

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

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

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

Several commenters recommended clarifying the Rule by specifying the circumstances in which a manufacturer or importer must possess test results or another specific type of evidence to establish a reasonable basis.³⁹ One

commenter said that testing might not always be required and suggested that the Rule should specify different types of required evidence for different circumstances.⁴⁰ This commenter stressed, however, that the Rule should require a reasonable basis for a garment in its finished state, noting that the current Rule suggests that it is satisfactory to have reliable evidence "for each component part" of a garment.⁴¹ Another Commenter suggested that the Rule should set out performance standards for certain properties of garments (e.g., dimensional stability and colorfastness) and should identify both testing methodologies and evaluation criteria for those properties.⁴²

b. Objectives and Regulatory Alternatives

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

If the Commission decides to amend the reasonable basis standard, one

option is to indicate in the Rule that whether one or more of the types of evidence described in Section 423.6(c) constitutes a reasonable basis for care labeling instructions depends on the factors set forth in the FTC Policy Statement Regarding Advertising Substantiation.⁴³ Another option, as reflected in Question 9 of the FRN, is to require in the Rule that cleaning directions for certain garments, fabrics or materials will comply with the Rule only if they are supported by the results of appropriately designed and conducted scientific tests recognized by experts in the field as probative of whether the item can be cleaned as directed without damage. The Commission also seeks comment on whether, if testing is required under certain circumstances, the Rule should specify particular testing methodologies to be used.

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

Part C—Request for Comments

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

Questions

A. Definitions of Water Temperatures in the Appendix

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

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

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

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

³⁶ J.C. Penney (70) p.3.

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

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

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

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

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

⁴² Industry Canada (37) p.2.

⁴³ In the Statement, the Commission set forth criteria to consider in establishing the minimum required basis for objective advertising claims, where no specific basis was stated or implied: "These factors include: the type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable." *FTC Policy Statement Regarding Advertising Substantiation*, 104 F.T.C. 839, 840 (1984).