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stated that the T400 fiber is an inherently elastic, manufactured textile fiber consisting of two substantially different forms of polyester fibers. DuPont maintained further that T400 is distinguished from commercially available fibers by a significant and long-lived stretch and recovery characteristic fitting between conventional textured polyesters and spandex.

Contending that the unique structure and characteristics of fibers made from T400 are inadequately described under existing generic names listed in the Textile Rules, DuPont petitioned the Commission to establish a new generic subclass name and definition. After an initial analysis with the assistance of a textile expert, the Commission determined that DuPont's proposed new fiber technically falls within Rule 7(c)'s definition of "polyester."² The Commission further determined, however, that DuPont's application for a new subclass name and definition merited further consideration. Accordingly, on May 21, 2001, the Commission announced that it had issued DuPont the designation "DP 0002" for temporary use in identifying T400 fiber pending a final determination on the merits of the application for a new generic fiber subclass name and definition. The Commission staff further analyzed the application, and on February 15, 2002 (67 FR 7104), the Commission published a Notice of Proposed Rulemaking ("NPR") detailing the technical aspects of DuPont's fiber, and requesting public comment on DuPont's application. On April 19, 2002, the comment period closed.

II. Description of the Fiber and Solicitation of Comments in the NPR

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In the NPR, the Commission solicited comment on whether DuPont's application meets the Commission's criteria for granting applications for new generic fiber subclass names.

The Commission articulated standards for establishing a new generic fiber "subclass" in the proceeding to

Rulemaking." The comments also may be viewed on the Commission's Web site at f

²Rule 7(c) defines "polyester" as "[a] manufactured fiber in which the fiber-forming substance is any long chain synthetic polymer composed of at least 85% by weight of an ester of a substituted aromatic carboxylic acid, including but not restricted to substituted terephthalate units, [formula omitted] and para substituted hydroxybenzoate units, [formula omitted]." 16 CFR 303.7(c).

allow use of the name "lyocell" as an alternative generic description for a specifically defined subcategory of "rayon" fiber, pursuant to 16 CFR 303.7(d). There, the Commission noted that:

Where appropriate, in considering applications for new generic names for fibers that are of the same general chemical composition as those for which a generic name already has been established, rather than of a chemical composition that is radically different, but that have distinctive properties of importance to the general public as a result of a new method of manufacture or their substantially differentiated physical characteristics, such as their fiber structure, the Commission may allow such fiber to be designated in required information disclosures by either its generic name or, alternatively, by its "subclass" name. The Commission will consider this disposition when the distinctive feature or features of the subclass fiber make it suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.³

Thus, a new generic fiber subclass may be appropriate in cases where the proposed subclass fiber: (1) Has the same general chemical composition as an established generic fiber category; (2) has distinctive properties of importance to the general public as a result of a new method of manufacture or substantially differentiated physical characteristics, such as fiber structure; and (3) the distinctive feature(s) make the fiber suitable for uses for which other fibers under the established generic name would not be suited, or would be significantly less well suited.⁴

Within the established 24 generic names for manufactured fibers, there are

³ 60 FR 62352, 62353 (Dec. 6, 1995).

⁴ The criteria for establishing a new generic subcategory are different from the criteria to establish a new generic category. The Commission's criteria for granting applications for new generic names are as follows: (1) The fiber for which a generic name is requested must have a chemical composition radically different from other fibers, and that distinctive chemical composition must result in distinctive physical properties of significance to the general public; (2) the fiber must be in active commercial use or such use must be immediately foreseen; and (3) the granting of the generic name must be of importance to the consuming public at large, rather than to a small group of knowledgeable professionals such as purchasing officers for large Government agencies. The Commission believes it is in the public interest to prevent the proliferation of generic names, and will adhere to a stringent application of these criteria in consideration of any future applications for generic names, and in a systematic review of any generic names previously granted that no longer meet these criteria. The Commission announced these criteria on Dec. 11, 1973, at 38 FR 34112, and later clarified and reaffirmed them on Dec. 6, 1995, 60 FR 62353, on May 23, 1997, 62 FR 28343, on Jan. 6, 1998, 63 FR 447 and 63 FR 449, and on Nov. 17, 2000, 65 FR 69486, on Feb. 15, 2002, 67 FR 7104, and on May 24, 2002, 67 FR 36551.

three cases where such generic name alternatives may be used: (1) Pursuant to Rule 7(d), 16 CFR 303.7(d), within the generic category "rayon," the term "lyocell" may be used as an alternative generic description for a specifically defined subcategory of rayon fiber; (2) pursuant to Rule 7(e), 16 CFR 303.7(e), within the generic category "acetate," the term "triacetate" may be used as an alternative generic description for a specifically defined subcategory of acetate fiber; and (3) pursuant to Rule 7(j), 16 CFR 303.7(j), within the generic category "rubber," the term "lastrile" may be used as an alternative generic description for a specifically defined subcategory of rubber fiber.

Although the Commission's NPR announced that DuPont's fiber technically falls within Rule 7(c)'s definition of polyester, it noted that DuPont's application may meet the Commission's standard for a subclass name. Alternatively, the Commission stated that T400 may fit within the current definition of polyester in Rule 7(c), with or without need for clarification. Therefore, the Commission requested public comment on whether to: (1) Broaden Rule 7(c)'s definition of polyester to better describe the allegedly unique molecular structure and physical characteristics of T400 and any similar fibers (without creating a new subclass for T400); (2) amend Rule 7(c)'s definition of polyester by creating a separate subclass name and definition for T400 and other similar qualifying fibers within the polyester category; or (3) deny DuPont's application because T400 fiber fits within Rule 7(c)'s definition of polyester without need for any change.

1. Fiber Description and Proposed Subclass Name and Definition

The NPR provided a detailed description, taken from DuPont's application, of T400's chemical composition and physical and chemical properties.⁵ As a result of T400's fiber structure, DuPont maintained that T400 has the following distinctive properties that would be significant to consumers: (1) Stretch and recovery power that is far superior to that of any textured fiber, including textured polyesters; (2) the superior stretch and recovery property does not degrade or "sag" over time with normal use and washings,

⁵ 67 FR 7104, at 7105-7109 (Feb. 15, 2002). For brevity's sake, the Commission is providing a simplified description of the fiber in this notice, and refers those who wish to see detailed technical information about the fiber to the earlier description in the NPR.

by amending Rule 7 to incorporate a newly recognized ISO name, as we have done previously. That process does not create the problems that are inherent in amending the Commission's Rules to use the BISFA definition, which conflicts with the FTC's long-established definition of polyester.

¹¹ Accordingly, the revised definition no longer includes an American Society for Testing and Materials ("ASTM") test procedure, as proposed in

⁹ The BISFA definition requires that the fiber-forming polymer be composed of at least 66% by weight of an ester, while Rule 7(c)'s definition of polyester requires at least 85% by weight of an ester.

¹⁰ At the same time, when approved by ISO, the term "multelastester," and its somewhat broader definition, could be recognized by the Commission

provisions of the Regulatory Flexibility Act relating to an initial regulatory analysis, 5 U.S.C. 603-604, did not apply to the proposal because the amendments, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission believed that the proposed amendments would impose no additional obligations, penalties, or costs. The amendments simply would allow covered companies to use a new generic name as an alternative to an existing generic name for that defined