

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

The lack of this information can result in substantial injury to consumers in the form of unnecessary expense and/or damage to the environment that the consumer wishes to avoid. Moreover, it can be extremely difficult for consumers to avoid this injury by obtaining the information about washability of an item for themselves. While fiber content can be a guide to washability, other factors—such as the type of dye or finish used—can also determine washability, and consumers have no way of learning what dyes and finishes were used and whether they will survive washing. In addition, it may be that some garments that traditionally have been damaged by washing (e.g., wool business suits) can be cleaned without damage by new methods of professional wet cleaning, but consumers have no way of determining for themselves which of the many garments available to them are now washable.

Accordingly, the Commission seeks comment on whether it should amend the Care Labeling Rule to require a laundering instruction for all covered products for which laundering is appropriate. This amendment would permit optional dry cleaning instructions for such washable items, provided dry cleaning would be an appropriate alternative cleaning method.<sup>30</sup> The amendment would, however, require that manufacturers marketing items with a "Dry Clean" instruction alone be able to substantiate

both that the items could be safely dry cleaned and that home laundering would be inappropriate for them.<sup>31</sup>

The disclosures required by this proposal would inform consumers purchasing washable items that the items could be safely laundered at home. As noted in the comments, this would enable consumers to make a more informed purchasing choice and provide them with the option of saving money by laundering at home instead of incurring the higher expenses of dry cleaning. In addition, consumers who are concerned about reducing the use of PCE will have information about the "washability" of all apparel items they are considering purchasing. Moreover, this proposal would not result in the additional substantiation testing (and increased PCE use) that the comments suggested a "dual disclosure" requirement could necessitate, because a dry cleaning instruction would be optional, as would the necessary substantiation to support it.

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

<sup>31</sup> The Rule currently requires this level of substantiation for a "Dry Clean Only" instruction.

### 3. The Reasonable Basis Requirement of the Rule

#### a. Background

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

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

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

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

<sup>32</sup> *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839 (1984). The Commission issued this statement to "reaffirm[]" its commitment under Section 5 of the FTC Act, 15 U.S.C. § 45, to requiring adequate substantiation for objective advertising claims before they are disseminated.

<sup>29</sup> A Perdue University survey found that 89.3% of the 962 respondents indicated that they would not wash a garment labeled "dryclean." Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule (16 CFR Part 423) (May 1978), p. 141. Other surveys showed similar results. *Id.* at 142–143.

<sup>30</sup> The Commission has learned from several commenters, primarily manufacturers, that requiring both washing and dry clean labels (a "dual disclosure" amendment) would require a dry cleaning instruction on virtually all washable items. According to these commenters, this would necessitate additional testing expenses for manufacturers and a resulting increase in PCE use, to the detriment of human health and the environment. The Commission has no reason to believe at this time that it is either unfair or deceptive for a manufacturer or importer to fail to reveal that a garment labeled for washing can also be dry cleaned. The comments also indicate that most consumers would not want to spend the additional money necessary to dry clean such items.