



[Billing Code: 6750-01-S]

## FEDERAL TRADE COMMISSION

### 16 CFR Part 423

## TRADE REGULATION RULE ON CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Based on comments received in response to its Advance Notice of Proposed Rulemaking (“ANPR”), the Federal Trade Commission proposes to amend its trade regulation rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods as Amended (“Rule”) to: allow garment manufacturers and marketers to include instructions for professional wetcleaning on labels; permit the use of ASTM Standard D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” or ISO 3758:2005(E), “Textiles --- Care labelling code using symbols,” in lieu of terms; clarify what can constitute a reasonable basis for care instructions; and update the definition of “dryclean.” In addition, the Commission seeks comment on several other issues.

**DATES:** Written comments must be received on or before November 16, 2012. Parties interested in an opportunity to present views orally should submit a request to do so as explained below, and such requests must be received on or before November 16, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Care Labeling Rule, 16 CFR Part 423, Project No. R511915” on your comment, and file your comment online at

<https://ftcpublishcommentworks.com/ftc/carelabelingnprm> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex B), 600 Pennsylvania Avenue, NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Frisby, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2098.

**SUPPLEMENTARY INFORMATION:**

The Commission finds that using expedited procedures in this rulemaking will serve the public interest. Specifically, they support the Commission's goals of clarifying and updating existing regulations without undue expenditure of resources, while ensuring that the public has an opportunity to submit data, views, and arguments on whether the Commission should amend the Rule. Because written comments should adequately present the views of all interested parties, the Commission is not scheduling a public hearing or workshop. However, if any person would like to present views orally, he or she should follow the procedures set forth in the **DATES, ADDRESSES, and SUPPLEMENTARY INFORMATION** sections of this document. Pursuant to 16 CFR 1.20, the Commission will use the procedures set forth in this document, including: (1) publishing this Notice of Proposed Rulemaking ("NPRM"); (2) soliciting written comments on the Commission's proposals to amend the Rule; (3) holding an informal hearing (such as a workshop) if requested by interested parties; (4) obtaining a final recommendation from staff; and (5) announcing final Commission action in a document published in the *Federal Register*. Any motions or petitions in connection with this proceeding

must be filed with the Secretary of the Commission.

## I. INTRODUCTION

The Rule makes it an unfair or deceptive act or practice for manufacturers and importers of textile wearing apparel and certain piece goods to sell these items without attaching labels stating the care needed for the ordinary use of the product.<sup>1</sup> The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for care instructions<sup>2</sup> and allows the use of approved care symbols in lieu of words to disclose those instructions.<sup>3</sup>

The Commission promulgated the Rule in 1971 and has amended it three times since.<sup>4</sup> In 1983, the Commission clarified its requirements regarding the disclosure of washing and drycleaning information.<sup>5</sup> In 1997, the Commission adopted a conditional exemption to allow the use of symbols in lieu of words.<sup>6</sup> In 2000, the Commission amended the Rule to clarify what constitutes a reasonable basis for care instructions and to change the Rule's definitions of "cold,"

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<sup>1</sup> 16 CFR 423.5 and 423.6(a) and (b).

<sup>2</sup> 16 CFR 423.6(c).

<sup>3</sup> The Rule provides that the symbol system developed by ASTM International, formerly the American Society for Testing and Materials, and designated as ASTM Standard D5489-96c "Guide to Care Symbols for Care Instructions on Consumer Textile Products" may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of Part 423. 16 CFR 423.8(g).

<sup>4</sup> *Federal Trade Commission: Care Labeling of Textile Wearing Apparel: Promulgation of Trade Rule and Statement of Basis and Purpose*, 36 FR 23883 (Dec. 16, 1971).

<sup>5</sup> *Federal Trade Commission: Amendment to Trade Regulation Rule Concerning Care Labeling of Textile Wearing Apparel and Certain Piece Goods*, 48 FR 22733 (May 20, 1983).

<sup>6</sup> *Federal Trade Commission: Concerning Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods; Conditional Exemption from Terminology Section of the Care Labeling Rule*, 62 FR 5724 (Feb. 6, 1997).

“warm,” and “hot” water.<sup>7</sup>

In 2000, the Commission rejected two proposed amendments. First, the Commission did not require labels with instructions for home washing on items that one can safely wash at home, because the evidence was not sufficiently compelling to justify this change and the benefits of the proposed change were highly uncertain.<sup>8</sup> Second, the Commission did not establish a definition for “professional wetcleaning” or permit manufacturers to label a garment with a “Professionally Wetclean” instruction.<sup>9</sup> The Commission stated that it was premature to allow such an instruction before the development of a suitable definition and an appropriate test method<sup>10</sup> and added that it would consider such an instruction if a more specific definition and/or test procedure were developed.<sup>11</sup>

As part of its ongoing regulatory review program, the Commission published an Advance Notice of Proposed Rulemaking (“ANPR”) in July 2011 seeking comment on the economic impact of, and the continuing need for, the Rule; the benefits of the Rule to consumers; and the

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<sup>7</sup> *Federal Trade Commission: Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, Final Amended Rule*, 65 FR 47261 (Aug. 2, 2000).

<sup>8</sup> *Id.* at 47269.

<sup>9</sup> The Commission proposed a definition of professional wetcleaning, stating, in part, that it is “a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers.” *Id.* at 47271 n. 99.

<sup>10</sup> *Id.* at 47272. The Commission explained that the definition must either describe all important variables in the process, so that manufacturers can determine that the process would not damage the garment, or be coupled with a specific test procedure that manufacturers can use to establish a reasonable basis for the instruction. *Id.*

<sup>11</sup> *Id.* at 47273.

burdens the Rule places on businesses.<sup>12</sup> The ANPR also sought comment on whether and how the Rule should address professional wetcleaning and updated industry standards regarding the use of care symbols, as well as whether the Commission should address non-English disclosures.

This NPRM summarizes the comments received by the Commission, explains the Commission's decision to retain the Rule, proposes several amendments to the Rule, and explains why the Commission has declined to propose certain amendments.<sup>13</sup> It also poses questions soliciting additional comment and provides a regulatory analysis as well as analyses under the Regulatory Flexibility Act and the Paperwork Reduction Act. Finally, the NPRM sets forth the Commission's proposed Rule language.

## **II. SUMMARY OF COMMENTS**

The Commission received 120 comments in response to the ANPR.<sup>14</sup> Most were filed by individuals. At least 70 of these individuals identified themselves as owning or operating a cleaning business or working in the drycleaning or wetcleaning industries. The Commission also

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<sup>12</sup> *Federal Trade Commission: Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, Advance Notice of Proposed Rulemaking; request for comment*, 76 FR 41148 (July 13, 2011).

<sup>13</sup> The Commission publishes this NPRM pursuant to Section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a *et seq.*, the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

<sup>14</sup> The comments are posted at <http://www.ftc.gov/os/comments/carelabelinganpr/index.shtm>. The Commission has assigned each comment a number appearing after the name of the commenter and the date of submission. This notice cites comments using the last name of the individual submitter or the name of the organization, followed by the number assigned by the Commission.

received comments from government agencies,<sup>15</sup> industry standard-setting organizations,<sup>16</sup> environmental advocacy organizations,<sup>17</sup> manufacturers and retailers,<sup>18</sup> and trade associations representing industries affected by the Rule.<sup>19</sup>

All but two of the numerous comments that addressed retention of the Rule favored it.<sup>20</sup> Comments from the apparel manufacturing and cleaning industries uniformly supported the Rule. For example, the American Apparel & Footwear Association (“AAFA”) stated that the labels benefit consumers, manufacturers, and business in general, as they allow for the necessary flow of information along the commodity chain. Similarly, the National Cleaners Association (“NCA”) and the Drycleaning & Laundry Institute (“DLI”) stated that the Rule provides valuable

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<sup>15</sup> Three California agencies filed comments: the Air Resources Board (18), Department of Toxic Substances Control (123), and the San Francisco Department of the Environment (89).

<sup>16</sup> ASTM International (“ASTM”) (111) and GINETEX (83), which is responsible for the care labeling system used in European countries.

<sup>17</sup> The Coalition for Clean Air (119), the Toxic Use Reduction Institute (86), and the UCLA Sustainable Technology & Policy Program (84).

<sup>18</sup> Miele (108), Miele & Cie. KG (110), The Children’s Place (90), and The Clorox Company (122).

<sup>19</sup> The Association of Home Appliance Manufacturers (“AHAM”) (114), American Apparel & Footwear Association (113), Professional Wet Cleaners Association (“PWA”) (73) and (102), Association of Wedding Gown Specialists (“AWGS”) (22), National Cleaners Association and Drycleaning & Laundry Institute (124), Professional Leather Cleaners Association (“PLCA”) (109), International Drycleaners Congress (“IDC”) (47), and Textile Industry Affairs (112).

<sup>20</sup> GINETEX argued that the Rule should not be mandatory for textile and apparel companies because a voluntary scheme would adapt in a timely manner to technical and environmental developments as well as innovations, while adjustments to mandatory rules are very cumbersome to implement. It also argued that national rules not in line with international standards can create a nontariff barrier to trade, and that the ASTM standard creates an unnecessary obstacle to international trade. A retailer argued that the time and effort spent on labels required by the Rule does not really serve the ultimate goal of educating consumers on laundering habits. Kambam (4).

guidance on care to consumers and industry. Textile Industry Affairs (“TIA”) noted that the Rule has generated dramatic benefits to both consumers and manufacturers, and that no apparel manufacturers that have complied with the Rule have ever reported any negative consumer impact.

While the comments indicate widespread support for the Rule, most argued that the Commission should update or expand it in various ways. In particular, many comments urged the Commission to address professional wetcleaning by either requiring or allowing manufacturers to disclose a wetcleaning instruction. Still others urged the Commission to update the Rule’s provisions allowing the use of care symbols by incorporating the latest ASTM or International Organization for Standardization (“ISO”) care symbol standards, allowing manufacturers to follow either standard, or adopting new symbols for professional cleaning. Several comments requested clarification of the Rule’s reasonable basis provisions or imposition of testing requirements on manufacturers. Others advocated updating the definition of “dryclean” and the Appendix to reflect the development of new solvents and cleaning technologies and practices. Some comments urged the Commission to require manufacturers to disclose all appropriate methods of care on labels. Further, some comments urged the Commission to amend the Rule to require the disclosure of additional information such as fiber content or more detailed care instructions, to disallow certain instructions currently permitted by the Rule, or to impose additional obligations. Several comments addressed disclosures made in multiple languages.

A. Professional Wetcleaning

Slightly more than half of the 120 comments received by the Commission stated or

implied that the Commission should permit, or require, a professional wetcleaning instruction on garments that can be wetcleaned. Wetcleaning is an alternative to drycleaning and involves professionals cleaning products in water using special technology (cleaning, rinsing, and spinning), detergents, and additives to minimize adverse effects, followed by appropriate drying and restorative finishing procedures. Of the comments addressing this issue, only three expressed concerns.<sup>21</sup> Comments favoring a wetcleaning instruction made several arguments in support of their position.

First, they touted the economic, health, and environmental benefits of wetcleaning. For example, based on its analysis of scientific literature on the health and environmental impacts of drycleaning solvents, and its review of operational costs and compliance-related impacts, the San Francisco Department of the Environment determined that professional wetcleaning is the most environmentally-preferable professional cleaning option.<sup>22</sup> The Toxic Use Reduction Institute stated that the benefits from professional wetcleaning include decreased use of energy and water, significant air quality improvement in the shop, and improved employee health and satisfaction.<sup>23</sup> It explained that over 80% of the U.S. professional garment cleaning industry uses perchloroethylene (“perc”), and that studies have identified ecological and human health

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<sup>21</sup> AHAM urged the Commission to gather data on consumer knowledge and the availability of wetcleaning before amending the Rule to address it. AHAM (114). One commenter stated that wetcleaning is not a viable alternative to drycleaning. Enderlin (63). PLCA did not take a position on wetcleaning, but noted that there are not enough cleaners trained in wetcleaning. PLCA (109).

<sup>22</sup> San Francisco Department of the Environment (89). This comment included a chart showing the results of its analysis.

<sup>23</sup> Toxic Use Reduction Institute (86).

hazards associated with its use.<sup>24</sup> It added that the National Institute for Occupational Safety and Health has recommended handling perc as a human carcinogen, and the Environmental Protection Agency has classified it as a probable human carcinogen.<sup>25</sup> Two comments noted that, starting in 2023, California drycleaners can no longer use perc.<sup>26</sup> A number of others favored wetcleaning due to concerns about using toxic or unhealthy drycleaning solvents.<sup>27</sup> Others noted that wetcleaning can produce better results than drycleaning in some circumstances.<sup>28</sup>

Second, several comments explained that the number of cleaners providing professional wetcleaning has increased and that consumers increasingly use or prefer it. Two trade associations reported that professional wetcleaning is now widespread in the industry.<sup>29</sup> Another stated that wetcleaning has been steadily growing in the United States for over a decade.<sup>30</sup> Yet another explained that professional wetcleaning has come a long way in the last few years, and

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<sup>24</sup> *Id.*

<sup>25</sup> *Id.* The California Department of Toxic Substances Control also explained the environmental problems caused by perc. (123).

<sup>26</sup> Air Resources Board (18) and NCA and DLI (24).

<sup>27</sup> *E.g.*, Addison (81); Bohnet (80); Chung (70); and Xu (101).

<sup>28</sup> One comment explained that the absence of wetcleaning labels limits cleaners in offering the best process when it comes to cleaning performance (*e.g.*, water-soluble stains) or fabric-related cleaning processes (*e.g.*, polyurethane). Miele & Cie. KG (110). A comment from a cleaner noted that some stains can be removed only with water. Kaplan (57). Another comment stated that wetcleaning is a necessary method for certain combinations of soil and fabric. Riggs (53).

<sup>29</sup> NCA and DLI (124).

<sup>30</sup> Press on Cleaners (120).

that many traditionally drycleaned garments can be wetcleaned with good results.<sup>31</sup>

Several comments provided data on the number of cleaners providing wetcleaning and the number of garments they clean. For example, one comment stated that over 200 perc drycleaners in California have switched to wetcleaning and successfully cleaned the full range of garments they previously drycleaned.<sup>32</sup> Two comments noted the success of well over 120 professional wetcleaners in California who clean over 75 million garment pieces annually.<sup>33</sup> Another explained that there are hundreds of professional wetcleaners in the United States who use only water and soap to clean all garments presented to them.<sup>34</sup> This comment also indicated that there are 80 Miele professional wetcleaners in California, and that they process four million articles of clothing a year.<sup>35</sup>

Other comments cited the experience of individual cleaners that increasingly replace drycleaning with wetcleaning. For example, one comment from a cleaning business stated that wetcleaning is becoming common, and that it wetcleans approximately 65%-80% of the clothes it washes.<sup>36</sup> Another commenter stated that it wetcleans 100% of garments and that the

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<sup>31</sup> Patterson (14).

<sup>32</sup> Coalition for Clean Air (119).

<sup>33</sup> Chang and PWA (73) and Sim (116). Another comment stated that there are over 120 professional wetcleaners in California that clean over 250,000 pieces of garments across the state daily. Press on Cleaners (120).

<sup>34</sup> Miele (108).

<sup>35</sup> *Id.*

<sup>36</sup> Peltier (43).

instruction “dryclean only” has lost its meaning.<sup>37</sup>

Several comments noted the development of industry standard care symbols for wetcleaning. Indeed, ASTM and ISO have adopted consistent care symbols for professional wetcleaning.<sup>38</sup> ISO has also issued a standard on testing garments to determine whether they can be wetcleaned.<sup>39</sup>

Finally, several comments argued that the Rule’s failure to address wetcleaning places professional wetcleaners and equipment vendors at a competitive disadvantage and discourages greater use of wetcleaning.<sup>40</sup>

The comments urging the Commission to amend the Rule to address wetcleaning differ on whether the Commission should require a wetcleaning instruction or merely permit one. Moreover, many urge the Commission to address wetcleaning without specifying exactly how. Of those comments taking a position, the vast majority favored amending the Rule to require a

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<sup>37</sup> Behzadi (69).

<sup>38</sup> UCLA Sustainable Technology & Policy Program (84); Toxic Use Reduction Institute (86); and Riggs (53). *See* ASTM D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” and ISO 3758:2005(E), “Textiles – Care labelling code using symbols.”

<sup>39</sup> UCLA Sustainable Technology & Policy Program (84); Toxic Use Reduction Institute (86); and Riggs (53). ISO 3175-4:2003, “Textiles – Professional care, drycleaning and wetcleaning of fabrics and garments – Part 4: Procedure for testing performance when cleaning and finishing using simulated wetcleaning.”

<sup>40</sup> *E.g.*, Miele (108) and San Francisco Department of the Environment (89). Another comment argued that labeling garments “Dry Clean” or “Dry Clean Only” even though they can be successfully wetcleaned is unfair to professional wetcleaners. If a consumer prefers to dryclean such garments, the wetcleaner faces the prospect of losing the business or deceiving the consumer by wetcleaning instead of drycleaning such garments. The dilemma of either lying to the customer or potentially losing business makes professional wetcleaning unappealing to many drycleaners. PWA (102).

professional wetcleaning instruction if the garment can be wetcleaned.<sup>41</sup> Comments argued that requiring the instruction would provide consumers and cleaners with more and better options, and produce various benefits as more consumers choose wetcleaning.<sup>42</sup> One comment expressed concern that failing to require an instruction might result in most manufacturers choosing not to disclose that wetcleaning is a viable option, thereby deceiving customers and treating wetcleaners unfairly.<sup>43</sup>

In addition, several commenters that do not appear to manufacture or market apparel argued that the benefits of requiring a wetcleaning instruction would exceed the added labeling and testing costs to manufacturers. One comment explained that the vast majority of manufacturers use experience and expertise to determine the care label.<sup>44</sup> It added that, because experience and expertise are free or virtually free, the economic impact of requiring a wetclean label likely is *de minimus*.<sup>45</sup> It further explained that most manufacturers test garments by sending them to established cleaners and use in-house staff to evaluate results and that this method requires no capital equipment cost and only a marginal cost.<sup>46</sup> DLI and NCA advised that they currently provide care label guidance to garment manufacturers and that the average

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<sup>41</sup> *E.g.*, Anonymous (106); Bromagen (91); Draper (100); Eldridge (46); Evans (67); Fox (107); Hagearty (61); NCA and DLI (124); Overmoe (66); Preece (54); Raggi (30); San Francisco Department of the Environment (89); Tebbs (47); Toxic Use Reduction Institute (86); UCLA Sustainable Technology & Policy Program (84).

<sup>42</sup> *E.g.*, NCA and DLI (124) and San Francisco Department of the Environment (89).

<sup>43</sup> UCLA Sustainable Technology & Policy Program (84).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

cost to provide appropriate and comprehensive washing, drycleaning and wetcleaning instructions would be under \$1,400.<sup>47</sup> Another comment noted that testing is not that expensive and would not lead to a large increase in the cost of an item and that any extra costs would fall as universal testing reduces testing costs per item.<sup>48</sup>

A smaller number of comments indicated that they favored amending the Rule to permit, but not require, a wetcleaning instruction. One comment argued that allowing the instruction on labeling will reconfirm to the public that this method is accepted and safe and encourage manufacturers to produce more garments that do not need to be cleaned in a solvent.<sup>49</sup> Another supported permitting a wetcleaning instruction by amending the symbol sets to include wetcleaning because there appears to be expert consensus that clear testing protocols exist to verify its safety, and stated that the consumer and environmental benefits of wetcleaning are worthy of consideration.<sup>50</sup>

Many comments simply urged the Commission to address wetcleaning without specifying how.<sup>51</sup> For example, one comment stated that the Commission seriously should consider adding wetcleaning because of its consumer and environmental benefits.<sup>52</sup> It also explained that, with the development of ISO standards, there now appear to be consensus testing

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<sup>47</sup> NCA and DLI (124).

<sup>48</sup> Riggs (53).

<sup>49</sup> Huie (71).

<sup>50</sup> Textile Industry Affairs (112).

<sup>51</sup> *E.g.*, Air Resources Board (18); Bosshard (13); Chang (88); Santana (12); and Schoeplein (27).

<sup>52</sup> The Clorox Company (122).

protocols to verify a safe care process.<sup>53</sup>

B. Use of Care Symbols

With a few exceptions, the comments addressing the use of symbols to provide care instructions favored their continued use.<sup>54</sup> One comment stated that the current FTC-approved symbols do a good job of covering most of the home and professional care needs in the United States.<sup>55</sup> It therefore did not advocate modifying any of the symbols, as consumers are just now becoming familiar with them.<sup>56</sup> Several comments, however, advocated modifying the Rule to refer to the most recent version of the “Standard Guide for Care Symbols for Care Instructions on Textile Products,” ASTM D5489, instead of the older version of the ASTM standard currently referenced.<sup>57</sup> One comment urged the Commission to exclude the standard’s date; it explained that ASTM D5489-07 is the most recent standard and that, by not designating the year, the Commission can ensure that the most recent standard is used.<sup>58</sup> It added that D 5489-07 is an international standard as defined by the WTO TBT Agreement, and that, as a signatory to this agreement, the United States is pledged to use international standards as the basis for technical

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<sup>53</sup> *Id.*

<sup>54</sup> Two commenters stated that they do not like the use of symbols. Charles (3) and Vlasits (6). Other comments urged the Commission to require care symbols on all textile products. Fox (107) and Old Town Dry Cleaners (56).

<sup>55</sup> Textile Industry Affairs (112).

<sup>56</sup> *Id.*

<sup>57</sup> ASTM (111); Evans (67); and The Children’s Place (90). Another comment argued that the Rule should keep pace with developments in the ASTM system, and that the biggest challenge with symbols is educating the consumer. NCA and DLI (124). It advised that care symbols are not prevalent in the United States. *Id.*

<sup>58</sup> ASTM (111).

regulations when possible.<sup>59</sup> Others urged the Commission to address the development of ASTM symbols without indicating how it should do so.<sup>60</sup> Another explained that it would be very helpful if the care instructions on foreign and domestic labels were in agreement or, at a minimum, contained ASTM symbols.<sup>61</sup>

A number of comments expressed support for harmonizing the ASTM symbols allowed under the Rule with those used internationally.<sup>62</sup> One comment favoring harmonization concluded that the Rule prevents a global ISO Standard and that ISO symbols should supplant ASTM symbols.<sup>63</sup> It explained that the ASTM and the ISO symbols are similar but not the same and that ISO symbols are used in every country except South Korea, Japan, and the United States (and that Japan is working on harmonizing ISO and the JIC standards that apply in Japan).<sup>64</sup> Another favored one set of worldwide symbols and explained that the ISO recommends a complete set of care symbols, including washing, bleaching, ironing, drying, and professional care.<sup>65</sup> It added that these symbols are consistent with those developed by ASTM.<sup>66</sup> Some

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<sup>59</sup> *Id.*

<sup>60</sup> Preece (54) and Yazdani (78).

<sup>61</sup> Professional Leather Cleaners Association (109).

<sup>62</sup> AHAM (114); American Apparel & Footwear Association (113); Draper (100); GINETEX (83); Johnson (50); O'Connor (20); Textile Industry Affairs (112); and The Clorox Company (122).

<sup>63</sup> GINETEX (83).

<sup>64</sup> *Id.*

<sup>65</sup> Riggs (53).

<sup>66</sup> *Id.*

comments argued that harmonizing symbols would also address problems stemming from label disclosures in multiple languages.<sup>67</sup> One of these comments favored harmonization but argued that, as an alternative, the Rule should allow manufacturers to use either ASTM or ISO symbols in the United States, to relieve some of the burden and increase the accessibility of global trade.<sup>68</sup> It stated that differences among the symbol systems cause confusion and limit the opportunities for trade growth.<sup>69</sup> Another comment proposed that the Rule provide for or recognize agreements between the United States and other countries to accept international and national care label symbol systems currently in use in the global marketplace.<sup>70</sup>

Still others favored acceptance of ISO or internationally-accepted symbols without addressing the ASTM symbols.<sup>71</sup> Three comments urged the Commission to adopt or accept the ISO standard.<sup>72</sup> One supported adding to the symbols in cases where there are clear testing protocols to verify the safety of a care process.<sup>73</sup> It explained that, in the case of wetcleaning, there appears to be expert consensus that a new test does just that.<sup>74</sup>

GreenEarth Cleaning (“GreenEarth”) advocated a different approach to disclosing

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<sup>67</sup> American Apparel & Footwear Association (113) and The Children’s Place (90).

<sup>68</sup> American Apparel & Footwear Association (113).

<sup>69</sup> *Id.*

<sup>70</sup> The Children’s Place (90).

<sup>71</sup> Cote (58); Horrigan (17); Thorsteinson (45); and Yazdani (78).

<sup>72</sup> UCLA Sustainable Technology & Policy Program (84); White (15); and GINETEX (83). As noted above, GINETEX argued that the ISO symbols should supplant the ASTM symbols.

<sup>73</sup> Textile Industry Affairs (112).

<sup>74</sup> *Id.*

professional cleaning instructions. It argued that the ASTM and ISO professional cleaning symbols are inadequate because they are based on particular solvents rather than solvent characteristics.<sup>75</sup> It explained that the increasing number of solvents and advances in technology call for an approach addressing solvent aggressiveness (cleaning method) and mechanical action (cycle); it proposed that a Kauri-Butanol Value (“KBV”) of 35 or less be designated as “gentle” and that a “fragile” or “very fragile” instruction be provided for items needing minimized mechanical action.<sup>76</sup> It stated that the KBV is widely recognized in the textile care industry as having the greatest influence on the processing of textiles.<sup>77</sup> This comment further argued that there is a direct correlation between propensity for garment damage and a higher solvent KBV.<sup>78</sup> GreenEarth proposed specific cleaning method and cycle symbols to replace the current ASTM and ISO symbols and urged the Commission to make every effort to implement simple, consistent international symbols that can be universally interpreted to ensure the best care for garments.<sup>79</sup> No other comment favored this proposal.

In addition to proposing new symbols, GreenEarth advocated parallel changes to the “overarching nomenclature and the guiding principle” behind the Rule, to improve the reliability and understandability of care labels.<sup>80</sup> Specifically, it proposed replacing the instructions “dry

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<sup>75</sup> GreenEarth Cleaning (98) at 2.

<sup>76</sup> *Id.* at 2-3.

<sup>77</sup> *Id.* at 2.

<sup>78</sup> *Id.* at 4.

<sup>79</sup> *Id.* at 2-3.

<sup>80</sup> *Id.* at 2.

clean,” “do not dry clean,” “wetclean,” and “do not wetclean” with simplified categories of “cleaning method” and “cycle.” It also proposed that “cleaning method” would encompass all types of professional cleaning, including wetcleaning, and “cycle” would address the level of mechanical action.<sup>81</sup> As with its proposed symbols, GreenEarth would classify cleaning methods based on solvent aggressiveness rather than solvent type.<sup>82</sup> For the “cycle” category, GreenEarth would replace “mild” and “very mild” with “fragile” and “very fragile.”<sup>83</sup>

Two comments addressed the presentation of symbols. One argued that the current system works well, but that some uniformity regarding location, size, composition, and font size would greatly help the industry.<sup>84</sup> Another comment proposed attaching the international care label symbols to the garments in a small, removable brochure or paper, or in an online link address for such information.<sup>85</sup>

### C. The Rule's Reasonable Basis Provisions

Four comments argued that the Commission should clarify or strengthen the Rule's provision requiring manufacturers to have a reasonable basis for care instructions. One urged the Commission to strengthen the reasonable basis requirements and hold manufacturers accountable to individual consumers for inappropriate care instructions.<sup>86</sup> Two argued that the

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 3.

<sup>84</sup> Raggi (30).

<sup>85</sup> Santana (12).

<sup>86</sup> NCA and DLI (124).

Commission should clarify the reasonable basis provisions because some non-compliant parties appear to be misinformed or to misunderstand the requirement.<sup>87</sup> They suggested that the Commission request fresh data from manufacturers regarding their reasonable basis for their current care instructions.<sup>88</sup> One of them argued that, given standardized testing (*e.g.*, ASTM methodology) for colorfastness and garment integrity (*e.g.*, tensile strength), the Commission should require actual data to support care instructions.<sup>89</sup> Another comment favored requiring manufacturers to test products with all available processes, including wetcleaning.<sup>90</sup>

#### D. Rule Definitions and Appendix

Several comments urged the Commission to update the Rule's definition of "dryclean," as well as the Appendix. One comment urged the Commission to adopt a broader definition of "dryclean."<sup>91</sup> It explained that, 25 years ago, only two solvents were widely used — perc and petroleum.<sup>92</sup> It added that now there are many solvents, including high flash hydrocarbons, silicones, glycol ethers, carbon dioxide, aldehydes, and wetcleaning.<sup>93</sup> It also reported that: fluorocarbon solvent, one of the solvents listed in the definition, is no longer used; new

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<sup>87</sup> Textile Industry Affairs (112) and The Clorox Company (122). They stated that disclosing an instruction based on "unreasonable" and "possible" fabric impact is not an acceptable instruction or warning.

<sup>88</sup> *Id.*

<sup>89</sup> The Clorox Company (122).

<sup>90</sup> Behzadi (69).

<sup>91</sup> NCA and DLI (124).

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

hydrocarbon drying parameters are different from those of early petroleum solvents; and not all solvents are organically based.<sup>94</sup>

Four comments from cleaners similarly argued that the current definition of drycleaning is very limiting.<sup>95</sup> The first reported that it adopted a new solvent, but has concerns because labels do not provide the information needed.<sup>96</sup> The second reported that it hesitated to adopt a new solvent because it is not recognized by the Rule.<sup>97</sup> The third reported that it wanted to use a new solvent, which involves purchasing a costly new machine, but hesitated because the solvent or process is not recognized by the Rule.<sup>98</sup> The comment argued that the Rule should not curtail technological advancement.<sup>99</sup> The fourth urged the Commission to expand Rule to address other solvents, such as SolvonK4 by Kreussler.<sup>100</sup>

Two comments urged the Commission to revise Appendix A. One advised that Appendix A of the Rule diverges from ASTM D5489, although it did not identify how or explain why amendments are warranted.<sup>101</sup> Another urged the Commission to suggest that all leather goods have a more specific care label, such as “Leather Clean and Refinish by Professional Leather

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<sup>94</sup> *Id.*

<sup>95</sup> Bromagen (91); Hagearty (61); Preece (54); and Yazdani (78).

<sup>96</sup> Bromagen (91).

<sup>97</sup> Hagearty (61).

<sup>98</sup> Preece (54).

<sup>99</sup> *Id.*

<sup>100</sup> Brunette (115).

<sup>101</sup> ASTM (111).

Cleaner Only,” and to expand the definition in Appendix A.8 to read “Leather Clean and Refinish by Professional Leather Cleaner Only.”<sup>102</sup>

E. Instruction on All Appropriate Methods of Care

Several comments from the cleaning industry urged the Commission to amend the Rule to require manufacturers to include instructions on all appropriate methods of care.<sup>103</sup> As one comment explained, this would empower consumers to decide whether they want to care for the garment at home or use a professional cleaner.<sup>104</sup> It added that, by listing all methods of care, the label would eliminate guesswork regarding whether a care method is not listed because it will cause damage.<sup>105</sup> Others explained that such a label would enable the cleaner to select the best cleaning method based on the type of soils on the garment or the customer’s requests.<sup>106</sup>

F. Additional Issues

Some comments proposed amending the Rule to require additional disclosures, disallow certain care instructions currently allowed by the Rule, address the format or composition of labels, expand the scope of the Rule, or impose additional requirements. Additionally, several comments addressed the use of multiple languages on care labels.

Five comments urged the Commission to require disclosure of fiber, fabric, or component

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<sup>102</sup> Professional Leather Cleaners Association (109).

<sup>103</sup> *E.g.*, Bromagen (91); Draper (100); Edwards (97); Evans (67); Hagearty (61); Kudler (72); Maisel (34); McKay (104); NCA and DLI (124); Overmoe (66); Preece (54); Tebbs (47); Widmar (48); and Yazdani (78).

<sup>104</sup> NCA and DLI (124).

<sup>105</sup> *Id.*

<sup>106</sup> Overmoe (66) and Preece (54).

content.<sup>107</sup> One of them also advocated requiring disclosure of the content of all fabrics, linings, and trims, including applied water repellent coatings or sizing that may be removed during processing.<sup>108</sup>

Other comments urged the Commission to require more detailed care instructions or disclosure of additional information related to care.<sup>109</sup> For example, one comment urged the Commission to address the instruction “exclusive of trim” where the trim is not removable.<sup>110</sup> Another urged the Commission to require disclosure of the type of dye method used to lessen the likelihood of damaged garments.<sup>111</sup> Another stated that the Rule should require more details, including how and which drycleaning fluid can, or cannot, be used for the garment.<sup>112</sup> Yet another argued that any care that the manufacturer knows could harm the garment should be specifically stated as a “Do Not” warning.<sup>113</sup>

One comment proposed that the Rule provide that the care instruction indicate the maximum treatment that can be applied to the item.<sup>114</sup> The comment explained that the Rule

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<sup>107</sup> Chambers (92); Hiebert (64); Professional Leather Cleaners Association (109); Santana (12); and Wilson (32).

<sup>108</sup> Hiebert (64).

<sup>109</sup> One comment advocated guidelines for designating specific solvent characteristics, such as KB value, polarity, and water solubility, on pre-existing labels. Cote (58).

<sup>110</sup> Chelsky (38).

<sup>111</sup> King (19).

<sup>112</sup> Momin (51).

<sup>113</sup> NCA and DLI (124).

<sup>114</sup> GINETEX (83).

allows a manufacturer to provide an instruction, such as “dry flat” even if a more severe method, such as “tumble dry,” will not harm the garment. Under the ISO standard the care instruction provided is the most severe method that can be used without damaging the article.<sup>115</sup> Another comment argued that the Rule should require that jobbers who add trimming, ornaments or feathers, etc., to an item must change or add additional labels and add the jobbers’ names and contact info.<sup>116</sup> Another comment argued, among other things, that labels should disclose a serial number and an address for a website providing several additional categories of information and countries of manufacture.<sup>117</sup>

Moreover, one comment argued that care tags could be replaced or made much smaller and simpler with the use of a unique identifier for every garment, such as a barcode, QR code, or an RFID chip.<sup>118</sup> It explained that the code would include a manufacturer ID, product ID, and serial number, and that the manufacturer would input this information into a centralized database that could be accessed by consumers, retailers, drycleaners, etc.<sup>119</sup>

Another comment addressed disclosure of an item’s point of origin. It urged the Commission to require disclosure of the state for items allowed a “made in the United States” label.<sup>120</sup>

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<sup>115</sup> *Id.*

<sup>116</sup> Zeidel (29).

<sup>117</sup> Winn (40).

<sup>118</sup> Levy (99).

<sup>119</sup> *Id.*

<sup>120</sup> Fisher (24).

Other comments argued that the Commission should disallow certain care instructions that they view as providing little, if any, benefit to consumers, or to otherwise limit care instructions. One comment argued that all garments should be serviceable, and opposed “Do not wash. Do not dryclean” labels.<sup>121</sup> One stated that care methods should be dryclean only, clean by any method, and cannot be cleaned.<sup>122</sup> Another stated that too many labels state “remove trim before cleaning” where removing the trim results in taking apart the garment.<sup>123</sup> One stated that labels that specify “Spot Clean” should be disallowed.<sup>124</sup>

Two comments addressed the format or composition of the labels required by the Rule. One argued that labels should be a standard size, printed on white material only, using stable black ink, non-soluble in water and drycleaning solvents.<sup>125</sup> The other argued that care labels need to be securely attached to the garment, and not by a few stitches, to avoid causing holes in the garments after a few cleanings.<sup>126</sup>

Two comments addressed the scope of the Rule. One argued that the Rule should continue to exempt rental garments, such as corporate uniforms, because many of them require professional care for health reasons.<sup>127</sup> The other proposed requiring care labels for household

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<sup>121</sup> Brunette (115).

<sup>122</sup> Enderlin (63).

<sup>123</sup> O'Connor (20).

<sup>124</sup> Shaw (33).

<sup>125</sup> Horrigan (17).

<sup>126</sup> Maknojia (87).

<sup>127</sup> American Apparel & Footwear Association (113).

items such as comforters, drapes, etc.<sup>128</sup>

Four comments favored imposing additional obligations under the Rule other than labeling. One urged the establishment of an electronic database for reporting insufficient or incorrect labeling so consumers can research problems.<sup>129</sup> Another urged the Commission to add provisions holding manufacturers accountable to individual consumers for inappropriate care instructions.<sup>130</sup> A third advocated providing that a consumer can return a failed garment to the place of purchase for a refund, that the place of purchase must keep a record of the garment, and that the point of sale vendor will be able to get refunds from its vendor.<sup>131</sup> A fourth urged the creation of guidelines for specific solvent characteristics, such as KB value, polarity, and water solubility, to allow for easy testing on the manufacturing side and to encourage eco-friendly alternatives on the care side.<sup>132</sup> It added that solvent developers could provide MSDS sheets (material safety data sheets) and publicly-available materials for ease of use by manufacturers, dry-cleaners and consumers.<sup>133</sup>

Finally, several comments argued that the Rule should not require multiple language disclosures.<sup>134</sup> One stated that labels should be only in English, and another stated that English

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<sup>128</sup> Kudler (72).

<sup>129</sup> Bosshard (13).

<sup>130</sup> NCA and DLI (124).

<sup>131</sup> Sabo (23).

<sup>132</sup> White (15).

<sup>133</sup> *Id.*

<sup>134</sup> One commenter, a consumer who does not indicate any affiliation with an organization, stated that she does not like having so many language translations. Charles (3).

is the only language needed on labels.<sup>135</sup> One added that English is a must but other languages can be an option.<sup>136</sup> Another argued that labels for clothes to be purchased in the United States should be in English, and for clothes available for purchase in multiple countries, the label should be in multiple languages.<sup>137</sup> Yet another stated that labels should be in English and that symbols should eliminate the need for additional languages.<sup>138</sup> Another argued that the label should be in English with internationally-accepted symbols and that those cleaners who do not speak or read English well should contact their own association for a translation of the international symbols.<sup>139</sup> None of the comments proposed amending the Rule to address the format for presenting care instructions in more than one language, other than to note that using symbols would address problems stemming from disclosures in multiple languages.<sup>140</sup>

### **III. THE COMMISSION RETAINS THE RULE**

The record shows wide support for the Rule from all the major industries affected by its provisions as well as from consumers. Among other things, comments supporting the Rule explained that it benefits consumers, manufacturers, and businesses in general and provides valuable guidance on care to consumers and the fabricare industry.

Two comments opposing the Rule, one filed by GINETEX and the other by a retailer,

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<sup>135</sup> Branfuhr (42) and Childers (49).

<sup>136</sup> Maknojia (87).

<sup>137</sup> Vlasits (6).

<sup>138</sup> Hurley (60).

<sup>139</sup> Thorsteinson (45).

<sup>140</sup> American Apparel & Footwear Association (113) and Hurley (60).

failed to provide any tangible evidence to support their assertions.<sup>141</sup> There is no evidence in the record showing that a voluntary scheme would work better than the Rule, that the ASTM care symbols permitted by the Rule create an unnecessary obstacle to international trade, or that the time and effort spent on the labels required by the Rule do not serve the goal of educating consumers about how to care for their garments.

In light of the many stakeholder comments expressing support for the Rule, the Commission concludes that a continuing need exists for the Rule and that the Rule imposes reasonable costs on the industry. The Commission therefore concludes that the weight of the record evidence clearly supports retention of the Rule.

#### **IV. PROPOSED AMENDMENTS**

Many of the comments supporting the Rule also advocated various amendments. Accordingly, based on the comments and the evidence discussed herein, the Commission proposes to amend the Rule in the following four ways.<sup>142</sup> First, the Commission proposes to permit manufacturers and importers to provide a care instruction for professional wetcleaning on labels if the garment can be professionally wetcleaned. Second, the Commission proposes to permit manufacturers and importers to use the symbol system set forth in either ASTM Standard

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<sup>141</sup> See footnote 20 for more details about these comments.

<sup>142</sup> The Commission can issue a NPRM under the FTC Act if it has “reason to believe that the unfair or deceptive acts or practices which are the subject of the proposed rulemaking are prevalent.” 15 U.S.C. 57a(b)(3). The Commission can find “unfair or deceptive acts or practices are prevalent” where: “(A) it has issued cease and desist orders regarding such acts or practices, or (B) any other information available to the Commission indicates a widespread pattern of unfair or deceptive acts or practices.” *Id.* at 57a(b)(3)(A)-(B). The Commission has “wide latitude” in fashioning a remedy and need only show a “reasonable relationship” between the unfair or deceptive act or practice and the remedy. *American Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 988 (D.C. Cir. 1985) (quoting *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 612-13 (1946)).

D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” or ISO 3758:2005(E), “Textiles — Care labelling code using symbols.” Third, the Commission proposes to clarify what constitutes a reasonable basis for care instructions. Finally, the Commission proposes to update the definition of “dryclean” to reflect current practices and technology.<sup>143</sup>

A. Professional Wetcleaning

As noted above, in 2000, the Commission declined to amend the Rule to permit a “Professionally Wetclean” instruction on labels. The Commission stated that it would consider permitting such an instruction if a more specific definition and/or test procedure were developed that provided manufacturers with a reasonable basis for a wetcleaning instruction.<sup>144</sup> The Commission explained at the time that it was premature to permit such an instruction due to the absence of a suitable definition and appropriate test method.

The record now shows that these conditions have been met. ISO has developed ISO 3175-4:2003, “Textiles – Professional care, drycleaning and wetcleaning of fabrics and garments – Part 4: Procedure for testing performance when cleaning and finishing using simulated wetcleaning.” This standard includes a definition of wetcleaning and test procedures for determining whether apparel can be wetcleaned professionally. Several comments favoring a wetcleaning instruction cited this standard approvingly.<sup>145</sup> None of the comments argued that

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<sup>143</sup> The Commission also proposes to delete the words “As Amended” from the Rule’s title. These words do not serve any purpose, and none of the other titles of Commission rules that have been amended include these words.

<sup>144</sup> *Federal Trade Commission: Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, Final Amended Rule*, 65 FR 47261, 47273 (Aug. 2, 2000).

<sup>145</sup> UCLA Sustainable Technology & Policy Program (84); Toxic Use Reduction Institute (86); and Riggs (53).

the ISO standard is inadequate.<sup>146</sup>

As described in Section II.A, the record shows widespread support for amending the Rule to include professional wetcleaning. Many comments explained the economic, environmental, and health benefits of wetcleaning. They also noted the increasing industry acceptance and use of wetcleaning, the inclusion of wetcleaning symbols in both the ASTM and ISO care symbol systems, and the risk that failing to allow an instruction could place wetcleaners at a disadvantage, thereby discouraging its use despite its advantages. The increasing industry acceptance and use of wetcleaning and the inclusion of wetcleaning symbols in both the ASTM and ISO systems establish the prevalence of wetcleaning. Only three comments expressed reservations, and none of them provided evidence that amending the Rule would harm consumers or that the cost of doing so would exceed the benefits.

While the record supports permitting a professional wetcleaning instruction, it does not warrant requiring such an instruction. None of the comments provided evidence that the absence of a wetcleaning instruction for products that can be wetcleaned would result in deception or unfairness under the FTC Act. Nor did they provide evidence that the benefits of requiring a wetcleaning instruction would exceed the costs such a requirement would impose on manufacturers and importers.<sup>147</sup> Thus, the Commission declines to propose amending the Rule

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<sup>146</sup> The standard ISO 3758:2005(E), “Textiles — Care labelling code using symbols” also defines wetcleaning.

<sup>147</sup> Also, the comments stating that the benefits of requiring a wetcleaning instruction would exceed the added testing and labeling costs were not submitted by entities that would purportedly incur the added costs that would result if the Commission amends the Rule to require a wetcleaning instruction. *See* UCLA Sustainable Technology & Policy Program (84); NCA and DLI (124); and Riggs (53).

to require a wetcleaning instruction. If consumers prefer wetcleaning to drycleaning and make their purchase decisions accordingly, manufacturers and importers will have an incentive to provide a wetcleaning instruction either in addition to, or in lieu of, a drycleaning instruction. Furthermore, by treating drycleaning and wetcleaning in a similar fashion — as care procedures that manufacturers and importers can disclose to comply with the Rule — the Rule as proposed would help level the playing field for the drycleaning and wetcleaning industries.

Based on this record, the Commission concludes that permitting a professional wetcleaning instruction would provide consumers with useful information regarding the care of the apparel they purchase. Therefore, the Commission proposes adding a definition of “wetclean” based on the definition of “professional wet cleaning” set forth in ISO 3758:2005(E). Specifically, proposed section 423.1(h) would state that “wetclean” means a commercial process for cleaning products or specimens in water carried out by professionals using special technology (cleaning, rinsing, and spinning), detergents, and additives to minimize adverse effects, followed by appropriate drying and restorative finishing procedures.

This definition closely tracks the definition in a widely-used international standard cited approvingly in comments. Thus, the Commission concludes that the definition would provide manufacturers and importers with sufficient guidance to distinguish wetcleaning from other cleaning processes, thereby helping them to determine whether they have enough evidence to provide a wetcleaning instruction or a warning not to wetclean, if they choose to do so. The Commission also proposes to amend Appendix A by including this definition as set forth in the proposed amendment in the last section of this Notice of Proposed Rulemaking.

In addition to defining “wetclean,” the Commission proposes amending section 423.6(b)

to add a wetcleaning subsection, as set forth in the proposed amendment in the last section of this Notice of Proposed Rulemaking. To harmonize with international standards, the proposed subsection states that any wetcleaning instruction must indicate whether to use a normal, mild or very mild process and disclose fiber content if needed to select the appropriate wetcleaning process. These amendments bring the Rule in line with both the ASTM and ISO symbol systems, and ISO 3758:2005(E)'s fiber disclosure.

This proposed amendment would not impose any new obligations on manufacturers or importers. They could choose to provide a wetcleaning instruction if they have a reasonable basis for it and wish to do so. They also could provide a different instruction, such as a drycleaning or washing instruction.

The proposal, however, would require manufacturers and importers currently labeling items with a "dryclean only" instruction either to substantiate that wetcleaning is an inappropriate method of care or to revise their labels. Revised labels stating "dryclean" would comply with the Rule. Manufacturers and importers who wished to convey to consumers that home laundering would damage the garment could, if they wished, label the garment as "dryclean/do not home wash," but would comply with the Rule if they disclosed just the cleaning method (in this example, drycleaning) known to produce safe results. Manufacturers and importers could continue to use the "dryclean only" label only if they could substantiate that both home laundering and professional wetcleaning were inappropriate methods for cleaning the garment.

#### B. Use of Care Symbols

The Rule permits manufacturers and importers to use care symbols set forth in ASTM Standard 5489-96c, "Guide to Care Symbols for Care Instructions on Consumer Textile

Products.” Since the Commission last amended the Rule in 2000, ASTM has updated this standard to ASTM D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products.” The Rule currently does not permit the use of this updated, or any other non-ASTM symbol system in lieu of terms.

Nearly all of the comments addressing the issue favored allowing the use of symbols in lieu of terms. Some favored amending the Rule to reference ASTM D5489-07, the most recent version of the ASTM standard, or ASTM D5489 without designating the year so that the Rule would automatically reference the latest version of the standard. Still others favored allowing the use of the symbol system developed by ISO. Several urged the Commission to amend the Rule to harmonize the ASTM symbols permitted by the Rule with those set forth in the ISO standard or to allow manufacturers and importers to use either symbol system. None of the comments expressed a preference for the ASTM symbol system currently referenced in the Rule. Nor did any of the comments oppose the harmonization of the ASTM and ISO symbols.

The record supports: (1) continuing to allow the use of ASTM care symbols in lieu of terms, (2) updating the Rule to reference the 2007 version of the ASTM standard, and (3) permitting the use of the ASTM and ISO symbols. The Commission concludes that permitting the use of the symbol system in either the updated ASTM standard, ASTM D5489-07, or ISO 3758:2005(E) would ensure that manufacturers and importers that choose to use symbols in lieu of terms will use them consistent with the latest industry standards.<sup>148</sup> It also would provide

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<sup>148</sup> Manufacturers would need to purchase and follow only one of the two standards to disclose care instructions using symbols, thereby reducing compliance costs. *E.g.*, manufacturers already using ISO symbols in lieu of written terms would not need to incur the expense of adding ASTM symbols or written terms to their labels so that they can market their garments in the United States.

them with the flexibility to use either symbol system, resulting in less cluttered labels if manufacturers opt to use one set of symbols.<sup>149</sup>

Because the ASTM and ISO symbol systems are not identical, consumers may need to know which system appears on the label so that they can ascertain or confirm the meaning of a particular symbol. Furthermore, permitting the use of two symbol systems could increase the risk of consumer confusion. Therefore, the Commission proposes requiring that manufacturers or importers opting to disclose care instructions using the ISO symbols disclose that they are using ISO symbols. The Commission does not propose requiring a similar disclosure on labels using the ASTM symbols because the Rule already permits the use of ASTM symbols without requiring any such disclosure. For example, consumers might have a greater familiarity with the ASTM symbols than with the ISO symbols because the Rule started permitting them in 1997. On the other hand, that may not be the case. The Commission seeks comment on this issue, including on the extent to which care labels currently include ASTM and ISO symbols.

Permitting the use of either symbol system should not confuse or deceive consumers because the symbol systems are nearly identical. Although the ASTM system includes more symbols than the ISO system,<sup>150</sup> the two systems use virtually identical symbols for washing,

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<sup>149</sup> Both the ASTM and ISO standards are subject to copyrights and can be purchased from the organizations that issued them. In addition, the ISO symbols are protected by trademarks and their use is dependent on a contract with GINETEX. See [www.ginetex.net](http://www.ginetex.net). Consumers can find the symbols and explanations of their meaning on the Internet, including the ISO symbols on the GINETEX website and the currently approved ASTM symbols on the FTC website at <http://www.ftc.gov/opa/1996/12/label.pdf>. Consumers can find the professional care symbols in the 2007 version of the ASTM standard on page three of the GreenEarth comment (mistakenly described as the “current FTC Symbol Chart”) located at <http://www.ftc.gov/os/comments/carelabelinganpr/00098-80529.pdf>.

<sup>150</sup> *E.g.*, the ISO system has fewer symbols for drying. ISO has normal and low temperature

bleaching, and professional care such as drycleaning and wetcleaning. Manufacturers and importers that prefer to use the ISO system can supplement the ISO symbols with written instructions as appropriate. Both symbol systems lack symbols for certain instructions and acknowledge the need to supplement their symbols with written instructions as appropriate.<sup>151</sup>

Although the two systems differ slightly with respect to drying and ironing symbols, the differences do not appear substantial. ASTM has more symbols for drying, and the ASTM symbol for medium temperature drying means normal temperature drying in the ISO system. The ASTM system includes a “no steam” symbol for ironing while the ISO symbol for low heat, unlike the ASTM symbol for low heat, indicates that steam ironing may cause irreversible damage. If a manufacturer or importer concludes that one of the systems has symbols that more effectively convey the proper care instructions, it can choose to use that system.<sup>152</sup>

The Commission notes that the meaning of one ASTM drycleaning symbol changed significantly in the revised ASTM standard. The old symbol, a circle with the letter “P” inside, means dryclean with any solvent except perc. Under the revised standard, the symbol means dryclean with perc or petroleum. Although potentially confusing, this change does not seem likely to harm consumers who understand the meaning of the symbol at the time they purchase

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symbols while ASTM has symbols for any heat, high, medium, low, and no heat/air.

<sup>151</sup> *E.g.*, both the ASTM and ISO systems list written instructions, including “wash separately” and “remove promptly.”

<sup>152</sup> *E.g.*, if a manufacturer or importer determines that it needs to use one of the ASTM drying symbols not available in the ISO system to convey drying instructions properly, it can opt to use the ASTM symbol system. If both systems have a drying symbol that suffices, it can opt to use either system.

the product.<sup>153</sup>

However, even if consumers understand the symbol at the time of purchase, confusion could result with respect to: (1) products labeled before, but sold after, the symbol system change; and (2) situations where the consumer does not remember whether he or she purchased the product before or after the symbol change. The change in the symbol's meaning could also cause confusion if drycleaners do not know whether the garment was labeled before the change. Of course, notwithstanding the change in symbol meaning, consumers and drycleaners can avoid any risk of using an inappropriate solvent by using petroleum rather than perc to dryclean the product (under both the old and new meaning, the symbol indicates that petroleum can be used). The Commission seeks comment on these issues.

As explained above, a comment from GreenEarth urged the Commission to replace the ASTM and ISO symbols with new symbols based on a solvent's aggressiveness rather than type.<sup>154</sup> GreenEarth did not submit any evidence on consumer perception of its proposed symbols or establish that any resulting benefits would exceed the cost to business.<sup>155</sup> Moreover, none of the other comments proposed anything similar to GreenEarth's proposal. The record, therefore, does not indicate that GreenEarth's approach to care instructions would be superior to

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<sup>153</sup> As noted in footnote 149, consumers can find the symbols and explanations of their meaning on the Internet.

<sup>154</sup> GreenEarth's arguments and proposal are summarized in Section II.C.

<sup>155</sup> GreenEarth argued that its proposal would encourage the substitution of less aggressive solvents for more aggressive ones in the cleaning process, thereby measurably reducing claims for damaged garments. However, it did not address whether its proposal would increase the cost of providing care instructions or submit any evidence showing that its proposal would actually reduce the use of more aggressive solvents.

the current one. Moreover, it would represent a significant departure from the symbol system currently permitted by the Rule as well as from the updated ASTM and ISO symbol systems widely used by apparel manufacturers and importers and favored by nearly all of the other comments that addressed the use of symbols. Therefore, the Commission declines to adopt GreenEarth's proposal.<sup>156</sup>

Finally, Section 423.8(g) states that, for the 18-month period beginning on July 1, 1997, symbols may be used in lieu of terms only if an explanation of the symbols is attached to, or provided with, the product. This provision has expired; therefore, the Commission proposes to remove it from the Rule.

To implement the revisions described above, the Commission proposes amending Section 423.8(g) as set forth in the proposed amendment in the last section of this Notice of Proposed Rulemaking.

One of the comments urged the Commission to update the Rule by referring to the ASTM standard without identifying the year or version of the standard. The comment argued that, if the Commission amended the Rule in this way, the Rule would always incorporate the most recent ASTM standard. The Commission declines to follow this approach because it would, in effect, grant ASTM the power to revise a Commission Rule. If ASTM revises the standard, the Commission can consider whether to revise the Rule to incorporate the revised standard. Any interested party can petition the Commission to amend the Rule at any time, particularly if the failure to incorporate the revised standard would have an adverse effect on consumers or

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<sup>156</sup> GreenEarth may wish to submit its proposal to ASTM and ISO for their consideration if it has not already done so.

commerce.<sup>157</sup>

C. Clarification of Reasonable Basis Requirements

As noted above, the Rule requires that manufacturers and importers possess a reasonable basis for the care instructions they provide prior to sale. Under the Rule, a reasonable basis must consist of reliable evidence supporting the instructions on the label.<sup>158</sup> Specifically, a reasonable basis can consist of: (1) reliable evidence that the product was not harmed when cleaned reasonably often according to the instructions; (2) reliable evidence that the product or a fair sample of the product was harmed when cleaned by methods warned against on the label; (3) reliable evidence, like that described in (1) or (2), for each component part of the product in conjunction with reliable evidence for the garment as a whole; (4) reliable evidence that the product or a fair sample of the product was successfully tested; (5) reliable evidence of current technical literature, past experience, or industry expertise supporting the care information on the label; or (6) other reliable evidence.<sup>159</sup>

Several comments summarized in Section II.C above urged the Commission to impose more rigorous testing requirements or to clarify the Rule's reasonable basis requirements. These comments explained that some manufacturers and importers appear not to understand the Rule's reasonable basis requirements. No comment provided specific suggestions.

The record is devoid of evidence showing that any manufacturers or importers improperly relied on evidence other than testing, that particular testing was inadequate or flawed,

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<sup>157</sup> See 16 CFR 1.9.

<sup>158</sup> 16 CFR 423.6(c).

<sup>159</sup> *Id.*

or that the benefits of requiring additional or more rigorous testing to ensure better care instructions would exceed the costs to manufacturers and importers. The mere assertion that some manufacturers or importers violate the Rule does not prove that the Commission needs to amend the Rule. Therefore, the Commission declines to propose more rigorous testing requirements.

However, the comments suggest a need to clarify the Rule's reasonable basis requirements to aid compliance without increasing or decreasing the burden imposed on industry. Specifically, providing examples of situations where testing an entire garment may be needed to determine care instructions, as well as examples where such testing is not needed, may help clarify the Rule's requirements. Accordingly, the Commission proposes to incorporate advice from its business education materials and include examples in Section 423.6(c)(3) and (5) as set forth in the proposed amendment in the last section of this Notice of Proposed Rulemaking.

Because the Commission does not intend to impose new requirements on manufacturers or importers, it views these proposed revisions as non-substantive.<sup>160</sup> Nonetheless, the Commission seeks comment regarding whether these proposed additions would be helpful and whether the Commission should provide any additional clarification.

#### D. Revised Definition of Dryclean

Several comments urged the Commission to update and expand the Rule's definition of "dryclean" to include new solvents in the list of examples and to cover solvents that are not

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<sup>160</sup> The Commission also proposes to correct an error in Section 423.6(c) by replacing the word "processing" with "possessing."

organically-based. One comment noted the introduction of new solvents over the last 25 years, such as high flash hydrocarbons, silicones, glycol ethers, carbon dioxide, and aldehydes. It also explained that one solvent listed in the definition, fluorocarbon, is no longer used, and that not all solvents are organically-based. Additionally, several comments argued that the definition discourages the use of solvents not recognized by the Rule and, therefore, risks curtailing technological advancement.

The record shows that the Commission needs to modernize the Rule's definition of "dryclean." Although the definition technically includes all common organic solvents, it only lists three examples, one of which is no longer used. To address the concerns raised by comments, the Commission proposes to broaden the definition to cover any solvent excluding water. In addition, the Commission proposes to drop the reference to fluorocarbon and add new solvents identified in the record to the list of examples. The Commission does not propose to delete perchloroethylene from the list because drycleaners continue to use it and may do so at least until California's ban takes effect in 2023. Accordingly, the Commission proposes amending Section 423.1(c) as set forth in the proposed amendment in the last section of this Notice of Proposed Rulemaking.

The Commission also proposes to amend Appendix A.7.a in the same way and to amend Appendix 7.c to include the solvent examples from the revised definition.

## **V. OTHER AMENDMENTS THE COMMISSION DECLINES TO PROPOSE**

A number of comments proposed amendments to the Rule other than those discussed above. Some suggested that the Commission require manufacturers and importers to disclose all appropriate care procedures. Others proposed requiring additional disclosures, disallowing

certain care instructions, addressing the format or composition of labels, expanding the scope of the Rule, or imposing additional requirements such as making manufacturers or importers accountable to consumers if they provide inaccurate care instructions. One commenter proposed changing the “overarching nomenclature and the guiding principle” behind the Rule to improve the reliability and understandability of care labels. The Commission declines to propose any of these amendments for the reasons explained below. Additionally, the comments did not suggest amending the Rule to address the presentation of instructions in multiple languages, and the Commission declines to propose any amendments addressing this issue.

Several comments from the cleaning industry urged the Commission to require manufacturers and importers to disclose all appropriate methods of care. None of the comments from other affected industries supported this proposal. The Commission issued the Rule to protect consumers from unfair and deceptive trade practices. In issuing the Rule, the Commission determined, based on the record in the proceeding, that it was unfair or deceptive for manufacturers and importers to fail to disclose a regular care procedure necessary for the ordinary use and enjoyment of the product (or to warn the consumer that the product cannot be cleaned without being harmed). It did not conclude that manufacturers and importers must disclose multiple care procedures. None of the comments included evidence demonstrating that the failure to disclose all appropriate care methods would result in deception or unfairness under the FTC Act. Nor did they submit evidence that the benefits of requiring such a disclosure would exceed the costs such a requirement would impose on manufacturers and retailers. The Commission, therefore, has no reason to believe that it is either unfair or deceptive for a manufacturer or importer to fail to disclose all appropriate methods of care.

Similarly, the other comments proposing that the Commission impose additional disclosure or other obligations on manufacturers and importers, summarized in Section II.F above, failed to show that imposing these obligations is necessary to prevent deception or unfairness. Nor did they show that the benefits of the proposals would exceed their costs. Thus, the Commission declines to propose any of these amendments.

Some comments urged the Commission to require manufacturers and importers to disclose fiber content on care labels even though the Commission's Rules and Regulations Under the Textile Fiber Products Identification Act ("Textile Rules") already require disclosure of fiber content.<sup>161</sup> The comments did not provide evidence addressing the need for this amendment or the costs it would impose. While it is true that the Textile Rules do not require this disclosure in a form that can be referred to by the consumer throughout the useful life of the product, the Commission has anecdotal evidence that some manufacturers and importers often include the fiber content disclosure required by the Textile Rules on the same "permanent" label that provides care instructions. In addition, as explained above, the Commission proposes to require that any wetcleaning instruction disclose fiber content if needed to select the appropriate wetcleaning process. The Commission seeks comment on the extent to which care labels already disclose fiber content and the need for fiber content information on "permanent" labels but, at this time, declines to propose amending the Rule to address this issue.

GreenEarth proposed changing the "overarching nomenclature and the guiding principle" behind the Rule to improve the reliability and understandability of care labels (*e.g.*, by replacing instructions such as "dryclean" and "do not dryclean" with simplified categories of "cleaning

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<sup>161</sup> 16 CFR Part 303.

method” and “cycle”).<sup>162</sup> GreenEarth, however, did not submit any evidence on consumer perception of its proposed nomenclature for care instructions or whether the benefits of replacing the Rule’s existing nomenclature and guiding principles would exceed the cost to business.<sup>163</sup> None of the other comments made similar proposals or addressed GreenEarth’s proposal. The record does not establish that GreenEarth’s approach would be superior to the current one. In addition, it would represent a significant departure from the Rule’s longstanding approach to and industry practice for providing care instructions. The Commission, therefore, declines to propose amending the Rule as proposed by GreenEarth.<sup>164</sup>

Finally, the ANPR sought comments on whether the Commission should amend the Rule to address care instructions in multiple languages. None of the comments proposed amending the Rule to address the format for presenting instructions in more than one language, although two comments noted that using or harmonizing symbols would address problems stemming from disclosures in multiple languages. Because none of the comments proposed any amendments directly addressing the presentation of multiple languages on care labels, the Commission declines to propose any amendments on this issue. The Commission, however, seeks additional comment on whether any of the proposed amendments to the Rule affect the need to address this

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<sup>162</sup> See discussion of GreenEarth’s comment in Section II.B.

<sup>163</sup> GreenEarth argued that its proposal would encourage the substitution of less aggressive solvents for more aggressive ones in the cleaning process, thereby measurably reducing claims for damaged garments. However, it did not address whether its proposal would increase the cost of providing care instructions, or submit any evidence showing that its proposal would actually reduce the use of more aggressive solvents.

<sup>164</sup> The Commission rejects GreenEarth’s proposal regarding care symbols for similar reasons. See discussion in Section IV.B.

issue.

## **VI. REQUEST FOR COMMENTS**

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 16, 2012. Write “Care Labeling Rule, 16 CFR Part 423, Project No. R511915” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>.

As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn’t include any sensitive personal information, such as anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn’t include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don’t include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, don’t include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure

explained in FTC Rule 4.9(c), 16 CFR 4.9(c).<sup>165</sup> Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/CareLabelingNPRM>, by following the instruction on the web-based form. If this Notice appears at <http://www.regulations.gov/#!home>, you also may file a comment through that website.

If you file your comment on paper, write "Care Labeling Rule, 16 CFR Part 423, Project No. R511915" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex B), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 16, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

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<sup>165</sup> In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

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

### **Questions**

1. Is there empirical evidence regarding whether consumers interpret a "dryclean" instruction to mean that a garment cannot be washed? If so, please submit such evidence.
2. How many domestic businesses provide professional wetcleaning to the public on a regular basis? To what extent do domestic businesses provide both drycleaning and wetcleaning? What evidence supports your answers?
3. To what extent do consumers have access to and use professional wetcleaning services? To what extent are wetcleaning services widely available geographically? What evidence supports your answers?
4. To what extent are consumers aware of the attributes and availability of professional wetcleaning services? What evidence supports your answer?
5. Assuming the Commission amends the Rule to permit a wetcleaning instruction, should the Commission also amend Section 423.8(d) of the Rule, which exempts

products that can be cleaned safely under the harshest procedures from the requirement of a permanent care label? If so, how? What evidence supports your answer? For example, should the Commission amend this section to add professional wetcleaning to the list of procedures that safely can be used for a product to fall under this exemption?

6. To what extent do drycleaners use solvents other than petroleum and perc? To what extent do they use each of these drycleaning solvents? How do these other solvents compare to perc with respect to performance and environmental effects? To what extent do they use multiple solvents? What evidence supports your answers?
7. To what extent do manufactures and importers disclose fiber content information on labels providing care instructions? What evidence supports your answer?
8. To what extent do manufacturers and importers use care symbols to provide care instructions for garments and piece goods sold in the United States? To what extent do they use symbols alone? To what extent do they use symbols in conjunction with written instructions? To what extent do they use ASTM symbols without using ISO symbols, ISO symbols without using ASTM symbols, or both ASTM and ISO symbols? What evidence supports your answer?
9. Is there empirical evidence regarding the extent to which consumers understand or rely on care symbols or find labels using multiple symbol systems, such as both the ASTM and ISO symbol systems, confusing? If so, please submit such evidence.

10. The meaning of one drycleaning symbol in the ASTM symbol system currently permitted by the Rule, a circle with the letter “P” inside, changed significantly in the revised ASTM symbol system. The currently permitted symbol means dryclean with any solvent except perc. In contrast, the symbol under the revised system means dryclean with perc or petroleum. Should the Commission amend the Rule to address this issue? If so, how? What evidence supports your answer?
11. Do the proposed amendments to the Rule’s reasonable basis provisions clarify them adequately? Is any additional clarification needed? If so, what? If not, why not? What evidence supports your answers?
12. The record did not establish a need to amend the Rule to address care labels in multiple languages. Do any of the proposed amendments to the Rule affect the need to address this issue? If so, how? What evidence supports your answer?
13. Would the following amendments impose costs or confer benefits on consumers? Would they impose costs or confer benefits on apparel and piece good manufacturers and importers, especially small businesses? Would they impose costs or confer benefits on businesses that clean apparel, especially small businesses? Would they impose costs or confer benefits on businesses that sell apparel or piece goods to consumers, especially small businesses? If so, how? If not, why not? What evidence supports your answers?
  - (A) Amending the Rule to permit manufacturers and importers to provide a professional wetcleaning instruction for garments or piece goods that can be professionally wetcleaned;

- (B) Amending the Rule to update the provision allowing the use of certain care symbols in lieu of written terms by permitting manufacturers and importers to use the symbol system set forth in either ASTM Standard D5489-07, "Standard Guide for Care Symbols for Care Instructions on Textile Products," or ISO 3758:2005(E), "Textiles — Care labelling code using symbols";
  - (C) Amending the Rule to clarify the Rule's reasonable basis requirements; and
  - (D) Amending the Rule's definition of "dryclean."
14. General Questions: To maximize the benefits and minimize the costs for buyers and sellers (including specifically small businesses), the Commission seeks views and data on the following general questions for all the proposed changes described in this document:
- (A) What benefits would the proposed changes confer, and on whom?
  - (B) What costs or burdens would the proposed changes impose, and on whom?
  - (C) What regulatory alternatives to the proposed changes are available that would reduce the burdens of the proposed changes while providing the same benefits?

## **VII. COMMUNICATIONS TO COMMISSIONERS AND COMMISSIONER ADVISORS BY OUTSIDE PARTIES**

Pursuant to Commission Rule 1.18(c)(1), the Commission has determined that

communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment. Written communications and summaries or transcripts of oral communications shall be placed on the rulemaking record if the communication is received before the end of the comment period on the staff report. They shall be placed on the public record if the communication is received later. Unless the outside party making an oral communication is a member of Congress, such communications are permitted only if advance notice is published in the Weekly Calendar and Notice of “Sunshine” Meetings.<sup>166</sup>

### **VIII. PRELIMINARY REGULATORY ANALYSIS AND REGULATORY FLEXIBILITY ACT REQUIREMENTS**

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

The proposed amendments provide manufacturers and importers with additional options for disclosing care instructions, clarify the Rule, and update the definition of “dryclean” to reflect current practices and technology, so the proposed amendments would not require manufacturers

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<sup>166</sup> See 15 U.S.C. 57a(i)(2)(A); 16 CFR 1.18(c).

or importers to alter their behavior and would not impose additional costs on them. The Commission, however, requests comment on the economic effects of the proposed amendments.

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601-612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA, 5 U.S.C. 605, provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. The Commission believes that the proposed amendments would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. Specifically, the Commission proposes a few limited amendments designed to provide manufacturers and importers with more options for disclosing care instructions, clarify the Rule, and update the definition of “dryclean.” In the Commission’s view, the proposed amendments should not have a significant or disproportionate impact on the costs of small entities that manufacture or import apparel or piece goods. Therefore, based on available information, the Commission certifies that amending the Rule as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities.

Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes amending the Rule to respond to the development of new technologies, changed commercial practices, and updated industry standards.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to provide manufacturers and importers of apparel and certain piece goods with additional options for disclosing care instructions, clarify the Rule's reasonable basis provisions, and update the definition of "dryclean" to reflect current practices and technology. The Commission promulgated the Rule pursuant to Section 18 of the FTC Act, 15 U.S.C. 57a. As noted earlier, the Commission has wide latitude in fashioning a remedy and need only show a "reasonable relationship" between the unfair or deceptive act at issue and the remedy.<sup>167</sup> The Rule as modified by the proposed amendments would reasonably relate to the practices that led the Commission to promulgate the Rule. It would provide covered entities with additional options for complying with the Rule's disclosure requirements without imposing new burdens or additional costs.

C. Small Entities to Which the Proposed Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, textile apparel and some fabric manufacturers qualify as small businesses if they have 500 or fewer employees. Clothing and piece good wholesalers qualify as small businesses if they have

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<sup>167</sup> *American Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 988 (D.C. Cir. 1985) (quoting *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 612-13 (1946)).

100 or fewer employees. The Commission's staff has estimated that approximately 22,218 manufacturers or importers of textile apparel are covered by the Rule's disclosure requirements.<sup>168</sup> A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendments will not have a significant impact on small businesses because it does not impose any new obligations on them. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, including Classes of Covered Small Entities and Professional Skills needed to Comply

As explained earlier in this document, the proposed amendments will provide apparel manufacturers and importers with additional options for disclosing care instructions, clarify the Rule's reasonable basis requirements, and update the definition of "dryclean" to reflect current practices and technology. The small entities potentially covered by these proposed amendments will include all such entities subject to the Rule. The professional skills necessary for compliance with the Rule as modified by the proposed amendments would include office and administrative support supervisors to determine label content and clerical personnel to draft and obtain labels. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that

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<sup>168</sup> *Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request*, 76 FR 77230 (Dec. 12, 2011).

would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply provide additional options for disclosing care instructions, clarify the Rule's reasonable basis provisions, and update the definition of "dryclean" to reflect current practices and technology. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Rule on small entities. If the comments filed in response to this NPRM identify small entities that would be affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rule. As explained above, the Commission considered a number of alternative amendments advocated by commenters and decided not to propose any of them.

**IX. PAPERWORK REDUCTION ACT**

The Rule contains various "collection of information" (*e.g.*, disclosure) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act

(“PRA”), 44 U.S.C. 3501 *et seq.*<sup>169</sup> As discussed above, the Commission proposes amendments to: (a) clarify the Rule; (b) update the definition of “dryclean” to reflect current technology and practices; and (c) provide manufacturers and importers with added options for disclosing care instructions. These proposed amendments do not impose any additional collection of information requirements. For example, businesses that prefer not to provide a wetcleaning instruction or use symbols need not do so. Depending on the disclosure option selected for disclosing care instructions, the associated PRA burden might even be reduced.

### **List of Subjects in 16 CFR Part 423**

Clothing, Labeling, Textiles, Trade practices.

For the reasons set out in the preamble, the Commission proposes to amend 16 CFR Part 423 as follows:

### **PART 423 -- CARE LABELING OF TEXTILE WEARING APPAREL AND CERTAIN PIECE GOODS**

1. The authority citation for part 423 continues to read as follows:

**Authority:** 15 U.S.C. 57a.

2. Revise the heading of part 423 to read as set forth above.

3. Amend § 423.1 by revising paragraph (c) and adding paragraph (h) to read as follows:

#### **§ 423.1 Definitions.**

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<sup>169</sup> The Commission recently published its PRA burden estimates for the current information collection requirements under the Rule. *See Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request*, 76 FR 77230 (Dec. 12, 2011) and *Federal Trade Commission: Agency Information Collection Activities; Submission for OMB Review; Comment Request*, 77 FR 10744 (Feb. 23, 2012). On March 26, 2012, OMB granted clearance through March 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084-0103.

\* \* \* \* \*

(c) *Dryclean* means a commercial process by which soil is removed from products or specimens in a machine which uses any solvent excluding water (e.g., petroleum, perchloroethylene, silicone, glycol ether, carbon dioxide, or aldehyde). The process also may involve adding moisture to the solvent, up to 75% relative humidity, hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.

\* \* \* \* \*

(h) *Wetclean* means a commercial process for cleaning products or specimens in water carried out by professionals using special technology (cleaning, rinsing, and spinning), detergents, and additives to minimize adverse effects, followed by appropriate drying and restorative finishing procedures.

4. Amend § 423.6 by revising paragraph (b) introductory text, adding paragraph (b)(3), and revising paragraphs (c) introductory text, (c)(3), and (c)(5) to read as follows:

**§ 423.6 Textile wearing apparel.**

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(b) Care labels must state what regular care is needed for the ordinary use of the product. In general, labels for textile wearing apparel must have either a washing instruction, a drycleaning instruction, or a wetcleaning instruction. If a washing instruction is included, it must comply with the requirements set forth in paragraph (b)(1) of this section. If a drycleaning instruction is included, it must comply with the requirements set forth in paragraph (b)(2) of this section. If a wetcleaning instruction is included, it must comply with the requirements set forth

in paragraph (b)(3) of this section. If washing, drycleaning, or wetcleaning can be used, the label need have only one of these instructions. If the product cannot be cleaned by any available cleaning method without being harmed, the label must so state. [For example, if a product would be harmed by washing, drycleaning, and wetcleaning, the label might say, "Do not wash -- do not dryclean or wetclean," or "Cannot be successfully cleaned."] The instructions for washing, drycleaning, and wetcleaning are as follows:

\* \* \* \* \*

(3) *Wetcleaning*—(i) *General*. If a wetcleaning instruction is included on the label, and a mild or very mild process should be used, the label must state the process that must be used. If a normal process will not harm the product, the label need not mention any type of process. If the product's fiber content is needed to determine how to select the appropriate wetcleaning process, the label must state the fiber content.

(ii) *Warnings*. (A) If there is any part of the wetcleaning procedure which consumers or wetcleaners reasonably can be expected to use that would harm the product or others being cleaned with it, the label must contain a warning to this effect. The warning must use the words "Do not," "No," "Only," or some other clear wording.

(B) Warnings are not necessary for any procedure which is an alternative to the procedure prescribed on the label. [For example, if an instruction states "Professionally wetclean, very mild process," it is not necessary to give the warning "Do not use normal process."]

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

\* \* \* \* \*

(3) Reliable evidence, like that described in paragraph (c)(1) or (2) of this section, for each component part of the product in conjunction with reliable evidence for the garment as a whole; provided that test results showing that a whole garment can be cleaned as recommended may be required where, for example:

- (i) The color of one part often bleeds onto another when the finished garment is washed;
- (ii) A dye that is known to bleed, or beads, buttons, or sequins that are known to be damaged often in drycleaning are used; or
- (iii) A garment contains several fibers, fabrics, or components not previously used together; or

\* \* \* \* \*

(5) Reliable evidence of current technical literature, past experience, or industry expertise supporting the care information on the label [For example, if past experience with particular dyes and fabrics indicates that a particular red trim does not bleed onto surrounding fabric, testing the entire garment might not be necessary]; or

\* \* \* \* \*

5. Amend § 423.8 by revising paragraph (g) as follows:

**§ 423.8 Exemptions**

\* \* \* \* \*

(g) The symbol systems developed by ASTM International (ASTM) and designated as ASTM D5489-07, "Standard Guide for Care Symbols for Care Instructions on Textile Products" and by the International Organization for Standardization (ISO) and designated as 3758:2005(E),

“Textiles — Care labelling code using symbols,” may be used on care labels or care instructions in lieu of terms so long as the symbols fulfill the requirements of this part. If the ISO symbols are used, the label should disclose this fact. In addition, symbols from either one of the two symbol systems above may be combined with terms so long as the symbols and terms used fulfill the requirements of this part. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D5489-07, “Standard Guide for Care Symbols for Care Instructions on Textile Products,” may be obtained from ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Copies of ISO 3758:2005(E), “Textiles — Care labelling code using symbols,” may be obtained from American National Standards Institute, 11 West 42<sup>nd</sup> Street, 13<sup>th</sup> Floor, New York, NY 10036. Both ASTM D5489-07 and ISO 3758:2005(E) may be inspected at the Federal Trade Commission, room 130, 600 Pennsylvania Avenue, NW, Washington, D.C. or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

\* \* \* \* \*

6. Amend Appendix A by revising paragraph 7.a and c, and by adding a new paragraph 9.a, to read as follows:

**Appendix A to Part 423—Glossary of Standard Terms**

\* \* \* \* \*

7. *Drycleaning; All Procedures:*

a. “Dryclean”— a commercial process by which soil is removed from products or specimens in a

machine which uses any solvent excluding water (*e.g.*, petroleum, perchloroethylene, silicone, glycol ether, carbon dioxide, or aldehyde). The process also may involve adding moisture to the solvent, up to 75% relative humidity, hot tumble drying up to 160 degrees F (71 degrees C) and restoration by steam press or steam-air finishing.

\* \* \* \* \*

c. "Petroleum," "Perchloroethylene," "Silicone," "Glycol Ether," "Carbon Dioxide," or "Aldehyde"—employ solvent(s) specified to dryclean the item.

\* \* \* \* \*

9. *Professional Wetcleaning:*

a. "Wetclean"— a commercial process for cleaning products or specimens in water carried out by professionals using special technology (cleaning, rinsing, and spinning), detergents, and additives to minimize adverse effects, followed by appropriate drying and restorative finishing procedures.

By direction of the Commission.

Donald S. Clark  
Secretary.

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