

C. Other Guidance and Law Enforcement Tools

The rescission of the Watch Guides does not remove the consumer protection laws relating to watch claims. The main reason that the comments argued that the ISO standards were not an appropriate substitute for the Watch Guides was that the ISO standards are not enforceable in the United States. However, section 5 of the FTC Act, prohibiting "unfair or deceptive acts or practices," covers the advertising, marking, and sale of watches.⁴⁶ Thus, under the FTC Act, the Commission may seek administrative or federal district court orders against companies or individuals who engage in unfair or deceptive practices, prohibiting future violations and, as appropriate, providing other relief such as consumer redress or disgorgement of ill-gotten gains. The rescission of the Guides does not signal an FTC withdrawal from preventing deception in the advertising and marking of watches. If, in the future, deceptive practices prove to be a problem in this industry, FTC investigations and law enforcement actions may be appropriate and necessary.

The rescission of the Guides also does not leave the industry without guidance as to how to comply with the law. The Commission directs the industry's attention to the principles of law articulated in the FTC's Policy Statement on Deception and pertinent Commission and court decisions on deception, both of which are generally applicable to all industries. As articulated in the Policy Statement on Deception, the Commission "will find deception if there is a representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."⁴⁷ In addition, sellers are required to possess substantiation for objective claims made about products. That is, advertisers must have a reasonable basis for claims before they are disseminated.⁴⁸

Therefore, sellers must have competent and reliable evidence to substantiate objective claims about watches, such as claims that a watch is water-resistant. In this respect, ISO

standards may provide sellers with useful guidance. Other tests, research, or information (besides international standards) also might be used by sellers to substantiate claims.⁴⁹ Sellers bear the responsibility of ensuring that such information constitutes competent and reliable evidence in support of their claims.⁵⁰ The Commission will evaluate the adequacy of substantiation on a case-by-case basis.

For all of the foregoing reasons, the Commission has decided to rescind the Watch Guides.

List of Subjects in 16 CFR Part 245

Advertising, Labeling, Trade practices, Watches, Watch bands, Watch cases

PART 245—[REMOVED]

The Commission, under the authority of section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a, amends chapter I of title 16 in the Code of Federal Regulations by removing part 245.

By direction of the Commission.

Donald S. Clark,
Secretary.

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BILLING CODE 6750-01-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 10

Rules of Practice; Final Rules; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rules; technical corrections.

SUMMARY: On October 19, 1998, the Commodity Futures Trading Commission ("Commission") published in the **Federal Register** (63 FR 55784) final regulations amending its Rules of

⁴⁹Timex, for example, indicated that there may be other equally valid tests, acceptable in the industry, besides those in the ISO standards. Timex (11) p.11.

⁵⁰Sellers also need to ensure that the substantiation supports consumers' interpretations of the claims they make about their products. For example, consumers may have certain expectations regarding a watch claimed to be "gold-plated." If consumers understand such a claim to mean that the gold coating on the watch will last for a certain period of time, sellers would need to ensure that the gold plate is of such thickness and surface coverage to assure that it will be reasonably durable. Although international standards may provide guidance regarding, among other things, the minimum thicknesses of gold to be used, sellers should be sure to take into account United States consumer expectations and understandings of claims.

Practice ("Rules"), 17 CFR Part 10 (1998), which governs most adjudicatory proceedings brought under the Commodity Exchange Act, as amended ("Act"), other than reparations proceedings. Included in the amended Rules was a new Appendix A, which sets out Commission policy relating to the acceptance of settlements from defendants or respondents in Commission enforcement proceedings, specifically, that the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the allegations in the complaint. The Commission has determined to make certain technical changes to Appendix A to clarify two points: the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the findings of fact and conclusions of law contained in an order settling the matter; and Commission settlement agreements do not affect a defendant's or respondent's subsequent testimonial obligations in any proceeding. In addition, the Commission has made several technical corrections or publication errors in the final Rules. **EFFECTIVE DATE:** The effective date is June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Mihans, Office of Chief Counsel, Division of Enforcement, at (202) 418-5399, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581.

SUPPLEMENTARY INFORMATION: On October 19, 1998, the Commission published its final amended Rules of Practice. This was the first major revision of the Rules in over 20 years. Appendix A was added to the Rules to set out the Commission's policy relating to the acceptance of settlements in Commission enforcement proceedings, specifically, that the Commission will not enter into a settlement if the defendant or respondent wishes to continue to deny the allegations in the complaint. The proposed changes to Appendix A are intended to clarify two points related to this policy. First, in its current form, Appendix A requires an agreement from defendants and respondents as a condition of settlement that they will not deny the allegations in a complaint, but does not address directly a respondent's or defendant's ability to deny the findings of fact or conclusions of law in settlement order entered by the Commission or a court. The proposed changes make clear that settling defendants and respondents cannot continue to deny either the allegations in the complaint or the

⁴⁶In addition, industry members should note that the National Gold and Stamping Act, 15 U.S.C. 291, et seq., regulates the marking of gold or silver content on all products, including watches.

⁴⁷FTC Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174 (1984).

⁴⁸See FTC Policy Statement Regarding Advertising Substantiation, 48 FR 10471 (Mar. 11, 1983), *appended to Thompson Medical Co.*, 104 F.T.C. 648, 839 (1984).

findings of fact or conclusions of law in a settlement order that is entered by the Commission or a court.

Second, the proposed changes to Appendix A clarify that Commission settlement agreements do not affect defendants' or respondents' testimonial obligations in proceedings to which the Commission is a party or in any other proceeding. In its current form, Appendix A effectively requires an agreement by a settling respondent or defendant not to give testimony in a Commission proceeding that would tend to deny any allegation in the complaint or create an impression that the complaint lacks a factual basis. This restriction has the potential to conflict with the legal obligation of a respondent or defendant to testify truthfully. Accordingly, the Commission is making technical changes to Appendix A to clarify that a Commission settlement agreement does not affect a settling respondent's or defendant's subsequent testimonial obligations in any proceeding in which the Commission is a party or in any other proceeding. This change will not affect the Commission's ability to protect against respondents or defendants making later statements that are inconsistent with statements upon which the Commission relies in entering into a settlement. In such circumstances, the Commission can condition the settlement upon the truthfulness of such statements and can vitiate the settlement in the event that the respondent or defendant subsequently provides testimony that is inconsistent with the statements. Moreover, the Commission will continue to prohibit settling respondents and defendants from taking legal positions in proceedings to which the Commission is a party that would tend to deny the allegations in the complaint or the findings of fact and conclusions of law in the settlement order or would tend to create the impression that the complaint or order is without a factual basis.

Because Appendix A constitutes a statement of agency policy, the Commission finds that there is no need to provide the public with an opportunity to submit comments before implementing the above changes. 5 U.S.C. 553(b)(A). For the same reason the Commission has determined to make the changes to Appendix A effective immediately upon publication. 5 U.S.C. 553(b)(2). All of the remaining changes to the Rules correct publication errors. Accordingly, the Commission also finds good cause to make these corrections effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B), 553(d)(3).

In consideration of the foregoing, the Commission corrects Chapter I of Title 17 of the Code of Federal Regulations as follows:

List of Subjects in 17 CFR Part 10

Administrative practice and procedure, Commodity futures.

PART 10—RULES OF PRACTICE

1. The authority citation for Part 10 continues to read as follows:

Authority: Pub. L. 93-463, sec. 101(a)(11), 88 Stat. 1391; 7 U.S.C. 4a(j), unless otherwise noted.

2. Section 10.1 is amended by revising paragraph (d) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

(d) The assessment of civil penalties pursuant to sections 6(c) and 6b of the Act, 7 U.S.C. 9 and 15 and 13a;

3. Section 10.68 is amended by revising the second sentence in paragraph (a)(2) to read as follows:

§ 10.68 Subpoenas.

(a) * * *
(2) Application for subpoena duces tecum. * * * All requests for the issuance of a subpoena duces tecum shall be submitted in duplicate and in writing and shall be served upon all other parties to the proceeding, unless the request is made on the record at the hearing or the requesting party can demonstrate why, in the interest of fairness or justice, the requirement of a written submission or service on one or more of the other parties is not appropriate. * * *

4. Section 10.92 is amended by revising paragraph (b)(1) to read as follows:

§ 10.92 Shortened procedure.

(b) Filing of Statements—(1) Opening statement. Within 20 days after receipt of notice that the shortened procedure will be used, the Division of Enforcement shall serve upon all other parties and file with the Proceedings Clerk, in triplicate, an opening statement, in support of the complaint;

5. Section 10.101 is amended by revising paragraph (a)(5)(iii) to read as follows:

§ 10.101 Interlocutory appeals.

(a) Scope of review. * * *
(5) * * *

(iii) Subsequent reversal of the ruling would cause unnecessary delay or expense to the parties.

6. Section 10.102 is amended by revising the fifth sentence in paragraph (e)(1) to read as follows:

§ 10.102 Review of initial decisions.

(e) Appendix to briefs—(1) Designation of contents of appendix. * * * In designating parts of the record for inclusion in the appendix, the principal parts of the record relied upon should be designated, but the parties shall have regard to the fact that the entire record is always available to the Commission for reference and examinations and shall not engage in unnecessary designation. * * *

7. Section 10.106 is amended by revising the last sentence in paragraph (b)(3) to read as follows:

§ 10.106 Reconsideration; stay pending judicial review.

(b) Stay pending judicial appeal

(3) Civil monetary penalties and restitution. * * * In the event the Commission denies the applicant's motion for a stay, the Proceedings Clerk shall return the surety bond to the applicant.

8. Appendix A to Part 10 is revised to read as follows:

Appendix A to Part 10—Commission Policy Relating to the Acceptance of Settlements in Administrative and Civil Proceedings

It is the policy of the Commission not to accept any offer of settlement submitted by any respondent or defendant in an administrative or civil proceeding, if the settling respondent or defendant wishes to continue to deny the allegations of the complaint or the findings of fact or conclusions of law to be made in the settlement order entered by the Commission or a court. In accepting a settlement and entering an order finding violations of the Act and/or regulations promulgated under the Act, the Commission makes uncontested findings of fact and conclusions of law. Similarly, in settling a civil proceeding with a defendant the Commission invites the federal court to make conclusions of law and, in some instances, findings of fact. The Commission does not believe it would be appropriate for it to be making or inviting a court to make such uncontested findings of violations if the party against whom the findings and conclusions are to be entered is continuing to deny the alleged misconduct.

The refusal of a settling respondent or defendant to admit the allegations in a

Commission-instituted complaint or the findings of fact or conclusions of law in the settlement order entered by the Commission or a court shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations or the findings and conclusions. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, findings or conclusions, the settling respondent or defendant agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or findings or conclusions in the order, or creating, or tending to create, the impression that the complaint or the order is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's—

- i. Testimonial obligation, or
- ii. Right to take legal positions in other proceedings to which the Commission is not a party.

Issued in Washington, DC on June 1, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99-14370 Filed 6-8-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-6354-5]

RIN 2060-AI29

Regulation of Fuel and Fuel Additives: Modification of Compliance Baseline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: With today's action the U.S. Environmental Protection Agency ("EPA", "the Agency", or "we") will allow the conventional gasoline emissions, from gasoline that a refiner

sells in Puerto Rico in excess of its baseline volume of Puerto Rico gasoline, to be evaluated using only the summer version of the Complex Model.

Additionally, the reformulated gasoline program's anti-dumping compliance baseline calculation will be modified. This modification will replace the annual average statutory baseline term with a summer statutory baseline term for purposes of evaluating a refiner's excess Puerto Rico gasoline. Finally, the summer Complex Model, which is more climatically appropriate for evaluating Puerto Rico gasoline, will replace the winter Complex Model for all baseline and compliance calculations for Puerto Rico gasoline. These provisions will apply to any refiner that has Puerto Rico gasoline in its individual baseline, has increased production of gasoline for sale in Puerto Rico above its individual baseline volume of Puerto Rico gasoline, and petitions the Agency to apply the modified compliance baseline to its Puerto Rico gasoline. Any refiner submitting such a petition must recalculate its individual baseline using the summer Complex Model for all Puerto Rico gasoline.

DATES: This action will be effective on July 26, 1999 unless notice is received by July 9, 1999 from someone who wishes to submit adverse or critical comments. If such comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Interested parties may submit written comments in paper form and/or by E-mail. To ensure their consideration by EPA, all comments must be submitted to EPA by the date indicated under **DATES** above. Paper copies of written comments should be submitted (in duplicate if possible) to Public Docket No. A-99-16 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket Section, Room M-1500, 401 M Street, S.W., Washington, D.C. 20460. The

Agency requests that a separate paper copy also be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT**. EPA also encourages that an electronic copy of comments (in ASCII format) accompany the submission of a paper copy (by E-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette). Public comments may also be submitted by E-mail to the docket at the address listed above without the submission of a paper copy. However, to ensure the clarity of the submission, EPA encourages that a paper copy accompany the E-mail submission. If comments are submitted by E-mail alone, EPA requests that a copy of the E-mail message that contains the comments be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT**.

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260-7548, and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner or Felicia Seals-Buchanan, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4287 or x4589, FAX (734) 214-4051, E-mail brunner.christine@epa.gov or seals-buchanan.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include those involved with the production, distribution and sale of gasoline motor fuel. Regulated categories and entities include:

Category	NAICS ¹ codes	SIC ² codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.

¹ North American Industry Classification System (NAICS).

² Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected.

To decide whether your organization might be affected by this action, you should carefully examine this action and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the

persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's document is available electronically on the day of publication from the EPA Internet Web site listed