

Dated: November 27, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

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BILLING CODE 6210-01-P

FEDERAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY: Federal Trade Commission.

TIME AND DATE: 10 a.m., Tuesday, January 7, 2003.

PLACE: Federal Trade Commission Building, Room 532, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Part of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: *Portion Open to the Public:* (1) Oral Argument in Schering-Plough Corporation *et al.*, Docket 9297.

Portion Closed to Public: (2) Executive Session to follow Oral Argument in Schering-Plough Corporation, *et al.*, Docket 9297.

FOR FURTHER INFORMATION CONTACT: Mitch Katz, Office of Public Affairs: (202) 326-2180. Recorded Message: (202) 326-2711.

Donald S. Clark,
Secretary.

[FR Doc. 02-30651 Filed 11-27-02; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL TRADE COMMISSION

Notice and Request for Comment Regarding Textile Corporate Leniency Policy

AGENCY: Federal Trade Commission.

ACTION: Notice of Textile Corporate Leniency Policy Statement and request for comment.

SUMMARY: The Federal Trade Commission (the "Commission") is announcing a policy statement describing the Commission's approach to self-reported minor and inadvertent violations of certain provisions of the rules and regulations implementing the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. section 70, *et seq.*, and the Wool Products Labeling Act ("Wool Act"), 15 U.S.C. section 68, *et seq.* Although this policy is already in effect, the Commission is soliciting comments about this policy from interested persons. If, after considering any comments, the Commission determines to revise the policy, it will publish a revised policy statement.

DATES: The policy statement is effective on December 2, 2002. Comments must be received by December 31, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H-159, 600 Pennsylvania Ave. NW., Washington, DC 20580. All comments should be captioned "Textile Corporate Leniency Comments." Comments in electronic form should be sent to: textilecorporateleniency@ftc.gov as prescribed below.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, Federal Trade Commission, 600 Pennsylvania Ave., NW., Washington, DC 20580, (202) 326-2966, or cvecellio@ftc.gov.

SUPPLEMENTARY INFORMATION: This policy statement discusses how the Commission expects to consider mitigating factors in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. This policy statement provides guidance and information only, and does not create any rights, duties, obligations, or defenses, implied or otherwise. The Commission specifically retains its discretion for determining how to proceed in particular cases.

As noted above, the Commission is soliciting comments about this policy from interested persons. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box:

textilecorporateleniency@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR section 4.9(b)(6)(ii), on normal business days between the hours of 8:30 a.m. and 5 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

I. Introduction

The Commission is announcing a policy statement that describes generally how the Commission will exercise its discretion in matters where minor and inadvertent violations of the Textile or Wool Rules are self-reported by a company. The purpose of the policy is to help increase overall compliance with these rules while also minimizing the burden on business of

inadvertent labeling errors that are not likely to cause injury to consumers. In developing this policy, the Commission looked for guidance to its existing Civil Penalty Leniency Program, 62 FR 16809 (April 8, 1997). That program was adopted under Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. No. 104-21) ("SBREFA"), and affects only small businesses. This Textile Corporate Leniency Policy is not limited to small businesses, and it differs from the Civil Penalty Leniency Program in that it is not limited to situations involving the assessment of civil penalties.

II. Background

A. Statutory Disclosure/Labeling Requirements

The Textile and Wool Acts cover most textile products, including apparel and home furnishings such as sheets and towels. They require that labeling of wool and other textile products convey three basic pieces of information to consumers: the fiber content, the country of origin, and the name (or registered identification number) of the manufacturer, importer, or some other dealer responsible for the item. The Textile and Wool Rules promulgated by the Commission explain in detail how this information should be conveyed, and these requirements have been well publicized through "how to comply" guides and industry seminars. The industry, however, is very large, and many of its members are small businesses. About 17.7 billion textiles were sold in the United States in 2001, and about 34,000 companies participated in the manufacture, importation, and sale of these items. Accordingly, it is not surprising that minor violations regularly occur.

B. Enforcement Authority and History

The Textile and Wool Acts provide that violations of those acts, or of the implementing Textile or Wool Rules, are violations of the Federal Trade Commission Act.¹ Violations of the Textile or Wool Rules can be prosecuted administratively or in district court. In addition, pursuant to section 5(l) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45(l), violation of a Commission administrative order can result in a federal court action, with civil penalties of up to \$11,000 per violation. The Commission also can seek penalties in appropriate situations under section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B). Under this section, a company that engages in a

¹ Section 3 of the Textile Act, 15 U.S.C. 70a; Section 3 of the Wool Act, 15 U.S.C. 68a.

practice that the Commission has found to be unfair or deceptive in a prior decision also can be subject to civil penalties of up to \$11,000 per violation. Thus, in appropriate instances, the Commission can seek civil penalties in federal court, even when the party is not subject to a prior order.

There have been 31 Textile or Wool Act cases since 1990—nine of them federal court actions with civil penalties ranging from \$10,000 to \$360,000. One of these cases was a criminal action. (Under both the Textile and Wool Acts, willful acts of mislabeling can be charged as a misdemeanor.)

C. Current Informal Policy for Self-Reported Violations

For many years, the staff of the Commission has been receiving reports from businesses about minor mislabeling problems and requests for advice on how to handle them. The staff has advised that it would not recommend enforcement action if the mislabeled goods are sold without relabeling under the following conditions: “first offense” of this type for the company; the mislabeling was inadvertent; the mislabeling is not likely to lead to consumer injury; and the company has undertaken to institute new procedures to ensure the mislabeling will not occur again. The Commission staff tells the company that its decision does not bind the Commission, and asks the company to affirm that it understands that the Commission remains free to take whatever action it deems appropriate and that the staff is making its decision not to recommend action on a one-time basis only. In many of these cases, the cost of relabeling is prohibitive, and the goods would be destroyed if they could not enter commerce without being relabeled.

The following is a list of the types of mislabeling that have been reported to the Commission staff and have resulted in advice from the Commission staff that it would not recommend enforcement action if the goods were sold without relabeling:

- Label with required information is accessible but not immediately obvious (e.g., covered by another label that may be lifted up).
- Fiber content is correct but constituent fibers are not listed in order of prominence (e.g., 20% polyester, 80% cotton instead of 80% cotton, 20% polyester).
- A trade name is used to identify the fiber rather than the generic name (e.g., lycra rather than spandex).

- A shortened form of the generic name is used (e.g., “poly” is listed rather than polyester).
 - Label contains country of origin but is not in the neck of the garment.
 - The fiber content is slightly incorrect (e.g., 90% nylon, 10% spandex rather than 85% nylon, 15% spandex).²
- In instances such as these, the Commission staff has advised companies that it would not recommend enforcement action. The Commission believes it will be useful to publicly announce this policy, for the benefit of those companies that are not aware that they have the option of self-reporting and seeking a one-time reprieve from the expense of relabeling mislabeled goods.

III. Textile Corporate Leniency Policy

The Commission announces that consideration of the following factors will lead the staff to allow mislabeled textiles to be sold without relabeling:

1. The entity reported the violation to the Commission promptly after discovering it and the violation has not been discovered by the Commission or any other government agency.
2. The entity undertakes, in writing, to adopt procedures that will help ensure that the violation does not occur in the future.
3. The entity has a low degree of culpability. The degree of culpability reflects the efforts taken by the entity to determine and meet its legal obligations.
4. The entity has not been granted leniency under this program in the last three years. In addition, it has not been subject to any previous enforcement action by the Commission or other federal, state, or local law enforcement jurisdiction for the same or similar conduct. Where there have been prior enforcement actions, however, the Commission staff may take into consideration, as possible mitigating factors, when the previous enforcement action occurred, and whether the entity’s management has changed since the previous enforcement action, and other appropriate factors (for example, the use of a new sub-contractor).

5. The entity’s violations did not involve willful or criminal conduct.

6. The violations do not cause significant injury to consumers.

As noted, the Commission looked to its Civil Penalty Leniency Program under SBREFA for guidance. The factors listed above are in most cases identical to, or similar to the factors listed in the SBREFA program. Factor 1 is similar to SBREFA factor 1 except that the Textile

Corporate Leniency Program includes the additional requirement that no other government agency has discovered the violation.³ Factor 2 differs from the second SBREFA factor, which states that the entity “corrected the violation within a reasonable time, if feasible.” Under the Textile Corporate Leniency Policy, however, the entity is allowed to sell the mislabeled goods without correcting the mislabeling, for the reasons stated above, but it must undertake to adopt procedures that will help ensure that the mislabeling does not occur in the future. Factor 3 is identical to factor 3 in the SBREFA program in that the efforts taken by the entity to determine and meet its legal obligations are important in determining culpability. In the SBREFA program, however, efforts to comply with the law “are judged in light of such factors as the size of the business; the sophistication and experience of its owners, officers, and managers; the length of time it has been in operation; the availability of relevant compliance information; the clarity of its legal obligations; and any active attempts to clarify any uncertainties regarding its obligations.” Because a company can have minor and inadvertent violations of the Textile and Wool Rules in spite of its size or sophistication or the other factors listed in the SBREFA statement, the relevant criteria for culpability, or lack thereof, in this program is based on the efforts taken by the entity to determine and meet its legal obligations.

Factor 4 in the SBREFA program—ability to pay the usual civil penalty—is not relevant to this program. Factor 4 in this program is identical to factor 5 in the SBREFA program, except that there is an additional requirement that the entity has not been granted leniency under this program in the last three years. Factor 5 in this program is identical to factor 6 in the SBREFA program, requiring that the conduct not be willful or criminal. Factor 6 in this program is similar to the last factor in the SBREFA program, except that reference to health, safety, and environmental threats has been omitted because the Textile and Wool Rules do not address health, safety, or environmental issues.

The policy announced today is not limited to small businesses because the Commission believes it is a desirable policy for any business, large or small, that meets the criteria described above.

³ In particular, violations of labeling rules discovered by U.S. Customs are not eligible for consideration under this policy. The Commission staff currently cooperates informally with U.S. Customs in assessing the seriousness of labeling violations, and will continue to do so.

² The Textile Act itself provides a 3% tolerance, so variations of less than 3% do not violate the Act.

Nevertheless, the Commission believes it is primarily small businesses that will benefit from the publication of the policy because they, unlike larger businesses, may be unaware that self-reporting and seeking a one-time reprieve from relabeling is an option. For that reason, the Commission has used Section 223 of SBREFA as a model. Section 223 of SBREFA requires that agencies establish policies to reduce or waive penalties for small entities in appropriate circumstances. The primary goal of this provision is to foster a more cooperative, less threatening regulatory environment for small entities. Although the Commission has already established the policies required by SBREFA, it believes that the proposed corporate leniency policy for violations of the Textile and Wool Rules will also foster a more cooperative, less threatening regulatory environment for small entities. In addition, the Commission believes that the informal policy developed by Commission staff has resulted in more compliance with the Textile and Wool Rules because it has encouraged self-reporting of violations and subsequent reform of internal company policies to avoid future violations. The Commission believes that the policy announced today will also result in more compliance with those rules for the same reason.

IV. Request for Comments

Members of the public are invited to comment on any issues or concerns that they believe are relevant or appropriate to the policies described above. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies specific issues on which it solicits public comments. This list is 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) Should the Commission revise in any way the corporate leniency policy that it has announced? (e.g., should the policy be revised to include other possible violations, such as catalog disclosure requirements?) If so, please provide specific suggestions.

(2) How would the revisions affect the benefits provided by the policy?

(3) Are any of the criteria that the Commission has used in establishing the leniency policy inappropriate? If so, please explain.

(4) Are there any other criteria that the Commission should use? If so, please elaborate.

Such comments may be filed until December 31, 2002.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 *et seq.*; 15 U.S.C. 68 *et seq.*; 15 U.S.C. 70 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02-30479 Filed 11-29-02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the Assistant Secretary for Public Health Emergency Preparedness; Office of Public Health and Science; Statement of Organization, Functions and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AA, Immediate Office of the Secretary, Chapter AN, "Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP)"; Chapter AB, Deputy Secretary, Chapter ABC as last amended at 66 FR 40288, dated August 2, 2001; and Chapter AC, the "Office of Public Health and Science (OPHS)" as last amended at 67 FR 48903-48905, dated 7/26/2002; and ACK "Office of the Surgeon General (OSG)," OPHS, as last amended at 60 FR 56606-06, dated November 9, 1995. This organizational change is primarily to realign the functions of the OASPHEP to more clearly delineate responsibilities for the various activities associated with emergency preparedness and response. The changes are as follows:

I. Under Part A, Chapter AN, "Office of the Assistant Secretary for Public Health Emergency Preparedness," delete in its entirety and replace with the following:

Office of the Assistant Secretary for Public Health Emergency Preparedness (AN)

AN.00 Mission

AN.10 Organization

AN.20 Functions

Section AN.00 Mission. On behalf of the Secretary, the Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) directs and coordinates HHS-wide efforts with

respect to preparedness for and response to bioterrorism and other public health emergencies. OASPHEP will direct the National Disaster Medical System (NDMS) and any other emergency response activities within the Department of Health and Human Services that are related to bioterrorism and other public health emergencies. OASPHEP is responsible for ensuring a "One-Department" approach to developing such preparedness and response capabilities and directs and coordinates relevant activities of the OPDIVs.

Section AN.10 Organization. The Office of the Assistant Secretary for Public Health Emergency Preparedness (OASPHEP) is headed by an Assistant Secretary for Public Health Emergency Preparedness (ASPHEP), who reports directly to the Secretary, and includes the following components:

- Immediate Office of the ASPHEP (ANA)
- Office of Research and Development Coordination (ANB)
- Office of Emergency Response (ANC)
- Office of Planning and Emergency Response Coordination (ANE)
- Office of State and Local Preparedness (ANF)

Section AN.20 Functions

1. *Immediate Office of the Assistant Secretary for Public Health and Emergency Preparedness (ANA).* The Immediate Office of the ASPHEP provides executive and administrative direction to OASPHEP components. The ASPHEP is the principal advisor to the Secretary on matters relating to bioterrorism and other public health emergencies. The ASPHEP coordinates interagency interfaces between HHS and other Departments, agencies, offices of the United States and state and local entities with responsibility for emergency preparedness and direct activities relating to protecting the civilian population from acts of bioterrorism and other public health emergencies. The ASPHEP provides the necessary leadership and coordinates activities for emergency preparedness matters internal to the Office of the Secretary's components and represents the HHS in working closely with the **Federal Emergency Management Agency** and other Federal departments and agencies. OASPHEP acts as the lead Federal agency for Emergency Support Function #8 within the Federal Response Plan.

2. *Office of Research and Development Coordination (ANB).* The Office of Research and Development Coordination (ORDC) is headed by a Director and is responsible for research