver agreement(s) in any enforcement proceeding by the Commission against such parties for violation of this part with respect to such products.

5. Conflict With Flammability Standards

The current rule does not address the issue of its potential conflict with requirements for care instructions under the Flammable Fabrics Act. The staff report explains staff's rationale for recommending, as a matter of policy, that regulations issued under the Flammable Fabrics Act be given preference over provisions of the Care Labeling Rule in case of conflict.50 The record developed since the proposed revised rule was issued contains one comment in favor of this policy by the American Apparel Manufacturers Association and no others either in favor or in opposition.51 Staff, therefore, recommends that section 423.10 of the proposed revised rule be retained in the final Rule as written (section 423.12).

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50 Staff Report 34.

51 R. 17 at 1051, AAMA.

V. GENERAL CHARACTER OF THE LABEL AND INSTRUCTIONS ON THE LABEL

A. Permanency and Legibility

1. Preface

The current rule requires that care labels must be permanently affixed to the labeled item for its useful life and that instructions thereon also remain legible for the useful life of the item.[1] Comments received in response to the Request for Comment indicate, however, that neither the permanency nor the legibility standards of the current rule are being observed consistently by manufacturers.[2] After due consideration, staff determined that the requirements of permanency and legibility in the current rule are adequate and that only improved enforcement is needed to obtain the desired result.[3] Staff therefore elected to retain both the permanency and legibility requirements in the proposed revised rule as they are currently written.

The label industry originally produced only one type of label, called a brand or logo label, which was woven on a loom. Today, while woven labels are still produced, colorfast permanent labels are printed by gravure, screen, and other printing methods on woven and non-woven materials. Labels now are employed not only for brand identification but to transmit information about care, size, fiber content, registration number, WPL number, flame resistance, color, style, lot number and many other characteristics of textile products. Technology now exists to enable the production of a label which is not only permanent for the useful life of the item to which it is attached, but also non-abrasive, small enough so as not to be unsightly and relatively low in cost.[4]

The current record indicates that labels still are not fulfilling their intended purpose, i.e., they are not always legible at the point of sale, failing to provide information on which the consumer can base a purchasing decision, nor are they permanent and legible for the useful life of the item.

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1 Care Labeling Rule, Note 3; Paragraph (d)(4).

2 Staff Report 29.

3 Staff Report 30.

4 Tr. 2833-834, Robert Schwager, Packaging Systems Corporation.

to which they are attached, denying the consumer the benefit of information at the point of care. Some instructions are printed on labels so faintly that consumers are unable to read the instructions even at the point of sale.[5] Complaints indicating that labels are neither permanent nor legible after prescribed care abound.[6] Many so-called permanent labels fray and, after several washings, deteriorate so severely that they literally fall off the item. Printing inks on labels often fade after garments are washed or drycleaned once or twice.[7] Comments on the record graphically illustrate consumers' difficulties in this area:

> [Y]ou wash, or have dry-cleaned the garment one or two times and the print on the shoddy labels wears off so badly that you can no longer read the words on it, so you don't know any longer how to care for your garments.[8]

> [P]apery ones seem to disintegrate . . . where they are stitched to the garment.[9]

> I have also noticed that the print on labels fades quickly when bleach is used and also that the ink on some labels runs and turns an entire load of wash a grayish color.[10]

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5 R. 17 at 93;R. 17 at 2402, consumers; R. 20 at 249, Karen Geiken, Textiles and Clothing Instructor.

6 R. 17 at 230; R. 18 at 3, 83, 97, 112, 130, 182, 187, 238-291, 349, 439, 533, 631, 641, 686, 701, 712, 724, 801, 751, 760, 774, 780, 888, 918, 937, 953, 963, 976, 995, 1003, 2413, 2489, consumers; R. 20 at 80, 151, 291, consumers; R. 20 at 302, Textile Specialist, CES, New Jersey; R. 20 at 304, 460, 728, consumers; R. 20 at 739, Margaret Dana, Consumer Consultant.

7 R. 18 at 318, Consumers' Research Magazine; R. 18 at 1043, consumer; R. 20 at 348, Textiles and Clothing Professor, U. of Georgia; Tr. 1398, International Fabricare Institute; Tr. 2165, 2180-81, Evelyn Kennedy, small business owner.

8 R. 18 at 321, consumer.

9 R. 20 at 427, Extension Agent, CES, Connecticut.

10 R. 18 at 782, consumer.

> Also frustrating are care labels . . . made of paper-like material that curls up (and often becomes visible) after the first washing and either come[s] off or the writing comes off after the second washing.[11]
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> In some items the care instructions are washed out beyond reading after one or two washings.[12]

Witness Taylor states that labels of non-woven olefin which she tested by laundering twelve times were not legible. Further, when the labels were ironed at the lowest setting on an iron (200 degrees F) the ink smeared and the labels melted.[13] Olefin materials are abrasive and melt or distort at less than 300 degrees F, a temperature considerably below the 400 degrees at which most ironing and drying is done.[14] While only 6.03% of 1943 responding in the Colorado survey note that labels are not always permanent,[15] 96% of the respondents in the Seattle survey note that labels are not always legible for the life of the garment.[16] Except for the Colorado survey, the weight of the record, while sparse, clearly indicates that the legibility and permanency requirements of the current rule are not being fulfilled in many cases. Staff must consider, therefore, whether additional remedies beyond more stringent enforcement of the existing requirements are appropriate, and if so, what those remedies should be.

2. The Remedy

In order to fulfill the requirements of the current rule, a permanent label must be ravel-proof and fray-proof and the instructions thereon must remain colorfast and legible for the useful life of the item to which they are attached.[17] While

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11 R. 18 at 1046, consumer.

12 R. 20 at 223, Extension Agent, CES, Florida.

13 Tr. 2807-2811, Ruth Taylor, graduate student, Textiles and Clothing, Texas Christian University.

14 Tr. 2837, Robert Schwager.

15 R. 20 at 303, The Colorado Survey.

16 R. 20 at 318-320, the Seattle survey.

17 Tr. 2834, R. Schwager.

a label manufacturer notes that, within the garment industry, a test of 50 washings or drycleanings is used as a standard for determining the permanency of labels.[18] studies indicate that most intimate apparel as well as children's garments and household linens are often washed as many s 100 to 150 times by consumer-owners.[19] Nevertheless, in testing labels for colorfastness and ravel resistance, the commentor launders labels in a manner equivalent only to 50 washings, stating that labels which are sturdy and legible after five washings will almost invariably be in good condition after 50 washings.[20] Three methods currently exist for producing labels which meet these characteristics. First, labels can be made from tapes with two woven edges. These labels are printed, cut and folded or looped with the two non-woven or raw edges sewn into a seam to prevent raveling and to avoid abrasion.[21] A second type of ravel-proof label may be produced using synthetic fibers (such as polyester). Tapes of the synthetic fabric are cut from broad goods using a hot knife which melts and fuses the sides of the tape as it is cut, thereby preventing raveling.[22] The third method for producing ravel-proof labels consists of coating broad goods with a substance which "locks" the fibers together and then cutting the broad goods into tapes.[23]

Legibility, on the other hand, is determined solely by colorfastness. Prior to 1930, the only truly colorfast label contained instructions woven with dyed yarns.[24] Since that time, gravure printing, which involves the use of etched rollers and ink has been developed along with aging and developing processes which make the print permanent. Methods of screen printing not requiring the use of etched rollers have also been developed through the use of specialized inks which produce a colorfast print. These inks can be used with any and all of the known printing methods, such as offset, gravure, screen, flexo, and letter press;[25] all produce

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18 Id.

19 Id.

20 Id., 2871.

21 Id., 2861.

22 Id., 2862.

23 Id.

24 Id.

25 Id., 2863, 2864.

colorfast labels. Many companies now possess the technology to produce permanent and legible labels under current standards.[26] Indeed, a label manufacturer states that labels which are both permanent and legible can be produced at practically the same cost as inferior labels.[27]

As staff is recommending that many new products now have permanent care labels, a consideration of their cost is relevant. Such cost is determined by the size of the label and the quality of the fabric from which the label is constructed. A standard "stock" label, measuring 1" x 3/4" made of non-woven polyester, is sold by one label company for $0.00135 per label. Such a label is ravel-proof, colorfast, and non-abrasive.[28] A larger label of the same quality, measuring 7/8" x 1 1/8", is sold for $0.00175 per label.[29] Labels of non-woven acetate of the same dimensions cost 10-15% more than those made of non-woven polyester.[30] Further, paper labels and loosely woven cotton labels coated with starch or proxilene are also available for much less than the labels noted above. However, both the paper and the coated cotton labels are abrasive and neither of these labels is permanent; both will disintegrate after only a few washings.[31] Olefin labels are cheaper to produce but are not recommended by some label producers because olefin melts at very low temperatures, lower than the lowest setting on some irons and lower than the temperature reached on some automatic dryer cycles.[32]

Current proposals concerning the nature of care instructions could also result in an increase in the amount of information contained on care labels. Therefore, information concerning the effect of increasing the amount of information on a label on the cost of the label is also pertinent. The record indicates that the maximum amount of information on a label can be increased considerably without sacrificing legibility by using a smaller size type without any increase in label size or cost.[33] For

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26 Id., 2835

27 Id.

28 Id., 2852-853 ($1.35/1000 labels purchased in quantities of 500,000).

29 Id., 2853 ($1.75/1000 labels purchased in quantities of 500,000).

30 Id., 2854.

31 Id., 2857.

32 Id., 2837.

33 Id., 2848.

example, a label measuring 1" x 1 1/2" can accommodate 75 legible words on each side or 150 total words,[34] far more than would be needed for even the most complex care instructions.

In considering the cost of permanent labels, the cost of attaching such labels is also important. Approximate figures given by some garment manufacturers for attaching labels are $2.00 per one hundred items when two or more labels are sewn one on top of another (piggyback fashion). An operator can label 100 such items in 35 minutes. The cost of $2.00 is based on a projected hourly wage of $4.00 which would include wage plus fringe benefits.[35] At a projected wage of $4.00 per hour, the cost per label would be $0.02. On the other hand, one hundred single labels, sewn into side seams, can be installed in twelve (12) minutes. At a projected hourly wage of $4.00, the cost of sewing a single permanent care label in an item is $0.008.[36] There are also automatic methods of attaching permanent labels which do not involve the labor charges included for sewn-in labels. Automatic heat setting machines as well as automatic sewing machines, neither of which involves individual hand operation, are used in many sectors of the apparel industry.[37]

As an alternative to the permanent label, the record contains references to detachable labels which are permanent until removed by the consumer. A representative of a label manufacturer describes a detachable label as follows:

> A detachable label is one that is permanent if the consumer wants it to be or easily detachable if necessary. A label is detachable if it is made of a material which is weaker than the threads which are holding it on or if it is perforated so it can be torn out without damaging the garment. It is not detachable if in tearing out the label you damage the seam or the garment. In effect, a detachable label is an optionally permanent label which can be so described in the printed care instructions on a label.[38]

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34 Id., 2877.

35 Id., 2881.

36 Id.

37 Id., 2882.

38 Id., 2840.

Purchasing and affixing a woven acetate detachable label, made so that the label can be removed by tearing without damaging the item to which it is attached, costs no more than purchasing and affixing a comparable non-detachable label. Labels which are perforated, however, require an additional production operation and therefore cost somewhat more, possibly an additional $1.00 per 1000 labels.[39]

Objections in the record that reasonable standards of permanency and legibility are not technologically feasible or involve excessive costs are unfounded. The record shows that permanent labels containing legible instructions can be produced and attached at minimal expense. Further, the cost of increasing the quantity of information on a given label while ensuring legibility of such information is nil. Given these facts, there appear to be no valid reasons why parts of industry are failing to comply with the current permanency and legibility requirements of the Rule. Clearly this failure is not due to any incongruities or anomalies in the language of these requirements. Staff concludes, therefore, as it did in the staff report, that additional remedies or substantive modifications in their language are not appropriate at this time as the record does not indicate any improvements which would operate to reduce the prevalance inpermanent, illegible labels. Only stricter enforcement is likely to achieve this result.

With regard to non-substantive modifications to these requirements, the record contains three comments. Two major retailers propose that the definition of permanency in the proposed revised rule be altered slightly, suggesting that the words "will not become separated" should be changed to read "should not, under ordinary use become separated."[40] They state that manufacturers cannot assure that a label "will never" become separated since, after products leave the manufacturer's control many unforseen events can occur which will cause this result. Sears, Roebuck and Company further suggests that the phrase, "during its useful life" be clarified to read "during the useful life of the item."[41] Staff believes that these clarifications constitute improvements over the present language and concludes that they should be incorporated.

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39 Id., 2877.

40 R. 17 at 1203, J. C. Penney; R. 17 at 530-31, Sears, Roebuck & Company.

41 R. 17 at 530-31, Sears, Roebuck and Company.

Staff, therefore, recommends that the legibility requirement of the proposed revised rule [section 423.5(c)] continue to be included in the final Rule as written to apply to all care instructions on permanent labels required therein. Staff further recommends that the proposed revised rule's definition of permanency [section 423.6(h)] be modified in accordance with the comments heretofore mentioned as well as staff's conclusions regarding appropriate standards of permanency for labels for upholstered furniture (Chapter IV.F.3.c.) as follows:

> A 'permanent label' is a label attached or affixed in such a manner that it should not, in ordinary use, become separated from the item during the useful life of the item, except that a label attached to upholstered furniture in accordance with this part should not, in ordinary use, become separated from the furniture during the useful life of the outer covering of the furniture.

B. Abrasiveness of Labels

1. Preface

The current rule contains no requirement prohibiting the use of abrasive labels, i.e., labels which tend to cause inflammation or irritation when placed next to the skin; neither does it otherwise address the quality of material to be used for labels required therein. The subject is not even addressed in the Rule's Statement of Basis and Purpose.[1] Following the promulgation of the current rule, however, staff received a substantial number of complaints concerning discomfort caused by rough or abrasive care labels on wearing apparel. Indeed, the response to the Request for Comment overwhelmingly supported these complaints indicating that consumers often remove labels which are rough or uncomfortable, thus defeating the entire purpose of the Rule.[2] One solution to the problem was proposed, i.e., that the Commission require the quality of material used in manufacturing labels to match the quality of the garment to which they are attached.[3] Staff rejected this solution on the basis that such a requirement would be prohibitively expensive to manufacturers and such expense would, of course, be passed on to consumers.[4] It was staff's opinion that the effects of abrasiveness could be minimized, however, by permitting attachment of labels on apparel in such manner as to avoid prolonged skin contact. Therefore, staff proposed in section 423.5(d) to allow manufacturers to place an otherwise abrasive label on apparel in any location where skin contact would not be likely, provided that the instructions on the label were made accessible to the purchaser at the point of sale through the use of a hang tag or other means.[5] Staff did not propose, however, to regulate the actual quality of the label.

In this section of the report, staff will review current record information concerning the prevalence of abrasive labels, followed by a review of information on standards of abrasiveness and finally a discussion of whether the problem of abrasive labels can be remedied in the Rule.

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1 Staff Report 30.

2 Id.

3 Id.

4 Staff Report 31.

5 Id.

Various factors may cause a label to be abrasive and, thus, irritating to the skin. Overly large labels may become "bothersome." The practice of sewing two, three or four labels, one on top of another, causes bulkiness which can result in skin irritation. Use of the wrong adhesive or improper sealing of the edges can make them sharp with consequent adverse dermatological effects. Frequently, labels are bar-tacked or sewn with a bob of thread only on the corners allowing the edges of the label to curl and cause abrasion. Finally, some labels made of synthetic materials are fused along their edges. This can create a "bead" on the edge of the label which can become extremely abrasive to the touch. Other synthetic materials contained in labels tend to stiffen or distort when subjected to high temperatures in drying or ironing also causing abrasion.[6]

Consumer comments throughout the record express extreme annoyance with abrasive labels,[7] of which only a few are set forth here:

> Labels today seem to have the abrasive power of sandpaper.[8]
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> Many labels are made of [something] that is hard as nails, scratches like the dickens, and is so stiff that the label makes a lump against the soft cloth of the garment and can be seen in outline from the outside . . . .[9]
>
> The permanent labels . . . now found on most wearing apparel are far too rough and abrasive. After one washing the label generally curls up and, if attached to the garment at the neck, is constantly sticking out the collar or scratching a raw spot on one's neck. The . . . labels hardly ever lie down flat and smooth like a brand name label. I have found this to be true on expensive clothes as well as moderate [sic] priced clothes.[10]

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6 Tr. 2836-837, Robert Schwager, Packaging Systems Corporation.

7 Tr. 2165, Evelyn Kennedy, small business owner; R. 18 at 3,801, consumers; R. 20 at 701, Council on Wage and Price Stability; Tr. 1908, K. Stanton; Tr. 2181-82, Evelyn Kennedy; Tr. 2534, K. Bourdeau.

8 R. 18 at 556, consumer.

9 R. 18 at 321, consumer.

10 R. 18 at 99, consumer.

The results of the Urbana-Champaign survey III show that 66% of 161 respondents find care labels to be "scratchy" "usually" or "sometimes."[11] Similarly, in the Urbana-Champaign survey I, 75% of 93 respondents find care labels to be "scratchy" "usually" or "sometimes."[12]

In order to rid themselves of a constant irritant, consumers frequently remove these labels.[13]

> Many of the clothing labels are made of such cheap, papery, itchy, fabric that they must be removed right away and thus are not helpful.[14]

> My main complaint with regard to labels as they are now used is that so often they are made of scratchy material and placed at the back of the neck of the garment. Like so many others, I have very sensitive skin and have had to remove the label about half of the time because it irritated my neck.[15]

> Few things can be more irritating than a label constantly scratching you. If you take it out, there is a good chance you will lose it.[16]

> Some labels are abrasive and irritate the skin. It defeats the purpose of permanent care labeling if the first thing done after a purchase is to cut the label out.[17]

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11 Tr. 1467, Urbana-Champaign survey III.

12 Tr. 1490, Urbana-Champaign survey I.

13 R. 20 at 6, Extension Agent, CES, Iowa; R. 20 at 151, Textiles Instructor, Seattle Pacific College, Washington; R. 20 at 455, Textiles Instructor, Univ. of Illinois at Urbana-Champaign; Tr. 1666, K. Geiken; Tr. 2286-87, M. Brinson. Seventy percent respondents in her survey who removed labels did so because labels were abrasive; Tr. 2607-08, W. Morck.

14 R. 18 at 111, consumer.

15 R. 18 at 582, consumer.

16 R. 18 at 2491, consumer.

17 R. 18 at 801, consumer.

> Many labels are too stiff to be comfortable and are, therefore, torn out at the first wearing. This makes them of no more value than a paper hang tag.[18]

In the Home Testing Institute survey, 89% of 499 respondents had removed labels from garments because the labels were "scratchy."[19] Removal of the labels often results in loss or misplacement thus negating any benefit derived from the permanency requirement of the Rule[20] and wholly defeating its purpose. The record developed since the initial notice confirms the record developed previously. The prevalence of abrasive care labels is great and shows no sign of abatement.

2. The Remedy.

Given the existence of the problem, consideration must be given to whether it can be remedied in this Rule. Pertinent to such a consideration is the question of whether abrasiveness can be measured in any meaningful fashion. The method currently employed by the garment industry to measure abrasiveness, as well as other tactile properties of fabrics, is known as the "hand test."[21] This test involves holding the label or other fabric in the hand and gently rubbing the fabric between two fingers. If a label is found to be stiff and papery, it is said to have "a bad hand." If the label feels silky, soft and supple, it is said to have "a good hand."[22] Such a "test" is obviously not highly scientific and is truly subjective in nature. The record indicates, however, that no other means exist for defining tactile properties of fabric. The record further indicates that, although the American Society for Testing and Materials is currently attempting to develop a standard for abrasiveness,[23] none presently exist.

Many materials are now used for labels, however, which are indisputedly non-abrasive by any standard. Woven, non-woven, coated and non-coated fabrics are available which are decidedly

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18 R. 20 at 325, Textiles Instructor, Freed-Hardeman College, Tennessee.

19 R. 17 at 1367, Home Testing Institute survey.

20 R. 20 at 347, Asst. Professor, Clothing & Textiles, Univ. of Ga.; Tr. 2286, M. Brinson.

21 Tr. 2866-67, Robert Schwager.

22 Id.

23 Tr. 1820-21, Dr. Vivian White; see also Tr. 2319, M. Brinson.

smooth to the touch.[24] Heat-sealed labels can also be made smoother if a permanent sealable adhesive is used.[25] Given the existence of these materials, many consumers argue that the Commission should flatly require their use in labels.[26]

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24 Tr. 2836-37, Robert Schwager.

25 Id.

26 R. 20 at 163, Home Economics Instructor: "Care Labels should be made of soft, pliable, durable fabric that will not be uncomfortable to the wearer. If labels cause irritation to the skin, the wearer may cut the label out of the garment."

R. 20 at 174, Extension Clothing Specialist, CES, Arkansas: "Labels permanently affixed to the garment should be required to be made of a soft non-abrasive fabric. Has any thought been given to having labels made from a soft, fusible, non-woven interfacing fabric? By using this type of fabric label, there would be no raveling, no stitching of the label to the garment, and yet the label could still be placed in an accessible spot. Of couse, for some items such as sheer garments, scarves, etc., the label could not be fused to the item because the label would detract from the aesthetic appearance."

R. 20 at 188, Home Economics Teacher, Pennsylvania: "Further, my strongest view on care labeling is that it is essential that these permanent labels be made of material soft and comfortable enough to be tolerated by the wearer. Otherwise, the consumer removes the scratchy, offending label immediately and the purpose of the label and the law is defeated. I feel that this is an important consideration, and that FTC should state requirements the labels must meet in this respect."

R. 20 at 425, Assistant Professor of Textiles, Iowa State Univ.: "In addition to specific recommendations about the content of the care labels, I believe the proposed Rule should include specifications for the softness and flexibility of care labels. As a consumer, I have removed scratchy and abrasive care labels from clothing. As a textiles and clothing professional with a strong conviction for the use of care labels, I have resewn the labels into areas of the garment that make less direct body contact. I am very sure that most consumers

(Continued)

The problem with these arguments is that, to staff's knowledge, there are no existing standards for abrasiveness which could be used in drafting an intelligible requirement. Setting such a standard would be impossible without a concise definition of the standard to be imposed.[27] Further, labels must be sufficiently firm to permit the use of labor-saving, automatic label-sewing machinery by manufacturers.[28] The record, however, contains no evidence of the degree of firmness required. Because of the lack of criteria for determining what is abrasive and what is not and given the apparent lack of technical knowledge of the entire subject area in the industry, a requirement that only "non-abrasive" materials be used for labels would be unenforceable and highly subjective. Therefore, despite heavy support on the record for such a requirement, staff is compelled to recommend, as a matter of policy, that it not be instituted here.

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26 (Continued)
do not bother to reattach scratchy labels and therefore do not obtain maximum benefit from them. If the labels were softer, they would remain with the garment longer, even when the garment is contributed to a charitable organization for resale."

R. 20 at 362, Textile and Clothing Specialist, CES, Oregon: "Given the conflict between placement of a permanent label on wearing apparel to ensure accessibility and placement to ensure the least discomfort to the wearer, how should the problem of label abrasiveness be resolved? Why not require non-abrasive labels? There certainly are too many of them around. They are sufficiently annoying that many consumers cut them out - thus negating the intent of the law. In my opinion, an abrasive label is still abrasive even if it has been moved to a different location."

R. 18 at 112, 395, 593, 611, 631, 751, 984, 991, 1051, consumers; R. 20 at 453, J. Stone, Textiles Instructor, Univ. of Illinois, Urbana-Champaign, Urbana, Ill.; R. 20 at 487; R. 18 at 641, 760, 765, 768, 782, 2494, consumers; R. 20 at 291, 325, 441, 364, consumers and consumer representatives.

27 R. 17 at 130, Phillips-Van Heusen Corp.

28 Tr. 2864-65, R. Schwager.

The record contains many comments from individuals, however, who support the solution originally proposed, i.e., relaxation of the accessibility requirements of the Rule to accommodate labels which are, in fact, irritating to the skin.[29] These commentors argue that a standard location (such as shoulder seam, side seam,

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29 R. 18 at 99, consumer: "I would suggest that if the labels must be so coarse and rough to last the lifetime of the fabric, they could just as easily be sewn in the side seam of the garment near the tail for a shirt or blouse or in the side seam of the skirt where the label would be out of the way and not directly touch one's skin. This would eliminate the irritation they cause when placed at the neck of a garment."

R. 18 at 140, consumer: "Care Labels are not important to the salesman, only to the buyer. The positioning at neck is just horrid to the wearer. They either turn up and are in plain sight, they irritate our skin or tickle at least, and try as we might to fold them inwards, they are always pointing outwards . . . . These could be placed at almost any other inner seam, at sides, or just about anywhere else where we would be less likely to be bare-skinned at the point of contact, AWAY FROM UNDERARM OR NECKLINE."

R. 18 at 610, consumer: "Put the label where it can comfortably be left on the garment NOT at the back of collar. Suggest: 1 - side seam (low); 2 - Back of shirt or pants. European makers do this well!"

R. 20 at 20, Textiles and Clothing Specialist, CES, Idaho: "Some permanent labels have been uncomfortable and I'm sure many consumers have cut them out. Rather than increasing cost to put in fine labels on moderate to inexpensive clothes, I think the accessibility requirements should be relaxed."

R. 20 at 323, Extension Adviser, CES, Illinois: "Care Labels should be attached to items of clothing in an easy-to-find place, but preferably not at the neckline area as the labels are sometimes stiff-feeling and are taken out for that reason." R. 18 at 86, John Dunlap, Calif. State Senate; R. 18 at 751, Textiles Student; R. 20 at 300, Textiles Professor, Ohio State U.; R. 20 at 364, Asst. Professor, Whittier College; Tr. 2319-320, M. Brinson; Tr. 2535, K. Bourdeau.

shirt tail, zipper seam, neckline or waistband seam) for attaching labels on apparel should be designated in the Rule. For every comment advocating an ideal location for labels, however, the record contains an equally persuasive comment criticizing the same location. The wide variety in apparel design, fabric selection and construction techniques render the designation of a standard location for all care labels a hopeless task. Further, such a location would necessarily be arbitrary. For these reasons, staff must conclude that designation of a standard location for labels on wearing apparel is not feasible at this time.

While staff recognizes the seriousness of this problem, the record contains no practical solutions other than that already proposed. Staff can only urge parties responsible for labeling apparel to select and place labels in such a manner as to minimize the potential for skin irritation. It is entirely possible that parties who habitually utilize labels of poor quality on their apparel products will experience a decrease in sales as potential buyers become aware of the causes of their discomfort. With this in mind, therefore, staff recommends that the accessibility requirements for permanent labels on wearing apparel be relaxed to allow apparel manufacturers to attach otherwise abrasive labels in locations where skin contact is unlikely, as set forth in section 423.5(d)(2) of the proposed revised rule. For a further discussion of accessibility and placement of labels, see Chapter V.C. of this report.

C. Accessibility and Placement

1. Preface

The current rule requires care instructions to be placed on a garment in such a manner as to be "readily accessible to the user,"[1] so that the purchaser, "may gain access to the instructions which are permanently attached at the point of sale."[2] By minute of May 10, 1972, the Commission interpreted the former phrase to mean visible at the point of sale except in situations where the packaging obscures the label itself. In such cases, the instructions may be reprinted on the outside of the package or on a tag attached thereto without violating the requirement. Staff has since interpreted the meaning of the term "accessible" to include those cases where the item can be easily moved or unfolded to reveal the permanent label.[3]

2. The Requirement

Except for concerns about abrasive but accessible labels (discussed in Chapter V.B.2.), the record contains little comment on the proposed accessibility requirement. Some object to the inevitable results of the requirement, saying that placement of the label in an accessible location has caused unforeseen consequences. For example, some dislike neckline labels (placed there presumably to comply with the accessibility requirement) in sheer garments, saying that the labels which can be seen through the fabric are unattractive.[4] Others complain that accessible labels sewn in with zippers make closing the zipper difficult and often cause an unsightly bulge in the fabric when the garment is worn.[5] Similar concerns are expressed with respect to items for which coverage is proposed. The Linen Trade Association says that permanent labels attached to sheer table linens will show through and will be unattractive. Indeed, LTA fears that consumers may attempt to remove such labels, disfiguring the product in the

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1 Care Labeling Rule, Note 4.

2 Statement, Chapter VII.A.4.

3 Staff Report 31.

4 R. 18 at 311-312, consumers; Tr. 1491, Urbana-Champaign survey I. Two-thirds of the 93 respondents had had the experience of labels that stick out or show through; Tr. 1467, Urbana-Champaign survey III. Sixty percent of the 161 homemakers responding noted that labels often stick out or show through; Tr. 2215-16, Evelyn Kennedy, small retailer.

5 R. 20 at 6, Extension Home Economist, CES, Iowa; R. 18 at 708, 556, 582, consumers.

process.[6] In staff's opinion, these objections can be resolved by either exempting such articles from the permanency requirements of the Rule or changing the placement of such labels to another accessible location. Staff does not interpret these comments as advocating elimination of the accessibility requirement. On the other hand, many commentors favor such a requirement and, in fact, advocate that labels be placed in standard locations on each item covered by the Rule so that they will be easier to find at the point of sale.[7]

As previously noted, however, for each comment proposing an acceptable location for a label, the record contains another rejecting it.[8] There is no consensus on the record as to a single accessible location for all care labels on all items. Variations in fabrics, styles, and construction techniques for items to be covered by the final Rule render the implementation of such a concept practically impossible. As such, it is staff's opinion that manufacturers must be granted discretion to determine an appropriate, accessible location for attaching permanent care labels depending upon the item at issue. If such a location cannot be found, then the care instructions can also be included separately in such a manner as to be accessible at the point of sale.

Since the record contains no other comments either favoring or protesting the accessibility requirement contained in the proposed revised rule (except those relating to abrasive labels which have already been considered) and since the comments that do appear are of little value in improving it, staff concludes, in its discretion, that the requirement should be retained as proposed. It is undisputed that care instructions should be available at or before the point of sale. Staff can find no argument in the record which successfully undermines this basic principle. Therefore, staff recommends on this basis that section 423.5(d) and (d)(1) of the proposed revised rule be included in the final rule as written, to apply to all products (if appropriate) where permanent labels are required.

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6 Tr. 1138, Linen Trade Association.

7 R. 17 at 488, E. Kennedy; R. 18 at 199, 512, 527, 556, 582, 593, 661-662, 1015, 1051, 2391-92, 2494, consumers; R. 20 at 80, consumer; R. 20 at 632, Margaret Dana; R. 23 at 739, Margaret Dana; R. 18 at 115, consumer; Tr. 1907-08, K. Stanton; R. 20 at 61-63, Coosa County Survey.

8 R. 18 at 512, 527, 556, 582, 931, 937, 953, 1004, 1015, 1039, 1051, 2391, 2494, consumers; Tr. 2181-82, Evelyn Kennedy.

D. Symbols

1. Preface

The record upon which the current rule is based contains some comments advocating the use of symbols rather than words in care instructions. The Commission, however, elected to require that care instructions be expressed only in words for several reasons. First, there was no single internationally utilized symbol system for care terminology at that time, although both a Canadian and an European symbol system were being developed. Further, the symbols in those systems did not cover the extensive number of variations in care and maintenance options available to American consumers. Additionally, continued technological development in the apparel industry dictated the need for greater flexibility than a standardized symbol system would provide. Finally, the Commission felt that the development of a set of symbols for American use and the extensive time and effort required to educate the public as to the meaning of such a new "language" could be justified. Therefore, the Commission, while not prohibiting the use of acompanying symbols, concluded that care instructions, at minimum, should be expressed in words.[1] The proposed revised rule expresses this position in Section 423.5 (a)(3): "In any instruction symbols may be used in addition to words, so long as the words fulfill the requirement of this Section."[2]

2. Utilization in Care Instructions

The current record contains only passing reference to both the Canadian[3] and the European (International Standards Organization)[4] symbol systems as well as a set of symbols recommended by NRMA.[5] The number of symbols and the information transmitted by the symbol in each of these systems is limited. The system devised by NRMA, for example, has symbols for machine

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1 Statement, Chapter VI.D.3.

2 Proposed revised rule, Section 423.5(a) (3).

3 Tr. 2173, Evelyn Kennedy.

4 R. 20 at 625, Dr. Vivian White.

5 R. 18 at 84, textile student (submitted NRMA pamphlet).

and hand washing (caricature of a machine washer and a hand, respectively), drying (same), bleaching (B), drycleaning (caricature of a drycleaning drum), and ironing (picture of an iron) with designations for water temperatures (either the temperature itself or CW for cold water) and ironing temperatures (H,M,C,S,L). The typical American consumer's familiarity with these systems, however, appears to be poor at best, as demonstrated by a comment from Dr. Vivian White graphically illustrating difficulties of an American consumer facing symbolically expressed care instructions:

> Here is a label from Sweden. It is an apparel label. Following the ISO system, this garment label has instructions for washing, ironing, and drycleaning . . . . This label cost the American consumer two visits to the drycleaner, a trip to Cornell University, and a number of telephone calls to establish first what the 'wash' and 'dryclean' symbols meant, and secondly the fact that the drycleaner would not handle the garment because, although the symbols indicated dryclean-ability, a second permanently attached label said in English 'hand wash only'.[6]

Witness Kennedy also describes a symbolized care label attached to a French wool dress she owns. The label contains four (4) symbols. The symbol indicating washing and the recommended water temperature as well as an ironing symbol, cancelled with an "X" indicating "do not iron", were both easily deciphered by Ms. Kennedy. She acknowledges, however, that she was baffled by a symbol indicating "do not bleach" as well as the fourth symbol representing a drycleaning instruction.[7] Staff notes that Ms. Kennedy has an educational background in textiles with added experience both as a homemaker and the proprietor of a fabric store. No doubt she has a far greater understanding of textile care and maintenance than most consumers. This knowledge, however, did not enhance her understanding of the ISO symbol system.

The record contains a few comments in support of the exclusive use of symbols in care instructions.[8] Reasons given are

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6 R. 20 at 625, Dr. Vivian White.

7 Tr. 2202-2203, E. Kennedy.

8 R. 18 at 292, textile analyst; R. 20 at 133, Extension Agent, CES, New York.

that symbols are more readily understood by those who do not read or understand English[9] and that the use of a symbol system will aid American manufacturers who sell both domestically and abroad, i.e., now, they must either separate goods for export to countries using care symbols or use two different care labels for domestic and exported products.[10] One consumer believes that care symbols will be an aid in sorting clothes according to the type of care required,[11] stating that symbols require much less space on labels and that combinations of symbols can be used to express any possible combination of care techniques.[12] Witness Kennedy advocates the use of care symbols accompanied by written explanations of specific variations such as required temperature, noting that the adoption of a symbol system would enable American appliance manufacturers to label appliances such as washing machines and irons with symbols already coordinated with those pictured on care labels, enabling consumers to more easily select an appropriate machine cycle or temperature.[13] The record contains one comment supporting this view.[14] In a survey referenced by Witness Feather, however, where respondents were shown the same care instruction expressed in words only, symbols only and symbols with words, the instructions expressed only in symbols were the "least preferred" of all. Labels with symbols plus words, on the other hand, were rated as "less desirable" than the same instruction expressed only in "brief words" or expressed in letters plus words.[15] Indeed, Margaret Dana's position is that if numerous words must be used to explain a symbol, there is not much point in using the symbol at all.[16]

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9 R. 18 at 659, home economist; R. 20 at 476, textiles professor, Univ. of Maryland; R. 18 at 973, consumer; R. 20 at 129, clothing instructor.

10 R. 18 at 659, home economist.

11 R. 18 at 637, consumer.

12 Id.

13 Tr. 2173, 2204-2207, E. Kennedy.

14 R. 18 at 634, consumer.

15 Tr. 1003-1005, B. Feather.

16 R. 20 at 671, Margaret Dana, Consumer Consultant.

Finally, some record comments support the use of words only on care instructions. Witness Morck notes that symbols do not function to communicate as much information as words; the care procedure depicted by a symbol cannot be explained without the use of words.[17] While Dr. White favors the concept of care symbols, the lack of an accepted standardized set of symbols in this country and the complexity of the care methods available to American consumers leads her to conclude that the use of symbols is not really practical.[18] This position is confirmed by surveys on the record. In the Seattle Survey, 73% of those interviewed feel that symbols are more difficult to understand than written instructions.[19] In the Home Testing Institute survey, 81% of 499 respondents believe that care instructions are best explained through the use of words only.[20] Some manufacturers and retailers support the proposd revised rule which permits but does not require the use of symbols.[21]

While the record on this subject is sparse, it shows clearly conflicting opinions on the part of consumers and experts alike with regard to the use of symbols. In view of the fact that there is not a standard symbol system which is now recognized in this country and that optional care procedures in this country exist in far greater variety than in many European countries, the staff concludes that the use of symbols in care instructions should be permitted where such symbols are accompanied by words required by the Rule but that their use should not be required. The record contains no basis for such a requirement. Staff, therefore, recommends that Section 423.5(a)(3) of the proposed revised rule be included in the final Rule as written.

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17 Tr. 2573, 2609, 2632, W. Morck.

18 Tr. 1799, 1807, Dr. Vivian White.

19 R. 20 at 318-320, the Seattle Survey.

20 R. 17 at 1367, the Home Testing Institute survey.

21 R. 17 at 384, Levi Strauss & Co.; R. 17 at 527, Sears, Roebuck & Company; R. 17 at 1047, AAMA.

E. Standardization of Care Instructions.

1. Preface

The existing Rule does not address specific definitions and terminology to be used by manufacturers and consumers in devising and interpreting care instructions. Paragraph (1) of the Note requires only that the purchaser be fully informed of prescribed regular care which is necessary to the ordinary use and enjoyment of the item. How this is done is left to the manufacturer's discretion with a minimum of guidance from the Commission.[1] Chiefly because of evidence of a large number of inconsistent definitions assigned to terms commonly used in care instructions by the apparel industry, staff proposed that the Commission adopt a glossary of standardized terms in connection with its revision of the existing Rule.[2] The glossary selected is that developed in 1972 by the American Society for Testing and Materials (entitled "Standard Definitions of Terms Relating to Care of Consumer Textile Products and Recommended Practice For Use of These Terms on Permanently Attached Labels" and designated ASTM D-3136-72); this glossary appeared to be the most acceptable to the greatest number of affected parties.[3] The record developed since the proposal contains a considerable quantity of information regarding the need for and acceptability of the glossary as a whole, the adequacy of its terms and definitions and the advisability of wholesale adoption of such a glossary by the Commission. The Presiding Officer concludes for several reasons that the ASTM glossary should not be adopted as proposed and that the staff should devise its own.[4] The following discussion will address the advantages and disadvantages of the ASTM glossary with a view towards resolving the issue of its adoption as well as examining other alternatives which may exist.

2. Standardization in General

The record responds to the question of whether standardization of terms and definitions is necessary with a substantial

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1 See Statement, Chapter VI.D.1.

2 See proposed revised rule, section 423.7; Staff Report, 24-5.

3 Id.

4 Presiding Officer's Report 96.

mandate in favor of such action.[5] Among the reasons cited are the present lack of uniformity of word usage in care instructions. Either different terms are being used to convey identical messages[6] both by industry[7] and by consumers[8] or the same terms are being used to convey different messages. "In the experience of the [California Fabricare] Institute, there is insufficient agreement between the consumer and industry as to the meaning of current care labeling terms used to specify given laundry or drycleaning practices."[9] The ultimate result is total confusion as to what is meant in a care instruction especially on the consumer level.[10] Standardization will eliminate this confusion and make care instructions much easier to understand[11] as well as clearer and

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5 R. 18 at 630, 803-04, consumers; R. 19 at 6, Textile Analysis Service, University of Alberta; R. 20 at 296, Professor, University of Hawaii; Tr. 2535-36, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County. Of several hundred comments on this question, only twelve responded in the negative.

6 R. 18 at 682A, consumer; R. 20 at 344-45, Extension Specialist, CES, Ohio.

7 R. 20 at 627-631, M. Dana, consumer consultant.

8 Tr. 1795-96, V. White, Chairman, ASTM Committee D-13. The New York Cooperative Extension Agents, on surveying their consumer constituency, found that the word "wash" had 56 different meanings, the word "ironing" had 11 such meanings and the word "dryclean" had 13 different connotations. "One word has to be meaningful to many people and we have to make it clear . . . what these words mean." Standardization is very important for mutual understanding and communication.

9 Tr. 2408, California Fabricare Institute.

10 R. 17 at 124, Celanese (especially with variations in temperature descriptions); R. 17 at 421, American Home Appliance Association (overly-technical language); R. 18 at 110, consumer (many different ways of saying the same thing); R. 18 at 200, 630, 777, 822, consumers; R. 20, at 5, Extension Agent, CES, Florida.

11 R. 17 at 107, Asst. store manager and retailer of women's clothing; R. 18 at 779, 891, consumers; R. 20 at 139, Extension Agent, CES, Oregon; R. 20 at 356, Dept. of Consumer Affairs, West Palm Beach, Florida; Tr. 1504-05, J. Stone,

(Continued)

more specific 12 with less possibility of damage resulting from misunderstanding otherwise accurate information.13 Industry alone has found it impossible to arrive at one set of clear and consistent terms and definitions for care instructions which is agreeable to all;14 as such, industry would also benefit from standardization.15 Of the several studies in the record which address this question, all favor some sort of standardization or uniformity in care instructions by a large majority.16 Of the two consumers who oppose standardization, one states that care instructions will be sufficiently clear if the proposed Rule is adopted 17 and the other believes that standardization will not help the present situation.18 Staff believes that the reasons against an effort to standardize care instructions are

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Textiles and Clothing instructor, University of Illinois; R. 18 at 159, consumers (should also be compatible with existing appliance settings).

12 R. 17 at 156, Applebaum Tag and Label Co.; R. 18 at 323, consumer; Tr. 1504-05, J. Stone.

13 R. 18 at 2491, consumer. "We have ruined several garments by washing them improperly due to ambiguous terminology."

14 R. 20 at 289, R. Cederborg, University of Minnesota.

15 R. 20 at 452, Instructor, Textiles and Clothing, University of Illinois.

16 R. 17 at 1271, the Walker survey. Of 152 respondents, 40% believe standardization to be very important and 25% somewhat important; R. 17 at 1429, Home Testing Institute survey. Of 499 respondents, 86.6% favor a standard system of terms; R. 20 at 185, the New York State survey. Ninety-six percent of 186 rural respondents and 93% of 197 urban respondents state that industry should agree on usage of terms in care instructions; R. 20 at 256, the Oxford survey. Of 115 local residents polled, 107 (93%) agree that standardization will increase comprehension of care instructions; R. 20 at 322A, the Greeley survey. Eighty-one of 92 agree with the Oxford survey; R. 20 at 410, the Yreka survey. Fifty-three of 55 agree; R. 20 at 434, the Mississippi survey. One thousand sixty of 1250 consumers surveyed agree.

17 R. 18 at 908, consumer.

18 R. 20 at 143, Extension Specialist, CES, Michigan.

far outweighed in the record (from the standpoints of both quality and quantity) by the reasons in favor of standardization. Staff concludes, therefore, that care instructions, as presently formulated, may be confusing because of ambiguities in the meanings of terms commonly employed by the industry to describe appropriate care procedures. Such ambiguities can and should be resolved in a Rule which requires expression of such instructions through standardization of the terms used in the instructions and the meanings assigned to these terms.

3. Suitability of the ASTM Glossary.

In its proposal, staff recommends that the glossary developed by the American Society for Testing and Materials (D-3136-72) be used for this purpose.

> ASTM is the major United States organization for development of voluntary, full consensus standards. Full consensus means that each of the several concerned elements in society are participants in the consensus. In ASTM, these elements include consumers, users, producers and those representing the general public interest. We believe broad input from the beginning of its development results in a standard that is technically competent, with the highest credibility when critically examined and therefore useful as a basis for commercial and regulatory actions.[19]

As such, ASTM is a complex organization of many committees, subcommittees and task forces designed to assess the various interests that are represented in developing a particular standard.[20] Despite this impressive description, however, staff, in evaluating the proposed glossary, must determine whether the terms and definitions contained therein comport with those which are generally accepted in the eyes of industry and the consuming public. Staff believes it unwise to mandate a series of terms

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19 Tr. 1543, the American Society for Testing and Materials (ASTM).

20 Tr. 1560, ASTM. For example, the Consumer Textiles Subcommittee of the Committee on Textiles (D-13) is divided into three sections, each of which is concerned with a particular aspect of the production of textile products - here, "subassemblies," "end-products" and the acts and practices of both industry and consumers in this area.

and definitions which would be unacceptable to those who must use them and, thus, contrary to common usage. The following discussion, therefore, will deal with what the record reveals about the adequacy of the glossary as a whole, as well as the many individual terms and definitions contained therein, with respect to whether the terms themselves are reasonably clear and whether the meanings assigned to the terms resemble present industry as well as consumer understanding. The discussion will end with a consideration of the appropriateness of adopting the glossary as a presumptively acceptable standard in the final Rule.

Comments on the glossary as a whole are sparse and mixed. The ASTM representative argues that the terms and definitions are based on the widest possible usage[21] and were developed from input from a broad spectrum of society including the textile industry, detergent manufacturers and drycleaning interests. While no consumer surveys were conducted to ascertain consumers' usage, extension specialists and representatives from academic circles were used to represent the consumer interest.[22] The committee developing the glossary apparently did not believe consumer surveys to be fruitful in obtaining valid consumer input because of a built-in, but unexplained, consumer bias. In any event, the testimony of the ASTM representative produced little specific evidence of the utilization of such input by the committee in compiling it.[23] Two surveys in the record address the glossary generally. The New York State survey reveals the results of interviews conducted with a number of adult consumers in 12 New York counties regarding their respective interpretations of five separate phrases in a typical care instruction,[24] all of which are defined in the ASTM glossary. When these interpretations were compared with the ASTM definitions, an average of 54% agreed with ASTM's definition of "tumble dry low," 58.5% agreed with its definition of "machine wash warm," 84% agreed with its definition of "use cool iron," 13% agreed with its definition of "wash separately" and 55% agreed with ASTM's assumption that washability implies drycleanability.[25]

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21 The Dept. of Consumer Affairs, Orange County, California agrees, R. 20 at 331.

22 Tr. 1546, 1571-1573, ASTM.

23 R. 25 at 253, National Consumers Congress (NCC).

24 Tumble dry low, machine wash warm, use cool iron, wash separately, belief that washability indicates drycleanability.

25 R. 20 at 182-184, the New York State survey.

In contrast to most of these figures, the results of the BSSR survey are less favorable:

> [T]here is some confusion in the minds of consumers as to the exact meaning of words used in label terminology. The respondents consistently showed patterns of understanding of the terms which were far wide of the meanings delineated in the ASTM glossary . . . in fact, there is some evidence in the study which tends to show that the more concerned customers, those who display the greatest dependence on labeling, as well as the greatest desire to use labels as sources of information, were the most reluctant to read anything into the term which was not specifically included in the wording.[26]

NCC, therefore, recommends that the non-confusing terms in the glossary be listed in the Rule, but that the potentially confusing terms or terms whose meanings have been questioned on the record be redefined.[27] Witness Galbraith also indicates some problems with matching term definitions to actual performance of washers and dryers.[28] Staff is unable to arrive at any definitive conclusion from these comments except that there appears to be a significant discrepancy between consumer usage of certain terms listed in the glossary and the manner in which the glossary defines these terms. Therefore, staff will proceed with detailed examinations of specific terms about which questions were raised in the record.

One of the most controversial issues in this area involves the glossary's definition of the terms "machine wash" and "hand wash," as follows:

> Machine wash - a process in which products or specimens can be washed, bleached, dried and pressed by any customary commercial or home method, including a sour rinse commonly used in commercial laundering.

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26 Tr. 2735, NCC; HX 33, the BSSR survey.

27 Tr. 2745-46, NCC.

28 Tr. 2257-58, R. Galbraith, Dean, School of Home Economics, Auburn University.

> Hand wash - products must be laundered by hand with gentle squeezing action and can be bleached, dried and pressed by any customary method.[29]

The record shows without question that a large number of consumers and consumer representatives as well as some industry members do not use these terms as they are defined in the glossary. First, the definitions are inconsistent with staff's recommendations for care instructions for wearing apparel, slipcovers, draperies and linens since use of these terms, without more, would imply bleaching, drying and ironing capabilities; the recommended Rule, on the other hand, requires that such capabilities be addressed specifically in each washing instruction for reasons set forth in Chapter IV.C.4.[30] In no case could these terms be used alone and be in compliance with the recommended Rule. It appears, however, that ASTM regards these terms as adequate for use alone because they are defined so broadly. Second, with one or two exceptions, consumers simply do not infer the ASTM definitions from the terms at issue; the evidence indicates consumer inferences to be much narrower in scope. For example, numerous studies submitted for the record indicate that bleachability does not fall within consumers' perceptions of the terms "machine wash" or "hand wash."[31] This

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29 Proposed Revised Rule, Appendix.

30 R. 17 at 1217-1220, Clorox Co.

31 R. 17 at 1231-1233, the Home Testing Institute survey. Of 499 households, the phrase "100% washable" is interpreted by 9% to mean that chlorine bleach can be used and by 47% to mean that an all-fabric bleach can be used. Thirty-four percent of those interviewed believe an item not to be bleachable if specific mention is not made of that fact in the instruction. Similarly, in a survey of the meaning of the phrase "machine wash" (the MARC survey), of 301 respondents, only 21% infer bleachability, 66% draw a negative inference of bleachability and 13% do not know. The same study of the phrase "hand wash" indicates that only 7% infer bleachability and 86% draw a negative inference of bleachability. See also R. 17 at 1462, where the phrases "machine wash" and "hand wash," in the same survey, conjure up inferences of bleachability in only 4-5% of the cases. Finally, the BSSR survey of 699 respondents indicates that only 14.8% of consumers infer bleachability from the term "machine wash" (79.5% do not) and 5.9% of consumers infer bleachability from the term "hand wash" (91.1% do not). HX 33 at 447-48, The BSSR survey; Tr. 2723-24, NCC.

is confirmed by most of the consumer testimony on the record.[32] Only one disagrees, saying that most consumers will use bleach without specific information one way or the other.[33] Another, however, cites an example where a consumer used bleach on a garment containing a label simply stating "washable" and the garment was damaged.[34] Industry, on the other hand, disagrees on the proper interpretation of the phrases when the issue of bleach is raised. Fabri-Centers of America assumes that the phrase "machine wash" does not indicate bleachability and it uses the term accordingly.[35] A representative of the committee which developed the glossary indicates that bleachability can be inferred but only with appropriate consumer education efforts.[36] The American Apparel Manufacturers Association completely agrees with the definition, saying that bleachability can be assumed if no restriction is noted.[37] The National Retail Merchants Association concurs.[38] Small rug and bedspread manufacturers, on the contrary, assume that the phrase "machine wash" implies that bleach should not be used unless otherwise stated. According to the ASTM definition, the phrase "machine wash" cannot be used if an item is not bleachable.[39] Finally, Vivian White, Chairman of the ASTM glossary committee, supports the glossary definition but provides no specific reasons which are pertinent to this issue.[40]

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32 Tr. 1361-62, 1367, E. Shapiro, Dept. of Consumer Affairs, Detroit; Tr. 1522-23, 1530, M. Purchase, Professor, Cornell University; Tr. 2398, F. Reid, Dept. of Consumer Affairs, Orange County, Cal.; Tr. 2528-29, K. Bourdeau; Tr. 2814, R. Taylor, Clothing and Textiles, Texas Christian University.

33 Tr. 2314, 2322, 2323-2325, M. Brinson, Member, ASTM.

34 Tr. 2361, F. Reid.

35 Tr. 975, Fabri-Centers of America.

36 Tr. 1336, J. Schapiro, Dixo Co.

37 Tr. 1700, 1719-20, American Apparel Manufacturers Association.

38 Tr. 1853-54, National Retail Merchants Association.

39 Tr. 2035-2037, Carpet and Rug Institute; R. 25 at 425-427, CRI.

40 Tr. 1800, V. White.

When questioned regarding the real meaning of these phrases, both interviewees in studies as well as consumer and industry representatives interpret the phrases far more restrictively than the ASTM definitions would indicate. Ninety-seven point five percent (97.5%) of 82 county residents in the Coosa County survey indicate that the phrase "Hand Washable/Wash By Hand" means "Wash By Hand Only." Only 2.5% interpret the phrase to mean "Launder Only By Hand in Warm Water, Bleachable, Drycleanable."41 Fabri-Centers of America argues that the phrase "machine wash" in actuality means "machine wash warm with a mild detergent" to most consumers.42 Witness Esther Shapiro assumes only that a "machine washable" garment can be washed with a washing machine, using hot water. She does not assume that the item can be machine dried, as stated by the ASTM definition.43 The BSSR survey summarizes what appears to be extremely restrictive consumer interpretations of the two phrases. While 91.7% of 699 respondents assume that the phrase "machine wash" means "wash either by machine or by hand," only 60.4% infer the use of any drying procedure (32.8% do not), 33.2% assume any washing temperature can be used (59.9% do not), 27.7% assume any drying temperature can be used (65.6% do not), 49.5% assume any cycle can be used (44.2% do not), and 18.4% assume that ironing at any temperature can be safely accomplished (74.7% do not). The results for the phrase "hand wash" are even more restrictive.44

The ASTM representative defends the definitions only by stating that they were formulated from input from detergent manufacturers and a variety of other sources.45 The National Consumers Congress alleges, on the other hand, that these definitions were taken from a standard in an industry-sponsored document developed by the American National Standards Institute and not from any consumer surveys or estimates of consumer perception of the terms.46 There is no question that the terms are inherently

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41 R. 20 at 71, the Coosa County survey.

42 Tr. 980, Fabri-Centers of America.

43 Tr. 1361-62, E. Shapiro.

44 Tr. 2723-24, 2726-2728, NCC. HX 33 at 446-448, 451-454, the BSSR survey.

45 Tr. 1549-1552, ASTM.

46 R. 25 at 254-256, NCC.

confusing if used alone 47 as consumer perceptions of the meaning of the terms vary.48 It is evident that most of the textile industry employ the terms according to what the industry believes the terms mean to consumers, while consumers are interpreting them far more narrowly. The need for generally accepted definitions of the phrases is paramount because of their extremely common usage in care instructions.49 It is staff's opinion that the record contains little evidence to support the definitions contained in the glossary and much evidence against them. The definitions are based on assumptions of the meaning of the terms which are simply not made by most consumers, to say nothing of the varying industry interpretations in the record. It is staff's conclusion, therefore, that the definitions of the phrases "machine wash" and "hand wash" in the ASTM glossary are unsatisfactory and should be deleted. New definitions should be devised whose content is reasonably clear from the terms themselves. In this connection, staff recommends the removal of references to drying, bleaching, and ironing in the definitions and confinement strictly to the washing process as follows:

> "Machine Washing" - 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.
>
> "Hand Washing" - a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap and gentle squeezing action.

It should be noted that these definitions refer solely to the washing process and contain no hidden references to temperature or any other procedure which might normally accompany the washing process. As previously discussed, these procedures must be specifically disclosed to avoid consumer misunderstanding or misinterpretation. In staff's opinion, these definitions reasonably resemble consumer perception of the terms as revealed in the record.

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47 Tr. 1683, K. Geiken, School of Home Economics, University of Wisconsin.

48 R. 20 at 630, M. Dana.

49 R. 20 at 669, M. Dana; R. 23 at 737, M. Dana.

Likewise, the definition of "home launder" in the ASTM glossary possesses the same weaknesses as the term "machine wash" principally because the definition incorporates the meaning of the term "machine wash" as previously described.[50] While the record contains little specific evidence about the adequacy of the term "home launder" or its definition, what evidence exists is unfavorable. The MARC survey shows that only 20% of 301 consumers surveyed infer bleachability from the term while 64% do not and 16% do not know.[51] Witness Shapiro believes the term to be vague and agrees that bleachability cannot be inferred.[52] The record also shows, however, that the intended distinction between so-called commercial, industrial or institutional laundering and coin-op or home laundering is valid. The former employs special washing compounds, sour rinses and extremely large loads at very high temperatures. Special formulations, sour rinses and temperatures to 170 degrees are not typically employed in the latter process.[53] Based on the record for the definition of "machine wash" plus the additional information just discussed, staff concludes that the definition of "home launder" in the glossary is also inadequate for reasons cited above.

Staff is also of the opinion that the term "home launder" may be misleading since the record reveals that "coin-op" laundromats (outside the home) may also be used to avoid the risks of so-called commercial laundering. The term "home launder," as defined in the glossary, precludes this option. Since the record contains no evidence of damage to an article because of improper use of a commercial laundry and because common usage reveals no language which can be employed to express these options (residential vs. "coin-op") positively but briefly and accurately in care instruction in a way which will be understood, staff recommends relegating the concept of avoiding commercial, industrial or institutional laundries to a warning in the glossary and deleting the term "home launder," as follows:

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50 Home launder - same as machine wash but excludes commercial laundering.

51 R. 17 at 1463-1465, the MARC survey.

52 Tr. 1368, E. Shapiro.

53 R. 20 at 678; R. 23 at 335-36, National Automatic Laundry and Cleaning Council.

"Do Not Have Commercially Laundered" - do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures in washing. Wash at home or in a self-service establishment. Avoid commercial, industrial or institutional laundries.

Staff considers this warning necessary only in situations where a commercial launderer would not otherwise be informed by existing prescribed care instructions that a so-called "commercial process" is not appropriate. As such, any temperature or other restriction in such an instruction would serve this purpose.

The issue of the appropriateness of washing water temperatures used to define "hot," "warm," and "cold" in the glossary is also raised in the record. The glossary defines "hot" as an initial water temperature directly from the hot water tap from 130 to 150 degrees F (54 to 66 degrees C); "warm" as 90-110 degrees F (32-43 degrees C) and "cold" up to 85 degrees F.[54] The record contains several suggested changes to these temperatures. One manufacturer questions the 20 degree gap between the low figure in the range defining "hot" and the high figure in the range defining "warm." It is alleged that warm is accepted in the trade as 120 degrees ± 5 degrees and is so specified in the American Association of Textile Chemists and Colorists testing procedures. Thus, it is recommended that the temperature ranges be changed to 120-150 degrees F, 110-120 degrees F and up to 100 degrees F for "hot," "warm," and "cold" respectively.[55] The record contains a slight amount of support for this recommendation.[56] The International Fabricare Institute suggests raising the maximum water temperature defined as "hot" to 170 degrees to include water temperatures used by commercial laundries.[57] It is also aptly pointed out that the actual temperatures which will result from any given water heater depend upon the season of the year, the location of the residence in which the heater is installed and the setting of the heater, which only consumers

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54 Proposed revised rule, Appendix.

55 R. 17 at 148, Ballet Fabrics.

56 R. 17 at 445, R. D. Stehler comment to V. White re ASTM D-3136-72.

57 R. 17 at 459, 463, International Fabricare Institute.

can control.[58] The record, however, contains no conclusive evidence of the impropriety of the temperatures defined in the glossary. Staff must assume that such temperatures, and the gaps between them, have a solid basis in research performed by ASTM, even though the record contains little evidence of such research. Such ranges may represent an average of temperatures which actually emanate from domestic water heaters. In any event, it is staff's opinion that the ASTM glossary definitions are entitled to a presumption of reasonable accuracy which may be overturned by contrary and conclusive record evidence. As the record in this proceeding does not contain such evidence, staff recommends that the temperatures be retained as defined.

The glossary defines the word "separately" used with washing instructions as "wash alone or with like colors."[59] The record contains sparse but pointed comment that "separately" means "alone" and does not in any way address a situation of like or similarly colored items. These comments maintain that two terms should be used - one denoting that an item should be washed alone and another denoting that an item should be washed with like colors.[60] Staff agrees. The word "separately" is frequently but need not necessarily be used only for non-colorfast items. There may be a reason for using the word in another context. Further, in situations where "separately" is currently used to indicate non-colorfastness, consumers may find themselves wasting time and energy unnecessarily by washing a number of items "separately" or "alone" when they could be washed with "like or similar colors" without substantial impairment.[61] Therefore, staff recommends that the term "separately" be retained but that the definition be changed to "alone"; staff further recommends that a new term "with like colors" be added and defined as "with colors of similar hue and intensity."

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58 R. 20 at 642-43, J. Butel, Consumers Institute, General Electric Co.

59 Proposed revised rule, Appendix.

60 R. 17 at 446, comment by B. Olson of Sears, Roebuck & Co. to V. White on proposed glossary; R. 17 at 448, comment by Genevieve Smith of Sears, Roebuck & Co. to V. White on proposed glossary.

61 See R. 20 at 282, M. Krowles, Office of Consumer Protection, State of Louisiana; Tr. 1368, E. Shapiro, for related comments.

With respect to the issue of bleaching instructions, staff has already made specific recommendations as to the manner in which bleaching instructions should be expressed (see discussion, Chapter IV.C.4). The glossary terms and definitions differ in several respects from these recommendations. While the term "no bleach" and its definition are substantively the same, the glossary term "no chlorine bleach" and its definition does not conform to staff's recommendations and, thus, should be deleted and the terms "non-chlorine bleach only when needed" and "bleach only when needed" with appropriate definitions should be substituted. Staff recommends that the following terms and definitions be utilized:

> '<u>no bleach</u>' - no commercially available bleaches may be used;
>
> '<u>non-chlorine bleach</u> (or whatever bleach type may be used) <u>only when needed</u>' - only those bleaches specified may be used when necessary to the ordinary use and enjoyment of the item.
>
> '<u>bleach only when needed</u>' - all bleaches may be used when necessary to the ordinary use and enjoyment of the item.

The record contains a few scattered comments on other terms defined in the glossary which relate to the washing process. The term "no spin" received one comment which indicates that many consumers will assume that an item so labeled cannot be washed.[62] While staff acknowledges the possibility, it also acknowledges that spinning is not necessarily an essential part of washing. Further, the term itself contains no such implication and staff recommends that it be retained. The phrase "no squeeze, no wring, no twist" is supported by the same comment.[63] With respect to drying terminology, the BSSR survey reveals that 73.1% of 699 respondents interviewed believe that the term "tumble dry," defined in the glossary as "use machine dryer," means either "machine dry or hang up."[64] While this is at variance with the ASTM definition, the variance is not significant since, to staff's knowledge, many items which can be tumble dried can also be hung to dry without substantial impairment. As the record contains

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62 R. 20 at 90, the Coosa County survey.

63 <u>Id</u>.

64 Tr. 2725, NCC; HX 33 at 449, the BSSR survey.

no other objections to this term or its definition, staff recommends its retention. With respect to temperatures for drying, the glossary refers only to high, medium or low settings. Presumably this is because of the great temperature variations in many dryers set at the same temperature. Such temperatures also may vary depending upon where inside the dryer they are measured.[65] While the record indicates that specific maximum temperatures for these settings might be desirable to include as definitions in the glossary[66] and the International Fabricare Institute suggests maximum temperatures to be used,[67] the record contains no other information on the subject. Staff must assume that the ASTM committee would have specified such temperatures had it been reasonably sure of their accuracy as a practical matter. Further, the temperatures suggested by the Institute relate to commercial laundry practices only. As such, staff recommends that the general ASTM definitions be retained subject to future development of maximum temperatures appropriate for both commercial and residential application. With respect to ironing terminology, the record contains no objections to the use of "hot," "warm," and "cool" iron to describe corresponding iron settings. There is some sentiment, however, that maximum temperatures should be specified in the definitions,[68] even though it is acknowledged that such temperatures vary and that little reliable input exists upon which to base reasonably accurate temperature ranges for the wide variety of irons in the marketplace.[69] Staff, therefore, recommends that the current ASTM terms and definitions be retained subject to future development.

It is the position of the International Fabricare Institute and the California Fabricare Institute that the drycleaning terms and definitions in the glossary are totally inadequate.[70]

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65 R. 17 at 463, IFI.

66 R. 16 at 35, Slide Fasteners Association; R. 17 at 445, comment on glossary by R. D. Stehler to V. White.

67 R. 17 at 459, IFI. "High" - up to 250 degrees F; "Medium" - up to 160 degrees F; "Low" - up to 120 degrees F. IFI argues that these limits correspond to maximums observed in <u>commercial</u> laundry practice.

68 R. 16 at 35, Slide Fasteners Assoc.; R. 17 at 445, comment on glossary by R. D. Stehler to V. White; R. 17 at 459, 463-64, IFI.

69 R. 17 at 463-64, IFI; Tr. 1410-11, IFI; Tr. 2071-72, SFA.

70 Tr. 1408-09, IFI; Tr. 2421, CFI.

> While the current glossary terms are concise in the extreme--and thus are acceptable to the fabric or garment manufacturer from the viewpoint of limiting the physical size necessary for a label--such brevity does a disservice to the consumer, the professional drycleaner and the manufacturer by providing inadequate care instructions. . . . When the drycleaner damages [an] article although all label instructions were followed, the ensuing dispute will involve the drycleaner, the customer and the manufacturer.[71]

As such, the Institute believes that omissions and deficiencies in the glossary's drycleaning terms and definitions are unacceptable to both the drycleaning industry and the consuming public. It argues that the drycleaner, who acts as a direct representative of the consumer, should enjoy the same benefits as does the consumer under the Rule.[72] As a remedy, IFI proposes a set of drycleaning terms and definitions, including a group of generalized drycleaning cycle descriptions, which differ widely from those contained in the glossary in that they are far more specific and detailed.[73] IFI claims that this proposal was submitted to the care labeling committee of ASTM but no final vote was taken.[74] The record contains limited support for some of these modifications and additions; staff's analysis follows.

The first issue concerns the definition in the glossary of the word "dryclean." The glossary defines this term as:

> products can be drycleaned commercially or in self-service stores in a machine with any commonly used organic solvent (Stoddard solvent, perchlorethylene, fluorocarbon) including hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.[75]

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71 R. 17 at 1060-61; R. 20 at 691; Tr. 1390-91, IFI; Tr. 2408-09, CFI.

72 Tr. 1055, IFI; R. 20 at 691, IFI.

73 R. 17 at 1065-1068, IFI; Tr. 1408-09, IFI.

74 Tr. 1435-1438, IFI.

75 Proposed revised rule, Appendix.

IFI proposes 1) that the solvent name "Stoddard" be replaced with the generic name "petroleum" which includes Stoddard solvents as well as other petroleum solvents; 2) that a moisture level be specified since a full drycleaning cycle includes the addition of moisture to the solvent/detergent system for removal of water soluble soils and; 3) that the maximum of 160 degrees F for hot tumble drying should be reduced to 140 degrees F since this corresponds to recommended practice in the drycleaning industry.[76] Other comments in the record address the issue of whether self-service or "coin-op" drycleaning should be included within the definition, as current usage of the term is ambiguous in this area.[77] Staff agrees with IFI that the generic name "petroleum" is more appropriate as it should not be the function of this glossary to promote a particular brand or type of petroleum solvent. Staff also agrees that moisture addition should be included to the extent that it is an essential part of the normal drycleaning process. Staff cannot agree, however, with the Institute's recommendation for a maximum tumble drying temperature of 140 degrees, as opposed to 160 degrees in the glossary. While 140 degrees may be recommended by the industry, there is no record proof that it is, in fact, used by the industry which is crucial when considered in light of a particular care instruction. As such, staff must assume that ASTM has already determined with some accuracy what drying temperatures are actually employed by drycleaners. Finally, the discussion of drycleaning instructions (Chapter IV.C.4.) reveals that both consumers and the industry generally consider self-service establishments to be included within the scope of the word "drycleaning." On this basis, staff recommends that such establishments remain within the definition as follows:

> 'Drycleaning' - a process by which soil may be removed from products or specimens in a machine which uses any common organic solvent (for example, petroleum, perchlorethylene, fluorocarbon) located in any commercial establishment. The process may include

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76 R. 17 at 464, IFI.

77 R. 17 at 443, comment to V. White on glossary. In this connection, the BSSR survey indicates that 67.3% of 699 respondents believe "dryclean" to imply refurbishing by a professional drycleaner only while 58.6% believe that self-service or "coin-op" establishments may be used. It should be noted that the total of the two percentages is 125.9% which indicates some parties answered affirmatively (albeit inconsistently) to both questions. Thus, these figures may be somewhat meaningless. HX 33 at 451, the BSSR survey.

moisture addition to solvent up to 75% RH, hot tumble drying up to 160 degrees F and restoration by steam press or steam-air finishing.[78]

The second principal issue concerns the retention of and, if so, the definitions of the terms "professional" and "commercial" as used with drycleaning instructions. ASTM uses the terms synonymously and defines them as excluding the use of all self-service facilities.[79] The Institute disagrees stating that while "professional," as currently used, may correspond with this definition, "commercial" does not because self-service facilities are also "commercial" establishments. Further, although it argues that "professional" should constitute a signal to whoever is cleaning an article that some modification of the normal, full drycleaning cycle is needed, it defines "professionally dry clean" as excluding only the use of self-service machines using perchlorethylene solvent because the cycles of many fluorocarbon self-service machines can be modified in accordance with the Institute's concept of "professional" drycleaning.[80] While witness Schapiro agrees that "professional" denotes to the drycleaner some special process in addition to or other than a preset drycleaning cycle, he does not agree that ASTM's definition of the term carries that connotation to the consumer (he would presumably disagree with IFI's definition on that basis as well).[81] Staff concludes that a compromise must be struck for the benefit of both the drycleaner and the consumer. Staff agrees with IFI regarding the use of the word "commercial" and recommends that it be deleted entirely; as currently used, the words "professional" and "commercial" are not synonymous. It is clear from the record, however, that the two proposed definitions of the word "professional" do not address the real meaning of the term as used by drycleaners and consumers, i.e., someone must handle the article in a special manner by modifying the normal drycleaning cycle in order to avoid an unsatisfactory result. In staff's opinion, this should be expressed in a definition of the term which has meaning to the public as well as to the industry. Therefore, staff recommends the following:

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78 Other changes to either the ASTM or IFI definition are purely editorial for clarification only.

79 Proposed revised rule, Appendix.

80 R. 17 at 465, IFI; Tr. 1390-91, IFI; Tr. 2408-09, CFI; R. 17 at 1065, IFI.

81 R. 17 at 453, J. Schapiro.

'Professional drycleaning' - a drycleaning process which must be modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modification or both.

In staff's opinion, this definition tells the drycleaner that some modification of the drycleaning cycle is necessary while informing the consumer in general terms the manner in which necessary modifications may be effected. Staff's previous discussion of drycleaning instructions supports the use of the term "professional," as used by the industry and by consumers, if it is defined in this manner to conform to such usage. Finally, the definition eliminates any direct (and inherently confusing) reference to the type of drycleaning establishment (such as self-service, attended self-service, "professional") and focuses on the real reason the term is used in the marketplace.

The remainder of the drycleaning terminology and definitions contained in the glossary concern specific modifications of the drycleaning cycle. For unknown reasons, the committee developing the glossary chose four modifications which it apparently concluded are of such magnitude as to merit inclusion. These modifications would necessarily follow the word "dryclean" in an instruction. They presumably are directed to the drycleaner or to the consumer who is able to make such cycle modifications in a self-service establishment. Their substance is as follows:

'no steam' - restricts use of steam, normally essential to pressing where shrinkage or damage may occur;

'tumble cold' - excludes self-service drycleaning or drying in hot tumbler; tumble dry at room temperature without steam;

'no tumble' - excludes self-service drycleaning; item must not be tumble dried;

'pile-fabric method' (used with other instructions) - use short running cycle and minimum extraction.[82]

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82 Proposed revised rule, Appendix.

The record contains numerous comments about these definitions. The Institute points out that the terms "tumble cold" and "no tumble" when used with "dryclean" do not successfully convey to the consumer that some self-service machines may not be used because of the inability of the consumer to modify the machines' cycles in accordance with the instructions. Further, the definitions may be inaccurate because some self-service fluorocarbon machines indeed may be used in the manner conveyed by the terms.[83] The same points are made by witness Schapiro[84] and others.[85] Further, the International Fabricare Institute (in cooperation with the California Fabricare Institute) proposes an entirely different set of limiting terms whose definitions add to those limitations already included in the glossary. Thus, the Institute proposes that the following limiting terms and definitions be substituted for those in the glossary, to follow "professionally dryclean" where appropriate:

PROFESSIONALLY DRYCLEAN ONLY, PETROLEUM OR FLUOROCARBON -- excludes use of all perchlorethylene machines.

MODIFIED CYCLES, PROFESSIONAL METHODS ONLY, MODIFIED CLEANING CYCLES:

MODERATE CYCLE -- reduced cleaning time, reduced moisture level, tumble dry warm.

SOFT WOOL CYCLE -- minimum cleaning time, low moisture level, tumble dry warm.

FRAGILE CYCLE -- garment net-bagged with minimum cleaning time, low moisture level, cabinet dry or fluorocarbon tumble dry cool.

DEEP FUR-PILE CYCLE -- minimum cleaning time, reduced moisture level, minimum extraction, tumble dry cool.

HOUSEHOLD CYCLE -- reduced cleaning time, low moisture level, tumble dry warm.

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83 R. 17 at 1060-1062, IFI; Tr. 1390-91, IFI; R. 17 at 464-65, IFI.

84 R. 17 at 453-54, J. Schapiro.

85 R. 18 at 686, consumer; R. 20 at 418, home economist.

MODIFIED DRYING CYCLES:

TUMBLE WARM -- item can be tumble-dried warm up to 120 F (49C).

TUMBLE COOL -- item can be tumble-dried cool, up to 100 F (38C).

CABINET DRY WARM -- cabinet dry only, up to 120 F (49 C).

CABINET DRY COOL -- cabinet dry only, up to 100 F (38C).

STEAMING, ALL DRYCLEANING METHODS:

DRYCLEAN: NO STEAM -- excludes use of steam in pressing or finishing, and steam cabinets and wands.

DRYCLEAN: STEAM ONLY -- excludes use of contact pressure when steaming.[86]

Justification for this proposal, according to IFI, lies in the fact that phrases such as "professionally dryclean only" convey little information to the drycleaner about the care and handling of the article. Such information would be provided through the terms proposed. To the extent that drycleaners or manufacturers are unfamiliar with the parameters of the drycleaning cycles named, such parameters could be made generally available by the Institute and the Federal Trade Commission to those who need them.[87] As described, the terms and definitions proposed address the following characteristics of the "professional" drycleaning process: 1) type of solvent to be used (perchlorethylene, fluorocarbon, petroleum); 2) length of cleaning time (reduced or minimum); 3) moisture levels (reduced or low); 4) drying method (cabinet or tumble dry); 5) drying temperature (warm or cool); 6) length of extraction time (minimum); and 7) use of steam (whether it should be used at all and whether the item should be touched when steaming).

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86 R. 17 at 1065-66, IFI.

87 R. 17 at 466, IFI.

It is immediately apparent that the IFI proposal deals with several drycleaning characteristics about which the glossary is silent. The record contains no other information regarding these characteristics (excepting solvent designation and moisture level discussed in Chapter IV.C.4.). Since the terms proposed need not be included in every drycleaning instruction, staff's only task here is to compare the terms and definitions currently provided in the glossary with those proposed by IFI in order to determine which most conform to common understanding and usage among the industry, drycleaners and consumers. With respect to those terms and definitions currently contained in the glossary, staff agrees with the specific objections to the definitions contained in the record, i.e., that elimination of self-service machines is not reflected in the terms "tumble cold" or "no tumble" and that some self-service machines may in fact be used under certain circumstances. Further, staff agrees to a limited extent that the glossary may be incomplete in the drycleaning area in that 1) it does not address certain important variables in the drycleaning process, viz., solvent usage and moisture level and 2) it does not completely address other variables, viz., length of cleaning time, drying method and length of extraction time. Staff believes that manufacturers should have the option of expressing these variables in a nonconfusing and uniform manner if they desire to do so. Finally, it is staff's impression that the drycleaning terms and definitions in the glossary are presented in a haphazard manner without evident continuity as if they were picked at random from a group; it should be noted that, with the exception of the term "pile fabric method," most are expressed negatively without amplifying information.

On the other hand, while the Institute's proposal deals rather completely with all the variables in the drycleaning process, staff questions whether a typical industry member or drycleaner would be familiar with such terms as "household cycle" or "moderate cycle" without extensive education as to their meanings. It appears that these terms and definitions were designed by the Institute specifically for care instructions and are not now in common use in the trade.[88] As such, including them in an existing glossary without any indication of the degree to which they are accepted by those using them may be of questionable validity. Staff considers it far more likely that drycleaners and, to a lesser extent consumers and manufacturers, are familiar with the variables used to define the cycles listed, such as cleaning time, moisture level etc.; thus, staff would prefer drycleaning instructions to be expressed in these more

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88 See R. 17 at 466, IFI, where the Institute acknowledges the need for an educational effort.

basic terms. We are aware that the Institute proposes these "cycle names" to enable manufacturers to shorten their care instructions without sacrificing content. Such "cycle names" will be of no value, however, if drycleaners, consumers and manufacturers are not aware of their meanings, absent a massive post-Rule educational effort of uncertain results. Further, the cost of adding words to a label is minimal.[89]

In view of the extent of consumer injury due to drycleaning damage noted in this record, staff considers it of utmost importance that manufacturers be able to express drycleaning instructions as clearly and specifically as possible. Therefore, staff supports the inclusion of basic terms and definitions in the glossary clearly describing the various characteristics of the professional drycleaning process as presented by the Institute. For reasons already stated, staff rejects the haphazard manner in which ASTM has handled specific drycleaning instructions; staff also rejects the "cycle names" proposed by IFI because the record contains no evidence of common usage within the industry. Staff proposes that all references to all-inclusive "cycles" or methods be removed from the glossary and that the terms used by the Institute to define these methods be substituted (with appropriate definitions as revealed in the record) to be utilized as modifiers of the phrase "professionally dryclean." In accordance with this discussion, the following specific terms and definitions are recommended. They are extracted from both ASTM and IFI terms and definitions now in the record:

'no tumble' - do not tumble dry;[90]

'tumble warm' - tumble dry up to 120 degrees F (49 C);[91]

'tumble cool' - tumble dry at room temperature;[92]

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89 See discussion of labels *infra*, Chapter V.A.

90 See ASTM definition of "dryclean; no tumble"; Appendix, proposed revised rule.

91 R. 17 at 1066, IFI ("tumble warm").

92 See ASTM definition of "dryclean; tumble cold," Appendix, proposed revised rule.

'cabinet dry warm' - cabinet dry up to 120 degrees F (49 C);[93]

'cabinet dry cool' - cabinet dry at room temperature;[94]

'short cycle' - reduced or minimum cleaning time depending upon solvent used;[95]

'minimum extraction' - least possible extraction time;[96]

'reduced/low moisture' - decreased relative humidity;[97]

'steam only' - employ no contact pressure when steaming;[98]

'no steam' - do not use steam in pressing, finishing, steam cabinets or wands;[99]

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93 R. 17 at 1066, IFI ("cabinet dry warm").

94 Id., ("cabinet dry cool").

95 See ASTM definition of "dryclean - pile fabric method," Appendix, proposed revised rule.

96 Id.

97 R. 17 at 1065-1068, IFI (all cycle definitions).

98 R. 17 at 466, 1066, IFI ("dryclean - steam only").

99 R. 17 at 466, 1066, IFI. See ASTM definition of "dryclean - no steam," Appendix, proposed revised rule.

'petroleum/fluorocarbon/perchlorethylene (or other solvent)' - employ solvent or solvents specified to dryclean the item.100

It is staff's opinion from record evidence that these terms and definitions cover the drycleaning process completely and sufficiently specifically to impart adequate guidance to the drycleaner or consumer who chooses to use self-service machines. On the other hand, the terms and definitions are not so specific as to squelch any individual professional judgment that the drycleaner wishes to employ in determining, for example, exactly (to the minute) how long an item should be cleaned or exactly what relative humidity should be used. Further, staff suspects that numerically specific amounts (other than accepted maximums) in these and other areas will change depending upon the introduction of new fibers or fabrics or new drycleaning machinery on the market. While the record does not contain a mandate for these particular words and meanings, it does indicate conclusively that a choice must be made regarding the quality and type of drycleaning instructions to be included on care labels in the future. Staff has made that choice.

The record contains little information regarding the fur and leather cleaning instructions in the glossary. The sole comment relating to the phrase "fur clean" involves a grammatical error and is of no substantive value.101 The record supports the glossary's use of the term "leather clean" and its definitions.102

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100 R. 17 at 1065, IFI. Although IFI's definition refers to the use of perchlorethylene machines, this, in staff's opinion, is peripheral to the whole point of the disclosure which is to designate the use of a particular type of solvent. This is also sufficient to cause a consumer to inquire as to the type of solvent provided in self-service establishments. See discussion of disclosure of solvent information, Chapter IV.C.4.

101 R. 17 at 454, J. Schapiro, Dixo Co. (add the letters "-ing" to the word "drum" used to define the term "fur clean" in the glossary).

102 See discussion of care instructions for leather, Chapter IV.H.

While the glossary addresses care terminology and definitions for the "wearing apparel group" (apparel, draperies, slipcovers and linens), it does not cover other products which staff recommends be included in the final Rule. Thus, appropriate terms for the care traits of components such as zippers are not presently included.[103] The need for acceptable standards and industry's willingness to develop them in conjunction with ASTM is acknowledged in the record.[104] Neither does the glossary contain appropriate terms and definitions for household furnishings such as upholstered furniture and carpets and rugs,[105] although these items are now being considered by the committee.[106] Specifically, the committee favors (at least conceptually) the instructions for upholstered furniture proposed by the National Association of Furniture Manufacturers which is also supported by the record in this proceeding. A separate ASTM task group is considering some of the proposed terms which need defining as well as what such definitions should be.[107] Little progress has been made in the area of carpets and rugs, except to establish that the glossary is presently inapplicable to such items.[108] The Presiding Officer agrees that, as presently constituted, the glossary is inappropriate for items other than those included in the "wearing apparel group."[109]

Having concluded that some of the terms and definitions presently contained in the glossary are not supported by the record, staff must now consider whether the glossary is nevertheless appropriate for adoption as a presumptively acceptable standard in the final Rule. In this connection, it is pertinent to examine in more detail precisely how ASTM develops industry standards in general and ASTM D-3136-72 in particular.

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103 Tr. 2088, Slide Fasteners Association.

104 Tr. 2072-73, 2096-2098, Slide Fasteners Association.

105 R. 17 at 300, Association of Interior Decor Specialists; R. 17 at 531, Sears, Roebuck & Co.; R. 17 at 1203, J. C. Penney.

106 R. 20 at 625-26, V. White.

107 R. 17 at 190, National Association of Furniture Manufacturers; R. 17 at 432, American Textile Manufacturers Institute; Tr. 1095, NAFM; Tr. 1584, ASTM; Tr. 1818, V. White.

108 Tr. 1819, V. White; R. 25 at 425-427, CRI.

109 Presiding Officer's Report 96.

Generally, development of the glossary by ASTM began in 1969 through the establishment of a task group on care instructions which was held responsible for the initial work.[110] While a list of task group members for the glossary is unavailable, the make-up of one task group (which the National Consumers Congress implies is typical) consisted of 52 members, 36 of which were industry affiliated and one of which was identified as a consultant on consumer attitudes.[111] When questioned regarding the make-up of the task group developing the glossary, the ASTM representative mentioned three members representing the consumer but could not remember the rest.[112] In any event, task groups in ASTM have no membership requirements.[113] The task group obtained input for the glossary from a wide variety of sources,[114] except that it had no consumer surveys at its disposal besides those supplied by detergent and washing machine manufacturers.[115] These studies concerned wash water temperatures, the word "press" (also circulated to the American Association of Textile Chemists and Colorists and to extension groups) and various ironing terms and temperature ranges.[116] Sources from which other information was obtained include representatives of professional and trade organizations, extension services, academic circles and students through the American Home Economics Association.[117] The task group made attempts to gather raw consumer input with some success.[118] The feeling was, however, that the consumers' interest is generally inextricably bound with the producers' interest.[119]

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110 Tr. 1547-48, ASTM.

111 R. 25 at 259-60, 279-281, NCC.

112 Tr. 1552-53, ASTM.

113 Tr. 1547, ASTM.

114 Id.

115 Tr. 1553-54, ASTM. As previously stated, consumer surveys were deemed not fruitful at the time.

116 Tr. 1803-1805, V. White.

117 Tr. 1797, 1802-03, V. White.

118 Tr. 1797, V. White; R. 20 at 624, V. White.

119 Id.

Once the task group agreed, it sent its recommendations to the subcommittee level (ASTM Subcommittee on Consumer Textiles D.1354) for further work. In drafting the glossary, the subcommittee used the proposed American National Standards Institute glossary L 28.1 as a basic working document, previously sponsored as a voluntary standard by the National Retail Merchants Association.[120] The subcommittee was comprised of more than one hundred members whose affiliations ranged from fiber and fabric producers, apparel manufacturers and retailers to representatives in the "consumer" and "general interest" categories who supposedly made up 55% of the membership.[121] As of December 3, 1976, however, the subcommittee was composed of approximately 109 voting members of which 70 were industry affiliated and two were consumer representatives. The balance originated from testing organizations, educational institutions, consulting firms, government purchasing services or were unidentified (7).[122] The subcommittee continued to seek new input but obtained no concrete information as to consumers' understanding of the terms proposed.[123] Generally speaking, what input was obtained was received through existing members and available only to those who actually attended subcommittee meetings.[124] Letter ballots were customarily taken from all members, 60% of which had to be returned.[125] Some negative votes of unknown substance were taken on the existing glossary.[126] In any event, the glossary survived subcommittee, committee and society level votes and became ASTM D-3136-72.

According to ASTM procedures, a document such as the glossary must be reviewed and reaffirmed by consensus balloting every 5 years.[127] The care labeling glossary is currently being reaffirmed in this manner. Further, an attempt is being made to update the standards inherent in the glossary; a separate group has been assigned to consider new standards for carpets and rugs, upholstered

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120 R. 25 at 255, 260-270, NCC.

121 Tr. 1547, ASTM.

122 R. 25 at 258, 271-278, NCC.

123 Id.

124 Tr. 1578-1582, ASTM.

125 Tr. 1548-49, ASTM.

126 Tr. 1556-57, ASTM.

127 Tr. 1547, 1578, ASTM.

furniture and leather[128] with no prediction as to when these standards might be finalized.[129] Glossary supporters emphasize that its substance is based on "trade-offs" with a real attempt to limit the number of words necessary on a label.[130] Moreover, the glossary can be modified if input to ASTM indicates that the terms used are not clear.[131] On the other hand, there is serious question whether a sufficient amount of input was obtained from consumers as to their understanding of the terms used.[132]

Staff is in no position to draw any overall conclusions as to the quality or quantity of input that the various ASTM decision-making groups had at their disposal because of the lack of information on the record. Staff is convinced that these groups, through ASTM, produced a commendable document. Judging from evidence of wide variances in consumer comprehension of the terms and definitions in the glossary, as well as a distinct lack of hard evidence indicating real consumer participation in its formulation, however, staff must question whether all the terms and definitions in the glossary adequately reflect consumer understanding in this regard. The evidence submitted by the National Consumers Congress confirms this doubt. As such evidence was not rebutted effectively by ASTM representatives, staff must conclude on the basis of the record that the glossary may need considerable improvement in this area.

Despite these drawbacks, the record contains a great deal of support from industry as well as from some consumer interests for inclusion of ASTM D-3136-72 in the final Rule as proposed.[133] Its development from a consensus organization where all parties are

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128 Tr. 1547, ASTM.

129 Tr. 1585-86, ASTM.

130 Tr. 1796-1798, V. White. The term "machine wash" was developed with these criteria in mind. Tr. 1803-1805, V. White.

131 Tr. 1729-30, AAMA.

132 Tr. 1411, 1438-39, IFI.

133 R. 17 at 128, Philips Van Heusen Research & Development; R. 17 at 429, ATMI; R. 17 at 531, Sears, Roebuck & Co.; R. 17 at 772, Fieldcrest Mills; R. 20 at 237, Attorney General, State of Illinois ; Tr. 887-88, Neighborhood Cleaners Association; R. 17 at 297, Linen Trade Association; R. 17 at 385, Levi-Strauss.

entitled to express their views as well as ASTM's required periodic review are touted as distinct advantages of the ASTM glossary over other existing documents.[134]

> [W]e support inclusion of the glossary in the proposed Rule. We regard it as highly desirable precisely because care terminology is so variable both among consumers and within concerned industries. Not only is the terminology itself variable but meanings attached to various terms are suprisingly so. Therefore, the glossary provides a very useful set of standard care term definitions, arrived at by consensus of all interested parties, to help the proposed revised rule to be of maximum effectiveness.[135] Some consumers and industry representatives assert that the glossary, in fact, accurately reflects current consumer[136] and industry usage.

"The ASTM definitions are well known in the apparel industry and we believe that their inclusion in the proposed rule will lead to a clearer understanding of the rule by manufacturers and consumers alike."[137] Other commentors approve conceptually of the use of an ASTM glossary but either object to certain parts of D-3136-72 or suggest fairly radical improvements or additions. For example, the International Fabricare Institute states that although the glossary which is approved should be one devised by ASTM, the definitions in the particular glossary at issue are unsatisfactory, particularly in the drycleaning area.[138] Some consumer representatives, while supporting it in general, state that many improvements are needed;[139] thus, regular review and

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134 R. 17 at 500; Tr. 1290, J. Schapiro; R. 20 at 668-670, M. Dana.

135 Tr. 1544-45, ASTM. See also Tr. 1796-97, V. White.

136 R. 20 at 330-31, Dept. of Consumer Affairs, Orange County, California; R. 20 at 668-670, M. Dana.

137 R. 17 at 1051, AAMA; Tr. 1702, AAMA.

138 R. 17 at 96-97, 457, IFI; Tr. 1390, IFI. Accord, Tr. 2408, 2431, California Fabricare Institute.

139 Tr. 2392, 2397-98, F. Reid; Tr. 2186-87, E. Kennedy, small retailer.

updating are extremely important.[140] Representatives of appliance industries propose alternative glossaries which differ in many respects from D-3136-72. These glossaries focus upon what is currently available on appliances and eliminate what are viewed as inadequate or unclear definitions.[141] Finally, a few consumer representatives, including the National Consumers Congress, oppose inclusion of the glossary in any form,[142] on grounds that many of the definitions do not correspond with the understanding of a substantial number of consumers.[143]

The record also raises an important question as to the propriety and appropriateness of the Commission's adopting a glossary, as revised, over which it has little control.

> Such an adoption would leave the responsibility for revising care labeling terms in the hands of private non-government bodies. We do not think it is sound policy for the FTC to commit itself to adopting terms and future revisions that may not be acceptable . . . we recommend that the non-confusing terms from the glossary be listed in the definitions section of the Rule. However, those terms whose meanings have been questioned . . . should be redefined in accordance with information developed on the present record.[144]

Further, a subsequent revision of the glossary, if adopted, would not be promulgated under the rulemaking procedures of the Commission but rather under the procedures of ASTM for developing new standards.[145] The Presiding Officer agrees stating that such a revision might not be acceptable to the Commission.[146] At least

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140 Tr. 2242-43, R. Galbraith.

141 R. 20 at 635-638, General Electric Co.; R. 20 at 645-46, Washington Gas Consumer Information. Many of the terms or definitions to which they object have already been shown to be inadequate.

142 R. 17 at 497, home economist, clothing consultant.

143 Tr. 2745, NCC.

144 Id.

145 Tr. 2060, 2075, Slide Fasteners Association.

146 Presiding Officer's Report 96.

one consumer representative and one industry association prefer that the Commission include the glossary in the final Rule as its own and effect periodic revisions through its own rulemaking procedures.[147] The ASTM representative, in effect, acknowledges the problem of adoption, stating, however, that the Commission would have "great influence" on the outcome of any revisions proposed by ASTM committees[148] and that the committees, albeit reluctantly, would try to make acceptable modifications in accordance with Commission desires.[149] Further, glossaries that are now being considered for upholstery as well as carpets and rugs are separate from the glossary at issue. Thus, each would have to be adopted by the Commission individually when developed.[150] Finally, the Home Laundering Consultative Council of Great Britain suggests that the glossary be utilized only as a guide to manufacturers and consumers because the likelihood of the glossary being adopted in toto on an international scale is small.[151]

Staff is of the opinion that the weight of the record supports adoption of the ASTM glossary at least in part. With few exceptions, the glossary enjoys universal industry support. While the National Consumers Congress objects to its adoption because of lack of consumer input in its formulation, the record reflects this gap only in certain instances where certain specific terms and definitions in the glossary have been shown conclusively to be unsatisfactory insofar as consumer comprehension is concerned.[152] As such, staff recommends that these terms be excepted from adoption and satisfactory ones be substituted in the Rule and required to be used, as defined. While adoption of subsequent revisions may present problems, these problems can be overcome. Staff proposes that such revisions be adopted conditionally, subject to approval by the Commission (or delegated authority within the Commission) after 90 days advance notice. If the Commission does nothing,

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147 Tr. 2399, F. Reid; Tr. 1731-32, AAMA.

148 Tr. 1562-1564, ASTM.

149 Tr. 1576-77, ASTM.

150 Tr. 1819, 1825, V. White.

151 R. 17 at 206, Home Laundering Consultative Council, (Great Britain).

152 These terms are "machine wash," "hand wash," "home launder," "wash separately," all bleaching instructions and all dry-cleaning instructions.

the revision can be considered adopted. If the Commission finds a proposed ASTM revision to the glossary unacceptable, the Commission may (by press release, advisory opinion or otherwise) notify all concerned of its decision not to adopt such revisions and simultaneously propose substitutes, if deemed necessary, by whatever mechanisms are available. For substantial revisions materially affecting the substance of the Rule, the public record can be opened for comment to satisfy due process requirements before a decision is made. On the other hand, if industry or consumer groups are dissatisfied with a proposed revision, they are free at any time to petition the Commission for necessary modifications or deletions. Staff believes that this course is infinitely preferable, especially in light of the crying need for standardization and uniformity in this area, to disregarding the glossary altogether because of a relatively few inadequacies or to incorporating the entire glossary and subsequent revisions into the Rule, without exception. The latter course would place the entire burden on the Commission to keep pace with technology and other developments in the field and make modifications when appropriate. It is staff's opinion that ASTM is far more capable generally of shouldering this burden than is the Commission, both in terms of resources and technical expertise. Staff's proposal allows ASTM to perform what the organization is designed to do while giving the Commission the option of accepting or rejecting ASTM's work-product insofar as its incorporation into the Rule is concerned. In this manner, some degree of uniformity in care instructions can be realized with a minimum of resource expenditure on the part of the Commission.

Staff is aware that the Presiding Officer recommends that the Commission formulate its own terms and definitions in lieu of adopting any part of the glossary and gives five reasons therefore.[153] First, he argues that the glossary was designed only for wearing apparel and not for furniture or carpets and rugs. Staff agrees. This is not sufficient justification, however, for scuttling the entire document; other terms and definitions may be used to the extent that they are omitted from the glossary. His second and third arguments concerning the acceptability of future revisions and the inadequacy of some terms and definitions in the glossary have already been resolved. His fourth argument that the glossary and the proposed revised Rule are inconsistent has been resolved in part (in terms of the all-inclusive nature of the glossary's definition of "machine wash"). With respect to the glossary's assumption that all washable items are also drycleanable, staff

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153 Presiding Officer's Report 96.

has already rejected this assumption (see Chapter IV.C.4., Alternative Care) and, therefore, recommends against its adoption.[154] Finally, the Presiding Officer observes that the record contains substantial data upon which to base terms and definitions formulated by staff. Staff agrees but only with respect to those terms and definitions which have already been discussed. The record is silent on as many other terms which have been open to comment throughout the proceeding. Staff has already outlined its reasons for not recommending that the Commission devise and revise its own glossary of terms; ASTM is the proper party to engage in this pursuit.

For the foregoing reasons, therefore, staff recommends that the following provision, retitled "Terminology," be substituted in the final Rule for section 423.7 of the proposed revised rule, designated section 423.13:

> (b) For purposes of this part only and subject to the exceptions noted below, the Commission adopts the terms and definitions set forth in Part 4 (Definitions of Terms) of the American Society for Testing and Materials' "Standard Definitions of Terms Relating to Care of Consumer Textile Products and Recommended Practice for Use Of These Terms on Permanently Attached Labels" (ASTM D-3136-72), as presumptively acceptable standards for the terminology to be employed in compliance with this part. The Commission will not challenge the accurate use of such terminology without advance notice provided the other requirements of this part are met. Accordingly, for the purposes of compliance with this part:
>
> (1) the terms as defined in ASTM D-3136-72 should be used to the extent applicable;
>
> (2) where applicable terms are not defined in ASTM D-3136-72, other terms may be used so long as such terms accurately describe the care procedure and otherwise fulfill the disclosure requirements of this part.
>
> (c) For the purposes of this part only and subject to the exceptions noted below, the Commission also adopts subsequent revisions to ASTM D-3136-72: Provided, however, That,

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154 The proposed revised rule makes no such assumption either in the glossary section or in other sections.

(1) notice of proposed revisions to ASTM D-3136-72 is provided to the Secretary of the Commission to be placed upon the public record at least ninety (90) days in advance of their promulgation; and

(2) the Commission (or its delegated authority) takes no action with respect to the proposed revisions before the expiration of the ninety day period.

If the Commission (or its delegated authority) determines that such proposed revisions are unacceptable, the American Society for Testing and Materials shall be notified of such action with reasons therefore before the expiration of the ninety day period. Such notice shall also be placed on the public record and in the Federal Register. The Commission (or its delegated authority) shall at any time consider, upon good cause shown in a written petition to be placed on the public record, any request for reconsideration or modification of its actions under this part in accordance with Section 1.15 of the Commission's Organization, Procedures and Rules of Practice.

(d) The Commission does not adopt any term or definition in ASTM D-3136-72, or subsequent revisions, which is inconsistent with the terms and definitions set forth below. These terms, as defined, should be used to the extent applicable, in lieu of corresponding terms and definitions in the glossary.

(1) Washing, Machine Methods:

(i) "<u>machine washing</u>" - 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.

(ii) "<u>do not have commercially laundered</u>" - do not employ a laundry which uses special formulations, sour rinses, extremely large loads or extremely high temperatures or which otherwise is employed for commercial, industrial or institutional use.

Employ laundering methods designed for residential use or use in a self-service establishment.

(iii) "separately" - alone.

(iv) "with like colors" - with colors of similar hue and intensity.

(v) "no bleach" - no bleaches may be used.

(vi) "non-chlorine bleach (or whatever bleach type may be used) only when needed" - only those bleaches specified may be used when necessary to the ordinary use and enjoyment of the item.

(vii) "bleach only when needed"- all bleaches may be used when necessary to the ordinary use and enjoyment of the item.

(2) Washing, Hand Methods:

(i) "hand washing" - a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap and gentle squeezing action.

(ii) "separately" - alone.

(iii) "with like colors" - with colors of similar hue and intensity.

(iv) "no bleach" - no bleaches may be used.

(v) "non-chlorine bleach (or whatever bleach type may be used) only when needed" - only those bleaches specified may be used when necessary to the ordinary use and enjoyment of the item.

(vi) "bleach only when needed" - all bleaches may be used when necessary to the ordinary use and enjoyment of the item.

(3) Drycleaning, All Methods:

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

(ii) "professionally dryclean" - use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both.

(4) Drycleaning, Modifications:

(i) "petroleum/fluorocarbon/perchlorethylene [or other solvent(s)]" - employ solvent(s) specified to dryclean the item.

(ii) "short cycle" - reduced or minimum cleaning time, depending upon solvent used.

(iii) "minimum extraction" - least possible extraction time.

(iv) "reduced/low moisture" - decreased relative humidity.

(v) "no tumble" - do not tumble dry.

(vi) "tumble warm" - tumble dry up to 120 degrees F (49 degrees C).

(vii) "tumble cool" - tumble dry at room temperature.

(viii) "cabinet dry warm" - cabinet dry up to 120 degrees F (49 degrees C).

(ix) "cabinet dry cool" - cabinet dry at room temperature.

(x) "steam only" - employ no contact pressure when steaming.

(xi) "no steam" - do not use steam in pressing, finishing, steam cabinets or wands.

F. Basis for Care Instructions: Testing

1. Preface

The current rule does not require that responsible parties have any basis whatsoever for care instructions currently being supplied. The Rule specifically mentions only that care instructions be "clear" and that they "fully inform" the purchaser of regular care and maintenance procedures.[1] As such, the Rule contains no reference to "accuracy," either in its text or in its Statement of Basis and Purpose[2] and instead concentrates on clarity and completeness. Similarly, while the staff report acknowledges the issue of mandatory "testing" to ensure "accuracy," the report recommends against inclusion of a testing requirement in the rule because of unanimously negative input from industrial and technological sources.[3] The principal reason for such input was the total lack of acceptable or standardized tests in this area.[4] Presumably because of evidence of increased inaccuracy in care instructions, the record developed since the proposed revised rule contains sufficient comment and testimony on the subject to necessitate a full discussion in this report. Staff will proceed with a consideration of the current availability of standardized test procedures, what these test procedures are designed to measure and whether manufacturers are currently using them. The ultimate issue of whether any form of testing should be required in the rule will then be resolved.

2. Current Testing Procedures

With two exceptions, the record indicates that test procedures for various care traits of various items do exist; however, it is apparently the degree of standardization which fluctuates. The International Fabricare Institute sponsors a host of tests for sundry textile characteristics:

> The International Fabricare Institute has a Seal Program under which products are tested in IFI's Certified Seal Laboratory and awarded performance seals . . . a "certified" garment has been tested to assure washability and/or drycleanability . . . . Tests utilized in this program include: dimensional

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1 Care Labeling Rule, paragraphs (a), (b) and Note 1.

2 Theoretically, inaccurate care instructions could be challenged under § 5 of the FTC Act, despite failure of the Rule to address this subject specifically.

3 Staff Report 25.

4 Id.

> change (shrinkage and stretching); tensile strength (the strength of a fabric in both dry and wet state); colorfastness to: water, solvent, perspiration [and color crocking]; durability of applied designs and finishes; chlorine retention; soil resistance; yarn distortion; abrasi[on] resistance; pilling.[5]

Among the items tested are towels, linens, blankets, career apparel, athletic wear, work clothing, coats, suits, jackets, dresses, sweaters, draperies, slipcovers, and leather items. The tests are performed using the cleaning equipment prescribed rather than in contrived laboratory situations and the procedures used are selected to, "correlate with the intended end-use of the item." For example, the number of washing cycles employed to test a particular article varies with its make-up; further, the number and kind of drycleaning processes employed to test such an article are classified according to pre-determined standards for cleaning. While the test methods cannot be used to predict performance under all conditions of wear and storage IFI maintains that reasonable estimates of performance can be given.[6]

> We feel that [testing] the finished product with all component parts has merit over testing fabric samples in most instances. We have had specific examples where fabric samples passed a drycleaning test, yet failed when made into a garment . . . . This is why we prefer to test the entire product, supplementing with laboratory tests when they can be used or applied individually.[7]

The Institute clearly does not agree with such organizations as the American Society for Testing and Materials (ASTM) or the American Association of Textile Chemists and Colorists (AATCC) who use primarily laboratory methods. The fact that both laboratory and so-called "equipment" methods are currently being used, however, indicates that such test methods do exist.[8]

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5 R. 20 at 390-91, McCullough, Mrs. Jacquelyn, Instructor, School of Home Economics, Eastern Illinois University, "An Analysis of Problems Associated with Permanent Care Labeling and Recommendations for Improvement" (Fall, 1975).

6 R. 25 at 285-287, National Consumers Congress (interviews with representatives of the Institute).

7 Id. at 287.

8 Tr. 1439, 1450-51, International Fabricare Institute. The California Fabricare Institute concurs, Tr. 2429-30.

Test methods employed by ASTM and, to a lesser extent, AATCC depend upon the voluntary consensus standard system previously described in Chapter V.E. Tests have been developed under this system which are also utilized to varying degrees.[9] Currently, a section of the ASTM subcommittee D-13.54 (D-13.54.02)[10] is attempting to develop standards for apparel end-products using ASTM or AATCC methods[11] by establishing levels of performance and thereafter test methods by which those levels can be determined.[12] There are also currently existing test methods in which the cause of damage may be determined.[13] "The AATCC has developed standard test methods for important fabric properties and quality control aids which have been available for years to all phases of industry, business, government and educational institutions."[14] For example, the record contains a proposed revision of AATCC's Test Method 135, "Dimensional Changes in Automatic Home Laundering of Woven and Knit Fabrics" outlining in great detail the appropriate procedures involved in testing for shrinkage.[15] The Research Committee on Dry Cleaning (RA 43) of AATCC has also developed tests for colorfastness and durability of applied design to drycleaning as well as standard specifications for drycleaning detergents and tests for foam laminates. Witness Schapiro states that these tests represent great progress toward a test for total drycleanability and advocates their inclusion in the Rule.[16] He acknowledges, however, that there is no set of standards that will cover <u>all</u> items included in the Rule.[17]

Other test methods have also been developed by or are supported by individual manufacturers and groups. The Clorox Company has invented a "Bleachability Test for Colored Fabrics" designed to determine the susceptibility of a fabric to color change in wash

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9 R. 17 at 502; Tr. 1297, J. Schapiro, Dixo Co.; <u>supra</u>, note 5 at 389-90; Tr. 1807, V. White, Chairman ASTM Committee D-13.

10 Tr. 1733, W. St. John, Assoc. Professor, Southern Illinois University.

11 Tr. 1561, ASTM.

12 Tr. 1615, W. St. John.

13 Tr. 1614, W. St. John.

14 <u>Supra</u>, note 5 at 389.

15 R. 17 at 1181-1193, Ballet Fabrics, Inc.

16 Tr. 1289, 1324-25, 1327, J. Schapiro.

17 Tr. 1326, J. Schapiro.

solutions which include bleach,[18] although the record contains some testimony which questions its use for this purpose.[19] A test for "bleachability" must include a determination of structural as well as color change.[20] The Apparel Research Foundation has created an Apparel Performance Levels Standards Committee to determine performance guidelines for end-products to enable manufacturers, "to economically evaluate the effect cleaning has on apparel . . . ."[21] Standard test methods (color change, color transfer, shrinkage) for specifying the quality of zippers and zipper tapes have been published by ASTM, representing 25 years of development by AATCC in cooperation with the Slide Fasteners Association.[22] Many individual firms and associations generally support these efforts.[23] Leather cleaners support the use of tests to determine suitability of leather skins for garments and their serviceability in the garment itself.[24] Leather cleaners are further supported in this effort by the Tanner's Council of America and the Suede and Leather Refinishers of North America.[25] Finally, there are those who aptly point to the actual washing and drycleaning procedures used by consumers and dry-cleaners which could reasonably be utilized as viable test procedures. Subjecting an item to care which the consumer will employ at home or in a self service establishment according to prescribed care instructions will demonstrate, at least, the blatant deficiencies in such instructions.[26] Only a furniture manufacturing

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18 R. 17 at 1531-1535, Clorox Co.

19 Tr. 2239-2240, R. Galbraith, Dean, School of Home Economics, Auburn University. A minimum of 5 washes conducted at a bleach level and concentration recommended by the manufacturer is insufficient to predict the kind of damage that might occur over the lifetime of a garment and is not sufficient to predict "bleach safety." Ms. Galbraith avers that 50-100 washes would be more reliable.

20 Tr. 1532-33, M. Purchase, Professor, Cornell University.

21 Supra, note 5 at 390.

22 Tr. 2062, 2070-71, 2079, 2088, Slide Fasteners Association.

23 Supra, note 5 at 390; Tr. 1733, American Apparel Manufacturers Association.

24 Tr. 2471, Kirk's Suede Life.

25 Tr. 2475, Kirk's Suede Life.

26 Tr. 1616, W. St. John; Tr. 1885-1887, 1892-1894, B. Smith, drycleaner.

association[27] and a carpet cleaning representative[28] see no progress in determining test methods for products in their respective fields.

While the record indicates some disagreement as to appropriate test methods which should be utilized, the record amply demonstrates the existence of such methods to a surprising degree. Staff concludes, therefore, that test methods which can be used in devising proper care instructions are currently available to all parties who make an effort to obtain them. While such methods are not, as yet, standardized, they are rapidly becoming so. These methods address the many and varied care traits of textile and leather products and could conceivably be used as a basis for prescribing care instructions under this Rule. To the extent that such methods can be used for textile components of furniture and carpets, these tests could also be used, at least in part, for such products. The Presiding Officer concurs in this analysis.[29]

Whether or not manufacturers currently use existing testing methods in formulating their care instructions is an open question on the record, depending upon the source of the answer. Some organizations claim that testing is done as a matter of policy using quality control laboratories, washing machines and whatever else is available to determine the expected life of the product as well as the number of recommended care procedures which the particular product will withstand.[30] While the American Apparel Manufacturers Association has no policy in this regard, its representatives state that, in most cases, including those where drycleanability is at issue, a certain amount of testing is performed.[31] Manufacturers in the Linen Trade Association (LTA) also test certain items for care instructions on a sporadic basis.[32] While LTA does not routinely test for bleachability, other members of the textile industry may.[33] Some manufacturers also test to confirm care information received from their suppliers

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27 Tr. 1107, National Association of Furniture Manufacturers.

28 Tr. 2337, D. Argo, carpet cleaner.

29 Presiding Officer's Report 103.

30 Tr. 1964-1966, American Textile Manufacturers Institute.

31 R. 20 at 682, AAMA; Tr. 1750-51, AAMA.

32 Tr. 1161-62, Linen Trade Association.

33 Tr. 1163, LTA; Tr. 2229, E. Kennedy, small retailer.

before labeling the final product.[34] A carpet manufacturers association argues, however, that testing products as a matter of policy would be too expensive, especially for the small manufacturer who does not have in house facilities.[35]

On the contrary, drycleaners, as well as some consumers, aver that manufacturers as a matter of policy do not test their products for proper care instructions. "We have learned that manufacturers order labels without any prior testing of the garment as to the proper care procedure. In some instances, these garments are totally unserviceable because they can neither be washed nor drycleaned."[36]

According to the Neighborhood Cleaners Association, one exception to this indictment may be large retailers from whom it has detected few inaccurate labels; the Association argues, however, that in literally hundreds of other cases, there is no question that the item was never tested. In some cases, mere immersion in a drycleaning solvent would have been enough.[37] One consumer representative cites the rash of drycleaning damage (solvent-soluble dyes and bonding adhesives, for example) as well as examples of erroneous assumptions about the drycleanability of washable items as further evidence of the lack of testing.[38] Other drycleaning commentators as well as one retailer and the National Automatic Laundry and Cleaning Council agree.[39] Finally, the Walker survey of 152 consumer-respondents reveals rather inconclusively that 54% believe care information to be based on actual laboratory testing, 31% believe no testing is conducted and 14% do not know.[40] While it is clear that what consumers believe is not necessarily what manufacturers actually do, the record does indicate two facts: 1) at least some manufacturers

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34 Tr. 1617, W. St. John.

35 Tr. 2649, Carpet Manufacturers Association of the West.

36 Tr. 852, Neighborhood Cleaners Association.

37 Tr. 874, Neighborhood Cleaners Association.

38 Tr. 2126, 2140-2142, B. Reed, Better Business Bureau, Milwaukee.

39 R. 23 at 33, National Automatic Laundry and Cleaning Council; R. 17 at 2, 179, drycleaners; R. 17 at 93, Quality Control Manager, W. T. Grant Co.

40 R. 17 at 1262, 1272, the Walker survey.

currently utilize some test methods to verify the accuracy of their care instructions and 2) many consumers and drycleaners believe that the price for failing to perform even rudimentary tests is often high in terms of damage due to improper care. The Presiding Officer arrives at similar conclusions.[41]

3. The Requirement

Those who address this subject in the record almost unanimously support a testing requirement in the Rule. Manufacturing organizations commenting generally do not oppose such a requirement if reasonably based, although there is some disagreement as to whether or not test methods should be specified and, if so, what.[42] The Council on Wage and Price Stability sees the problem as a matter of trade-offs:

> Perhaps the most important trade-off involves the accuracy of information versus the costs of testing. Obviously, the more tests that are run on a particular line of apparel, the more confidence that may be placed in the care instructions devised. But such testing is costly, and consumers end up footing the bill. Ideally, one would trade-off the marginal benefits of more accurate information (decreased likelihood of harming a garment through improper care) against the marginal costs of better information through additional testing.[43]

While urging the development of more credible testing methods,[44] consumers, consumer representatives, and cleaners of consumer items consistently support a general testing requirement to ensure more accurate instructions,[45] to ensure the serviceability of consumer merchandise,[46] to prevent unnecessary damage due to improper

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41 Presiding Officer's Report 103.

42 Tr. 1733-34, AAMA; Tr. 1327, J. Schapiro; Tr. 1966-67, ATMI.

43 R. 20 at 701, Council on Wage and Price Stability.

44 R. 20 at 282, J. McCullough, Textiles & Clothing Instructor, Eastern Illinois University.

45 R. 20 at 291, consumer; Tr. 2796-97, NCC; Tr. 2540, K. Bourdeau, Dept. of Consumer Affairs, Los Angeles County; see also R. 17 at 522, Sears, Roebuck & Co., advocating a requirement for accuracy in the Rule.

46 Tr. 2474-75, 2486, Kirk's Suede Life (leather garments).

care,[47] to ensure corporate accountability, adequate enforcement by the Commission and an effective Rule[48] and for other miscellaneous reasons.[49] What test methods should be specified (if any) is uncertain in the record.[50] Some would even include a recordkeeping requirement to ease resolution of disputes when a question arises as to the propriety of a particular instruction.[51]

It is acknowledged, however, that a testing requirement may involve an inordinate burden to the small manufacturer:

> The cost to manufacturers of submitting textile products for evaluation is a function of the number of identical or essentially identical items which they produce. Because of that, the burden of testing falls most heavily on the smaller and more creative manufacturers, who in turn generally deal with smaller retailers. The rule of course automatically is to the benefit of the very large companies, the Burlingtons, the Sears, the Penneys and other mass marketers.[52]

On the other hand, smaller manufacturers may also experience some built-in advantages in this area, according to a manufacturing representative:

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47 R. 18 at 292, consumer home economist textile analyst. "The companies should be required to test all garments and component parts instead of guessing . . . what label to put on a garment. [One] would be horrified to see the damaged garments because of improper labeling in the permanent collection of the Drycleaning and Laundry Institute"; Tr. 2141-2143, B. Reed.

48 Tr. 1366, E. Shapiro, Dept. of Consumer Affairs, Detroit; R. 18 at 1799, consumer.

49 Tr. 1670-71, K. Geiken, School of Home Economics, University of Wisconsin; Tr. 1887, B. Smith, drycleaner; Tr. 2297, M. Brinson, Assoc. Professor, Buffalo State College.

50 R. 19 at 9, Textile Analysis Service, University of Alberta (advocates specification of "certain test methods"); Tr. 1451-54, IFI [agrees to specifications of some test methods so long as they could be revised (drycleanability)]. See also Tr. 2413-14, CFI.

51 Tr. 2394-95, F. Reid, Office of Consumer Affairs, Orange County, Cal.; HX 33 at 500, NCC.

52 R. 17 at 115, Joseph Bancroft Co.

> Such legislature [sic] will not impose a heavy burden on the small company. If anything, small companies are 'closer' to their product than the larger ones. They are more apt to give away or sell their products to relatives and friends and thus receive first hand information about the adequacy of the care instruction on their garments. Poorly labelled products are more often the cause of nonchalance than ignorance.[53]

In any event, it appears that a substantial number of consumers are willing to pay the price, if it is not too high. "Consumers would most likely be willing to pay extra costs involved in testing if the testing would save them the ruin of their merchandise through improper cleaning or washing procedures."[54]

While witness St. John believes that the industry is not ready for testing requirements or the specification of test methods in a rule,[55] he is the only witness who expressed such reservations. The National Consumers Congress suggests a specific testing requirement containing a 3-year record retention provision:

> If the care labeling rule is to give consumers the intended protection, the information on the labels must be accurate; silence on this point seriously undermines the Rule's effect. NCC considers it vital that manufacturers or importers be required to verify the accuracy of label information and maintain records describing the tests used and the results obtained.[56]

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53 R. 23 at 547-48, E. Bilezekian, Manager, Product Development, Londontown Manufacturing Co. Mr. Bilezekian advocates a full testing requirement with a stringent record retention clause (these remarks represent the personal opinions of Mr. Bilezekian and are not those of Londontown Manufacturing Co.)

54 Tr. 1784, P. Faley, Office of Consumer Protection, Montgomery County, Md. See also the Walker survey which indicates that of 152 respondents, 48% state they would be willing to pay more for garments with instructions based on actual tests (35% indicate up to 5% more, 9% indicated 5-10% more, 3% indicate over 10% more). Fifty-one percent, however, reply in the negative R. 17 at 1272, 1278, the Walker survey.

55 Tr. 1617, W. St. John.

56 HX 33 at 500, NCC.

The Presiding Officer concludes that manufacturers should, "have a 'reasonable basis' to substantiate such instructions." A "reasonable basis" would consist of subjecting a representative product to prescribed care procedures a reasonable number of times. The Presiding Officer's plan, however, contains no record retention requirements.[57] Neither NCC nor the Presiding Officer recommends specification of particular test methods in such a requirement.

The record indicates by an overwhelming margin that the "testing" issue cannot be ignored as it has been in the past. Despite the fact that staff did not include any reference to such a requirement in the proposed revised rule, the transcript is full of testimony regarding it. Presumably, the reason for such concern is the preponderance of inapposite care instructions with which consumers have had to deal. While the current rule and the proposed revised rule address the clarity and thoroughness of such instructions, they neatly avoid the issue of accuracy.[58] Staff recognizes that a clear, complete but inaccurate instruction may be worse than no instruction at all. Thus, staff concludes that the final Rule should contain a provision which requires manufacturers, as a matter of course, to be able to substantiate the content of care instructions prescribed for any particular product.[59]

The Commission has already exacted various substantiation requirements in trade regulation rules promulgated in the past, including "reasonable basis" provisions,[60] recordkeeping provisions[61] and specifications of particular test methods to be

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57 Presiding Officer's Report 104.

58 Insofar as the current rul is concerned, the lack of any care instructions whatsoever, not inaccuracy, was the problem when the Rule was promulgated.

59 It is recognized that the Commission could probably proceed from "scratch" against a responsible party for inaccurate instructions under § 5 of the FTC Act, however, ponderous such action might be. On the other hand, it is to the benefit of all concerned that any final Rule issued by the Commission contain all the requirements regarding a particular practice with which the Commission is concerned and not reserve a "Catch-22" within the webs of the FTC Act.

60 16 CFR 435, Mail Order Merchandise, § 435.1(a)(2).

61 16 CFR 435, Mail Order Merchandise, § 435.1(a)(4); 16 CFR 424, Retail Food S e Advertising and Marketing Practices, § 424.1(b)(1)(ii).

used for required disclosures.[62] The concept of "reasonable basis" for advertising claims is an established concept in Commission law.[63] The record in this proceeding supports some but not all of these remedial provisions. Staff can first eliminate specification of particular test methods. As previously discussed, while there are many test methods available, no one method is universally accepted or used and some are duplicative in nature. All may be reasonably based, depending upon the point of view of the user. It is not possible on this record to determine which would be most acceptable to the greatest number of concerned parties without making an arbitrary decision. As there is insufficient evidence on the record to determine on an informed basis what test methods should be specified, staff recommends that such specifications be left to the manufacturer of the product within certain guidelines now to be discussed.

Staff supports the Presiding Officer's recommendation that manufacturers be required to have a "reasonable basis" for prescribed care instructions, but disagrees with the restrictive definition assigned to the term in his report.[64] It is staff's opinion that there are several factors which might serve as evidence of a "reasonable basis," none of which may alone be deemed conclusive. The Presiding Officer advocates that evidence of the fact that a product (or a representative sample) has actually been subjected to a prescribed care procedure for a reasonable number of times without damage or substantial impairment should be conclusive. In staff's opinion, while such evidence might be given considerable weight, other factors such as reliable evidence of the care traits of the components of the product, evidence of reliable or accepted laboratory tests which simulate the effects of certain care procedures on the product, or other evidence which would contribute to the reasonableness of a particular instruction should be considered. Given the fact that textile testing methods and technology are in a constant state of fluctuation at this time and disagreement as to the propriety of certain avenues of endeavor still exists, the Commission should not be restricted in an enforcement action to a consideration of only one set of facts in determining whether a care instruction has a "reasonable" basis.

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[62] 16 CFR 432, Power Output Claims For Amplifiers Utilized in Home Entertainment Products, § 432.3, 432.4(c); 16 CFR 422, Posting of Minimum Octane Numbers on Gasoline Dispensing Pumps, § 422.1 (Note); 16 CFR 490, Incandescent Lamp Industry, § 409.1 (Note 1).

[63] Presiding Officer's Report 104.

[64] Id.

In this connection, staff sees no need to require retention of records in all situations. Rather, staff views records indicating the criteria that were used in prescribing a care instruction as the best and most reliable way to demonstrate that instructions can be substantiated. The fact that a proposed respondent has no such records gives rise to a rebuttable presumption that, in fact, no such substantiation can be made and, therefore, that the instructions have no reasonable basis. Room should be given a proposed respondent, however, to rebut such a presumption by whatever other evidence is deemed pertinent to the issue.

On the basis of the foregoing, therefore, staff recommends that the following new section be incorporated into the final Rule, to apply to all care instructions required thereunder:

(a) It is an unfair or deceptive act or practice for any manufacturer, importer or other responsible party under this part to sell any product for which care information is required without having a reasonable basis to substantiate the accuracy of such information. A reasonable basis to substantiate the accuracy of such care information may include:

(1) reliable evidence that the product (or a representative sample) has been subjected to the care procedure(s) prescribed for the product a reasonable number of times without damage or substantial impairment;

(2) reliable evidence of the care traits of the component parts of the product; and

(3) reliable evidence that the product (or a representative sample) has been subjected to reputable laboratory tests which are designed to simulate the procedure(s) described in (1) above.

All such evidence will be considered in determining whether a reasonable basis for care information exists.

(b) In any action brought by the Federal Trade Commission alleging a violation of this part, the failure of a responsible party to have records or other documentary proof of the manner in which such care information was devised shall create a rebuttable presumption that such party lacks a reasonable basis for such information.

In staff's opinion, these provisions give adequate guidance to the industry for complying with this part while advising those responsible that it will be considered a violation of the Rule to provide care information for any included product if substantiation for such information is lacking regardless of whether any damage has actually occurred as a result of such information.

VI. Economic Impact

A. Small Business

The initial notice of the proposed revised rule commencing this proceeding contains the following question wth respect to the entire rule: "What is the economic effect of the revised rule on small business?" This subject was not addressed in the staff report recommending the rule because the record at that time contained no evidence pertinent to this issue. Since issuance of the initial notice, however, a number of written comments as well as a substantial amount of testimony has been received on the record from a variety of sources which address this topic. Small businesses affected by this Rule include small manufacturers, retailers or importers of products covered by the Rule as well as members of the cleaning establishment such as drycleaners and launderers.

About one quarter of the record input in this area regards the effect of this Rule on small business to be economically negligible, i.e., neither favorable nor adverse.[1] While compliance with the Rule might be expensive initially to those who must provide labels and instructions, such instructions will result in increased consumer confidence, consumer satisfaction and larger sales.[2] Modifying existing care labels will apparently not cause severe problems.[3] While more personnel might have to be trained both at the manufacturing and retail levels, retailers will be protected against liability if a labeled article is returned damaged due to improper care.[4] Increased costs will be absorbed by products which will wear longer and retain a better appearance.[5] The representative of the Department of Consumer Affairs in Orange County, California observes:

> Based on the interviews conducted in my office, I foresee little economic impact on the majority of small businesses which would be concerned with the Proposed Rule. Most businesses are already complying with the rules proposed. Slight adjustments in their labeling procedures

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1 R. 18 at 151, Seattle-Pacific College; R. 20 at 167, Extension Agent, CES, Georgia; Tr. 2487-89, Kirk's Suede Life.

2 R. 18 at 170, 875, 892, consumers.

3 R. 18 at 552, consumer - garment industry worker.

4 R. 18 at 139, consumer; R. 20 at 362-3, Extension Specialist, CES, Oregon; R. 20 at 440, Office of Consumer Affairs, City of New Orleans.

5 R. 20 at 176, Extension Specialist, CES, Missouri.

> may be necessary which might result in higher overhead costs. Greater costs will be incurred by those few businesses which produce items which lack care labels and fall under the provisions of the Proposed Rule. However the cost to these few businesses of including care labels when compared to the possible replacement costs for products which are damaged and for which the consumer is able to obtain restitution when provisions of the rule are applied, will probably constitute an equal trade-off.[6]

When problems involving care occur less frequently, the increase in business and good-will obtained by small businessmen will offset the small initial increase in cost.[7] The Mississippi survey of 1250 local consumers reveals a similar feeling. While consumers acknowledge the increase in time, trouble and cost for the small businessman, they cite such offsetting benefits as increased consumer satisfaction and confidence and fewer returns of damaged articles.[8]

Another one quarter of those commenting in this area predict that the Rule will have an adverse effect on the small businessman, solely because of increased costs.[9] Such costs will be caused by testing requirements which force the small businessman without facilities to pay for a testing service,[10] services

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6 R. 20 at 331, Office of Consumer Affairs, Orange County, California.

7 Tr. 2630-31, W. Morck, instructor, family and consumer studies.

8 R. 20 at 435, the Mississippi Survey.

9 R. 18 at 208, 626, 802, 842, 854, consumers; R. 20 at 17, Extension Specialist, CES, Georgia; R. 20 at 143, Extension Specialist, CES, Michigan; Tr. 1913, Littwin Textiles.

10 R. 17 at 125, Celanese Corp.

associated with the purchase and attachment of labels,[11] government "red-tape",[12] and the fact that retailers will no longer be able to sell unserviceable items[13] thus reducing consumer choice.[14] While acknowledging that the cost per label is low, commentor Jacquelyn McCullough cites other possible hidden costs which might obtain such as testing, training of personnel, style elimination, legal costs for defending against violation of the Rule and costs to the taxpayer of enforcement. She also acknowledges, however, the possibility that consumer complaints might decrease with fewer resulting enforcement proceedings and the fact that retailers' costs involving refunds or replacements might fall because of fewer complaints and returns.[15]

A majority of those addressing the issue, however, believe that the overall economic effect of this Rule will be enormously favorable to the small businessman.[16] Several reasons are cited. The small manufacturer and retailer can expect fewer complaints and resulting returns of merchandise because of damage due to improper care and fewer losses due to the necessity of replacing such merchandise.[17] Consumers will be more satisfied with merchandise purchased resulting in increased public trust, consumer

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11 R. 18 at 924, consumer.

12 R. 18 at 532, consumer.

13 R. 19 at 7, Textile Analysis Service, University of Alberta. Staff regards this as a benefit!

14 R. 20 at 394-5, J. McCullough, Eastern Illinois University.

15 Id.

16 R. 17 at 263, Wisconsin Fabricare Institute; R. 18 at 704, retailer.

17 R. 17 at 225, consumer; R. 23 at 548, E. Bilezikian; R. 18 at 660, home economist; R. 18 at 756, department store employee; R. 18 at 189, 329, 343, 524, 645, 654, 677, 710, 730, 784, 968-9, consumers; R. 20 at 316, Office of Consumer Affairs, Atlanta, Georgia; R. 20 at 364, Professor, Whittier College.

patronage, sales and ultimately net earnings.[18] Public confidence in domestic products will increase, reducing sales of imports in the United States.[19] For the retailer, the cost of distributing care instructions, while not great, will be "money well spent". Witness Kennedy, a small businesswoman, is eager to spend a small amount in order to receive a larger amount.[20] Further:

> Small business should welcome additions as it will help ensure [that] consumers car[e] for their goods properly. It will help equalize information given to consumers by small business and large business who spend more on promoting their products. Small retailers should welcome information as there generally is less opportunity for their sales people to receive training.[21]

Drycleaners regard care labeling of products which they clean as an aid to the successful operation of their businesses.[22] As with retailers, drycleaners predict fewer complaints, fewer returns because of drycleaning damage and increased business as a result.[23] Consumer representatives recognize that the issue involves balancing the interests:

> [T]he increased cost to business of implementing the protective measures proposed herein will be ultimately borne by the consumer. The problem of achieving a healthy balance in necessary consumer information, competitive prices for the consuming public, and incentive for business investment is a complex and often volatile issue. The proposals supported herein are those that

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18 R. 17 at 157-8, Applebaum Tag and Label. "[S]atisfaction by the consumer translates into increased sales and business."; R. 18 at 730, department store employee; R. 18 at 128, 200, 238-9, 741, 758, 968-9, 985, consumers; R. 20 at 226, Extension Agent, CES, Georgia.

19 R. 17 at 225, consumer; R. 23 at 548, E. Bilezikian.

20 Tr. 2190-92, E. Kennedy, small retailer.

21 R. 20 at 34, Extension Specialist, CES, North Dakota.

22 R. 18 at 654, consumer; Tr. 1433, IFI.

23 Tr. 893-894, Neighborhood Cleaners Association; Tr. 1901, B. Smith, drycleaner; Tr. 2156-58, B. Reed; Tr. 2322, M. Brinson.

in view of my office will provide the most acceptable integration of those considerations.[24]

The Council on Wage and Price Stability, while arriving at no conclusions, postulates that care labeling in general is a function of demand which, if it exists to any degree (and this record says it does), will cause firms seeking further patronage to include care information to increase their profits and their market shares. While noting that the textile and textile related industries affected by the proposed Rule are composed of both small and large firms which are workably competitive, the Council recalls that such industries began to consider care labeling programs two years before the Commission considered mandatory action in this area.[25] The implication is that the industries involved discern an inherent "across the board" benefit in providing such information with their products.

Three quarters of those commenting on this issue in the record see the proposed revised rule as having either a favorable economic effect or no economic effect at all on the small businessman. Staff concedes that initially there will be costs to be borne both by the manufacturer in obtaining and/or attaching care labels, devising care instructions, ascertaining their accuracy and distributing them to lower levels in the chain of sellers and by the retailer in effecting their distribution to the consumer. Staff also concedes that initially these costs may be passed on to the consumer in the form of slightly increased prices. The record contains no specific evidence, however, of the amount of these costs except that they are predicted to be quite low in comparison to the benefits received. Many retailers, as well as consumers, cite tangible benefits in the form of increased sales resulting from intangible benefits such as increased consumer confidence and customer good will. As it is the retailer or the drycleaner who often suffers because of poor or inaccurate care instructions devised by the manufacturer, these parties are bound to experience a marked improvement in customer relations, assuming the care instructions are accurate and otherwise satisfactory. At this level, good customer relations often spells increased net earnings. Further, as mentioned several times in the record, many of the costs involved are initial costs which will disappear

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24 Tr. 2366, F. Reid.

25 R. 20 at 498-500, Council on Wage and Price Stability.

once a program designed to provide care information is implemented. The record contains no evidence whatsoever that promulgation of this rule will, in effect, force any firm out of business because of excessive costs. The record contains much evidence, on the other hand, from both industry and consumers, that care labeling of products is generally now regarded as an astute business practice which will eventually reap rewards for all concerned. Given these facts, staff must conclude that the rule will, at worst, have little effect on the financial condition of most small businessmen, and at best, a favorable one. The Presiding Officer agrees.[26]

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26 Presiding Officer's Report 113.

B. Consumers

The initial notice of the proposed revised rule commencing this proceeding also contains the following question with respect to the entire rule: "What is the economic effect of the revised rule on consumers?" This subject was not specifically addressed in the staff report recommending the rule because the record at that time contained little evidence pertinent to the issue, except for that relating to the substantive issues presented. Since issuance of the initial notice, however, a number of written comments as well as a modicum of testimony have been received on the record which discuss this topic.

Negative opinions were expressed by only 8% of those addressing the matter, viz., that the rule will result in a large increase in individual item prices and will only serve to increase "big brotherism."[1] While a number of other commentors recognize that care labeling requirements may slightly increase retail prices of the items proposed to be covered,[2] most believe that the benefits which inure from the Rule will far outweigh such increases. Consumers will be better able to make informed purchasing decisions, avoiding those purchases which do not meet their needs or facilities with respect to the care prescribed for the item.[3] On the assumption that the care instructions are accurate and will be followed, consumers will save both money and untold aggravation at the point of care through the prevention of damage which might otherwise have occurred.[4] Such damage can result not only in the loss of the item in question but usually necessitates its replacement. In addition to damage prevention, proper care typically prolongs the useful lives of articles covered by the Rule[5] whereas improper care can result in premature "down-grading" of an item and loss of service life. Finally, prescribed care instructions will aid consumer-purchasers in conserving time, money and energy through

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1 R. 18 at 208, 516, 734, 851, consumers; R. 17 at 374, NHYA.

2 R. 18 at 156, 163, 313, consumers; R. 20 at 138, 143, consumer representatives; R. 17 at 225, E. Bilezekian.

3 R. 17 at 263, Wisconsin Fabricare Institute; R. 18 at 169, 183, 524 consumers; R. 20 at 135, Extension Agent, CES.

4 R. 18 at 103, 163, 169, 181, 524, consumers.

5 R. 18 at 175, 235, consumers.

the selection of products requiring care procedures which they consider most appropriate. 6

Record information concerning the cost of labels shows that manufacturers pay merely a fraction of a cent for a care label of acceptable quality. Although labor costs for attaching labels may be slightly higher, in many cases, labels are attached by automated machinery which involves much less cost. Further, the information made available to staff both on and off the record indicates that consumers will realize considerable benefit from knowledge of proper care not only for apparel but for all "new" products covered by the Rule, many of which represent unusually large investments for most consumers. Given the lopsided record on this issue, staff can only conclude that the overall economic effect of the recommended final rule on consumers will be overwhelmingly favorable.

VII. SEVERABILITY

It is self-evident that the recommended final Rule imposes requirements regarding several different products. To the extent possible and for purposes of simplicity, staff has attempted to confine all requirements pertaining to a particular product in one specific provision in the Rule. While some provisions may pertain to more than one product or all products covered by the Rule (such as addressing terminology to be used in care instructions or the basis for such instructions), many provisions pertain only to one kind of product, e.g. carpets or rugs or upholstered furniture. Staff also believes this "divisibility" to be desirable for another reason. In the unlikely event that a reviewing authority finds a divisible part of the Rule to be objectionable, the entire Rule need not fall as a result. Only the divisible part held invalid need be removed; the balance of the Rule should be capable of standing alone generally unaffected by the removal. In order to make clear the Commission's intent in this regard, staff concludes that the final Rule should include a "severability" provision similar to those contained in statutes such as the Truth in Lending Act (§501) or the Textile Fiber Products Identification Act (§13). "[S]uch a legislative declaration serves to assure ... that separate sections or provisions of a partly invalid act may be properly sustained 'without hesitation or doubt as to whether they would have been adopted, even if the Legislature had been advised of the invalidity of part.'" Further, "... the legislative declaration 'provides a rule of construction which may sometimes aid in determining that intent.'" In its absence, a presumption of inseparability may prevail [Read, Horace E., et al., Legislation; Cases and Other Materials (Foundation Press, Inc., 1959) at 182, citing Hill v. Wallace, 259 U.S. 44, 71, 42 S. Ct. 453, 459 (66 L. Ed. 822); Dorchy v. Kansas, 264 U.S. 286, 290, 44 S. Ct. 323, 325 (68 L. Ed. 686)]. Since the staff has designed the Rule to be as "severable" as possible, staff recommends that the following "severability" provision be made Section 423.14 of the final Rule to overcome any presumptions of inseparability: "If a provision of this part is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this part is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application(s)."

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6 R. 70 at 46; R. 18 at 105, 110, 125, 128, 129, 156, 169, 313, consumers; Tr. 950, Dept. of Consumer Affairs, Fairfax County, Va.; Tr. 1360-1361, E. Shapiro; Tr. 1684, K. Geiken; Tr. 1901, B. Smith; Tr. 2320-2321, M. Brinson; Tr. 2192-2195, E. Kennedy; Tr. 2629-2630, W. Morck; Tr. 2784-2785, National Consumers Congress.

VIII. The Rule

423.1 Definitions

For the purpose of this part, the following definitions shall apply:

(a) "Textile Product." Any commodity spun, woven, knit or otherwise made primarily of fibers, yarn or fabric which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser.

(b) "Leather Product." Any commodity made primarily of animal skins or hides tanned or otherwise dressed for use, which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser.

(c) "Suede Product." Any commodity made primarily of animal skins or hides tanned or otherwise dressed for use, reversed and buffed to a soft nap, which is intended for sale or resale and which requires care and maintenance in order that ordinary use and enjoyment of the commodity may be obtained by the purchaser.

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

(e) "Piece Goods." Textile products sold on a piece-by-piece basis from bolts, pieces or rolls excepting "trim" five (5) inches or less in width and those pieces termed "pound goods" or "fabrics of undetermined fiber origin" and conspicuously identified as such when offered for retail sale, which are composed of miscellaneous scraps, rags, odd lots, secondhand materials, textile by-products or waste materials of unknown and, for practical purposes, undeterminable fiber content which are ten (10) yards or less in length and which are cut from larger bolts, pieces or rolls only at the manufacturing level. Pieces termed "assorted remnants" which are created at the retail level or about which fiber content is known do not fall within this exclusion.

(f) "Finished Article of Upholstered Furniture." Any article of upholstered furniture whose manufacture is complete and which is customarily although not exclusively used as an interior appointment.

(g) "Finished Carpet or Rug." Any carpet or rug whose manufacture is complete and which is customarily although not exclusively used as an interior appointment.

(h) "Linen." Any bed covering (for example, bed pad, mattress cover, sheet, pillow cover, comforter, blanket or bedspread) and any bath, kitchen or table accessory (for example, towel, shower curtain, doily, tablecloth, placemat or napkin) whose manufacture is complete and which is customarily used as an interior appointment.

(i) "Intermediate Component." Any piece goods, yarn, lining, interfacing, trim, thread, zipper, tape, braid or other such item manufactured by a component manufacturer to be sold to or used by a finished product manufacturer or importer as part of a finished product. This definition does not include those products which are supplied to a component manufacturer for use as part of a component, as defined herein.

(j) "Irregulars Or Seconds." All products included within the scope of this part which are not of first quality or which contain imperfections or defects in material, construction or finish.

(k) "Permanent Label." A label attached or affixed in such a manner that it should not in ordinary use become separated from the item during the useful life of the item except that a label attached to upholstered furniture in accordance with this part should not, in ordinary use, become separated from the furniture during the useful life of the outer covering of the furniture.

(l) "Manufacturer." Any person or organization that directs or controls the manufacture of an item.

(m) "Retailer." Any person or organization that sells an item directly to the ultimate consumer.

(n) "Ultimate consumer." Any person or organization that obtains any item by purchase or exchange with no intent to sell it, exchange it, incorporate or otherwise use it as a component of another product intended for sale or resale.

423.2 Textile Wearing Apparel; Draperies and Curtains; Slipcovers; Linens

(a) It is an unfair or deceptive act or practice for the manufacturer or importer of any textile product in the form of a finished article of wearing apparel, drapery, curtain, slipcover or linen to sell, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any such article

which does not have a permanent label affixed or attached thereto, which clearly discloses instructions for the care and maintenance of such article.

(b) Instructions for the care and maintenance of any item within the scope of this section shall conform to the following:

(1) General Rule: fully and completely inform the purchaser of such regular care and maintenance procedures necessary to the ordinary use and enjoyment of the item. In order to constitute full and complete information, such instructions shall comply with, but need not necessarily be limited to, the provisions set forth below:

(i) Washing: In any washing instruction each of the following topics must be clearly disclosed:

(A) Method of washing and adjectival description of water temperature, e.g., hot, warm, cold;

(B) Method of drying and, if by machine, adjectival description of temperature, e.g., high, medium, low;

(C) Use of iron and adjectival description of ironing temperature, e.g., hot, warm, cool, when necessary to the ordinary use and enjoyment of the item;

(D) Bleaching method in accordance with the following provisions set forth below:

(aa) Where all commercially available bleaches can be used without damage or substantial impairment to the labeled article, the phrase "bleach only when needed" or its precise equivalent must be included;

(bb) Where not all commercially available bleaches can be used without damage or substantial impairment to the labeled article but some can be so used, the type of bleach which can be used, followed by the phrase "only when needed" or its precise equivalent, must be included;

(cc) Where no commercially available bleaches can be used without damage or substantial impairment to the labeled article, an appropriate warning as required by section 423.2(b)(2) must be included;

(dd) Provided, however, That where the party responsible for care instructions under this part has a reasonable basis for determining that bleach, under all forseeable circumstances, will never be necessary to the ordinary use and enjoyment of an article covered by this section during its useful life (assuming ordinary

wear and tear) and a warning against the use of bleach is not appropriate, no bleaching instructions need be included.

(ii) Drycleaning. In any drycleaning instruction, each of the following topics must be clearly disclosed:

(A) The type of drycleaning solvent to be used when not all commercially available drycleaning solvents can be used;

(B) Any other modifications to the drycleaning process, as defined herein, when necessary to the ordinary use and enjoyment of the item, Provided, however, That the words "commercial(ly)" and "drycleanable" may not be used in any drycleaning instruction.

(iii) Alternative Care

(A) In all instructions where outerwear (coats, suits, jackets, pants, robes, skirts, dresses or sweaters), draperies, curtains, slipcovers or piece goods and yarn made for the purpose of immediate conversion by the ultimate consumer into such finished items may be either washed or drycleaned without damage or substantial impairment, both methods must be disclosed in the manner set forth in this section; Provided, however, That only one method need be disclosed where the manufacturer or importer determines on the basis of a comparison of the likely effect of the two methods of care on the utility and appearance of the item, the initial cost of the item, the cost of each method of care, and the ease of such care, that the method disclosed is clearly superior to the other from the point of view of those likely to purchase the product.

(B) In any action brought by the Federal Trade Commission alleging a violation of this section, the failure of the manufacturer or importer to have records or other documentary proof showing the manner in which such comparisons were made shall create a rebuttable presumption that such party lacked a reasonable basis for failing to disclose the alternative method in the care instruction.

(2) Warnings: Warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated, which would damage or substantially impair the item to which care instructions apply or cause that item to damage or substantially impair other articles being cared for or maintained with that item. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those items included within the scope of this part which cannot be cared for or maintained by any cleaning

method (including washing, drycleaning or any other commercially available cleaning method) without damage or substantial impairment, care instructions must contain a full and complete disclosure to that effect.

(3) Legibility: remain legible for the useful life of the item.

(4) Accessibility and Placement: except as hereinafter provided, are visible or easily and readily accessible to the purchaser without unreasonable effort at the point of retail sale; Provided, however, That:

(i) Where items are packaged, displayed or folded in such a manner that the care instructions on the permanent label are not readily accessible as required, the same instructions must be imprinted on the exterior of the package or on a hang tag securely attached to the item.

(ii) Where the permanent label is coarse or abrasive in character, placement of the label on wearing apparel may be relocated to minimize irritation to the skin, so long as the requirements of paragraph (4)(i) of this section are met.

423.3 Piece Goods

(a) In connection with the sale of any textile product in the form of piece goods made for the purpose of immediate conversion by the ultimate consumer into a finished item otherwise covered by sections 423.2 and 423.5, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:

(1) For the manufacturer or importer of such piece goods to fail to:

(i) Conspicuously disclose on the end of each bolt or roll of piece goods clearly stated instructions for the care and maintenance of such goods;

(ii) Ensure in any manner that retailers of such goods obtain labels which:

(A) Clearly disclose instructions for the care and maintenance of such products; and

(B) Can by normal household methods be permanently affixed to the finished item by the ultimate consumer.

(2) For the retailer of such piece goods to fail to provide a reasonable number of such labels to the ultimate purchaser of such goods at the time of retail purchase.

(b) Care instructions for such goods must meet the criteria specified in this part for the products they are primarily designed to make.

423.4 Yarn

(a) In connection with the sale of any textile product in the form of yarn made for the purpose of immediate conversion by the ultimate consumer into a finished item otherwise covered by section 423.2 or section 423.6 in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:

(1) For the manufacturer or importer of such yarn to fail to:

(i) Clearly and conspicuously disclose on each skein or other unit of yarn clearly stated instructions for the care and maintenance of such yarn; and either

(ii) Ensure in any manner that the retailer of such yarn obtains labels which:

(A) Clearly disclose instructions for the care and maintenance of such yarn; and

(B) Can by normal household methods be permanently affixed to the finished item by the ultimate consumer; or, at the manufacturer's option,

(iii) Securely enclose such a label in each skein or other unit of such yarn in such a manner that it will remain with the skein or other unit until the point of retail sale.

(2) When care labels have been provided in the manner outlined in paragraph (1)(ii) above, for the retailer of such yarn to fail to provide a reasonable number of care labels to the ultimate purchaser of such yarn at the time of retail purchase.

(b) Care instructions for such yarn must meet the criteria specified in this part for the products they are primarily designed to make.

423.5 Upholstered Furniture

(a) It is an unfair or deceptive act or practice for the manufacturer or importer of any textile product in the form of a finished article of upholstered furniture to sell, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any such article which does not have a permanent label affixed or attached thereto, which clearly discloses instructions for the care and maintenance of such article; Provided, however, That,

where compliance with the accessibility requirements of this section requires placement of the label on the article in such a manner as to substantially impair its utility or appearance, such instructions need not be supplied on a permanently attached label but must be supplied on a hang tag or other such device which will not become separated from the article before it is purchased by the ultimate consumer.

(b) Instructions for the care and maintenance of any article within the scope of this section shall:

(1) General Rule: fully and completely inform the purchaser of such regular care and maintenance procedures necessary to the ordinary use and enjoyment of the article, e.g., vacuuming, cleaning agents and methods suitable for use by the ultimate consumer and cleaning agents and methods suitable for use by a commercial establishment specializing in the refurbishing of such products.

(2) Warnings: Warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated, which would damage or substantially impair the article. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those upholstered furniture articles included within the scope of this section which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such an article must contain a full and complete disclosure to that effect;

(3) Accessibility: be visible or easily and readily accessible to the purchaser without unreasonable effort at the point of retail sale; and

(4) Legibility: remain legible for the useful life of the outer covering of the item when provided on permanent labels.

423.6 Carpets and Rugs

(a) In connection with the sale of any textile product in the form of a finished carpet or rug, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice:

(1) for the manufacturer or importer of such carpet or rug to fail to ensure in any manner that the retailer of such products obtains clearly stated instructions for the care and maintenance of such carpet or rug in a form which can be transmitted to the ultimate consumer at or before the time of retail purchase;

(2) for the retailer of such carpet or rug:

(i) to fail to clearly and conspicuously disclose the availability of such care instructions for carpets and rugs in the area of the retail establishment where such products are displayed; and

(ii) to fail to provide such care instructions to the ultimate purchaser of a carpet or rug at or before the time of retail purchase.

(b) Instructions for the care and maintenance of any article within the scope of this section shall:

(1) General Rule: fully and completely inform the purchaser of such regular care and maintenance procedures as are necessary to the ordinary use and enjoyment of the article, e.g., vacuuming, cleaning agents and methods suitable for use by the ultimate consumer and cleaning agents and methods suitable for use by a commercial establishment specializing in the refurbishing of such products;

(2) Warnings: warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated, which would damage or substantially impair the article. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those carpets and rugs included within the scope of this section which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such products must contain a full and complete disclosure to that effect;

(3) Provided, however, That care instructions for those carpets and rugs for which care procedures set forth in paragraph 423.2(b) of this part are prescribed need not comply with the provisions of paragraph (b) of this section but must comply with provisions set forth in paragraph 423.2(b) of this part.

423.7 Leather and Suede Wearing Apparel

(a) It is an unfair or deceptive act or practice for the manufacturer or importer of any suede or leather product in the form of a finished article of wearing apparel to sell, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, any such article which does not have a permanent label affixed or attached thereto, which clearly discloses instructions for the care and maintenance of such article.

(b) Instructions for the care and maintenance of any article within the scope of this section shall:

(1) General Rule: fully and completely inform the purchaser of the cleaning method to be used for such article, i.e., leather, textile or other appropriate method and any other regular care and maintenance procedures necessary to its ordinary use and enjoyment, Provided, however, That, if a textile method is prescribed, such as washing or drycleaning, the criteria set forth in paragraph 423.2(b) of this part shall govern;

(2) Warnings: warn the purchaser as to any regular care and maintenance procedure or part thereof (other than those procedures already addressed in the instruction) the application of which can be reasonably anticipated, which would damage or substantially impair the article to which care instructions apply or cause that article to damage other articles being cared for or maintained with that article. Such warnings may be negatively expressed through use of the words "do not" or "no" before the prohibited procedure or positively expressed through use of the word "only" after the procedure to which care must be restricted or through other appropriate positive disclosures. With respect to those suede and leather articles included within the scope of this section which cannot be cared for or maintained by any commercially available cleaning method without damage or substantial impairment, care instructions for such an article must contain a full and complete disclosure to that effect;

(3) Legibility: remain legible for the useful life of the item;

(4) Accessibility and Placement: except as hereinafter provided, be visible or easily and readily accessible to the purchaser without unreasonable effort at the point of retail sale; Provided, however, That:

(i) Where articles are packaged, displayed or folded in such a manner that the care instructions on the permanent label are not readily accessible as required, the same instructions must be imprinted on the exterior of the package or on a hang tag securely attached to the item;

(ii) Where the permanent label is coarse or abrasive in character, placement of the label on such apparel may be relocated to minimize irritation to the skin so long as the requirements of paragraph (4)(i) are met.

423.8 Intermediate Components

(a) In connection with the sale of any textile product intended to be used as an intermediate component of a finished product covered by sections 423.2, 423.5, or 423.6 of this part,

in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice for the manufacturer or importer of such component to fail to provide to the manufacturer or importer of such finished product, upon request of that party, clearly stated information regarding the care performance characteristics of such component. Such information may be provided separately by invoice or other means reasonably calculated to communicate the information, Provided, however, That the requirements of this section shall not apply when the component is manufactured to the precise specifications of the finished product manufacturer or importer;

(b) Information regarding the care performance characteristics of a component within the scope of this section shall fully and completely address the effects of moisture, heat, a specified type of cleaning agent or a specified type of agitation or mechanical action on the performance of the component (1) where applicable to the component at issue and (2) when specifically requested by the finished product manufacturer or importer. To the extent that the effects listed above are dependent upon the manner in which the component is used, this fact should also be disclosed.

423.9 Basis for Care Information

(a) It is an unfair or deceptive act or practice for any manufacturer, importer or other responsible party under this part to sell any product for which care information is required without having a reasonable basis to substantiate the accuracy of such information. A reasonable basis to substantiate the accuracy of such care information may include:

(1) reliable evidence that the product (or a representative sample) has been subjected to the care procedure(s) prescribed for the product a reasonable number of times without damage or substantial impairment;

(2) reliable evidence of the care traits of the component parts of the product; and

(3) reliable evidence that the product (or a representative sample) has been subjected to reputable laboratory tests which are designed to simulate the procedures described in (1) above.

All such evidence will be considered in determining whether a reasonable basis for care information exists.

(b) In any action brought by the Federal Trade Commission alleging a violation of this part, the failure of the responsible party to have records or other documentary proof of the manner in which such care information was devised shall create a rebuttable presumption that such party lacks a reasonable basis for such information.

423.10 Exemptions

(a) Utility or appearance. The Commission (or its delegated authority) shall consider, upon written petition to be placed on the public record, addressed to the Secretary of the Commission, any request for exemption of any specific product or product "line" from the coverage of sections 423.2 or 423.7. In making this determination, the Commission shall consider the physical characteristics of the product or product "line" and whether its utility or appearance would be substantially impaired by a permanently attached label. Such a request must be accompanied by a labeled representative sample of the product or product "line" for which exemption is requested and a comprehensive statement containing reasons why the petitioner believes the exemption should be granted. If the requested exemption is granted, the information required by sections 423.2 or 423.7 must accompany such product or product "line" whenever it is sold in commerce, as "commerce" is defined in the Federal Trade Commission Act, but it need not be furnished in the form of a label permanently affixed or attached thereto.

(b) Price and Care Traits. The Commission (or its delegated authority) shall consider, upon written petition to be placed on the public record, addressed to the Secretary of the Commission, any request for exemption from this part of any specific product or product "line" intended to be sold at retail for $5.00 or less (per unit) or, if the intended retail price cannot be ascertained, having a manufacturer's selling price of $2.50 (per unit) and which can be machine washed with hot water (as defined), machine dried at a high setting (as defined), bleached with any commercially available bleach according to manufacturer's directions, ironed at a hot setting (as defined) and drycleaned with any commercially available solvent without damage or substantial impairment to the product itself or to other products with which it is maintained. Such a request must be accompanied by a statement of the intended retail price(s) or manufacturer's selling price(s) of the product or product "line" for which exemption is requested, whichever is applicable, and a documented test report from an independent laboratory summarizing the tests conducted to determine whether the product or product "line" satisfies the above requirements and stating the results thereof.

(c) Irregulars or Seconds. Products otherwise included within the coverage of this part which are designated "irregulars" or "seconds" by the manufacturer, as defined herein, are exempted from sections 423.2, 423.5, and 423.7, except that the information required by these sections must be securely attached to such products whenever they are sold in commerce as "commerce" is defined in the Federal Trade Commission Act. Attachment must be made in such a manner as to ensure the availability of such information at the point of retail sale but need not be permanent in nature.

(d) Previous exemptions. All exemptions previously granted under Sections 423.1(c)(1) or (2) of the Care Labeling Rule promulgated in December, 1971 (16 CFR Part 423) will remain in effect, provided, that the items in question still meet the standards upon which the exemptions were based; no action is necessary to maintain these exemptions. If the items in question no longer meet such standards, the exemption shall be considered automatically revoked.

423.11 Waivers

Manufacturers or importers of products covered by this part which are sold to institutional buyers exclusively for their own commercial use (as opposed to individual personal use) but not for resale are still required to comply with the requirements of this part with respect to those products, except that such manufacturers or importers will be considered exempt from such requirements with respect to such products when:

(1) such institutional buyers agree to waive their rights to care information for these products; and

(2) such manufacturers or importers can demonstrate the execution of such waiver agreement(s) in any enforcement proceeding by the Commission against such parties for violation of this part with respect to such products.

423.12 Conflict with Flammability Standards

The requirements of this part shall be applicable in all instance except where a direct conflict exists between this part and the regula tions issued under the Flammable Fabrics Act. In such instances, compliance with the regulations issued under the Flammable Fabrics Act will be considered compliance with this part.

423.13 Terminology

(a) In any instruction symbols may be used in addition to words so long as the words fulfill the requirements of this part.

(b) For purposes of this part only and subject to the exceptions noted below, the Commission adopts the terms and definitions set forth in Part 4 (Definitions of Terms) of the American Society for Testing and Materials' "Standard Definitions of Terms Relating to Care of Consumer Textile Products and Recommended Practice for Use of These Terms on Permanently Attached Labels" (ASTM D3136-72), as presumptively acceptable standards for the terminology to be employed in compliance with this part. The Commission will not challenge the accurate use of such terminology without advance notice provided the other requirement of this part are met. Accordingly, for the purposes of compliance wit this part:

(1) The terms as defined in ASTM D3136-72 should be used to the extent applicable.

(2) Where applicable terms are not defined in ASTM D3136-72, other terms may be used so long as such terms accurately describe the care procedures and otherwise fulfill the disclosure requirements of this part.

(c) For purposes of this part only and subject to the exceptions noted below, the Commission also adopts subsequent revisions to ASTM D3136-72; Provided, however, that,

(1) Notice of proposed revisions to ASTM D3136-72 is provided to the Secretary of the Commission to be placed upon the public record at least ninety (90) days in advance of their promulgation; and

(2) The Commission (or its delegated authority) takes no action with respect to the proposed revisions before the expiration of the ninety day period. If the Commission (or its delegated authority) determines that such proposed revisions are unacceptable, the American Society for Testing and Materials shall be notified of such action with reasons therefore before the expiration of the 90-day period. Such notice shall also be placed in the public record and in the Federal Register. The Commission (or its delegated authority) shall at any time consider upon good cause shown in a written petition to be placed on the public record, any request for reconsideration or modification of its actions under this part in accordance with section 1.15 of the Commission's Organization, Procedures and Rules of Practice.

(d) The Commission does not adopt any term or definition in ASTM D3136-72, or subsequent revisions, which is inconsistent with the terms and definitions set forth below. These terms, as defined, should be used to the extent applicable in lieu of corresponding terms and definitions in the glossary.

(1) Washing, Machine Methods

(i) "machine washing" - 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.

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

(iii) "separately" - alone.

(iv) "with like colors" - with colors of similar hue and intensity.

(v) "no bleach" - no bleaches may be used.

(vi) "non-chlorine bleach (or whatever bleach type may be used) only when needed" - only those bleaches specified may be used when necessary to the ordinary use and enjoyment of the item.

(vii) "bleach only when needed" - all bleaches may be used when necessary to the ordinary use and enjoyment of the item.

(2) Washing - Hand Methods

(i) "hand washing" - a process by which soil may be manually removed from products or specimens through the use of water, detergent or soap and gentle squeezing action.

(ii) "separately" - alone.

(iii) "with like colors" - with colors of similar hue and intensity.

(iv) "no bleach" - no bleaches may be used.

(v) "non-chlorine bleach (or whatever bleach type may be used) only when needed" - only those bleaches specified may be used when necessary to the ordinary use and enjoyment of the item.

(vi) "bleach only when needed" - all bleaches may be used when necessary to the ordinary use and enjoyment of the item.

(3) Drycleaning, All Methods:

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

(ii) "professionally dryclean" - use the drycleaning process but modified to ensure optimum results either by a drycleaning attendant or through the use of a drycleaning machine which permits such modifications or both.

(4) Drycleaning, Modifications:

(i) "petroleum/fluorocarbon/perchlorethylene [or other solvent(s)]" - employ solvent(s) specified to dryclean the item.

(ii) "short cycle" - reduced or minimum cleaning time, depending upon solvent used.

(iii) "minimum extraction" - least possible extraction time.

(iv) "reduced/low moisture" - decreased relative humidity.

(v) "no tumble" - do not tumble dry.

(vi) "tumble warm" - tumble dry up to 120 degrees F (49 degrees C).

(vii) "tumble cool" - tumble dry at room temperature.

(viii) "cabinet dry warm" - cabinet dry up to 120 degrees F (49 degrees C).

(ix) "cabinet dry cool" - cabinet dry at room temperature.

(x) "steam only" - employ no contact pressure when steaming.

(xi) "no steam" - do not use steam in pressing, finishing, steam cabinets or wands.

423.14 Severability

If a provision of this part is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision of this part is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application(s).

APPENDIX A

American Apparel Manufacturers Association (AAMA)
Arlington, Virginia

Membership: Large majority of domestic apparel manufacturers

American Retail Federation (ARF)
Washington, D.C.

Membership: 50 state retail associations
31 national retail associations
1 million retail establishments

American Society for Testing & Materials (ASTM)

American Textile Manufacturers Institute (ATMI)
Washington, D.C.

Membership: Spinners, weavers, knitters and finishers of textile products

American Yarn Spinners Association (AYSA)
Gastonia, North Carolina

Membership: Producers and sellers of yarn for weaving, machine knitting and carpet manufacture

Argo, Dorothy
Argo and Company
Spartanburg, South Carolina

Ballew, Travis
Merchandise Manager
Apparel Fabrics
Fabri-Centers of America
Cleveland, Ohio

Beyea, Alison
Managing Director
National Handknitting Yarn Association
New York, New York

Blackman, Walter
Teacher, Consumer Education
Fairfax High School
Los Angeles, California

Blagman, Burton
Director
Phillips-Van Heusen Research and Development Corporation
Waldwick, New Jersey

Occupation: Textile Chemist

Member: American Chemical Society;
American Association of Textile Chemists and Colorists;
American Society for Testing and Materials: Chairman, Subcommittee 13.54.02;
American Apparel Manufacturers Association,
Consumer Affairs Committee;
International Standards Organization, TC 38/SC11, United States delegate

Bourdeau, Kathleen
Special Consultant
Los Angeles County
Department of Consumer Affairs
Los Angeles, California

Brinson, Monica
Associate Professor
Buffalo State College
Buffalo, New York

Member: Consumer Product Safety Commission's National Advisory Committee;
American Society for Testing and Materials Committee on Textiles (D-13)

Arbitrator: Better Business Bureau of Western New York

Director: Buffalo Consumer Action

California Fabricare Institute (CFI)
Cupertino, California

Membership: 1700 commercial drycleaners and launderers

Carpet Manufacturers Association of the West (CMAW)
Covina, California

Membership: 25 carpet manufacturing firms producing tufted broadloom carpet; 20 associated companies

Carpet & Rug Institute (CRI)
Washington, D.C.

Membership: 70 carpet and rug manufacturers;
250 associated industries

Decorative Fabrics Association (DFA)
New York, New York

Membership: 34 manufacturers and distributors
of decorative fabrics

Fabri-Centers of America (fabric speciality store chain)
Cleveland, Ohio

Description: 405 retail fabric shops

Faley, Patricia A.
Investigator
Montgomery County Consumer Protection Office
Rockville, Maryland

Fargo, Richard
Supervisor
Quality Control
Talon Division
Textron Corporation

Feather, Betty L., Ph.D.
State Specialist for Clothing and Textiles
University of Missouri Extension Division
Columbia, Missouri

Member: American Home Economics Association;
The Association of College Professors
and Teachers;
American Council on Consumer Interests

Fisher, William E.
Administrator, Research Division
International Fabricare Institute
12251 Tech Road
Silver Spring, Maryland 20904

Member: American Association of Textile
Chemists and Colorists, Secretary,
RA 43 Drycleaning Test Methods;
American Society for Testing and
Materials, Textile Committee, D-13

Fitzmaurice, J. D.
Coats & Clark, Inc.
Newport News, Virginia

Galbraith, Ruth (Dr)
Dean, School of Home Economics
Auburn University
Auburn, Alabama

Doctorate: Textile Chemistry
Purdue University

Chemist: Dupont

Textile Chemist: Appliance Testing Laboratories,
General Electric Corp.

Research: Auburn University
University of Tennessee
University of Illinois

Gay, John
President
Gay Tred Mills
Manufacturers of small rugs

Geiken, Karen Frances Fritsche
Lecturer
School of Home Economics
University of Wisconsin
Milwaukee, Wisconsin

Member: American Home Economics Association
Wisconsin Home Economics Association

Gordon, J. James
Vice President Textile Distributors
Association
Vice President of United Merchants
and Manufacturers, Inc.
Manager, United Merchants-Cohama
Fabrics Division

Gorman, Aileen
Executive Director
National Consumers Congress
Washington, D.C.

Gragg, Kay
Consumer Affairs Representative
Dept. of Weights and Measures
and Consumer Affairs
County of Ventura
Oxnard, California

Greenbaum, Lee H., Jr.
Director and Past President
Linen Trade Association

Hall, Murray
Executive Director
Carpet Manufacturers Association
of the West
Covina, California

Hamilton, Gloria S.
Bureau of Social Science Research, Inc.
Washington, D.C.

Hopper, Ned
Director of Consumer Affairs
Carpet and Rug Institute
Dalton, Georgia

Houston, Frederic P.
General Counsel
American Yarn Spinners Association
Gastonia, North Carolina

International Fabricare Institute (IFI)
Silver Spring, Maryland

Membership: Commercial drycleaners
and launderers

Justesen, Wayne
Attorney
Blue Bell, Inc.
Greensboro, North Carolina

Chairman: Consumer Affairs Committee,
American Apparel Manufacturers
Association

Kellers, Richard E.
Executive Director
Slide Fastener Association

Kennedy, Evelyn Siefert
Groton, Connecticut

Kennedy Management Corporation, Vice President; EVELYN of Sewtique, Owner and Operator; Univ. of Connecticut, Continuing Education for Women, Adjunct Professor; Univ. of Connecticut, Extension Services, Clothing Consultant

Member: Small Business Administration National Advisory Council; American Home Economics Association; Connecticut Home Economics Association.

Knowles, Maryls
Complaint Investigator
Governor's Office of Consumer Protection
State of Louisiana
Baton Rouge, Louisiana

Lampone, Susan
Allegheny County Bureau of Consumer Affairs
Pittsburgh, Pennsylvania

Laumann, George J., Jr.
Executive Director
California Fabricare Institute
Cupertino, California

Lavine, Richard
Attorney
Nicholson and Carter
Washington, D.C.

Representing: Decorative Fabrics Association

Levenson, William
President
Levenson and Klein Furniture
Baltimore, Maryland

Representing: National Home Furnishings Association; American Retail Federation

Linen Trade Association (LTA)
New York, New York

Littwin, Steven
President
Littwin Textiles, Inc.
New York, New York

Member: American Home Sewing Council

London, Sheldon I., Esquire
General Counsel
Retail Floor Covering Institute
Washington, D.C.

Maguire, John A.
Staff
American Yarn Spinners Association
Gastonia, North Carolina

Mallard, Ronald B.
Deputy Director
Dept. of Consumer Affairs
Fairfax County, Virginia

Maslan, F.E., III
President
Carpet and Rug Institute

Chairman: Maslan & Son

McCreery, William E.
Vice President
Stroheim and Romann
New York, New York

Representing: Decorative Fabrics Association

Meredith, Ellis
President - Chief Operating Officer:
American Apparel Manufacturers Association
Arlington, Virginia

Merthan, Lawrence C.
Attorney
Executive Vice President
Carpet and Rug Institute
Washington, D.C.

Morck, Wendy Ann
Instructor
Consumer & Family Studies
Grossmont College
El Cajon, California

Nagy, Gerald
Director
Government Relations
National Home Furnishings Association
Washington, D.C.

National Association of Furniture Manufacturers (NAFM)
Southern Furniture Manufacturers Association (SFMA)

Membership: Majority of domestic furniture manufacturers

National Consumers Congress (NCC)
Washington, D.C.

Membership: 4000 individuals and local groups; unnumbered public interest groups, media representatives and businesses

National Handknitting Yarn Association (NHYA)
New York, New York

Membership: Suppliers of handknitting, hand crocheting and other yarns to retailers

National Home Furnishings Association (NHFA)
Washington, D.C.

Membership: 10,000 retail home furnishing stores

National Retail Merchants Association (NRMA)
New York, New York

Membership: 3000 retailers, 30,000 retail outlets

Neighborhood Cleaners Association (NCA)
New York, New York

Membership: 3000 drycleaners in 5 northeastern states

Oehlke, Norman D.
Senior Textile Analyst
International Fabricare Institute
Silver Spring, Maryland

Member: American Association of Textile Chemists and Colorists

Ott, Henry E.
Manager
Bureau of Standards
R. H. Macy & Company
New York, New York

Representing: National Retail Merchants Association

Packaging Systems Corporation
Pearl River, New York

Manufacturers of printed textile labels, printing machines and textile tapes.

Pearlman, Michael, Esquire
Assistant General Counsel
Fieldcrest Mills

Representing: American Textile Manufacturers Institute

Pierce, Clarence
Consultant
California Fabricare Institute

Powers, Thomas, Esquire
Attorney
Washington, D.C.

Representing: National Association of Furniture Manufacturers;
Southern Furniture Manufacturers Association;
Southwestern Furniture Manufacturers Association

Purchase, Mary E. (Dr.)
Professor
Department of Design and Environmental Analysis
New York State College of Human Ecology
Cornell University
Ithaca, New York

Doctorate: Household Equipment and Chemistry
Iowa State University

Member: American Home Economics Association;
American Chemical Society;
American Association of Textile Chemists and Colorists;
American Association for the Advancement of Science;
American Association of University Professors;
American Society for Testing and Materials;
College Educators of Home Equipment;
Electrical Women's Round Table

Reed, Barbara J.
Fabrics Division Manager
Better Business Bureau
Milwaukee, Wisconsin

Reid, Florence
Consumer Affairs Representative
Orange County Office of Consumer Affairs
Santa Ana, California

Retail Floorcovering Institute (RFI)
Washington, D.C.

Membership; 400 retail floor covering specialty stores; 1000 retail outlets

Schapiro, Jerome
President
Dixo Company, Inc.
Rochelle Park, New Jersey

Member: American Society for Testing and Materials, Committee on Soaps and Detergents (D-12), Textiles (D-13) and its subcommittee; Technical Advisory Group for the International Standards Organization; American Association of Textile Chemists and Colorists, Chairman, Research Committee on Drycleaning (RA-43); American National Standards Institute Consumer Council; USA Spokesman for ISO/TC-38/SC-1 Working Group - 8 on Drycleaning Color Fastness and SC-2 on Dimensional Stability

Schwager, Robert S.
Vice President
Packaging Systems Corporation
Pearl River, New York

Seitz, William
Executive Director
Neighborhood Cleaners Association
New York, New York

Shapiro, Esther
Director
Consumer Affairs Department
City of Detroit
Detroit, Michigan

Sitz, Sherwood M.
Executive Director
Western Floor Coverings Association
Los Angeles, California

Slide Fastener Association (SFA)

Membership: Domestic zipper manufacturers

Smith, E. Bretney, Jr.
Treasurer
Swannanoa Cleaners
Asheville, North Carolina

Solter, Myron, Esquire
Counsel
Slide Fastener Association

St. John, Dr. Wayne L.
Associate Professor
Director
Functional Design Division
Southern Illinois University
Carbondale, Illinois

Member: American Association of Textile Chemists and Colorists;
American Association for Textile Technology;
American Society for Testing and Materials, Committee on Textiles;
American Home Economics Association;
American College Professors of Textiles and Clothing;
American Association for the Advancement of Science;
American Chemical Society

Stanton, Karen
Administrative Assistant
Consumer Affairs Dept.
Burlington County
Mount Holly, New Jersey

Stewart, Robert C.
Vice President & General Manager
Kirk's Suede Life, Inc.
Chicago, Illinois

Stone, Janis
Teacher and Researcher Textiles
and Clothing
University of Illinois
at Urbana-Champaign
Urbana, Illinois

Member: American Home Economics Association

Taylor, Ruth A.
Graduate Student
Clothing and Textiles
Texas Christian University
Fort Worth, Texas

Textile Distributors Association (TDA)
New York, New York

Membership: 125 textile coverting companies

Tobias, David
President
Tobias Ontario Furniture
Ontario, California

Representing: Western Home Furnishing Association;
Retail Furniture Association of California;
Home Furnishings Association of
San Diego County, California

Warfield, Carol Larson
Instructor in Textiles
University of Illinois
at Urbana-Champaign
Urbana, Illinois

Member: American Association of Textile
Chemists and Colorists;
American Home Economics Association;
Association of College Professors of
Textiles and Clothing

Wasch, Sydney
President
Eucilla Company

Representing: National Handknitting Yarn
Association

Western Floor Covering Association (WFCA)
Los Angeles, California

Membership: 300 floorcovering retailers and contractors

Western Home Furnishings Association (WHFA)
Los Angeles, California

Membership: 550 home furnishings retailers

White, Vivian (Dr.)
Associate Professor
College of Human Ecology
Cornell University
Ithaca, New York

Member: American Society for Testing and Materials, Chairman of Committee D-13; American National Standards Institute; International Standards Organization; American Home Economics Association; Association of College Professors of Textiles and Clothing

Woods, Ron
Vice President
Georgia Textile Corporation

Manufacturer of bedspreads and small rugs

APPENDIX B

DESIGNATION: BSSR Survey

SUBMITTED BY: National Consumers Congress
Washington, D.C.

AUTHOR: Bureau of Social Science Research, Inc.
Washington, D.C.

TITLE: (Object) Care Labeling: A Survey of the Consumer's Use and Understanding of Labels

DATE: January, 1977

LOCATION: Washington, D.C. Standard Metropolitan Statistical Area

RESPONDENTS: 700 adult residents of randomly selected households

DESIGNATION: Colorado Survey

SUBMITTED BY: Ward, Annette A.
Graduate Student
Dept. of Textiles & Clothing
College of Home Economics
Colorado State University
Fort Collins, Colorado

AUTHOR: Same

TITLE: (Object) Consumer Attitudes Toward Care Labeling

DATE: Spring, 1976

LOCATION: State of Colorado; 40 Colorado Counties

RESPONDENTS: 1943 members of extension homemaker clubs

DESIGNATION: Coosa County Survey

SUBMITTED BY: Davis, Diane
Auburn University
Auburn, Alabama

AUTHOR: Same

TITLE: (Object)	A Research Report on Consumer Awareness of the Permanent Care Labeling Rule
DATE:	March, 1976
LOCATION:	Coosa County, Alabama
RESPONDENTS:	82 residents of Coosa County
DESIGNATION:	Fort Worth Survey
SUBMITTED BY:	Taylor, Ruth Arleen Teaching Assistant Dept. of Home Economics Texas Christian University Fort Worth, Texas
AUTHOR:	Same
TITLE: (Object)	Selected Aspects of Care Labeling of Piece Goods
DATE:	Fall, 1976
LOCATION:	Fort Worth, Texas
RESPONDENTS:	60 consumer purchasers at six selected piece goods stores
DESIGNATION:	Georgia Survey
SUBMITTED BY:	Gandy, Sharon G. Masters Degree Candidate Home Economics Dalton, Georgia
AUTHOR:	Same
TITLE: (Object)	Consumer Awareness of Care Labeling of Yard Goods
DATE:	Spring, 1976
LOCATION:	State of Georgia
RESPONDENTS:	153 adults enrolled in sewing classes at 12 post-secondary vocational, technical schools
DESIGNATION:	Greeley Survey

SUBMITTED BY:	Krosky, Dr. Beverly Dept. of Home Economics University of Northern Colorado Greeley, Colorado
AUTHOR:	Same
TITLE: (Object)	Informal Survey of Answers to Commission's Call for Comment
DATE:	Spring, 1976
LOCATION:	Greeley, Colorado
RESPONDENTS:	85 residents of Greeley, Colorado. Random selection.
DESIGNATION:	Home Testing Institute Survey
SUBMITTED BY:	The Clorox Company
AUTHOR:	Home Testing Institute at the request of the American Association of Textile Chemists and Colorists Manhasset, New York
TITLE: (Object)	Study of Consumer Response to Care Labeling
DATE:	September, 1973
LOCATION:	Nationwide
RESPONDENTS:	499 households selected to be representative of United States family population of six selected demographic characteristics
DESIGNATION:	MARC Survey
SUBMITTED BY:	The Clorox Company
AUTHOR:	Marketing Research Counselors, Inc. at the request of Clorox Company, San Francisco, California
TITLE: (Object)	Bleachability Terminology Study
DATE:	April, 1976

LOCATION: Nationwide

RESPONDENTS: 301 female heads of household. Random selection.

DESIGNATION: McCullough Study

SUBMITTED BY: McCullough, Jacquelyn
Instructor
School of Home Economics
Eastern Illinois University
Charleston, Ill.

AUTHOR: Same

TITLE: (Object) An Analysis of Problems Associated with Permanent Care Labeling and Recommendations for Improvement. Paper for advanced graduate course.

DATE: Fall, 1976

LOCATION: Purdue University, West Lafayette, Indiana

DESIGNATION: Mississippi Survey

SUBMITTED BY: Hill, Caroline
Instructor
Dept. of Home Economics
Mississippi State University
Mississippi State, Mississippi

AUTHOR: Same

TITLE: (Object) Survey of Answers to Commission's Call for Comment

DATE: Spring, 1976

LOCATION: State of Mississippi

RESPONDENTS: 1250 Mississippi consumers of textile goods

DESIGNATION: National Family Opinion Survey

SUBMITTED BY: London, Sheldon I.
Attorney on behalf of
Retail Floorcovering Institute

AUTHOR: National Family Opinion, Inc.
Toledo, Ohio

TITLE: (Object) The American Residential Carpet and Rug Customer

DATE: 1974

LOCATION: Nationwide

RESPONDENTS: 20,000 households. Random selection,

DESIGNATION: Nebraska Survey

SUBMITTED BY: Feather, Betty, Ph.D.
Clothing and Textiles Specialist
Cooperative Extension Service
University of Missouri
Columbia, Missouri

AUTHOR: Laughlin, Joan; Newton, Audrey; Scruggs, Barbara,
University of Nebraska

TITLE: (Object) Study Investigating Factors Influencing Consumer Awareness of Care Labeling in Textile Products

DATE: June, 1976

LOCATION: State of Nebraska

RESPONDENTS: 212 rural and urban members of Home Extension Clubs. Random selection.

DESIGNATION: New York State Survey

SUBMITTED BY: Saltford, Nancy C.
Associate Professor
Design and Environmental Analysis
Cornell University
Ithaca, New York

AUTHOR:	Same
TITLE: (Object)	Consumer Understanding and Use of Care Labels
DATE:	Fall, 1974
LOCATION:	Twelve Central New York Counties
DESIGNATION:	NHFA Survey (1974)
SUBMITTED BY:	National Home Furnishings Association Washington, D.C.
AUTHOR:	Same
TITLE: (Object)	Care Labeling on Home Furnishings
DATE:	1974
LOCATION:	Nationwide
RESPONDENTS:	850 retail members of the National Home Furnishings Association
DESIGNATION:	NHFA Survey (1976)
SUBMITTED BY:	National Home Furnishings Association Washington, D.C.
AUTHOR:	Same
TITLE: (Object)	Care Labeling on Home Furnishings
DATE:	1976
LOCATION:	Nationwide
RESPONDENTS:	1400 retail members of the National Home Furnishings Association
DESIGNATION:	Oxford Survey

SUBMITTED BY: Alexander, Dr. Patsy R.
Associate Professor
College of Liberal Arts
University of Mississippi
University, Mississippi

AUTHOR: Same

TITLE: (Object) Informal Survey of Answers to Commission's Call for Comment

DATE: Spring, 1976

LOCATION: Oxford, Mississippi

RESPONDENTS: 115 residents of Oxford. Random selection.

DESIGNATION: Peoria County Survey

SUBMITTED BY: Edwards, Helen H.
Extension Advisor
Home Economics
Peoria, Illinois

AUTHOR: Same

TITLE: (Object) Consumer Need For and Use of Care Labels (Informal)

DATE: Fall, 1975

LOCATION: Peoria County, Illinois

RESPONDENTS: 80 families

DESIGNATION: Pittsburgh Survey

SUBMITTED BY: Lampone, Susan
Consumer Intern
Allegheny County Bureau of Consumer Affairs
Pittsburgh, Pennsylvania

AUTHOR: Same

TITLE: (Object)	Information on Frequency and Availability of Care Instructions for Upholstered Furniture
DATE:	Summer, 1975
LOCATION:	Pittsburgh, Pennsylvania
RESPONDENTS:	22 retail furniture stores
DESIGNATION:	Safer Survey
SUBMITTED BY:	Safer, Holly M.
AUTHOR:	Nichols, B. and Daidis, R.
TITLE: (Object)	Consumer Satisfaction with Home Furnishings
DATE:	Unknown
LOCATION:	Unknown
RESPONDENTS:	Unknown
DESIGNATION:	Salmon Survey
SUBMITTED BY:	The Clorox Company
AUTHOR:	Kurt Salmon Associates
TITLE: (Object)	Analysis of the Care Labeling Practices of the Apparel and Textile Industries in the United States.
DATE:	October, 1975 - January, 1976
LOCATION:	Nationwide
RESPONDENTS:	122 apparel producers, textile and retail firms; 2500 apparel items
DESIGNATION:	Seattle Survey

SUBMITTED BY:	King, Rosalie R. Ph.D Acting Chairman, Textiles & Clothing School of Home Economics University of Washington Seattle, Washington
AUTHOR:	Same
TITLE: (Object)	Consumer Opinions Concerning Selected Aspects of Care Labeling
DATE:	November, 1975
LOCATION:	Seattle, Washington
RESPONDENTS:	Senior level textile science class
DESIGNATION:	Seattle-Pacific Survey
SUBMITTED BY:	Paul, Christine M. Textiles & Clothing Instructor Seattle-Pacific College Seattle, Washington
AUTHOR:	Same
TITLE: (Object)	Survey of Answers to Commission's Call for Comment (Informal)
DATE:	Spring, 1976
LOCATION:	Seattle, Washington
RESPONDENTS:	Unknown number of students in beginning college textiles class, Seattle-Pacific College
DESIGNATION:	Tanforan Park Survey
SUBMITTED BY:	The Clorox Company
AUTHOR:	Marketing and Research Counselors, Inc. at the Request of Clorox Co., San Bruno, California

TITLE: (Object)	Study of Consumer Perceptions of Products Labeled "Bleach-Safe"
DATE:	November, 1975
LOCATION:	Tanforan Park Mall, San Bruno, California
RESPONDENTS:	600 female heads of household
DESIGNATION:	Troy Survey
SUBMITTED BY:	Walton, Barbara Teacher Troy City Schools Consumer Homemaking Program Troy, New York
AUTHOR:	Same
TITLE: (Object)	Consumer Attitudes Toward Care Labeling (Informal)
DATE:	Spring, 1976
LOCATION:	Troy, New York
RESPONDENTS:	Adult students in consumer homemakers' program
DESIGNATION:	Urbana-Champaign Survey I
SUBMITTED BY:	Stone, Janis Instructor, Clothing and Textiles School of Human Resources and Family Studies University of Illinois at Urbana-Champaign Urbana, Illinois
AUTHOR:	Same
TITLE: (Object)	Survey On All Aspects of Care Labeling (Informal)
DATE:	September, 1976

LOCATION: University of Illinois at Urbana-Champaign

RESPONDENTS: 93 students in consumer textiles class

DESIGNATION: Urbana-Champaign Survey II

SUBMITTED BY: Stone, Janis
Instructor, Clothing & Textiles
School of Human Resources and Family Studies
University of Illinois at Urbana-Champaign
Urbana, Illinois

AUTHOR: Stone, Janis; Lashbrook, Debbie; Warfield, Carol; Douglas, Sara; Leggett, Barbara
Instructors and Teaching Assistant
Dept. of Textiles and Clothing
University of Illinois at Urbana-Champaign
Urbana, Illinois

TITLE: (Object) Informal Survey of Attitudes Toward Care Labeling

DATE: March, 1976

LOCATION: University of Illinois at Urbana-Champaign

RESPONDENTS: 70 students in class of consumer textiles

DESIGNATION: Urbana-Champaign Survey III

SUBMITTED BY: Warfield, Carol L.
Instructor, Clothing and Textiles
School of Human Resources and Family Studies
University of Illinois at Urbana-Champaign
Urbana, Illinois

AUTHOR: Same

TITLE: (Object) Survey On All Aspects of Care Labeling (Informal)

DATE: Fall, 1976

LOCATION: Urbana-Champaign, Illinois area

RESPONDENTS: 161 homemakers

DESIGNATION: Walker Survey

SUBMITTED BY: The Clorox Company

AUTHOR: Walker Research, Inc. at the request of Household Products Advertising - Textile Coop Program
Indianapolis, Indiana

TITLE: (Object) Consumer Attitudes Toward Care Labeling Information; Marketing Research Report for Household Products Advertising

DATE: October, 1975

LOCATION: Indianapolis, Indiana; Morristown, New Jersey

RESPONDENTS: 152 consumers intercepted in shopping malls

DESIGNATION: WHFA Survey

SUBMITTED BY: Western Home Furnishings Association

AUTHOR: Same

TITLE: (Object) Questionnaire On Care Labeling

DATE: April, 1976

LOCATION: Western States

RESPONDENTS: 104 retail members of Western Home Furnishings Association

DESIGNATION: Yreka Survey

SUBMITTED BY: Christenson, Marian J.
Homemaking Teacher
Yreka Union High School
Yreka, California

AUTHOR:	Christenson, Marian J. Mapleden, Linda (FHA student representative)
TITLE: (Object)	Student Attitudes Toward Care Labeling (Informal)
DATE:	Spring, 1976
LOCATION:	Yreka, California
RESPONDENTS:	63 students and teachers, Yreka Union High School