

obtain more useful displays of airline services.

Our proposed rule contains no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

Interested persons may address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Public Law 96-511, 44 U.S.C. Chapter 35.

#### Federalism Assessment

This proposed rule has been reviewed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that this action does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule will not limit the policymaking discretion of the States. Nothing in this proposal would directly preempt any State law or regulation. We are proposing this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. We believe that the policy set forth in this proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. Comments on these conclusions are welcomed and should be submitted to the docket.

#### List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 255 as follows:

#### PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

**Authority:** 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

#### § 255.12. Termination.

The rules in this part terminate on March 31, 2003.

Issued in Washington, DC on February 12, 2002, under authority delegated by 49 CFR 1.56a (h) 2.

**Read C. Van de Water,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 02-3924 Filed 2-13-02; 1:03 pm]

**BILLING CODE 4910-62-P**

### FEDERAL TRADE COMMISSION

#### 16 CFR Part 303

#### Rules and Regulations Under the Textile Fiber Products Identification Act

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Trade Commission ("Commission") solicits comments on whether to amend Rule 7(c) of the Rules and Regulations Under the Textile Fiber Products Identification Act ("Textile Rules"), to establish a new generic fiber subclass name and definition as an alternative to the generic name "polyester" for a specifically proposed subclass of polyester fibers manufactured by E. I. du Pont de Nemours and Company ("DuPont"), of Wilmington, Delaware. DuPont suggested the name "elasterell-p" for the fiber, which it described as an inherently elastic, bicomponent textile fiber consisting of two substantially different forms of polyester fibers, and referred to as "T400."

**DATES:** Comments will be accepted through April 19, 2002.

**ADDRESSES:** Comments should be submitted to: Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., NW, Washington DC 20580. Comments should be identified as "16 CFR part 303—Textile Rule 8 DuPont Comment—P948404."

**FOR FURTHER INFORMATION CONTACT:** Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 326-3038.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Rule 6 of the Textile Rules (16 CFR 303.6) requires manufacturers to use the generic names of the fibers contained in their textile products in making fiber

content disclosures on labels, as required by the Textile Fiber Products Identification Act ("Textile Act"), 15 U.S.C. 70b(b)(1). Rule 7 of the Textile Rules (16 CFR 303.7) sets forth the generic names and definitions that the Commission has established for synthetic fibers. Rule 8 (16 CFR 303.8) describes the procedures for establishing new generic names.

DuPont applied to the Commission on February 5, 2001, for a new polyester fiber subclass name and definition, and supplemented its application with additional information and test data on March 18, 2001, and August 23, 2001.<sup>1</sup> DuPont stated that the T400 fiber is an inherently elastic, bicomponent, manufactured textile fiber consisting of two substantially different forms of polyester fibers. According to DuPont, T400 is distinguished from commercially available fibers by a significant and long-lived stretch and recovery characteristic fitting between conventional textured polyesters and spandex.

As a result of T400's fiber structure, DuPont maintained that T400 has the following distinctive properties: (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, compared to textured fibers, including polyesters; and (3) a softer "silky" feel or "hand" than textured polyester fibers. DuPont asserted that T400 will fill a growing and unmet consumer demand for stretch garments with fibers that can yield quality stretch and recovery without degrading over time like textured polyester fibers. DuPont contends that it would be confusing to consumers if T400 is called simply "polyester."

DuPont, therefore, petitioned the Commission to establish the generic name "elasterell-p" as an alternative to, and a subclass of, "polyester." In addition, DuPont proposed that the Commission add the following sentence to the current definition of polyester in

<sup>1</sup> DuPont's petition and supplements thereto are on the rulemaking record of this proceeding. This material, as well as any comments filed in this proceeding, will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC. Any comments that are filed will be found under the Rules and Regulations Under the Textile Fiber Products Identification Act, 16 CFR part 303, Matter No. P948404, "DuPont Generic Fiber Petition Rulemaking." The comments also may be viewed on the Commission's website at [www.ftc.gov](http://www.ftc.gov).

Rule 7(c) to define T400 and similar fibers as a subclass of polyester:

Where the fiber is a multicomponent and exhibits inherent (not mechanically induced) recoverable stretch of at least 35% upon loading with 185 mg/dtex and unloading to 5.4 mg/dtex when tested in accordance with ASTM test D6720, the term "elasterell-p" may be used as a generic description of the fiber.

The effect of DuPont's proposed amendment would be to allow use of the name "elasterell-p" as an alternative to the generic name "polyester" for the subcategory of polyester fibers meeting the further criteria contained in the sentence added by the proposed amendment.

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."<sup>2</sup> The Commission further determined that DuPont's application for a new subclass name and definition merits 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. A final determination will be based on whether the record in this proceeding indicates that DuPont meets the Commission's criteria for issuing new fiber subclass names and definitions, as described in Part II, below.

## II. Invitation To Comment

The Commission is soliciting comment on DuPont's application generally, and on whether the 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 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.<sup>3</sup>

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.<sup>4</sup>

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

<sup>3</sup> 60 FR 62352, 62353 (Dec. 6, 1995).

<sup>4</sup> 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.

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.

DuPont's application may describe a subclass of generic polyester fibers with distinctive features resulting from physical characteristics of the fiber and its method of manufacture, which meets the above standard for allowing designation by the subclass name "elasterell-p." Alternatively, T400 may fit within the current definition of polyester in Rule 7(c), with or without need for clarification. This notice, therefore, suggests three approaches to resolve the situation, and requests comment from the public on the relative merits of each:

1. Amend Rule 7(c) to broaden its definition for 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 for 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.

In today's notice, the Commission is soliciting comments on all aspects of the appropriateness of DuPont's proposed amendment to Rule 7(c)'s definition of polyester. Although the Commission initially has determined that DuPont's new fiber technically falls within the existing Rule 7(c), 16 CFR 303.7(c), definition of "polyester," the Commission believes it is in the public interest to solicit comments on whether it should amend Rule 7(c) by creating a subclass to recognize T400's characteristics or otherwise. Before deciding whether to amend Rule 7, the Commission will consider any comments submitted to the Secretary of the Commission within the above-mentioned comment period.

## III. DuPont's Petition

### A. T400 Fiber's Chemical Composition

DuPont's petition and supplemental filings described in detail the T400 fiber. The following description is substantially verbatim:

Although each of the two components of T400 has the same chemical composition as polyester, new technology has made it possible for

<sup>2</sup> Rule 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).

DuPont to combine in a bicomponent fiber structure, previously commercialized polyester with another new form of polyester that has not yet been commercialized in the United States. One of these individual components of the new fiber is different from current commercial forms of polyester by one methylene group. T400 also has a molecular structure that is radically different from other polyesters in that it has a substantially different degree of polymerization and associated properties. In addition, T400's fiber structure is different from other polyesters. This differentiated physical characteristic is a helical crimp resulting from the differential shrinkage of two different fibers spun as a

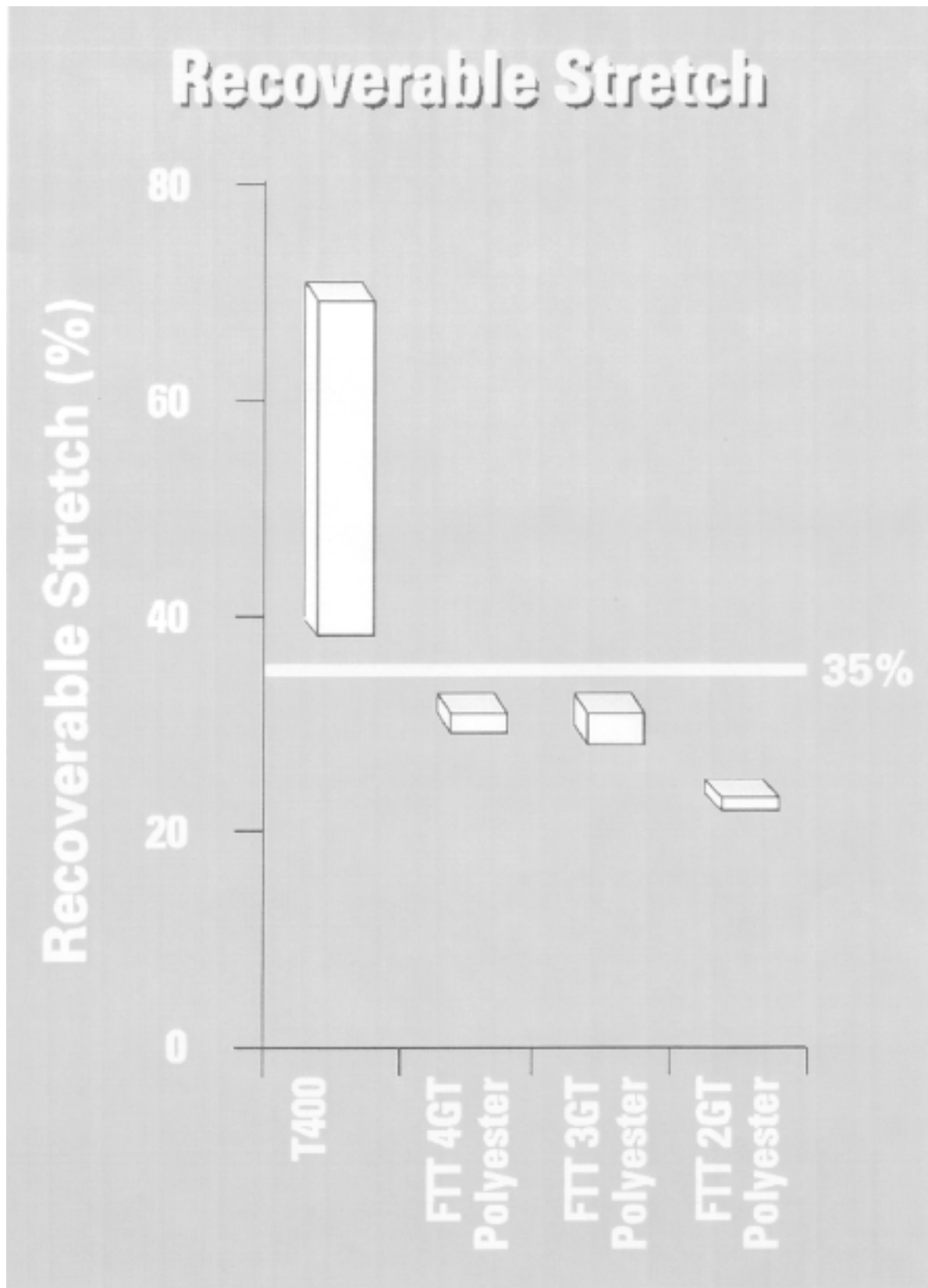
bicomponent, and results in a level of inherent stretch and recovery uncharacteristic of any other polyester. The stretch and recovery is not physically induced and temporary like texturizing, but is inherent in the helical fiber structure, and the stretch recovery power is sustained over time.

*B. T400's Distinctive Properties as a Result of a New Method of Manufacture or Substantially Differentiated Physical Characteristics, Such as Fiber Structure*

DuPont's petition detailed T400's distinctive physical properties. The following items are excerpted nearly verbatim from DuPont's petition and supplements.

1. According to DuPont, the most notable characteristic (and of greatest importance to consumers) of T400 is its stretch and recovery power which is far superior to that of any textured fiber, including textured polyesters. This property is a direct result of the fiber structure of T400. DuPont has compared the stretch and recovery of several false twist textured fibers to T400. The range of recoverable stretch values for T400, which is well above 35%, reflects the fact that DuPont can vary the stretch and recovery of the fiber by adjusting the spinner conditions. The recoverable stretch values for the polyester fibers described as 2GT, 3GT, and 4GT are below 35%.

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DuPont maintains that the ability of a yarn to recover effectively after being stretched is the key to producing quality stretch fabric. Air jet covered (AJC) spandex yarn (40d spandex with 150d polyester) having 9% by weight spandex was used as a yarn to benchmark recoverable stretch performance to

provide quality stretch and recovery. Recoverable stretch measurements on a variety of yarns, including the AJC benchmark yarn, indicated 35% recoverable stretch as a minimum value for producing quality stretch fabrics. AJC spandex is accepted in the trade as the minimum recovery force product for

creating quality stretch fabrics. DuPont compared the recoverable stretch of textured 2GT, textured 4GT, T400 and AJC spandex (9% by weight spandex) fibers using ASTM D6720 and the stretch of fabrics woven from those yarns. Results are summarized in the table below.

Yarn	2GT	4GT	T400	AJC spandex (9%)
Recoverable Stretch (%) .....	21	28	37	38
Woven Fabric Stretch (%) .....	10	9	23	21

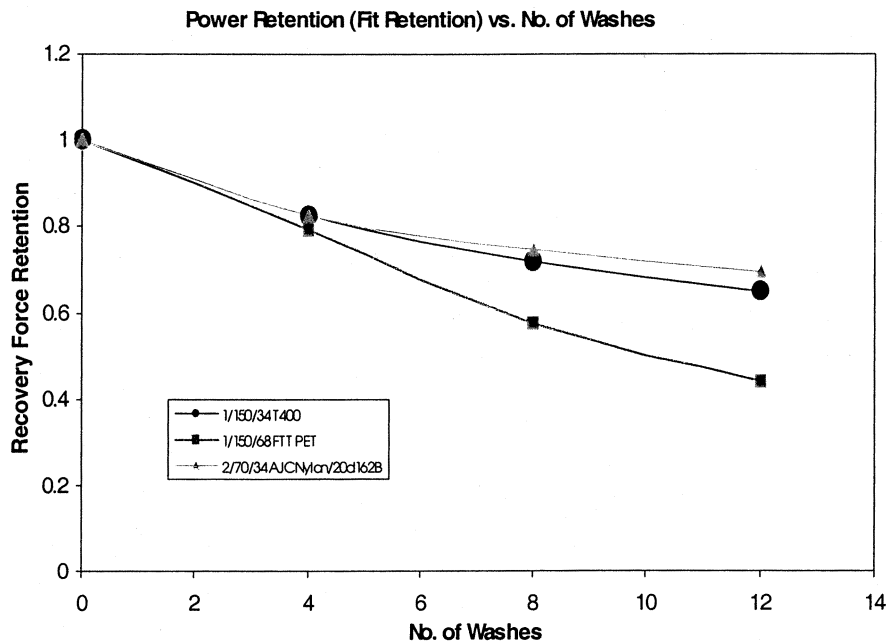
According to DuPont, the data support the conclusions that a yarn having 35% recoverable stretch produces a high quality stretch fabric, while a yarn having a recoverable stretch of 28% does not produce a high quality stretch fabric. DuPont further opined, based on the research it has conducted, that 20% minimum fabric elongation (stretch) is required to insure garment comfort.

2. DuPont further stated that an additional distinctive property of T400

is that its superior stretch and recovery does not degrade over time as compared to textured fibers, including polyesters. DuPont has conducted testing to demonstrate the degradation of stretch and recovery over time due to home laundering. In this test, fabric samples were washed in an automatic washer with 105 degree F (+/- 5 degrees) water, detergent, and one cup of chlorine bleach, and dried at 155 to 160 degrees

F for the number of repetitions indicated.

Similar knit samples of a Lycra spandex and nylon blend (identified as 2/70/34 AJC Nylon/20d 162B), a 15% T400 and combed cotton blend (identified as 1/150/34 T400) and a 15% textured 2GT polyester and combed cotton blend (identified as 1/150/68 FTT PET) were washed repeatedly and tested for stretch and recovery. A chart illustrating the data follows.



According to DuPont, the data show that the stretch and recovery resulting from the inherent stretch from fiber structure, as represented by the spandex and T400 samples, degrade substantially less than does mechanically induced texturizing in rigid fibers after repeated laundering. When the effect of the lower initial power of the textured fabric is considered, the fabric with T400, after 12 washings, still has approximately 100% of the power of the textured fabric

when new. With the same number of washes, the textured fabric has less than 45% of the power of the T400 fabric.

The chart above displays the residual recovery force of three types of knitted fabrics after a series of washings. The initial power, or recovery force, of the three knits measured before they were washed was used as the reference for the data in the chart. This zero wash cycle value was measured as the unload force at 140% elongation on the third

cycle. The zero wash cycle values are as follows:

Sample	0 wash recovery force (gm)
1/150/34 T400 .....	73
1/150/68 FTT PET .....	46
2/70/34 AJC Nylon/20d 162B ...	96

3. The physical properties of T400, 4GT, 3GT, and 2GT polyester fibers are

summarized in the table below. DuPont explained that the uniqueness of T400 is derived from the natural helical coil

imparted by the differential shrinkage of the two polymer components. This polymer choice, combined with

spinning technology, offers the differential shrinkage of the two components.

Fiber properties	T400	4GT	3GT	2GT
Recoverable Stretch .....	37%–68% .....	28% .....	27% .....	21%.
Stress/Strain .....	High Power, stretch.			
Cross-Section .....	Bicomponent non-homogeneous mix of two different polymers.	Irregular, homogeneous polymer.	Irregular, homogeneous polymer.	Irregular, homogeneous polymer.
Crimp .....	Consistent, regular, helical	Irregular .....	Irregular .....	Irregular.
Torque .....	Torque-free .....	Twist-lively .....	Twist-lively .....	Twist-lively.
Heat Set Temperature (F) .....	320–350 .....	360–370 .....	320 .....	350–370.
Dye Temperature (F) .....	212–265 .....	212 .....	212 .....	255–265.
Melting Point (F) measured by DSC.	444 and 484 .....	439 .....	446 .....	487.
Glass Transition Temperature (F) measured by DSC.	149 .....	.....	122 .....	165.
Tenacity (g/d) .....	3.8 .....	2.7 .....	2.6 .....	4.3.
Initial Modulus (g/d) .....	40 .....	18.6 .....	15 .....	48.
Extension @ Break (%) <sup>5</sup> ..	27 .....	37 .....	41 .....	16.5.
Specific Gravity .....	1.36 .....	1.32 .....	1.35 .....	1.39.
Yarn Crimp Extension (%) <sup>6</sup>	275 .....	233 .....	246 .....	213.
Yarn Set (%) <sup>7</sup> .				
2% Elongation .....	1.3 .....	1.8 .....	1.5 .....	1.5.
5% Elongation .....	3.0 .....	4.1 .....	3.7 .....	3.6.
10% Elongation .....	6.2 .....	6.3 .....	6.3 .....	7.1.

4. Dupont maintains that T400's distinctivestretch and recovery properties are of importance to the general public. DuPont stated that it has conducted extensive consumer research to identify the characteristics that consumers want for their clothes and on the appeal of stretch fabrics.<sup>8</sup> According to DuPont, globally, 74% of the population believe that stretch is not a fad, but is here to stay. DuPont contended that the appeal of stretch in garments is very high across age, sex and geographical boundaries. When men and women are asked to identify the value of the functional benefits of Lycra spandex in clothing, approximately 80% of men and women list the following: Comfort, freedom of movement, wrinkle/crease resistance, shape retention, fit, easy care. DuPont contends that consumers equate stretch with comfort, and that this is a

distinctive property of importance to consumers.

*C. T400's Distinctive Feature(s)  
Allegedly Make the Fiber Suitable for  
Uses for Which Other Polyester Fibers  
Would Not Be Suited, or Would Be  
Significantly Less Well Suited*

DuPont asserted that T400 is suitable for uses for which polyester fibers are not suited, or not as well suited. DuPont's petition stated:

T400 with inherent stretch will satisfy consumer demands for comfort, freedom of movement, shape retention and fit where textured fibers can not or can not as well. The difference will be noticeable to consumers with fabric stretch values 35–50% above [fabrics] made with textured yarns. T400 exhibits a much higher level of stretch than is possible with texturizing and, more significantly, it has recovery power that lasts. Inherent stretch built into the fiber structure does not degrade over time like the mechanical crimping of rigid polyester fibers. As a result, sweaters and sweatpants made with T400 will not sag like textured polyesters after normal use and numerous washings.

DuPont retained Arbor, Inc. of Media, Pennsylvania to conduct a qualitative, blind fabric focus group study with 18 consumers for the purpose of obtaining consumer reactions to fabrics constructed of textured 4GT, T400 and Lycra (spandex) blends with cotton. DuPont stated that, according to these consumers, the characteristics of the T400 blend fabrics seem to more closely resemble the characteristics of fabrics made with Lycra spandex fibers than

fabrics made with a polyester or polyester/cotton blend. The fabrics made with T400 and Lycra spandex were viewed to have more stretch. There were varying views on whether the fabrics with T400 or the ones with Lycra spandex had the most stretch, but both were viewed as having stretch. The polyester fabrics were viewed to have little, if any, stretch. According to DuPont, this subjective evidence supports the conclusion that textured polyesters are not suitable or not as suitable for imparting the stretch to garments that consumers expect, and that T400 is a suitable stretch component.<sup>9</sup>

Finally, DuPont argued that granting the petition would facilitate the use of this fiber in consumer applications.<sup>10</sup> It also stated that a new generic term (like elasterell-p) would help consumers identify products made from T400. Thus, DuPont maintained that a new generic fiber subclass name would be important to the public at large, not just knowledgeable professionals.

#### IV. Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial

<sup>9</sup> The executive summary of this study is included in DuPont's first supplemental petition dated March 18, 2001.

<sup>10</sup> Addressing the extent to which its fiber has been put into active commercial use, DuPont stated in its petition that it expected production capacity of T400 to expand to several thousand tons by the end of 2001. DuPont also expects that products manufactured from T400 will be consumed primarily in the United States and Europe.

<sup>5</sup> Extension @ Break expresses extension after the "uncrimping" or "yarn crimp extension" section of the force extension curves, as on page 4 of DuPont's first supplemental petition, has been removed.

<sup>6</sup> Yarn crimp extension is a measure of the "uncrimping" section of the force extension curve and was measured as follows: a 5,000 denier skein was boiled off to fully develop yarn crimp. The yarn length with 2.5 gr force was recorded (L 2.5). The skein was cycled three times to 1030 gr (L 1030) approximating a load that fully extends the yarn to uncrimp it. The extension is measured as 100% x (L 1030–L 2.5)/(L 2.5).

<sup>7</sup> Measured in accordance with ASTM D1774.

<sup>8</sup> Some of this research is documented in the brochure "Lycra Brand Consumer Insights," attached as Exhibit 1 to DuPont's February 5, 2001 Petition.

regulatory analysis (5 U.S.C. 603–604) are not applicable to this proposal because the Commission believes that the amendment, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission has tentatively reached this conclusion with respect to the proposed amendment because the amendment would impose no additional obligations, penalties or costs. The amendment simply would allow covered companies to use a new generic name for a new fiber that may not appropriately fit within current generic names and definitions. The amendment would impose no additional labeling requirements.

To ensure that no substantial economic impact is being overlooked, however, the Commission requests public comment on the effect of the proposed amendment on costs, profits, and competitiveness of, and employment in, small entities. After receiving public comment, the Commission will decide whether preparation of a final regulatory flexibility analysis is warranted. Accordingly, based on available information, the Commission certifies, pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the proposed amendment, if promulgated, would not have a significant economic impact on a substantial number of small entities.

#### V. Paperwork Reduction Act

This proposed amendment does not constitute a “collection of information” under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 109 Stat. 163) and its implementing regulations. (5 CFR 1320 *et seq.*) The collection of information imposed by the procedures for establishing generic names (16 CFR 303.8) has been submitted to OMB and has been assigned control number 3084–0101.

#### List of Subjects in 16 CFR Part 303

Labeling, Textile, Trade practices.

**Authority:** Sec. 7(c) of the Textile Fiber Products Identification Act (15 U.S.C. 70e(c)).

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 02–3195 Filed 2–14–02; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD 08–01–035]

RIN 2115–AE47

#### Drawbridge Operation Regulations; Missouri River (Missouri)

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commander, Eighth Coast Guard District proposes to change the regulation governing the operation of the A–S–B Railroad Drawbridge, Mile 365.6, Missouri River between North Kansas City, Kansas and Kansas City, Missouri. The existing regulation prescribes a procedure for requesting an opening of the drawspan which significantly differs from the current procedure used, and contains wrong information. The change is necessary to reconcile the regulation to the current operating procedure.

**DATES:** Comments must reach the Coast Guard on or before April 16, 2002.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD 08–01–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator (obr), Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, at (314)539–3900, extension 378.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, view or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–01–035) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Coast Guard district bridge office at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

#### Regulatory History

Prior to 1985, 33 CFR 117.411(b) and 117.687(b) required the A–S–B Railroad Drawbridge to open on signal for the passage of vessels. In October 1983, the bridge owner proposed remote operation of this bridge and the adjacent Hannibal Railroad Drawbridge, Mile 366.1, Missouri River. On May 17, 1984, a Notice of Proposed Rulemaking to operate the A–S–B Railroad Drawbridge from a remote location was published in the **Federal Register**. The proposal was to change the operation of the bridge from an onsite operator to a bridge/train controller remotely located in a tower in a nearby rail yard. The proposed rule required the bridge to be equipped with a directional microphone and horn for communicating with vessels that did not possess a radiotelephone. It also provided for the installation of closed circuit TV cameras at various locations to enable the remote bridge/train controller to view both river traffic and the bridge. The proposed rule also described the manner in which communications would be established and maintained between the remote bridge train controller and approaching vessels, and delineated the light signals to be used. In June 1984, the bridge owner informed the Coast Guard that the bridge/train controller for the A–S–B Railroad Drawbridge could not be at the remote location identified in the proposed rule. Instead, the bridge/train controller would be located at the Hannibal Railroad Drawbridge. The communications and control of the A–S–B Railroad Drawbridge as described in the proposed rule would remain with the bridge/train controller at the Hannibal Railroad Drawbridge. On October 30, 1985, a Final Rule was approved by the Coast Guard to allow remote operation of the A–S–B Railroad Drawbridge. On November 18, 1985, the Final Rule was published in the **Federal Register**, with an effective date of December 18, 1985. Immediately following publication of the final rule,