

Federal Trade Commission

Thursday
May 30, 1996

Part V

**Federal Trade
Commission**

**16 CFR Parts 19 and 23
Guides for the Metallic Watch Band
Industry and the Jewelry Industry, Final
Rules; and Guides for the Jewelry,
Precious Metals, and Pewter Industries,
Proposed Rule**

FEDERAL TRADE COMMISSION**16 CFR Part 23****Guides for the Metallic Watch Band Industry and Guides for the Jewelry Industry**

AGENCY: Federal Trade Commission.

ACTION: Final guides.

SUMMARY: The Federal Trade Commission ("Commission") announces that it has concluded a review of its Guides for the Metallic Watch Band Industry ("Watch Band Guides") and Guides for the Jewelry Industry ("Jewelry Guides"). The Commission rescinds the Watch Band Guides in a document published elsewhere in this issue of the Federal Register. The Commission is consolidating certain provisions of the Watch Band Guides with the Jewelry Guides. The Commission is renaming the Guides for the Jewelry Industry the Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission also revises the Jewelry Guides by defining the scope and application of the Guides and adding new provisions regarding the use of the terms "vermeil" and "pewter." The Commission is also making substantive changes to the existing provisions of the Jewelry Guides, as discussed in detail herein. The Commission is not making any changes to the provisions regarding the use of the word "platinum" at this time and will request additional comment on possible revisions to this section in a separate Federal Register notice.

EFFECTIVE DATE: May 30, 1996.**ADDRESSES:** Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.**FOR FURTHER INFORMATION CONTACT:** Constance M. Vecellio, Attorney, 202-326-2966, or Laura J. DeMartino, Attorney, 202-326-3030, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.**SUPPLEMENTARY INFORMATION:****I. Introduction**

The Commission revises the Guides for the Jewelry Industry and the Guides for the Metallic Watch Band Industry ("Guides"), 16 CFR Parts 23 and 19, respectively, as described in detail below. The Commission will announce the results of its review of the Guides for the Watch Industry, 16 CFR Part 245, which was conducted at the same time as the review of the other Guides, in a separate notice. The Commission

published a Federal Register Notice ("FRN") soliciting public comment on amendments to the Guides on June 12, 1992, in response to a petition from the Jewelers Vigilance Committee, Inc. ("JVC").¹ The comment period, as extended, ended on September 25, 1992.²

The FRN solicited comment on the JVC's proposal to revise the Guides.³ The FRN summarized the major amendments proposed by the JVC, as well as revisions that Commission staff was proposing. In addition to requesting comment on the proposed revisions generally, the FRN asked for comment on 34 questions.

The Commission received 263 comments. In the remainder of this notice, the comments are cited by an abbreviation of the commenter's name and the document number assigned to the comment on the public record. A list of the commenters, including the abbreviations and document numbers used to identify each commenter, is attached as an Appendix.⁴

The revisions are discussed section-by-section by category.⁵ Below, Part II addresses the standard regulatory review questions that were included in the FRN. Part III discusses general issues regarding the proposed revisions to the Guides. Part IV analyzes the proposed revisions to the Jewelry Guides section-by-section (including the

¹ 57 FR 24996 (June 12, 1992). The JVC, located at 401 East 34th Street, NY, NY 10016, is a trade association that was formed in 1912 to promote ethical practices in the jewelry industry. Its initial petition is dated April 15, 1986; additional proposed revisions were submitted on February 20, 1989.

² 57 FR 34532 (Aug. 5, 1992).

³ Because of its 71-page length, the JVC proposal was not published. But, the proposal, and a document showing how the current Guides would be changed by the JVC proposal, was placed on the public record for inspection and is available in the Public Reference Room of the Commission.

⁴ In summary, the comments are from 19 trade associations, 85 diamond dealers, 53 colored stone dealers, 37 retail jewelers, 10 synthetic gemstone manufacturers, 12 pewter manufacturers, 10 watch manufacturers, 9 general manufacturers, 5 gemologist/appraisers, 7 precious metals firms, 3 catalog houses, 2 manufacturer representatives, 2 writing implement manufacturers, 3 pearl dealers, and one each from: The Canadian Government, the U.S. Postal Service, the National Association of Consumer Agency Administrators, a scientist who works with laser technology and crystal growth, an economics professor, an importer, a retired trade association executive, and an editor of Jewelers Circular-Keystone, and a trade magazine.

⁵ Various sections of the Guides that pertain to particular subject areas are referred to as "categories," in the Appendix to the current Guides, i.e., Category I: Jewelry industry products in general; Category II: precious metals; Category III: diamonds, genuine and imitation; Category IV: pearls, genuine, cultured and imitation; Category V: gemstones, genuine, synthetic and imitation.

Watch Band Guides, now consolidated with the Jewelry Guides).

II. Regulatory Review and Related Questions

As part of the Commission's ongoing program to review all of its rules and guides periodically, the FRN included questions about the Guides' economic impact and continuing relevance, any compliance burdens, changes needed to minimize their economic impact, their relation to other federal or state laws or regulations, and the effect of any changed conditions since the Guides were issued. The Commission also solicited comment on general issues regarding the Guides, such as whether the JVC's proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade; whether proposed changes would result in a lessening of competition or increased prices; and whether the JVC's petition to revise should be rejected and the current Guides retained. Because these questions concern fundamental issues about whether the Guides should be retained, deleted or revised, the Commission addresses them first.

A. Summary of the Comments

All but one of the 37 comments specifically addressing the economic impact of the Guides stated that any compliance costs are far outweighed by the benefits to the industry and to consumers.⁶ None of the comments provided any figures or estimates of the monetary costs incurred in complying with the Guides.

Thirty-eight comments specifically addressed the continuing need for the Guides and all agreed that there is a continuing need, with most stating that the Guides protect consumers and industry.⁷ One comment stated,

⁶ *E.g.*, Fasnacht (4) p.1 (the Guides have a positive economic impact by creating a level playing field); Schwartz (52) (the Guides have a positive impact on the industry by establishing standards that offer consumers protection without undue cost); JMC (1); Thorpe (7); King (11); Gold Institute (13); Honora (15); Argo (17); AGS (18); AGTA (49); Estate (23); G&B (30); Jabel (47); Skalet (61); Handy (62); Lannyte (65); Newhouse (76); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); JVC (212); Matthey (213); Bruce (218); Service (222); MISA (226); Preston (229); Timex (239); and Sheaffer (249).

Service (222) agreed with regard to the current Guides, but thought that the compliance costs associated with the proposed revisions outweighed the benefits.

⁷ The commenters are the same as in footnote 6 *supra*, with the addition of Eisen (91). With regard to the current Guides, Best (225) stated, at p.2, that the Guides "are well developed and provide protection to consumers and to reputable jewelers against otherwise false and deceptive practices. The Guides offer a great measure of certainty to jewelers'

"Without the guides to serve as a reference manual, every manufacturer or producer would have their own interpretation [of what constitutes fair industry practices]." ⁸

Twenty-nine comments specifically addressed the burdens of complying with the Guides. Seven comments stated there are no compliance burdens.⁹ Three also stated that, if everyone complies, the burdens of compliance are evenly distributed and will not benefit one business at the expense of another.¹⁰ Ten comments stated that the burdens are minimal¹¹ and six thought the burdens were "worth it."¹² The seven comments that itemized the burdens ("testing and planning," "monitoring suppliers," "controls," "measurements," "record keeping," "time," and "personnel"), concluded that the costs are acceptable because of the benefits received.¹³ None of the comments identified the extent of the costs in money or in time.

Although 29 comments responded to the question regarding changes needed to minimize the economic effect of the Guides, they did not offer detailed explanations or suggestions. Fifteen comments stated that no changes are necessary.¹⁴ Six comments stated that the changes proposed by the JVC are sufficient to minimize their economic effects.¹⁵ Two comments recommended simplifying the Guides to avoid misunderstandings (e.g., about the proper use of terminology).¹⁶ Canada stated that harmonizing standards with Canada would minimize the economic

business practices as historical application and interpretation have better defined the parameters of acceptable conduct. This certainty has value because it contributes to an efficient and free flow of information to consumers in the marketplace." AGTA (49), at p.2, stated: "If consumers cannot be confident that what they are paying for is what they have been told it is, our trade cannot survive. The FTC guides provide a structure upon which our industry has built regulations for the consumer's protection, which is ultimately our own as a trade. Therefore, AGTA endorses their continued existence, timely revision, and a strong enforcement."

⁸ Skalet (61) p.1.

⁹ Fasnacht (4); Honora (15); G&B (30); Lannyte (65); Newhouse (76); CPAA (193); and Bedford (210).

¹⁰ Honora (15); G&B (30); and Newhouse (76).

¹¹ JMC (1); King (11); AGS (18); Estate (23); Schwartz (52); Handy (62); Nowlin (109); Bridge (163); MISA (226); and Preston (229).

¹² Argo (17); AGTA (49); Bales (156); LaPrad (181); Mark (207); and Matthey (213).

¹³ Jabel (47); Skalet (61); McGee (112); ArtCarved (155); IJA (192); Canada (209); and MISA (226).

¹⁴ JMC (1); Fasnacht (4); Thorpe (7); Honora (15); Argo (17); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Handy (62); McGee (112); LaPrad (181); IJA (192); and Mark (207).

¹⁵ AGTA (49); GIA (81); Bridge (163); Bedford (210); JVC (212); and Preston (229).

¹⁶ ArtCarved (155) and Matthey (213).

effect on entities subject to the Guides' requirements, reduce costs and promote international trade, by not requiring manufacturers to mark products for domestic use differently than those made for foreign use.¹⁷

Twenty-seven comments addressed the relation of the Guides to federal, state or local laws or regulations. Twenty-one comments specifically stated either that there is no conflict or overlapping or that they are unaware of any.¹⁸ Six stated that if there was any duplication, it should not deter the Commission from approving comprehensive guidelines.¹⁹ (No examples of duplication were provided.) However, the Postal Service stated that the Guides "overlap with Postal authority, sometimes undermining our position in false representation and fraud actions."²⁰ The Postal Service stated that the Guides do not adequately address the situation where the consumer purchases jewelry before actually seeing it. The Postal Service proposed changes to the Guides to help remedy this problem.²¹ As discussed below, the Commission has revised the Guides to mitigate this problem.

Thirty-one comments discussed economic or technological changes since the Guides were issued and the effect on the Guides. Three comments²² stated that economic and technological changes have had no effect on the Guides and 28 comments stated that such changes have had an effect on the Guides.²³ The changes the commenters specified, which they thought should be reflected in the Guides, are new gemstone enhancement techniques,²⁴ laser treatment of diamonds,²⁵ fracture-

filling of diamonds,²⁶ new methods of metal plating,²⁷ diffusion-treated sapphires,²⁸ advanced testing techniques,²⁹ new synthetic gemstones,³⁰ and possible new platinum products.³¹

On the economic side, Richard C. Mark commented on the dramatic increase in the price of gold since the Guides were most recently revised, which, he stated, increases the significance of any rules dealing with gold.³² Another comment stated that greater economic advantage to the trade would occur if national and international standards are uniform.³³

Twenty-four comments addressed whether proposed provisions accurately reflect accepted practices, technology or nomenclature used in the trade. Fourteen comments stated that there are no requirements in the JVC proposal that do not fairly and accurately reflect trade practices.³⁴ Some comments, however, identified parts of the proposed Guides that they contended are contrary to accepted industry practices. Specifically, Best and Service Merchandise stated that the JVC's proposed diamond weight tolerances, restrictions on the use of the term "point," and proposed disclosures regarding gemstone enhancement do not conform with accepted trade practices.³⁵ Other responses to this question were not directly responsive because they did not contend the JVC's proposals were out of step with current trade practices, but instead proposed adding new terms and standards to the Guides.³⁶

Thirty-one comments directly responded to the question regarding

²⁶ Thorpe (7); Estate (23); ArtCarved (155); IJA (192); and Preston (229).

²⁷ Newhouse (76); ArtCarved (155); Canada (209); and Preston (229).

²⁸ Thorpe (7); Honora (15); and Preston (229).

²⁹ ArtCarved (155); LaPrad (181); and Preston (229).

³⁰ Honora (15) and ArtCarved (155).

³¹ ArtCarved (155).

³² Comment 207, p.2. In 1957, when the Guides were last revised, gold cost \$35 an ounce. The current price fluctuates between \$350 and \$400 per ounce.

³³ Matthey (213) p.1 (stating that "Competition on a global as well as a national basis make the establishment of standards and clear definitions of terminology even more critical").

³⁴ JMC (1); Fasnacht (4); Argo (17); Capital (19); Estate (23); Jabel (47); Skalet (61); Handy (62); Newhouse (76); GIA (81); McGee (112); ArtCarved (155); IJA (192); and Bedford (210).

³⁵ Best (225) p.4 and pp.7-8 and Service (222) p.1 and 5 of letter and p.3 of comment. See also MISA (226) p.7 (opposing proposed diamond weight tolerances as contrary to industry practice).

³⁶ For example, AGTA (49) suggested banning certain terms in use that relate to synthetic gemstones and plated gold jewelry. See also Lannyte (65); Eisen (91); CPAA (193); and Matthey (213). (Their proposals are discussed under the appropriate categories *infra*.)

¹⁷ Comment 209, p.1.

¹⁸ JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); Handy (62); Lannyte (65); GIA (81); NACAA (90); McGee (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Best (225); MISA (226); and Preston (229).

¹⁹ Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).

²⁰ Comment 244, p.1. The Postal Service enforces 39 U.S.C. 3005, which prohibits persons from obtaining mail or property through the mail by means of false representation. The Postal Service also brings actions under the criminal mail and wire fraud statutes, 18 U.S.C. 1341, 1342 & 1345. *Id.*

²¹ Comment 244, pp.1-3.

²² JMC (1); Handy (62); and McGee (112).

²³ JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Estate (23); AGTA (49); Lannyte (65); Newhouse (76); GIA (81); Eisen (91); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); MISA (226); Preston (229); Timex (239); and Sheaffer (249).

²⁴ AGS (18); AGTA (49); GIA (81); Eisen (91); ArtCarved (155); LaPrad (181); and IJA (192).

²⁵ Fasnacht (4); Thorpe (7); Honora (15); ArtCarved (155); and Preston (229).

whether any proposed changes to the Guides would result in a lessening of competition, barriers to entering the industry or increased prices to consumers. Twenty-five answered "no" or "probably not."³⁷ But, numerous comments regarding the JVC's proposed weight tolerances for diamonds believed a narrow tolerance requirement (as the JVC proposed) would increase costs to consumers.³⁸ Jabel stated that paperwork and the printing of definitions and descriptions the JVC proposed as new requirements may increase consumer prices.³⁹

Preston commented that, although he was not specifically aware of any proposals that would lessen competition, produce barriers to entry or increase prices to consumers, he thought these results could occur on a modest scale.⁴⁰ Thorpe stated, on the other hand, but without giving any reasons, that the JVC proposal would increase competition based on quality, value and service, and that the proposal would lower prices to consumers by allowing them to shop and compare "on a level playing field."⁴¹ Bales recommended that the Guides allow products of less than 10 karat gold to be sold as a karat gold product because it would increase competition in the industry.⁴² Other comments, while not specifically responding to this question, stated that the JVC's proposal to prohibit the use of the term "gemstone" to describe synthetic or imitation products would be anticompetitive.⁴³

³⁷JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Estate (23); G&B (30); AGTA (49); Schwartz (52); Skalet (61); Handy (62); Lannyte (65); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); and Matthey (213). In addition, most of the 72 comments supporting a different tolerance for diamond weights indicated that requiring the merchant to state more accurately the weight or weights of diamonds would result in increased costs to consumers.

³⁸E.g., Service (222) and Best (225) (implementation of the JVC proposal would result in lessened competition and higher prices, particularly for low margin jewelry retailers, which would be passed on to consumers). The comments opposing the proposed diamond weight tolerance and alleging consequential costs are listed and examined in detail in the discussion of diamonds below.

³⁹Comment 47, p.2.

⁴⁰Comment 229.

⁴¹Comment 7, p.2.

⁴²Bales (156) suggested that a quality mark be permitted on a product called Balesium that is 4½ karat gold. See discussion below regarding the 10 karat minimum standard for karat gold.

⁴³Service (222) p.1 and p.4; Best (225) p.3; AGL (230) p.3; NRF (238) pp.1-2; Kyocera (242) p.1; River (254) p.1. Dealers in synthetics, which are materials made in a laboratory that have the same chemical, physical and optical properties as a natural gemstone, contend they should be able to describe their products as gemstones with

One hundred eighty-one comments responded to the question of whether the JVC's petition to revise should be rejected and the current Guides retained. Many comments stated that the petition to revise should not be rejected.⁴⁴ For example, AGTA affirmatively favored revising the Guides and 56 AGTA members filed individual comments endorsing the AGTA position. Twenty three other comments did not respond specifically to Question 34, but endorsed revision of the Guides.⁴⁵

Service Merchandise and Best recommended rejecting the petition to revise in favor of retaining the current Guides.⁴⁶ Service Merchandise stated that the proposed revisions are anti-competitive and offer insufficient benefit to the affected industries or their consumers to justify the additional efforts and costs that they allege will result.⁴⁷ Additionally, 72 comments recommended rejecting the JVC proposal and retaining the current Guides, apparently because of their objection to the JVC's proposal regarding diamond weight tolerances.⁴⁸

appropriate qualification to indicate that they are laboratory made.

⁴⁴E.g., JMC (1); Fasnacht (4); Thorpe (7); King (11); Gold Institute (13); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Handy (62); GIA (81); Nowlin (105); McGee (112); ArtCarved (155); Bales (156); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); Matthey (213); and Preston (229).

⁴⁵JMC (1); Littman (2); JA (3); Overstreet (8); Kennedy (9); Collins (12); Von's (16); Jeffery (21); Stanley (83); General (88); APG (89); NACAA (90); Eisen (91); Alie (106); AWI (116); USWC (118); Kremenz (208); JVC (212); WGC (223); MUSA (226); Swiss Federation (232); AWA (236); and ISA (237A).

⁴⁶Comment 222 and Comment 225.

⁴⁷Comment 222, p.1.

⁴⁸These 72 comments, mostly using one of four form letters, also urged that all proposed changes be rejected. One writer from this group indicated that he had a change he would like to suggest but stated "my understanding is that it [the JVC proposal] must be accepted in whole or rejected in total." Comment 60, p.1. Staff contacted this commenter, Richard Goldman, president of Frederick Goldman, Inc., who indicated that the group to which he belongs was advised, by a person he did not identify, that the JVC proposal had to be accepted or rejected in its entirety. Thus, this group's opposition to all other proposed revisions appears to be based on a false premise.

These 72 commenters are: London Star (20); Luria (28); Armel (32); Mendelson (33); Fashion (35); Courtship (36); MAR (37); NY Gold (39); Aviv (40) and (41); TransAmerican (43); Saturn (46); Faleck (50); Alarama (51); Fabrikant (53); Light Touch (54); Disons (55); Astoria (56); PanAmerican (57) and (101); Odi-Famor (58); Black Hills (59); Goldman (60); Almond (63); Brilliance (68); Oroco (69); Fargotstein (70); Simmons (71); Mikimoto (72); Evvco (73); Renaissance (74); Harvey (75); JGL (77); Raphael (78); AMG (79); Vijaydimon (80); Philnor (93); Orion (94); Flyer (95); Classique (96); Vardi (97); K's (98); Diastar (99); Foster (100); Fame (102); Cheviot (104); M&L (105); Kurgan (107); Rosy Blue

B. Conclusion

The comments largely favor retention of the Guides and state that there is a continuing need for the Guides. The comments indicate that the benefits of the Guides outweigh the costs, and present no persuasive evidence that the Guides have outlived their usefulness or impose substantial economic burdens. Accordingly, the Commission is retaining the Guides.

Many comments recommended that the Guides be revised to reflect changed technologies, and the Commission has considered these comments in amending the specific provisions of the Guides, discussed below. The comments that favored rejecting the JVC proposal and retaining the Guides as they exist now usually did so because of a particular JVC recommendation. The objections to those proposals also are addressed as they occur in the different Guide categories.

III. Changes to the Form of the Guides

A. Legal Language Used in the Guides

The legal language in the Guides has been revised to conform to the Commission's view on deception and unfairness as expressed in its Policy Statements on Deception and Unfairness.⁴⁹ Specifically, the phrase "it is an unfair trade practice," generally has been revised to state "it is unfair or deceptive to * * *."

B. Consolidation of the Guides

Detachable metallic watch bands are the subject of the Guides for the Metallic Watch Band Industry ("Watch Band Guides"), 16 CFR Part 19. Metallic watch bands that are permanently attached to the watch are included in the Guides for the Watch Industry, 16 CFR Part 245. The JVC proposed combining the Watch and Metallic Watch Band Guides with the Jewelry Guides and the FRN solicited comment on this proposal. Thirty comments addressed this issue, and 22 stated the Guides should be consolidated.⁵⁰ Most

(108); NEI (110); Leer (114); Majestic (115); Imperial (117); Schneider (119); Precision (121); New Castle (122); Stern (157); Consumers (158); Ultra Blue (160); DeMarco (161); Little (164); Golden West (179); Stanley (180); Mastro (190); Capitol Ring (191); Bogo (201); Schaeffer (211); Suberi (214); Impex (220); Landstrom's (241); Ultimate (243); and Murrays (264).

⁴⁹Statement on Deception, appendix to *Cliffdale Assocs., Inc.*, 103 F.T.C. 110, 1734-84 (1984) and Statement on Unfairness, appendix to *International Harvester Co.*, 104 F.T.C. 949, 1072 (1984).

⁵⁰JMC (1); Fasnacht (4); Gold Institute (13); Benrus (22); Estate (23); G&B (30); Jabel (47); Skalet (61); Lannyte (65); Newhouse (76); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bedford (210); Bridge (163); IJA (192); Canada (209); Matthey (213); Bedford (210); MUSA (226); and Leach (258).

of those who gave reasons for favoring consolidation mentioned the Watch Band Guides rather than the Watch Guides.⁵¹

Six of the eight comments opposing consolidating the Guides were from watch manufacturers or trade associations.⁵² The reasons given for opposition were primarily related to the consolidation of the Watch Guides, not the Watch Band Guides. The American Watch Association stated that the Guides correctly reflect the fact that watches and jewelry are different products, "by imposing substantially different definitions and standards for watches and jewelry."⁵³ For example, the minimum thickness in the Watch Guides for gold electroplated watches is about 100 times thicker than the minimum thickness for gold electroplated jewelry in the Jewelry Guides.⁵⁴

Based on the comments, the Commission has determined not to combine the Guides for the Watch Industry with the other two Guides. The Guides for the Watch Industry will remain as separate Guides and are discussed in another Federal Register notice. However, the Commission has determined to consolidate the Guides for the Metallic Watch Band Industry with the Jewelry Guides.⁵⁵ The Watch Band Guides primarily concern "fineness" standards for precious metals, which are the same as those contained in the Jewelry Guides.⁵⁶ Thus, unlike the Guides for the Watch Industry, the Watch Band Guides share many common elements with the

⁵¹ E.g., Bedford (210) commented, at p.3, that "as watch bands are mostly sold and fitted by jewelers, it would seem appropriate * * * that they be combined with the jewelry guidelines." However, no commenters identified themselves as watchband manufacturers.

⁵² USWC (118); JCWA (216); NACSM (219); Best (225); Citizen (228); Swiss Federation (232); AWA (236); and Timex (239). Only one comment from the affected industry, Benrus (22), favored consolidation of the Watch Guides.

⁵³ Comment 236, p.1. See also Swiss Federation (232) p.1 (the industries are separate and consolidating the Guides would make use of the Guides difficult) and Citizen (228) p.5 (watches and jewelry are dissimilar and should not be combined).

⁵⁴ See also JCWA (216) p.4 (favoring separate Guides because the application of materials and quality demands differ for watches and jewelry); Timex (239) pp.9-10 (opposing consolidation if doing so would create any additional compliance obligations); Swiss Federation (232) p.38 (stating that jewelry, watch and watch band companies are separate industries, with separate trade associations).

⁵⁵ JCWA (216), Citizen (228), and AWA (236) stated that all three Guides should be kept separate, but none of these provide reasons for keeping the Watch Band Guides separate.

⁵⁶ "Fineness" refers to the amount of precious metal in an article.

Jewelry Guides.⁵⁷ Therefore, consolidation of these two Guides eliminates unnecessary duplication.⁵⁸

IV. Category-By-Category Explanation of Revisions

This section discusses specific proposed revisions on which the Commission sought comment in the FRN and additional issues raised by the comments. This discussion includes a summary and analysis of the comments on each issue and a discussion of the revisions that the Commission has made. (In some instances there were no comments on particular proposals.)

A. Pre-Category I—Scope and Application: § 23.0

Section 23.0 in the current Guides is captioned "Definitions," and gives definitions for: "diamond," "pearl," "cultured pearl" and "imitation pearl." In the JVC proposal, section 23.0 is titled "Scope and Application," and the definitions appear in the sections that specifically address these products. The Commission has determined that this organizes the Guides in a more helpful fashion and adopts these changes.

Part (a) of section 23.0, as proposed by the JVC, lists industry products to which the Guides apply and part (b) defines industry members. The term "industry products" is used throughout the Guides, but it is not explicitly defined. To avoid any uncertainty about their intended coverage, the revised Guides include a definition of "industry products."

The JVC petition specifically suggested that the term "industry products" include pens, pencils and optical frames containing gold or silver. The FRN sought comment on whether provisions applying to the gold or silver content of pens, pencils and optical products should be included in the Guides, and whether they should be the same as the current provisions for jewelry. Thirty-one comments addressed this issue, and 25 favored including these products, including two major manufacturers of writing implements, Sheaffer and A.T. Cross.⁵⁹

⁵⁷ For example, the provisions for gold electroplated metal watch bands in the Watch Band Guides are the same as those for gold electroplated metal products included in the Guides for the Jewelry Industry.

⁵⁸ More than half of the material in the Metallic Watch Band Guides duplicates material in the Jewelry Guides.

⁵⁹ Fasnacht (4); Gold Institute (13); Estate (23); Korbela (27); G&B (30); Jabel (47); Schwartz (52); Skalet (61) p.3 (stating that the items are typically sold in jewelry, department and gift stores, and thus should be subject to the same standards as jewelry sold in the same store); Handy (62); Lannyte (65); Newhouse (76); McGee (112); Bales (156); Bridge (163) p.2 (stating that the metallic content of the

The six commenters that opposed the inclusion of these products simply stated that they saw no need for the inclusion of these products or that they were not "really" jewelry products.⁶⁰

The comments generally indicate that pens, pencils, and opticals made of precious metals are viewed by consumers as similar to jewelry because of their metallic content and where they are sold. Thus, consumers would tend to expect that claims about such products would be guided by the same standards that apply to other industry products. Because consumers' expectations about the meaning of terms such as "gold" are likely to be the same for any product, the Commission is including these items in the Guides. These products and detachable metallic watch bands are now specifically listed in § 23.0(a) of the revised Guides. The title of the Guides is now the Guides for the Jewelry, Precious Metals, and Pewter Industries to reflect the coverage of the Guides.⁶¹

Although the JVC petition did not list hollowware or flatware as "covered products," section 23.6A of the JVC petition addresses sterling hollowware and flatware. The Franklin Mint objected to this because these items are not jewelry.⁶² However, these items are commonly sold in jewelry stores, and at least one of the commenters simply presumed that these items were covered

items is more likely to be misrepresented if they are not included in the Guides); Cross (165) p.1 (favoring inclusion, because the mislabeling of these products, "especially by counterfeiters, has caused confusion by customers and harmed the business of legitimate manufacturers"); IJA (192); Tru-Kay (196) p.1 (stating that the public would find different standards for the metal content of these items as opposed to jewelry confusing); Mark (207) p.3 (same as Tru-Kay); Canada (209); Bedford (210); MISA (226) p.3 (stating that without inclusion in the Guides, there may be more misrepresentation of metallic content); Preston (229); Sheaffer (249) p.2 (favoring inclusion, but objecting to "unnecessary and arbitrary limitations" on the use of the term 'Plate' to describe gold electroplated articles); Franklin (250); and Knight (256).

Although no current manufacturers of eyeglass frames commented, Knight (256) stated, at p.2, that "We at one time owned the largest manufacturer of gold filled and rolled gold plate frames in the U.S.A. and they followed the jewelry guides."

⁶⁰ LaPrad (181); Nowlin (109); ArtCarved (155); Service (222); Franklin (250); and NACSM (219).

⁶¹ See *infra* for a discussion of the inclusion of items made from pewter.

⁶² Comment 250, p.3. The Franklin Mint stated that "industry products" should be limited to jewelry, which it defined as an ornamental item worn on or about one's person for personal adornment. (The Franklin Mint primarily markets objects that are not used for personal adornment, but which incorporate or are made of precious metals or gemstones, so that its proposal would exempt most of the products it carries from the application of the Guides.)

by the Guides.⁶³ As with pens and pencils made of precious metal, the Commission believes that consumers would tend to expect that claims about silver or gold hollowware or flatware would be guided by the same standards that apply to other industry products. Therefore, these products also are included in the list of industry products covered by the Guides.

The Guides also refer to "industry members," but do not define this term or give examples. The JVC proposed that the Guides state they apply to "every firm (a person, group of persons, or corporation) engaged in the business of selling" industry products. One commenter noted that the Guides need to clarify that purchasers at all levels of the industry are protected by the Guides, since it is commonly assumed by courts that merchants are experts who should know better than to rely on suppliers' representations as being accurate.⁶⁴

The Commission agrees that it would be useful to clarify that retailers, as well as consumers, are meant to be protected from deceptive practices addressed by the Guides. Therefore, the revised Guides state that they apply to persons, partnerships, or corporations at every level of the trade.

The JVC also proposed, in section 23.0(b), including in the description of industry members (in addition to sellers) those who are engaged in "identifying, grading, appraising, promoting the sale of or counseling the purchase or barter of industry products." The FRN specifically requested comment on whether the Guides should be expanded to include appraisals of jewelry in addition to sales and offers to sell jewelry.

Thirty-five comments addressed this question.⁶⁵ The comments generally favored including appraisers of jewelry industry products among those subject to the Guides. The main effect of including appraisers (or those "identifying" and "grading" industry products) among those covered by the Guides would be to ensure that they would be guided by the same definitions and standards as those selling the products. To confirm the value of an intended purchase, consumers often seek an appraisal because they rarely independently have the knowledge to determine the quality

or value of jewelry.⁶⁶ The Commission has concluded that it would be unfair or deceptive for appraisers to ascribe meanings to standard terms that are used in the jewelry industry that are different from the meanings attached to those terms by the sellers of the products. Thus, appraisers and those "identifying" and "grading" industry products are advised to follow the admonitions of the Guides.⁶⁷

However, 29 of the comments also recommended that the content of appraisals be covered by the Guides. Fifteen of these stated this change should be effective with this revision.⁶⁸

However, if the Guides were to regulate the content of appraisals, standards for establishing a value would be needed.⁶⁹ Fourteen comments, including those of the American Gem Society, the American Gem Trade Association, and the Gemological Institute of America, recommended including appraisals in the Guides when

⁶⁶ An "independent" appraisal is one done by a person who has no commercial relationship to the seller and does not sell competitive merchandise. In other words, the person who does the appraisal does not stand to benefit beyond his appraisal fee.

⁶⁷ The Commission is omitting from the list those who promote the sale, or counsel the purchase or barter, of industry products, because this language is unnecessarily specific, and because such persons are already covered by the language of the Guides (e.g., persons who sell or offer for sale industry products).

⁶⁸ JMC (1); Sibbing (5); Thorpe (7) p.2 (stating that appraisals are sometimes used to make a sale by showing the consumer "a signed document stating an inflated value"); King (11); Estate (23); G&B (30) p.7 (noting that "you are going to have to understand appraisals are subjective"); Jabel (47); Skalet (61) p.3 (suggesting that "appraisers should be certified or licensed and should have no connection with those who are making the sale"); Lannyte (65) p.4 (proposing that the Guides state that "an appraisal has to be qualified as to the purpose of appraisal and the market level of the value quoted"); Eisen (91) p.1 (suggesting that the Guides should provide for "a statement on no conflict of interest, disallowance of a percentage fee, and a resume with the appraiser's qualifications"); McGee (112); ArtCarved (155); LaPrad (181); AGL (230) pp.4-6 (proposing that the Guides state that it is unfair for a seller to provide an appraisal to a consumer when the appraiser is also the supplier of the item being appraised, and recommending that the Guides specify certain required content of appraisals of diamonds or colored stones (e.g., "appropriate tolerance information for each element that impacts on the value of the gemstone"); and ISA (237) and (237A) p.5 (stating that important problems are misrepresentation of qualifications and overstating of value to justify the selling price). Only one comment, LaPrad (181), proposed standards to use (those of the Appraisal Foundation).

⁶⁹ ISA (237A) noted, at p.18, that a New York City ordinance requires that appraisals state that "the opinions of appraisers can vary up to 25%." ISA stated that the opinions of appraisers, "depending on marketplace, variances in grading, and geographical market locations, as well as various purposes and functions and the method of value conclusion can cause appraisers to vary in their opinions of value for amounts potentially greater than 25%." *Id.*

there is adequate agreement on what the standards for appraisals should be.⁷⁰

Although the Commission has determined that for the sake of consistency for consumers purchasing industry products, the Guides will state that those who appraise, identify or grade industry products should follow the Guides, they do not otherwise purport to guide these industries.⁷¹

The JVC proposal included, in section 23.0(c), a description of the behavior (claims and representations) to which the Guides apply. It is similar to § 23.1(b) of the current Guides, but does not list the specific forms of advertising (periodicals, radio, television) that are described in § 23.1(b). The Commission's authority, however, is broader than the items currently listed as advertising in the Guides, and therefore the specific list unnecessarily limits the scope of the Guides. The National Retail Federation comment stated that such specifically enumerated limitations are helpful as they may prevent other representations, such as in-store signs or flyers, from being treated as advertising.⁷² However, that is not the intent of that section. Accordingly, § 23.0(c) of the revised Guides encompasses express and implied claims in all types of advertising and promotion.

B. Category I: §§ 23.1-23.4

Guides in this part apply to all industry products regardless of their composition.

Section 23.1(a) of the current Guides contains a list of attributes, such as origin and durability, which industry members are advised not to misrepresent. The JVC proposal omits "manufacture" from the list (possibly in error). The Commission has found no basis in the record for deleting "manufacture" from the list of items not to be misrepresented.

The JVC proposed adding the following attributes to the list of

⁷⁰ AGS (18); AGTA (49); GIA (81); IJA (192); Fasnacht (4); Honora (15); Bridge (163); Mark (207); Bedford (210); Matthey (213); MISA (226); and Preston (229) p.6 (stating that there are different formats and standards used for jewelry appraisals and that "[t]here is no overall agreement within the industry on precisely what does or does not constitute the ultimate desirable appraisal").

⁷¹ ISA (237) noted, at p.2, that its members are appraisers in more than "130 subspecialty areas of the major personal property disciplines * * *". It stated, at p.7, that while it prefers to have its own industry guide, it favors the inclusion of appraisals in the Guides, because "many times we serve as expert witnesses in court and rely on the content of the guides to inform the court as to what is or is not acceptable." The Commission believes ISA's concerns will be satisfied by the language added to the Guides.

⁷² Comment 238, p.1.

⁶³ See Gold Institute (13).

⁶⁴ ISA (237) p.12 (stating further that the Guides should "address all issues of intended disclosure to resellers of jewelry products so that this information can accurately and completely be passed on to the ultimate consumer").

⁶⁵ E.g., AGS (18); AGTA (49); GIA (81); IJA (192); and ISA (237 and 237A).

characteristics that should not be misrepresented: "clarity," "enhancement," "future value," and "prospects of resale." The Commission believes that the term "clarity" is unnecessarily specific, as it is already covered by the current Guides under "grade" and "quality." Therefore, this term has not been included. "Enhancement" is the term used by the trade to describe the treatment of gemstones to improve their color or otherwise improve their appearance. However, the Commission has determined that a more accurate term is "treatment" and has added this term, in lieu of "enhancement," to the list of attributes that should not be misrepresented. The Commission has determined that the third term, "future value" should not be added to the Guides, because the Guides already list "value," and "future value" is subsumed in value. The Commission also has determined that "prospects of resale" should not be added to the Guides. Representations regarding the prospects of resale go to the investment of gems, and the Commission has concluded that the sale of investment gems is unsuitable for treatment in guides.

The JVC proposed adding five additional parts to § 23.1, which would be designated as follows:

Misrepresentation of the character or identity of business; Misuse of the term "certified," etc.; Deception (as to gemstone investments); Misuse of the term "investment quality"; and Deception as to warranties on gemstone investments. Discussion of each of these proposed additions follows.

Misrepresentation of the character or identity of business was the caption of a section of the Jewelry Guides that was in effect from 1957 to 1979. This section admonished sellers from, for example, misrepresenting themselves as wholesalers or as offering wholesale prices.⁷³ NACAA commented that it is important to prohibit such a misrepresentation, noting that "retailers use phrases such as 'factory direct' to imply that items are less expensive, when in fact they obtain their merchandise through jobbers and other outside sources."⁷⁴ However, § 23.1 warns against misrepresentation as to the "manufacture" or "distribution" of industry products and this provision

would encompass misrepresentations about the nature of the seller's business.

Misuse of the term "certified," etc. was the caption of a section in the Guides that were in effect between 1957 and 1979 and which the JVC proposed reinstating. This section stated that it was an unfair trade practice to refer to an industry product as "certified" unless the identity of the certifier and the specific matter to be certified is disclosed; the certifier examines the product, makes the certification, and is qualified to certify; and the certifier makes available a certificate that includes certain information about the certifier and the certification.⁷⁵

Thirty-two comments favored requiring the seller to make available to the purchaser a certificate disclosing the name of the certifier and the matters and qualities certified.⁷⁶ The term "certified" or certificates of authenticity are likely to be used as a way of giving credence to a quality claim. If, in fact, the product is not "certified" in a valid manner or a certificate misrepresents the qualities of the item, the seller is not complying with the Guides' admonition in § 23.1 not to misrepresent important qualities or otherwise deceive purchasers. For this reason, the Commission is not including a provision relating to certificates in the Guides.⁷⁷

⁷⁵ The JVC also proposed requiring the disclosure of any business relationship between the certifier and the seller.

⁷⁶ JMC (1); Fasnacht (4); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); AGTA (49); Schwartz (52); Skalet (61); Lannyte (65); Newhouse (76); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163); LaPrad (181); IJA (192); Matlins (205); Bedford (210); Matthey (213); Bruce (218); MISA (226); Preston (229); ISA (237A); and Leach (257).

Opposed to this provision are: Bales (156) p.5 (stating that it would raise costs and eliminate many smaller jewelers); NACSM (219); Service (222); and Franklin (250).

With respect to the issue of whether there should be a disclosure that there is subjectivity in the grading and appraising of diamonds and colored stones, a comment form AGTA (49) and 56 individual AGTA members opposed disclosure, stating at p.6, that the degree of subjectivity is "better addressed by those in the business of operating laboratories for certificates * * * and to those associations governing appraisers." However, ISA (237A) stated at p.21, that appraisal reports should disclose that diamond and colored stone gradings are subjective in nature. Thorpe (7), AGS (18), Schwartz (52), Skalet (61), NACAA (90), Bruce (218), and Preston (229) were also in favor of the disclosure of the degree of subjectivity in grading.

⁷⁷ Certificates have no accepted meaning in the industry and are not defined in the standard dictionary for the industry ["Jewelers' Dictionary" (3d ed. 1976)]. See AGTA (49) p.5 (favoring the proposal, but stating that since "there are no nationally accepted standards for certification," the requirement that a certificate state the name of the certifier "is no assurance of either expertise or quality"); NACSM (219) p.24 (stating that the

However, some commenters suggested that the Guides address misrepresentation of the system of grading that was used in any certificate or grading report.⁷⁸ There are several different diamond color grading systems in general use, each having its own standards and terminology, and several grading systems for colored stones.⁷⁹

The Commission is persuaded that a representation that a stone is a specific grade could be deceptive if the identity of the grading system used is not disclosed. Section 23.1 states that it is unfair or deceptive to misrepresent the grade of an industry product. The Commission has added a Note to § 23.1 that states that, if any representation is made regarding the grade assigned to an industry product, the identity of the grading system used should be disclosed.

The FRN solicited comment on the JVC's proposed subsections 23.1(d) through (f), which address deception involving gemstone investments. Section 23.1(d) would require, in the sale of gemstones as investments, a disclosure that profit or appreciation cannot be assured, that no organized market exists for the resale of gemstones by private owners, and that the seller is in compliance with all applicable laws and regulations governing securities dealers. In general, the comments favored these disclosures.⁸⁰

proposed section was "vague and broad in that it could be construed to make any sales slip identifying the product a certification"); Service (222) p.2 (stating that the current Guides "are sufficient to prevent deception with certifications and appraisals").

⁷⁸ Rapaport (233) p.1 (stating that misuse of GIA color and clarity terminology by sellers (as opposed to appraisers or graders) is a major problem and suggesting that the Guides state that it is unfair to misuse GIA grading terminology); Thorpe (7) p.2 (stating that an identification of the grading system used "is necessary to make accurate quality comparisons"); Shor (257) p.1 (suggesting that the Guides state that it is unfair to describe diamonds by color and clarity grades developed by GIA or other recognized gem labs "unless they conform exactly to the standards set forth by those institutions").

⁷⁹ Richard T. Liddicoat, Jr. & Lawrence L. Copeland, "The Jewelers' Manual" 29-32 (1967); AGL (230); Rapaport (233) p.1. The Gemological Institute of America (GIA) and the American Gem Society (AGS) employ different grading systems, and some diamond graders have their own "in-house" grading systems. The letter "D" designates the best color in the GIA grading system. Some in-house grading systems have grades that start with "A," "AA," or "AAA" and consequently "D" in their systems stands for a much poorer color grade.

⁸⁰ JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); IJA (192); Bedford (210); Matthey (213); Bruce (218); Shire (221); MISA (226); Preston (229); Limon (235); ISA (237A); Leach (257); and AGTA (49)

⁷³ The JVC also proposed expanding this section by adding "investment broker" and "independent testing laboratory" to the list of examples of trade designations that firms are not to use falsely. ISA (237) recommended adding "gemological laboratory" and "appraisal facility" to the list.

⁷⁴ Comment 90, p.2.

The comments favoring these disclosures also generally favored the proposed sections 23.1(e) and (f). Proposed part (e) would prohibit the seller from implying that a gemstone sold for investment purposes is more desirable or different than gemstones marketed for use in jewelry.⁸¹ Proposed part (f) states that it is an unfair practice to limit a purchaser's opportunity for an independent examination of an industry product by delivering a product in a sealed container with a warranty that becomes void if the seal is broken.⁸² This practice makes it impossible for the consumer to examine the product or retain an independent expert to examine or appraise the product to determine whether the seller has fairly represented it. On the other hand, a consumer can refuse to buy a product sold under these conditions.

The FRN asked if there would be voluntary compliance with the proposed guidelines for sellers of investment gemstones. Thirteen comments stated that voluntary compliance could not be expected.⁸³ Six comments stated that compliance could be expected only from legitimate operators.⁸⁴ Five comments anticipated

(favoring the proposal for sales to consumers but opposing the proposal for inter-trade transactions (e.g., a sale by a dealer to a retailer).

Opposed to this provision: Onyx (162) and Rapaport (233) p.4 (stating that "there are regular ongoing markets for the resale of diamonds and colored stones by private owners" such as auction houses, jewelry stores, estate jewelry shows, and pawnshops). *But see* Shire (221) p.3 (stating that these examples do not constitute a ready market, since auction houses, for example, only want specific items and do not take everything for sale). The Commission believes that most consumers know that they, as individuals, would not have access to a market comparable to the stock market; hence, a disclosure would not be necessary to prevent deception in the absence of an affirmative misrepresentation as to the nature of the market.

There is no evidence indicating that consumers believe that sellers of investment gemstones are governed by laws and regulations covering securities dealers.

⁸¹ See comments cited in note 80, and NACAA (90) and LaPrad (181). These comments are mostly from retail jewelers who would not usually sell gemstones as investments. Ethical sellers of gemstones for investment purposes may provide gemstones that are a higher grade than those commonly sold as jewelry.

⁸² See comments cited in note 80. Rapaport (233) stated, at p.4, that it would be acceptable to deliver the product in a sealed container with a warranty that becomes void if the seal is broken, if the sealing agency allows the re-sealing of the product at a reasonable cost and discloses this at the time of sale.

⁸³ King (11); Argo (17); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); ArtCarved (155); IJA (192); Matthey (213); Shire (221); and Leach (257).

⁸⁴ Fasnacht (4); AGTA (49); Bales (156); LaPrad (181); Bedford (210); and ISA (237A).

voluntary compliance by all concerned.⁸⁵

An industry guide is not appropriate if there is an indication that the violations are willful or wanton and will not be voluntarily abandoned. The experience of the Commission in bringing cases against sellers of investment gemstones indicates that most of the sellers have been engaged in fraud. Thus, they are unlikely to comply with practices that would be likely to put them out of business. The Commission has concluded that a case-by-case approach is a more appropriate way to address the problem of gemstone investment claims than inclusion in the Guides.

The JVC did not propose any substantive changes in the last three sections in Category I (23.2, 23.3, 23.4), and there were no comments pertaining to these sections. The Commission has decided to retain sections 23.2 and 23.4. Section 23.2 states that it would be deceptive to use depictions that would materially mislead consumers about the product shown.⁸⁶ Section 23.4 states that it would be deceptive to use the term "handmade" unless the item is entirely handmade or made by manually controlled methods consistent with consumer expectations.

However, the Commission has determined to delete section 23.3. The admonition in section 23.3(a) against misrepresenting the origin of a product repeats the general guidance provided in section 23.1 (which provides a list of characteristics, including origin, which should not be misrepresented). Section 23.3(b) states that a disclosure of foreign origin should be made only when it is deceptive not to do so. A Note following this section explains that it is not necessary to disclose the foreign origin of small and functional parts, or other items (such as diamonds) which are primarily obtained from sources outside the United States. U.S. Customs requires products being imported into the U.S. to be marked with the country of origin unless they will be substantially

⁸⁵ Sibbing (5); Thorpe (7); Honora (15); Bridge (163); and MISA (226).

⁸⁶ The Postal Service (244) stated that mail order purveyors of jewelry sometimes use deceptive photographs to sell their wares. This section notes that such a practice is unfair or deceptive, and a following Note specifically states diamonds should not be depicted in greater than actual size without a disclosure that the depiction is an enlargement. The JVC proposed expanding the Note to include depictions of gemstones other than diamonds, and the Commission has made this change. In addition, because television shopping programs or computer images also may contain misleading images of jewelry, the Commission has added "televized or computer image" to the list of covered "visual depictions" in this section.

transformed in the United States.⁸⁷ Thus, the Commission has concluded that this section of the Guides is unnecessary.

The Commission also has deleted § 19.4(b) of the Watch Band Guides, which states that it is unfair to fail to disclose that a metallic watchband, or a substantial part thereof, is of foreign origin.⁸⁸ No commenters identified themselves as watchband manufacturers or marketers, and very few commenters even addressed the existence of the Watch Band Guides. It is unclear whether the fact that a watchband is made abroad is material to consumers, or whether consumers currently expect that any unmarked metallic watchband was made in the U.S.A. However, as noted, U.S. Customs requires imported watchbands (and other items of commerce) to be marked with the country of origin. Therefore, the Commission has concluded that this section is unnecessary.⁸⁹

C. Metals (Category II): §§ 23.5–23.8

Guides in Category II, in both the current Guides and the JVC petition, apply to industry products composed in whole or in part of precious metal. In the JVC petition, this category also includes a proposed standard for pewter.

1. Inclusion of Metallic Watchbands

As noted previously, the Guides for the Metallic Watchband Industry have been combined with the Jewelry Guides. The Commission believes that, in most respects in which the Watch Band Guides differ from the Jewelry Guides, the Watch Band Guides are unnecessarily restrictive or no longer represent the Commission's views of how the law should be applied. For example, unlike the Jewelry Guides, the Watch Band Guides state that it is unfair to fail to disclose the metallic composition of a product which has the appearance of gold but is not gold (§ 19.2(A)(2)). There is no evidence that suggests that consumers today will infer that a gold-colored metal watch band is gold. The prices for gold-colored

⁸⁷ See The Tariff Act of 1930, as amended, 19 U.S.C. 1304, and Customs' implementing regulations, 19 CFR 134.11.

⁸⁸ The Watch Band Guides contain very detailed instructions as to the labeling of watchbands assembled in the U.S. of foreign components. 16 CFR 19.4(b), note 2. Several Commission orders, from the 1960's or earlier, require similar detailed disclosures. However, the Commission recently issued a "Sunset Rule" that terminates administrative orders automatically after 20 years. 60 FR 58514 (Nov. 28, 1995).

⁸⁹ More specific guidance on when industry products can be marked "Made in the U.S.A." is likely to be addressed further by the Commission later this year.

metallic watch bands compared to what gold watch bands (or other gold jewelry) would sell for is at least one way consumers are alerted that a gold-colored band is not gold.⁹⁰ Thus, the Commission has omitted this provision from the Guides.

Other differences between the Watch Band Guides and the Jewelry Guides are noted at appropriate portions below.

2. Misrepresentation as to Gold Content: § 23.5

Section 23.5(a) of the current Guides states that it is an unfair trade practice to sell or offer for sale any industry product by means of any representation that would deceive purchasers as to the gold content. Section 23.5(b) identifies specific practices that may be misleading and section 23.5(c) lists markings and descriptions that are consistent with the principles described in the section. These latter provisions are "safe harbors" (*i.e.*, examples of ways of avoiding misrepresentations).

a. *General provision as to misrepresentation: § 23.5(a).* As noted, § 23.5(a) of the current Guides contains a general provision admonishing against misrepresenting the gold content of industry products. The JVC proposed adding definitions of "karat," "gold," "karat gold," "fine gold," "mark," and "apply or applied" to this section.⁹¹ No evidence indicating confusion as to the meaning of the terms was presented. In some cases, the terms are already defined very succinctly in the current Guides.⁹² For these reasons, the Commission has not included the proposed definitions in the Guides.

The JVC also proposed including a statement that no mark other than the quality mark (*e.g.*, 14 K) shall be applied to an article indicating that it contains gold or as to the quality, fineness, quantity, weight, or kind of gold in an article. The Commission found no justification or need for such a broad statement. Section 23.5(a) already states

⁹⁰To the extent that sellers purposely inflate the price of their gold-colored products to lead consumers to believe they are purchasing a gold item, they are probably engaging in fraud and are likely to misrepresent the item as gold when it is not, which would be a deceptive practice under § 23.5(a).

⁹¹Only one comment specifically addressed the proposed definitions. Finlay (253) stated at p.1 that it did not object to the proposed definitions of "gold."

⁹²For example, the JVC proposed defining "fine gold" as "gold of 24 karat quality." However, § 23.5(b)(1) of the current Guides simply refers to "fine (24 karat) gold." Similarly, although the JVC proposed a new definition for "quality mark" specifically for gold, the more general definition in § 23.8 of the current Guides (defining the term "mark" in conjunction with precious metals generally) is clearer and more accurate. See discussion regarding quality marks below.

that misrepresentations about the gold content of an article are unfair or deceptive.

b. *Specific provisions and "safe harbors": § 23.5(b)-(c).* Section 23.5(b) in the current Guides identifies specific practices that may be misleading. Subsection (1) states that the unqualified use of the word "gold" is limited to 24 karat gold. The JVC proposed adding that the unqualified use of "solid gold" is limited to 24 karat gold. There were two comments on this issue, one favoring the JVC proposal because "solid gold should mean that the product is 100% gold," and one against the proposal, since fineness must be disclosed for all gold other than 24 karat gold.⁹³ The Commission believes that the term "solid gold" is not inherently deceptive or unfair.⁹⁴ Accordingly, the Commission has rejected this proposal.

Subsection (2) in the current Guides advise that (except for 24 karat gold), the karat fineness be stated when the word "gold" is used. The JVC did not suggest any changes in this section, and only suggested minor changes in the corresponding "safe harbor" provision in § 23.5(c)(1).⁹⁵ However, Finlay argued that the word "gold" should be allowed in product advertising without a designation as to karat fineness.⁹⁶ Including karat fineness in advertising, however, helps consumers make basic comparisons among competing products offered by different retailers. Therefore, the Commission has not changed this provision.

A Note following the first "safe harbor" provision, § 23.5(c)(1) in the current Guides, deals with hollow products and advises that there be a disclosure that these products, whatever their gold content, have hollow centers, when the failure to make such a disclosure would be deceptive. It also

⁹³Lee (153); NRF (238) p.1.

⁹⁴For example, the phrase "solid 10 karat gold" is not likely to lead consumers to believe the item is 24 karat gold. See Advisory Opinion, "Solid" and "karat" used together, 71 F.T.C. 1739 (1967).

⁹⁵This safe harbor provision simply states that an industry product composed throughout of an alloy of gold of not less than 10 karat fineness, may be described as "Gold" when the word "Gold" is immediately preceded by a correct designation of the karat fineness. The JVC suggested following the words "an alloy of gold of not less than 10 karat fineness" with "less tolerance set out in 15 U.S.C. 294, *et seq.*" [the National Stamping Act] and footnoting that statement with a detailed explanation of the tolerance. The tolerances are set forth in § 23.5(d) of the current Guides and are more easily understood in the current format.

⁹⁶Comment 253, p.1 (stating that this "will not mislead consumers where all other requirements of the guidelines have been met and where information as to karat fineness is given at the point of sale"). See NRF (238) p.1 and discussion *infra*, regarding the scope and application of the Guides.

states that these products should not be referred to as *solid* gold. The JVC proposed revising the note to drop the guidance that there be a disclosure that the product is hollow. However, the Commission has determined that this disclosure is useful because, otherwise, consumers would be unaware that the product is only hollow. Thus, the Commission has not deleted this provision. The JVC also suggested that the note be changed to state that products that are filled with cement or some other filler may not bear a quality mark. However, such products are essentially "gold plated" products, and as long as they conform with the Guides' provisions about how to mark such products, consumers are not likely to be deceived. Thus, the Commission has decided not to adopt this proposal.

Subsections (3)-(5) advise against particular uses of the word "gold" (*e.g.*, plated, filled, rolled, overlay) unless they are so qualified as to be non-deceptive. Subsection (6) advises against representing that one gold product is superior to another unless the representation is true.⁹⁷

Subsection (7) advises against the use of the word "gold" on any product of less than 10 karat fineness. Bales proposed in its comment that the Guides be amended to permit gold alloys containing less than 10 karats of gold (less than .416 percent gold) to be marketed as containing gold. Bales has a patent on a product in which the gold content varies from four to six karats and which is alleged to have good corrosion resistance.⁹⁸ This issue was addressed comprehensively by the Commission in 1977.⁹⁹ Thus, the

⁹⁷A Note following this section provides guidance for the use of the word "gold" as applied to certain words (Duragold, Diragold, Noblegold, Goldine). The JVC proposed adding "Layered Gold" to this list, and the Commission has done so.

⁹⁸Comment 156, pp.5-8. LaPrad (181) stated at p.2 that "gold plated items should include any item that is not at least 10 karat solid gold in fineness throughout the item." This suggests that an alloy that contained less than 10 karat gold could be described as "plated." However, "plated" has been used for many years to refer to a base metal product with a coating of gold. Extending the meaning of the term to low-karat alloys would be confusing.

⁹⁹The 10 karat minimum standard has been used at least since 1933, when it first appeared in Commercial Standard CS 67-38, promulgated by the then Bureau of Standards of the U.S. Department of Commerce. It was incorporated into the Trade Practice Rules for the Jewelry Industry, 16 CFR Part 23, in 1957. In 1977, the Commission proposed permitting sellers to market gold of less than 10 karat and silver of less than 92.5% if the quality was accurately disclosed. This proposal was published for public comment. Over 1200 comments were received, many from consumers, and over 98% of the comments opposed lowering the 10K standard. The Commission found, based on articles and test reports, that articles of less than 10

Commission has not changed this provision.

The JVC petition also included an admonition against applying a quality mark (e.g., 9 karats) to any article of less than 10 karat fineness regardless of whether the word "gold" is used. Because the word "karat" is so clearly associated with gold content (even without the use of the word "gold"), the use of the term "9 karat" is likely to represent that the item is 9 karat gold. The Commission has determined that advising against this use is consistent with and clarifies the Guides.

On the basis of comments received in response to questions in the FRN, the Commission has revised current §§ 23.5(b)(3), (4), and (5). These changes are explained in detail below, along with the changes to the corresponding "safe harbor" provisions in subsection 23.5(c) of the current Guides.

i. Mechanically or electrolytically "plated" products. There are two basic kinds of "plated" gold. Mechanically plated gold has a layer of gold alloy bonded to a base metal by heat and pressure. Gold electroplate has a layer of gold alloy electrolytically deposited on a base metal. Section 23.5(b)(3) of the current Guides states that a surface-plated or coated article can only be referred to as "gold" when the term is adequately qualified so as to disclose that the product or part is only surface-plated or coated with an alloy of gold. However, for mechanically plated articles, it adds that the word "gold" should be preceded by a designation of the karat fineness.¹⁰⁰

Section 23.5(b)(4) states that certain terms ("gold-filled," "rolled gold plate," "rolled gold plated," "gold overlay," "gold plated," or "gold plate") should only be used for mechanically-plated items (i.e., not gold electroplate) and that the gold on these items should be of "such thickness and extent of coverage that the terms will not be deceptive." It also states that the karat

karat fineness tend to tarnish and corrode. The Commission ultimately retained the 10 karat minimum fineness for gold and the 92.5% standard for silver. 42 FR 29916, 29917 (1977).

¹⁰⁰ Canada (209) suggested, at p.4, that gold plated articles "be prohibited from using the quality mark 'karat' * * *" because such use confuses the consumer as to the value of the article. In fact, the current Guides (in §§ 23.5(b)(5) and (c)(3)) appear to prohibit a quality mark on gold *electroplated* items. However, a designation of karat fineness has been recommended in the Guides for *mechanically* plated articles for many years, and Commission staff is not aware of complaints from consumers who were deceived by this representation. No other commenters suggested that the Guides advise against the use of a quality mark on mechanically plated items. Hence, the revised Guides, in §§ 23.4(b)(5) and (c)(3), continue to recommend that items identified as mechanically plated contain quality marks.

fineness should be included with these terms. The safe harbor provision in § 23.5(c)(2) states that these terms are not deceptive when used for mechanically-plated items if the karat fineness is stated and the gold is of "substantial thickness" and constitutes 5% of the weight of the item. Section 23.5(c)(2) also creates a safe harbor for all these terms except "gold filled" when the gold weight is less than 5% if they are preceded by a fraction indicating the gold weight (e.g., $\frac{1}{40}$ 12 Kt. Rolled Gold Plate). "Gold filled" is reserved for items with a gold weight of 5% or more.¹⁰¹

The JVC proposed adding a note to § 23.5(c)(2) of the current Guides, stating "The actual gold content of gold-filled and rolled gold plate articles shall not be less than the gold content indicated by the quality mark by more than ten percent." Only three comments addressed this issue, all opposing the provision.¹⁰² Section 23.5(d) of the current Guides provide that "the requirements of this section relating to markings and descriptions of industry products and parts thereof are subject to the tolerances applicable thereto under the National Stamping Act (15 U.S.C. 294, et seq.) * * *." The National Stamping Act provides that, for articles made of gold, "the actual fineness * * * shall not be less by more than three one-thousandths parts than the fineness indicated by the mark * * *." 15 U.S.C. 295 (1993). No reason was offered for the much larger, proposed tolerance. Accordingly, the Commission has not adopted this change.¹⁰³

¹⁰¹ The Watch Band Guides contain almost identical provisions for mechanically plated watch bands, but they contain a section (§ 19.2(e)(2)) entitled "Examples of Proper Markings for Expansion Bands of Specified Composition and Construction." The main point made by the "Examples" is that quality marks on gold-filled portions of a watchband should not imply that base metal portions of the band are gold. The Commission believes the section of the current Jewelry Guides dealing with quality marks (§ 23.8) adequately addresses this issue. See discussion of quality marks, *infra*. Therefore, the Commission is not including the "Examples" in the revised Guides.

¹⁰² NACSM (219) p.24; Leach (258) p.9 (stating that the tolerance is "by far too liberal"); Korbeklak (27) p.4 of attached letter of April 23, 1982 to Susanne S. Patch (stating that the proposal is "unsupportable" and "contrary to the spirit of the recent amendment of the Marking Act which tightened tolerances on karat goods"). [The National Stamping Act was amended in 1976.]

¹⁰³ A ten percent tolerance is found in Voluntary Product Standard PS 67-76, "Marking of Gold Filled and Rolled Gold Plate Articles Other than Watchcases." The tolerance is apparently meant to apply to weight claims, such as "10% 14 karat gold".

This standard is referred to in the current Guides [§§ 23.5(d) and 23.5(f)] as "Commercial Standard CS

Section 23.5(b)(5) states that the terms "gold electroplate" or "gold electroplated" can only be used when the plating "is of such karat fineness, thickness, and extent of surface coverage that the use of the term will not be deceptive." The safe harbor provision in § 23.5(c)(3) states that these terms are not unfair or deceptive when used for items with a coating of seven millionths of an inch of fine (24 karat) gold, or the equivalent. [If the gold coating is, for example, 12K (half as fine), the coating should be 14 millionths of an inch thick (twice as thick).] "Heavy gold electroplate" may be used for a coating equivalent to 100 millionths of an inch of fine gold. This subsection also states that the terms "gold flashed" or "gold washed" may be used to describe an electroplated coating that is thinner than seven millionths of an inch of fine gold or its equivalent (the minimum thickness for the use of the term "gold electroplate").¹⁰⁴

The FRN sought comment on how "gold plate" should be defined in the Guides. (As noted, current § 23.5(b)(4) allows "gold plate" to be used to describe only mechanically plated items.) Six comments opposed allowing

47-34"] with respect to the *exemptions* applicable to the tolerance when a test for metal content is being performed (e.g., excluding "joints, catches, screws" etc.) Other Voluntary Product Standards are also referred to in the current Guides for the same reason (i.e., a list of parts of jewelry exempt from assay.) The JVC recommended including in the Guides the full text of all five Voluntary Product Standards for precious metals that are referred to in the current Guides as "Commercial Standards." Commercial Standards were promulgated by the U.S. Department of Commerce and administered by the National Bureau of Standards ("NBS"). Later renamed by the NBS as Voluntary Product Standards ("VPS"), they had the same legal significance as FTC guides. The Department of Commerce and the NBS, which is now called the National Institute of Standards and Technology ("NIST"), withdrew these and all other VPS, as an economy measure, on January 20, 1984. The JVC proposed preserving the material in the VPS by incorporating it into the Jewelry Guides.

Only one comment addressed the issue of whether to include the VPS in the Guides. The Gold Institute (13) agreed that the VPS should be incorporated, but gave no reasons. The Commission has included the material pertaining to exemptions from assay (with some changes, discussed *infra*) in the Appendix. However, the Commission has concluded that it is not necessary to include other portions of the VPS. The VPS state the standards that must be met for each product, if the product is represented to be in compliance with the VPS. However, the VPS have been withdrawn so such a representation is obsolete.

¹⁰⁴ The Postal Service (244) p.2, commented that the use of "gold flashed" or "gold washed" is misleading to consumers, particularly where items are ordered by mail and not seen by the consumer until after purchase. However, the terms "gold flashed" and "gold washed" have been in common use for many years. The Commission does not have sufficient evidence at this time to advise against the use of these terms in all circumstances.

electroplated items to be described as "gold plate."¹⁰⁵ Most gave no reason other than stating that there should be a distinction between products that are mechanically plated and those that are electroplated.

Twelve commenters favored letting electroplated items be designated as "plate."¹⁰⁶ Sheaffer noted that "gold electroplate," the designation currently advised by the Guides, is too lengthy for many of its products and is unknown to consumers in foreign countries, who are familiar with the term "plate."¹⁰⁷ Sheaffer stated that most foreign countries permit "plate" or "plated" to be used to describe an article coated with gold, regardless of the method of application, and that a change in U.S. requirements would allow them to stock inventory of items marked as "gold plate." Further, one commenter interviewed by Commission staff stated that some manufacturers would like to market items that are the product of both mechanical plating and electrolytic plating, that could be labeled "gold plate."¹⁰⁸

Some comments stated that the relevant issue for consumers is durability, and not the method of plating. Sheaffer stated that "[t]he normal consumer is totally unconcerned

about the process which a manufacturer might use to apply gold or silver plate to an article so long as the precious metal plate meets all appropriate required standards."¹⁰⁹ Canada commented that "gold plate" is "simply a layer of gold placed over a base substance" and that the "important reference should inform the consumer of the thickness of the plate."¹¹⁰

Although the comments indicate that there are differences of opinion in the industry regarding industry custom and usage of the term "plate," under the current Guides the term "gold plate" can only be used for mechanically plated gold. Historically, mechanically plated gold has contained a thicker coating of gold and has been more durable than gold electroplate, both because it was thicker and because it was less porous.

However, the comments indicate that electroplating has been significantly improved in recent years.¹¹¹ Other comments indicate that gold electroplate could now be as desirable, or more desirable, than mechanically plated gold.¹¹² Commission staff conducted telephone interviews of seven commenters, who, with one exception, indicated that gold electroplate can be made as thick and as durable as mechanically plated gold.¹¹³

Furthermore, all of the commenters whom Commission staff interviewed stated that mechanically plated gold has usually been marketed as "filled gold," "rolled gold," or "gold overlay" (instead of "gold plate").

Based on the comments, the Commission has determined that the current Guides reflect the now-outdated belief that gold electroplate is inherently inferior to mechanically plated gold. The Guides may thus unfairly give mechanical plating a competitive advantage and may make international trade more difficult. Further, the comments indicate that the term "gold plate" has not been used extensively for mechanically plated items, and therefore, consumers may not expect an item labeled as "gold plate" to have been mechanically plated. Moreover, the Commission agrees with the comments that state that consumers are unlikely to distinguish between products on the basis of the method of plating used and are more concerned with the durability.¹¹⁴ Thus, the distinction between mechanically plated and electroplated products no longer serves a useful purpose. Therefore, the Commission has concluded that the term "gold plate" would not be inherently deceptive when applied to electroplated items with a sufficient layer of gold that assures reasonable durability. This will allow products composed of a combination of types of plating, or newer methods of plating that are developed, to be called "gold plate."

For these reasons, the Commission has created a safe harbor that would allow "gold plate" to be used for gold applied by any process so long as the coating is sufficiently durable to satisfy consumer expectations that the plated product would retain its appearance for a reasonable period of time.¹¹⁵ The Commission believes that a standard based on thickness, rather than weight of the gold coating, is more relevant to

Howard Solomon, Vice President, Donald Bruce & Co. (218); I.L. Wein, President, Benrus (22); Barry Sullivan, President, ArtCarved (155); Kenneth Genender, U.S. Watch Council (118). Only Mr. Knight stated that gold electroplate is inherently inferior to mechanically plated gold.

¹¹⁴ Consumers can determine for themselves whether they like the appearance of the product, but the consumer has no way of determining durability.

¹¹⁵ Although the evidence indicates that the term "gold plate" has not been frequently used, because plating generally has been in use for many years, consumers reasonably would expect a certain minimum level of durability from an item so labeled. The Commission believes it is appropriate to create a safe harbor with a numerical standard for a specific term such as "gold plate" when consumers would expect certain qualities from products described by the term and products at or above the standard would have such qualities.

¹⁰⁵ Gold Institute (13) p.2 (defining "gold plate" as an optional term to describe a mechanically plated article); Handy (62); Newhouse (76); Mark (207); MISA (226) p.4 (limiting "gold plate" to mechanically plated articles is "generally consistent with terminology used in the trade"); and Knight (256) p.2 (stating that consumers know electroplate is inferior to mechanically plated gold).

¹⁰⁶ Fasnacht (4) p.1 (stating that "gold plate" has historically been used in the trade "for any application of a karat gold to a base"); Benrus (22); Estate (23); Korbela (27) p.3 (stating that the trade now uses "gold plate" to mean gold applied electrolytically); G&B (30); ArtCarved (155); LaPrad (181); Matthey (213); Bruce (218) p.7 (stating that the trade now uses the term "gold plate" to mean gold applied electrolytically); Citizen (228) p.3 (stating that the term should not "be restricted to any particular method of applying the gold covering" and noting that "the vast majority of gold coverings are applied electrolytically"); Sheaffer (249); and Leach (257). Four of these (Fasnacht, G&B, Matthey, and Estate) stated that the method should be disclosed.

¹⁰⁷ Comment 249, p.2. Section 23.5(c)(2) states that "adequate abbreviations" are not unfair or deceptive for mechanically plated gold, which is also referred to as "gold filled" and abbreviated as G. F. Section 23.5(c)(3) makes no such provision for electrolytically plated gold. Moreover, in an advisory opinion issued in 1971, the Commission stated that "gold electroplate" could not be abbreviated. Advisory Opinion, *Designation of gold content on ball point pens*, 79 F.T.C. 1052 (1971). However, the Commission currently has no information that consumers would understand abbreviations for mechanically plated gold but not for electrolytically plated gold. Thus, the Commission has revised the Guides to state that adequate abbreviations are not unfair or deceptive for electrolytically plated gold (e.g., 12 Kt. G. E. P.). Therefore, the advisory opinion is withdrawn.

¹⁰⁸ Matthew Runci from MISA.

¹⁰⁹ Comment 249, p.3 (noting that "silverplate" is allowed under the current Guides regardless of the method of application and that this has not misled consumers).

¹¹⁰ Comment 209, p.4.

¹¹¹ Benrus (22) p.2 (stating that "The science of gold plating has improved greatly in the past 15 years and the requirements in the current Guides . . . are simply not in tune with today's technology or market practices"); Alan Foster, "Electrodeposited and Rolled Gold," *Gold Bulletin* 64 (1982), attached to comment 27 (indicating that the electroplating of gold was greatly improved about 30 years ago). Korbela (27) (attached letter of April 23, 1982 to Susanne S. Patch) states that the current Guides "perpetuate an economic advantage to one method of manufacturing [mechanical] over another."

¹¹² Catholyte (34) p.1 (stating that when corrosion is the quality criterion, "mechanically clad material is not the present day choice because machining processes which produce the desired designs will destroy the starting clad stock and yield 'raw' or cut edges which will have little or no clad matter present. (This procedure necessitates the use of electroplate to 'cover' those edges which are exposed.)"). Other comments indicate that mechanically plated gold normally has a surface coating of electroplate. Korbela (27) (see articles attached to comment); Tru-Kay (196) p.1 (stating that its major product was mechanically-plated jewelry, and noting the existence of "the surface coating of gold electroplate" on gold filled items); Mark (207) p.3 (owned and operated a gold-filled manufacturer and distributor for 25 years and referred to the "surface coating of gold electroplate" on gold filled (i.e., mechanically-plated) items).

¹¹³ Matthew Runci, Executive Director, MISA (226); George Knight, former president of the Gold Filled Manufacturers Association (256); Irving Ornstein, Vice President, Leach & Garner (258);

consumer expectations.¹¹⁶ For the reasons discussed below, the Commission has established a safe harbor for products with a minimum thickness of one half micron of gold coating.

In developing this safe harbor, the Commission has considered the standard for gold plated jewelry established by the International Organization for Standardization ("ISO"): "ISO International Standard 10713 Jewellery [sic]—Gold alloy coatings."¹¹⁷ This standard sets a minimum thickness of half a micron of fine gold (or its equivalent) for both mechanically plated and electrolytically plated gold jewelry.

The Commission also considered the ISO standard for gold plated watches, which sets a minimum thickness

¹¹⁶Sheaffer (249) p.4 (stating that a standard based on a weight ratio (e.g., 1/20th) can "encourage the production of inferior articles lacking strength and rigidity as the thickness, and thus, the cost of the plate can readily be reduced by use of a very thin base material"). *But cf.* AWA (236) p.2 (in discussing "gold flashed" watches, stating that thickness "is only one factor in determining the esthetic qualities and durability of the electroplating process," that different technologies produce varying thicknesses, all of which provide durable coverage, and that establishing a threshold standard for "gold flashed" or other similar terms creates an arbitrary standard that distorts the marketplace); and NAW (251). However, because of the other comments discussed in the text, the Commission believes that identifying a minimum thickness and fineness is appropriate for a safe harbor for "gold plate" claims for jewelry.

¹¹⁷The Trade Agreements Act of 1979 states that federal agencies must, in developing standards, "take into consideration international standards and shall, if appropriate, base the standards on international standards." 19 U.S.C. 2532(2)(A) (1980). A "standard" is defined as "a document approved by a recognized body that provides, for common and repeated use, rules, guidelines, or characteristics for products or related processes and production methods, with which compliance is not mandatory." 19 U.S.C. 2571(13) (1995). An international standard is defined as a standard promulgated by an organization engaged in international standards-related activities, the membership of which is open to representatives, whether public or private, of the United States and all members of the World Trade Organization ("WTO"). 19 U.S.C. 2571(5), (6), and (8) (1995). A WTO member is "a state or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement. 19 U.S.C. 3501(10) (1995).

ISO is, according to the "foreword" sections in several ISO standards attached to the Swiss Federation comment (232), "a worldwide federation of national standards bodies. The work of preparing International Standards is normally carried out through ISO technical committees." ISO is open to representatives from the United States and to representatives from members of the WTO, and qualifies as an international standards organization.

However, the Trade Agreements Act also explicitly states several reasons why basing a standard on an international standard may not be appropriate, including the prevention of deceptive practices and fundamental technological problems. 19 U.S.C. 2532(2)(B)(i).

standard of 5 microns, and comments submitted as to the current standard in the Watch Guides, to determine a sufficiently durable coating of gold for plated jewelry. Watches have historically been assumed to be subjected to more wear than other articles of jewelry.¹¹⁸ The comments that address gold-plated watches indicate that a one micron thickness may be durable. Benrus commented that thicknesses of up to 1/2 micron "are unsubstantial and wear very quickly" but that there is "a new industry 'standard' of a minimum of 1 micron of gold plating (40 millionths of an inch) which has substantial durability and reliability and gives years of satisfactory service."¹¹⁹ The U.S. Watch Council also noted that the watch industry has adopted 1 micron of thickness (described as 40 millionths of an inch of 23 karat gold) as a standard for gold plating.¹²⁰ Two commenters interviewed by Commission staff, Benrus and U.S. Watch Council, stated that watches with a one micron coating of gold, if worn every day, could be expected to last between two and four years.

Because most jewelry gets less wear than watches, the Commission believes that the ISO standard of half a micron of fine (24 karat) gold plating for jewelry constitutes a "floor" of sufficient durability, so that consumers are unlikely to be misled about the durability of an item marked "gold plate." However, the Commission recognizes that some commenters indicated that half a micron is not very durable. Also, certain items of jewelry receive more wear than others, and some items, such as rings, might actually receive more wear (and more friction with skin) than watches.¹²¹

¹¹⁸This is reflected in the current Guides. Watches marked "gold electroplate" should be plated with at least three-fourths one thousandths of an inch of 10 karat gold (or 750 millionths of an inch) whereas jewelry should be plated with at least 7 millionths of an inch of 24 karat gold or the equivalent.

The American Watch Association (236) stated at p.1, that standards for gold plating should be similar for watches and jewelry because "consumers can be confused when faced with jewelry and watch products subject to entirely different definitions and standards." However, watches may be subjected to more wear than most jewelry (because they are usually worn daily), and, based on past practice, consumers may expect watches to have a thicker coating of gold plate than jewelry. Moreover, there are different ISO standards for plated jewelry and plated watches.

¹¹⁹Other commenters interviewed by Commission staff stated that 1/2 micron was not very durable [Irving Ornstein from Leach (257); Kenneth Genender from U.S.W.C. (118)]. Catholyte, (34) p.1 (a "quality" product would contain 5 microns).

¹²⁰Benrus (22); USWC (118).

¹²¹Telephone interview with I. L. Wein, President, Benrus, Bruce (218), in discussing vermeil (which is gold plate over sterling silver),

Therefore, to ensure that consumers are not deceived by the implied claims of durability arising from the term "gold plate," the "safe harbor" in the revised Guides (§ 23.4(c)(2)) reflects the Commission's view that the term "gold plate" is not inherently deceptive or unfair when used for gold applied to an industry product (excluding watches) by any process so long as the following two conditions are met: (1) The product contains a coating of half a micron, or 20 millionths of an inch, of fine gold or the equivalent; and (2) The coating is "of substantial thickness,"¹²² which for items that are subject to a great amount of wear, such as rings, should be more than half a micron of fine gold or the equivalent. This second provision ensures that products that are subject to greater wear should have a coating of greater thickness than the minimum half micron. Moreover, it ensures that products that are subject to a great amount of wear in certain areas would have a more substantial coating in those areas.

The Commission has indicated that the thickness of the gold plating may be marked in microns on the item itself if it is followed in close proximity by a gold quality mark (e.g., 2 microns 12 K. G. P.). A note following this section recommends that if a product has a thicker coating in some areas than others, the area of least thickness should be marked. This allows manufacturers to inform consumers of the minimum thickness of the plating, and consumers may therefore shop for items with more or less plating depending on their needs and budget.

The ISO standard, in section 5.4, prohibits quality marks on gold plated items. However, the Commission does not believe it is appropriate to include this portion of the international standard in the revised Guides. The quality mark in combination with an indication of the thickness of the gold plate, can communicate important information to consumers. The ISO standard also sets up a system whereby gold plated products can be labeled "A," "B," or "C," with A indicating products that have a minimum of 5 microns of 14 karat gold (or the equivalent), B indicating a minimum of 3 microns of 14 karat gold (or the equivalent), and C indicating a half micron of 24 karat gold (or the equivalent). However, American

stated that one micron of plating would be sufficient for some items such as earrings, two microns for other such as necklaces, but that an item like a ring would require three microns.

¹²²"Substantial thickness" is defined in a footnote which is similar to the present footnote 1 in the current Guides.

consumers are not familiar with this system, and the Commission does not believe it is appropriate to include it in the Guides at this time.¹²³

The safe harbor for "gold plate" (§§ 23.4 (b)(4) and (c)(2)) will be in addition to those already contained in the Guides. Thus, §§ 23.4 (b)(5) and (c)(3) of the revised Guides indicate that mechanically plated gold can be called "gold filled," "rolled gold plate," or "gold overlay." However, items mechanically plated with gold also can be referred to as "gold plate," in accordance with the guidance of § 23.4 (c)(2) of the revised Guides. Electroplated items can be marked as "gold electroplate" or "GEP," in accordance with the guidance of §§ 23.4(b)(4) and (c)(4) of the revised Guides,¹²⁴ or as "gold plate," in accordance with § 23.4(c)(2).

c. *New methods of plating.* The FRN solicited comment on whether newer methods of plating should be included in the guides and how they should be addressed. Nineteen comments addressed this issue, and of this group, only one commenter stated that he was unaware of new techniques.¹²⁵ The most frequently mentioned new method was "electroforming," a process in which gold is deposited over materials that are removed, leaving a hollow item.¹²⁶ (If all

of the foreign material is removed, the product is not actually plated.) Citizen Watch (228) described a process called "ion plating," and Sheaffer (249) described "vapor deposition," "sputtering," and "electroless immersion." However, Sheaffer stated that these processes could be handled in the same basic manner as mechanical plating and electroplating and noted that the terms "plate" or "plated" should be available to describe products coated by any of these methods.¹²⁷ As discussed *supra*, the Commission has revised the Guides to indicate that it is not misleading to describe an item as gold plate, whatever method is used to apply the gold, so long as it meets the suggested minimum thickness and fineness standards. The Commission does not have enough information at this time to provide more detailed guidance regarding the newer methods of plating.

d. *Nickel in gold-filled jewelry.* The FRN solicited comment on whether the Guides should advise against the use of the term "gold-filled" to describe a product in which nickel is inserted between the gold-filled item and a surface coating of gold electroplate. The FRN also asked if it would be acceptable to permit the insertion of nickel so long as the lessened durability of such an item is disclosed, and asked what type of disclosure should be made.¹²⁸

Most of those who commented believed that jewelry made in this way should not be called "gold-filled."¹²⁹ Tru-Kay (which stated that gold-filled jewelry is its major product line) noted that the insertion of nickel would

and actually sells [it] as gold or silver"); Canada (209) (stating that the problem of foreign substances left inside plated articles deserves review). Section 23.5(a) of the Guides makes clear that overstatement of the quantity of gold in a product is unfair and deceptive.

¹²⁷ Comment 249, p.3; ArtCarved (155) (stating that "gold plate" should be allowed for all methods). Two comments, Estate (23) and G&B (30), stated that the method of application should be revealed, but gave no reasons.

¹²⁸ The JVC proposed this provision to prevent "the occasional expediency, in the manufacturing of finished products, to 'hot nickel' or use some other non-precious electroplating over the mechanical precious metal surface and then merely to apply a flash of precious metal electroplating." Petition Section 23.5 C(2), Footnote 2. ArtCarved (155) suggested, at p.3, that "on some surfaces nickel serves as a leveling agent." Korbela (27) stated, at p.4, that "nickel is apparently used to prevent corrosion of the unavoidably exposed copper alloy base of the mechanically coated stock."

¹²⁹ Fasnacht (4); Gold Institute (13); Estate (23); Korbela (27); Newhouse (76); Tru-Kay (196); Phillips (204); Mark (207); Matthey (213); Bruce (218); WGC (223); MISA (226); and Leach (257). Two commenters, G&B (30) and Jabel (47), favored allowing the insertion of nickel with a disclosure, but G&B noted that there may be a need to "have a new term."

adversely affect durability and quality.¹³⁰ Three comments contended that nickel should not lessen durability.¹³¹

Mark stated that if a layer of nickel "has covered the basic material, it will show up as soon as any gold surface coloration has worn through* * *."¹³² This is particularly important since the metal color would change from yellow to white. Mark also stated that "[t]o cover the mechanically bonded layer of gold [with nickel] which is the essence of the gold-filled product defeats the purpose of the gold-filled standard to the consumer."¹³³

The Commission agrees with the argument of the majority of the commenters that a thin wash of gold could wear away and reveal the nickel. Thus, the use of the term "gold-filled" to describe such a product does not comport with § 23.4(b)(5) of the revised Guides, which states that the product should contain "a surface-plating of gold alloy applied by a mechanical process which is of such thickness and extent of surface coverage that reasonable durability is assured." The Commission has concluded that the use of "gold-filled" or other terms to describe mechanically plated gold covered with nickel that is washed with gold involves a misleading use of the word "gold" because it does not disclose that this product has only a thin wash of gold over a surface layer of nickel.¹³⁴ To clarify this point in the revised Guides, the Commission has added a provision, § 23.4(b)(6), that states that such a product should not be described as "gold plate" or "gold-filled" unless it contains a disclosure that the primary gold coating is covered with a base metal, which is gold washed. Such a product comports with the guidance in the current and revised Guides for "gold washed" or "gold flashed" and, if the seller wished to do so, the seller could so describe it.¹³⁵

¹³⁰ Tru-Kay (196) p.1.

¹³¹ Handy (62); ArtCarved (155); and Sheaffer (249).

¹³² Mark (207) p.4.

¹³³ *Id.*

¹³⁴ The Commission rendered an advisory opinion on this issue in 1966, stating that "a purchaser of such an article would not get the type of performance expected from gold filled articles because points of wear would expose the coating of white nickel at a very early stage and the ornamental value would be seriously reduced." Advisory Opinion, *Improper Use of terms such as "gold filled" or "rolled gold plate"*, 69 F.T.C. 1234 (1966).

¹³⁵ The Gold Institute stated, that "Nickel is a recognized skin irritant," and urged that the use of nickel in gold jewelry be prohibited. Comment 13, p.2. Several other commenters took this position. However, the fact that nickel is a skin irritant would

¹²³ ISO standard 17013 also provides a similar system of marking mechanically plated gold items (e.g., "A" indicates a thickness of 5 microns), based on the thickness of the gold plate. However, the Guides allow marking of mechanically plated items (e.g., gold-filled or rolled gold plate), based on the weight of the gold in the item. The current system in the Guides has been used for many years and the ISO system of marking may be confusing to consumers. Thus, the Commission has not included the ISO system in the revised Guides. The Commission believes that omitting the ISO system of marking mechanically plated gold from the Guides will not pose a barrier to international trade, because manufacturers can mark the product "gold plate" according to the new provisions for gold plated items, discussed above.

¹²⁴ The JVC petition suggests revising the sections pertaining to electroplate by substituting the word "electroplate" for the word "plate" and "electroplating" for "plating." This revision clarifies that products coated with gold by a process other than electroplating should not be sold as "gold electroplate."

¹²⁵ Gold Institute (13); Estate (23); Korbela (27); G&B (30); Handy (62); Newhouse (76); Eisen (91); ArtCarved (155); Bales (156); LaPrad (181); Mark (207); Canada (209); Matthey (213); Bruce (218); WGC (223); MISA (226); Citizen (228); Sheaffer (249); and Leach (257). Leon Newhouse (76), a former executive in the watch industry who stated that he has been retired since 1971, said he was not aware of any new techniques. Handy, Mark, Matthey and MISA stated the techniques can be adequately dealt with by the existing provisions in the Guides.

¹²⁶ Bruce (218) (stating that it produces this type of jewelry); Bales (156) p.8 (stating that such jewelry is often sold by weight and that "[m]any times, the manufacturer leaves a measurable amount of residue inside the shell and weighs it,

e. *Provisions relating to vermeil.* Vermeil, a product made of sterling silver with a coating of gold, is a special form of gold plate.¹³⁶ The JVC proposed including provisions for vermeil in the Guides and the FRN solicited comment on whether a recommended minimum plating of 120 millionths of an inch of fine gold, or its equivalent, over sterling, was appropriate.

Eighteen comments addressed this issue.¹³⁷ Two comments stated the proposed standard was not appropriate; one offered no reason and the other stated that the standard should be up to the manufacturers.¹³⁸ Three comments stated that the proposed standard was thicker than necessary.¹³⁹ Other commenters offered various opinions on the proposed standard.¹⁴⁰ Most of the other comments simply said the proposed standard was appropriate but offered no reasons.

MJSA supported the proposed standard stating that it "assures an extremely high level of durability and low porosity." However, MJSA stated that "it is possible to establish a highly durable coating of gold over silver at substantially lesser thicknesses," and noted that many manufacturers currently produce such a product.¹⁴¹ In

require the disclosure of its presence in all jewelry, not just rolled gold jewelry. This was not proposed in the FRN and there is not an adequate basis at this time for adding such a provision.

¹³⁶ "Tiffany's Sterling: History and Status," National Jeweler (undated) (attached to Korbela (22)) (stating that vermeil is a unique product with a "silver-gold" glow, which has been on the market for a long time). However, no provisions pertaining to vermeil have ever been included in the Jewelry Guides.

¹³⁷ Fasnacht (4); Gold Institute (13); Korbela (27); G&B (30); Jabel (47); Handy (62); Newhouse (76); ArtCarved (155); JA (192); Tru-Kay (196); Mark (207); Canada (209); Bruce (218); Impex (219); MJSA (226); Sheaffer (249); Knight (256) and Leach (257).

¹³⁸ Newhouse (76) and Impex (219).

¹³⁹ Korbela (27) p.4 (stating that "a floor of 100 millionths of an inch was established by the trade many years ago"); Tru-Kay (196) p.2 (stating that the proposed standard was "quite excessive" and not necessary "in order to give the consumer a quality product"); Bruce (218) p.8 (stating that the proposed standard was "very heavy" and noted that "the nature of the product and the wear it is subjected to would be a more appropriate guide for plating thickness"). Bruce (218) suggested that the proposed standard was appropriate for items such as rings (which receive a lot of wear) but suggested 40 millionths of an inch for earrings and pendants and 80 millionths of an inch for bracelets and neck chains.

¹⁴⁰ MJSA (226) pp.4-5 (stating that the JVC recommended 120 millionths of an inch simply because it is higher than the 100 millionths of an inch required for heavy gold electroplate); G&B (30) p.8 (indicating that the point was simply to set some standard); ArtCarved (155) p.4 (stating that "if vermeil is the standard word used for 120 millionths of an inch, this would be okay"); Canada (209) p.4 (noting that it has a quality mark for vermeil but has yet to establish a minimum standard for plating).

¹⁴¹ Comment 226, pp.4-5.

the Jeweler's Dictionary, modern usage of "vermeil" is defined as "Heavy gold electroplate over sterling silver * * * or a substantial layer of karat gold mechanically applied over sterling silver."¹⁴² The current Guides identify the minimum thickness for heavy gold electroplate as the equivalent to 100/1,000,000ths of an inch of fine gold.

The JVC petition indicates that vermeil is susceptible to discoloration, presumably because the silver might tarnish.¹⁴³ Because gold itself deters tarnishing, the thicker the coating of gold, the less likely the underlying silver will tarnish. However, Korbela (27) p.4, stated that "gold coatings are permeated by sulfides in the average atmosphere up to thicknesses of 10 microns (0.0004 inch)." Thus, even a gold coating of 120 millionths of an inch (or 0.00012 inch), or about 3 microns would not completely solve this problem.

The Commission believes it is appropriate to reference a numerical thickness in the Guides when consumers have come to expect certain qualities from products described by the term and products below the standard would not have such qualities. The comments indicate that there are items sold as "vermeil" that have the qualities consumers associate with "vermeil," and that have a gold coating of less than 120 millionths of an inch. Furthermore, the definition of vermeil in the Jeweler's Dictionary is consistent with Korbela's comment (27) that many years ago, the trade established a floor of 100 millionths of an inch for vermeil. Therefore, the Commission has concluded that a thickness of 100 millionths of an inch, or 2.5 microns, of fine gold is an appropriate thickness "floor" for vermeil.

Because there may be items currently sold as "vermeil" that do not comport with the generally accepted meaning (*i.e.*, gold over silver), the Commission has added a general provision stating that it would be unfair or deceptive to describe an article as "vermeil" if it misrepresents the product's true composition. The Commission has also added a section, 23.5(b), which provides guidance on when a product may be described as "vermeil." This section states that a product may be described as "vermeil," "if it consists of a base of

¹⁴² "Jewelers' Dictionary" 253 (3d ed. 1976).

¹⁴³ The JVC recommended the addition of a note that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under the layer of gold.

sterling silver,¹⁴⁴ coated or plated on all significant surfaces, with gold or gold alloy of not less than 10 karat fineness, which is of substantial thickness and a minimum thickness throughout which is equivalent to two and one half (2½) microns (or approximately 100/1,000,000ths of an inch) of fine gold." As with other gold-plated items (covered in § 23.4 of the revised Guides), "substantial thickness" is defined in a footnote which is similar to the present footnote 1 in the current Guides.

With respect to the problem of the tarnishing of the silver base, the JVC recommended the addition of a note allowing a nickel barrier. However, the nickel is placed over the silver base, and it is the silver that distinguishes vermeil from other gold plated items. Moreover, vermeil is by definition composed completely of precious metal alloys.¹⁴⁵ Although the note indicates that the purpose of the "diffusion barrier" is to prevent premature discoloration, there was no discussion of the effect a "diffusion barrier" over the silver would have on the unique coloration of vermeil. Moreover, no explanation was offered for limiting the thickness of the barrier to 50/1,000,000ths of an inch.¹⁴⁶ Although there may be a need for such a barrier, in the absence of adequate information on this issue (including whether it changes the appearance of the product in a manner that would be objectionable to consumers), the Commission has determined not to add this note to the Guides. Instead, the Commission has added a Note which states that such a product should not be described as vermeil unless there is a disclosure that the sterling silver is covered with a base metal, which is gold-plated.

The JVC petition suggested several other qualifications of the use of "vermeil" that the Commission has not included in the revised Guides. The petition suggested that the application of the gold must be either by mechanical bonding or electroplating. However, comments have indicated that some new methods of application have been developed, and no reasons were offered

¹⁴⁴ The comments indicate that the sterling silver base is part of the common understanding of the term "vermeil."

¹⁴⁵ See also Advisory Opinion, *Impropriety of description "14K" for item not entirely gold*, 69 F.T.C. 1212 (1966) (stating that an earring post with a 14K gold base, electroplated with copper, nickel and then karat gold, could not be described as 14 karat gold, because it would "contains substantial electroplatings of base metals").

¹⁴⁶ Franklin Mint (250) p.4 (objecting to the proposal and stating that their own tarnish testing indicates the need for a barrier of 150/1,000,000ths of an inch).

for excluding those methods. (See *infra* for a discussion of these comments.) The JVC also proposed that a vermeil industry product only be represented by the word 'Vermeil' standing alone,¹⁴⁷ and proposed prohibiting use of the words "gold" or "silver" to modify "vermeil." However, no reasons were offered as to why the terms "gold vermeil" or "silver vermeil" would be deceptive. The use of the terms "gold" and "silver" are covered by other sections of the revised Guides, and the Commission believes these sections are adequate to prevent the deceptive use of these terms in connection with vermeil.

Finally, the JVC suggested including a requirement that when "vermeil" is used as a quality mark, it must be accompanied by the name or trademark of the manufacturer or importer according to the provisions of the National Stamping Act. The National Stamping Act creates such a requirement for any quality mark indicating the presence of gold or silver. Thus, the requirements of the Act may apply to a "vermeil" quality mark. However, there is currently a Note in the Guides, following the section dealing with quality marks, referring to the requirements of the National Stamping Act. Instead of creating a second note, the Commission has added "vermeil" to the list of quality marks in that Note (and in § 23.9 of the revised Guides).

3. Misrepresentation as to Silver Content: § 23.6

Section 23.6(a) of the current Guides cautions against misrepresenting the silver content in any industry product. The JVC proposed adding the abbreviation "Ster." to § 23.6(b) of the Guides, which states that the use of the terms "silver," "solid silver," "Sterling," or "Sterling Silver" is deceptive unless the product is 925/1000ths pure silver. Because consumers are likely to believe this term stands for "Sterling," the Commission has added the abbreviation "Ster." to this section.

The JVC proposed stating that abbreviating the term "Sterling" was not allowed when used to describe hollowware or flatware. No reason was offered for prohibiting this practice, and the Commission has no reason to conclude that this practice is inherently

unfair or deceptive.¹⁴⁸ The JVC also proposed stating that "Sterling" or "Ster." was not allowed to be applied to a silverplated article. This proposed addition to § 23.6(b) essentially restates § 23.6(d) of the current Guides, which states that it is unfair to apply the terms "Sterling" or "Coin" to any silver-plated article or the plating thereon. In fact, the National Stamping Act states that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a). However, the Commission has determined that § 23.6(d) of the current Guides may unnecessarily inhibit the use in advertising of phrases such as "sterling silver plated" or "coin silver plated." Thus, the Commission has deleted § 23.6(d) and has added a Note referring to the requirements of the National Stamping Act.

Section 23.6(c) states that the use of "coin" is deceptive unless the product is at least 900/1000ths pure silver. The JVC proposed adding a prohibition against abbreviating the term "coin." There is no evidence that "coin" is being abbreviated or, if it were, that it would be misleading to consumers. Accordingly, the Commission has not adopted this proposal.

a. *Silverplate.* Section 23.6(e) of the current Guides state that it is an unfair trade practice to represent an industry product as plated with silver unless all significant surfaces are coated with silver "which is of substantial thickness."¹⁴⁹ The JVC proposed continuing the use of the "substantial thickness" standard but adding a footnote stating this means thickness

¹⁴⁸ Franklin (250) commented at p.5, that the presumption implicit in allowing sterling to be abbreviated on other products "is that buyers of the other products named therein for which 'ster.' is an acceptable usage understand its meaning; it defies logic to assume that the term 'ster.' is not recognized and understood by the hollowware and flatware buying public."

¹⁴⁹ The Watch Band Guides differ from the Jewelry Guides in that they state that when an industry product is marked as "silver plate" all significant surfaces "shall have a plating or coating of silver of a high degree of fineness and such plating or coating shall be of substantial thickness." 16 CFR 19.2(b) (emphasis added). The Jewelry Guides simply state that such a product should contain a "plating or coating of silver which is of substantial thickness." The Jewelry Guides state that "silver" means sterling silver (*i.e.*, unless qualified by the word "coin"). Thus, the Jewelry Guides appear to limit the use of "silver plate" to sterling silver plate, whereas the Watch Band Guides appear to allow coin silver to be used on an item marked "silver plate." Because no one objected to the current provision in the Jewelry Guides, the Commission has retained the provision as it appears in the Jewelry Guides for both jewelry and detachable watch bands.

sufficient to assure durable coverage of the base metal. (The current Guides contain such a footnote in § 23.5(c)(2) with respect to gold-filled items.) The FRN solicited comment on whether this addition should be made or whether the thickness should be defined numerically.

All but one of the 16 pertinent comments indicated that giving a numerical value to "substantial thickness" would be desirable.¹⁵⁰ However, four of these suggested that additional data were needed.¹⁵¹ Moreover, only a few made specific recommendations. Sheaffer noted that it was "not aware of any problems resulting from the current definition of 'substantial thickness'" but nevertheless proposed a coating five microns (200 millionths of an inch) thick. Mr. Korbela suggested 500 millionths of an inch where it is functionally necessary.¹⁵²

The Gold Institute made detailed recommendations, but only for silver plated flatware and hollowware.¹⁵³ However, without more evidence of the need for, and desirability of, these particular standards, the Commission does not believe it is appropriate to adopt specific standards for flatware and hollowware. Moreover, the amount of wear received by jewelry is different from the amount of wear received by flatware and hollowware. Therefore, the proposed standards for flatware may not be appropriate for jewelry. Indeed, the amount of wear received by different kinds of jewelry varies greatly (*e.g.*, earrings as compared to bracelets) and manufacturers may need flexibility in any silver plate standard for jewelry.

Based on the comments, the Commission does not believe that there is currently a consensus in the industry as to what would constitute an appropriate minimum numerical thickness for the purpose of identifying a safe harbor for the term silverplate.¹⁵⁴ However, the Commission has added a note to § 23.6(e) to provide some guidance to the industry regarding "substantial thickness" in connection

¹⁵⁰ Gold Institute (13); Korbela (27); G&B (30); Handy (62); Newhouse (76); ArtCarved (155); Bales (156); Phillips (204); Canada (209); Bruce (218); MJSA (226); Sheaffer (249); and Leach (257). The one dissenter was the JCWA (216), which stated at p.3 that "there is insufficient data to determine an 'acceptable' thickness of silver plating, and because related ISO standards have not been established, it is difficult to determine the durability of specific levels of silver plating. Therefore, it is not practical to define 'durability' in numerical terms. The existing definition is appropriate."

¹⁵¹ G&B (30); Handy (62); Canada (209); and MJSA (226).

¹⁵² Sheaffer (249) p.4; Korbela (27) p.4.

¹⁵³ Comment 13, pp.2-3.

¹⁵⁴ There is no ISO standard for silverplate.

¹⁴⁷ Franklin (250), at p.4, objected to the exclusion of "alternative descriptions and markings . . . such as 'sterling silver electroplated with 24 kt. gold'" and noted that "no evidence has been produced that such designations would mislead the public." The Commission believes that alternative truthful descriptions of a vermeil product (*e.g.*, sterling silver electroplated with 24 kt. gold) are acceptable.

with the use of the term silverplate. This note is similar to footnote 1 in the current Guides, which annotates the use of the phrase "substantial thickness" in connection with "gold plate."

Finally, the JVC recommended adding a section to the Guides that would allow items with an inner core of base metal to be referred to as sterling or coin (instead of silverplate) as long as the item as a whole contained 925 or 900 parts silver per thousand. A literal reading of the sections of the current Guides pertaining to sterling and coin [§§ 23.6 (b) and (c)] indicates that this practice is not currently perceived as misleading. However, the actual practice in most of the industry is only to label an item sterling if it is a uniform mixture throughout of 92.5% silver and a base metal (or, for coin, 90% silver and the rest base metal). Without more information as to consumer beliefs, the Commission is not adopting this specific provision at this time.

b. *Diffusion barrier on sterling silver.* The JVC recommended adding a note to the Guides that states that a diffusion barrier (typically of nickel) may be electrolytically applied, in a thickness of no more than 50/1,000,000ths of an inch, under a layer of rhodium, to deter premature tarnishing on sterling silver products.¹⁵⁵

Although this note refers to "sterling silver products," it follows the section on silver plate, and it is unclear whether this note is meant to apply to sterling silver products or silver plated products or both. In either event, the described product would have no silver on the surface, and thus, strictly speaking, it would not fall within the definitions in the Guides of either sterling silver or silver plate. John Lutley, Executive Director of the Silver Institute and President of the Gold Institute, stated, "[s]ome jewelry manufacturers plate pure silver over a nickel flash on sterling silver to achieve a mirror finish and reduce the rate of tarnishing."¹⁵⁶ This may be the practice the note was designed to address. However, in the absence of adequate information on this issue (e.g., how such products are described to consumers), the Commission has not included this Note in the revised Guides.

c. *Quality marks.* The JVC proposed adding three subsections dealing with quality marks. Two subsections [23.6 Section I(g) and I(h) in the JVC petition] reiterate the general provisions concerning the use of the terms "Sterling," "Ster," "Sterling Silver,"

"Silver," or "Solid Silver" and "Coin" or "Coin Silver," set out in subsections (a), (b), and (c) of the silver section. Therefore, the Commission is not restating these provisions in another section.

The third proposed section dealing with quality marks [section 23.6 Section I (i) of the JVC petition] states that no quality marks shall be used "other than those herein specified." The Franklin Mint commented that this "inexplicably prohibits use of such universally recognized numerical terms as '.925' in conjunction with other applicable quality marks such as 'ster.' or 'sterling.'" ¹⁵⁷ The Commission does not believe that a marking such as ".925 ster." is inherently deceptive, and is not including this proposal in the Guides.

d. *Tolerances and exemptions for testing purposes.* Footnote 2 of the current Guides notes that the tolerances of the National Stamping Act are applicable to claims made with respect to silver content. The JVC suggested reorganizing this information, and the Commission believes that this change will be helpful to industry members who are using the Guides. Footnote 2 of the current Guides also refers to the exemptions recognized in an assay for quality (to determine the amount of fine silver in the item which is assayed), which are taken from Commercial Standard CS 118-44 [Marking of Jewelry and Novelties of Silver] and Commercial Standard CS 51-35 [Marking Articles Made of Silver in Combination with Gold]. The JVC suggested identifying these exemptions in an additional subsection. Because the exemptions apply to both silver and gold, and because the lists of exemptions distract from the main points of the text of the Guides, the Commission has included this information as an appendix to the Guides. A Note following the silver section refers to the Appendix. 4. *Marking of Articles Made of Silver in Combination With Gold*

The current Guides do not contain a separate section addressing how products which are a combination of silver and gold can be nondeceptively described. The JVC proposed including in the Guides most of the text of Voluntary Product Standard PS 68-76, "Marking of Articles Made of Silver in Combination with Gold."¹⁵⁸ The proposed section defines the covered

products as sterling silver in combination with gold.¹⁵⁹

The JVC's proposals, at least in the case of products with distinguishable components, result in markings that the Commission has already identified as deceptive.¹⁶⁰ However, claims as to silver content are covered by the silver section and claims as to gold content are covered by the gold section. Furthermore, the marking of articles which are a combination of silver and gold is adequately addressed by § 23.8(a) of the current Guides. That section provides that it is unfair to place a quality mark on a product when the mark would deceive purchasers as to the metallic composition of the product or any part thereof. Moreover, subsection (a)(2) notes that, when a quality mark applies to one part of a product but not another part of a similar appearance, it should be accompanied by an identification of the part to which it applies. The JVC offered no evidence regarding why additional guidance on these issues was needed or that any combination gold and silver products

¹⁵⁹ The VPS provides that articles where the gold and silver are visually indistinguishable (e.g., where the gold covers the entire article, or where white gold is combined with silver) may be marked, e.g., "Sterling and 1/5 10 K," where the fraction represents the proportion of the weight of the alloyed gold to the weight of the entire metal in the article. It also provides that the karat mark can only be used if the gold alloy is 1/20 of the weight of the entire metal in the article. For articles where the gold and silver are visually distinguishable, the karat mark must always follow the Sterling mark, e.g., "Sterling and 10 K," and there is no requirement that the proportion of the weight of the alloyed gold to the weight of the entire metal in the article be disclosed. The JVC also proposed that articles so marked must not contain any metal other than Sterling silver and 10 karat or better gold.

¹⁶⁰ In an advisory opinion, *Marking of jewelry produced from a 14 karat gold sheet laminated upon sterling*, 89 F.T.C. 651 (1977), the Commission stated that the mark "Sterling and 14K" was deceptive as applied to an article in which a 14K gold sheet was laminated on sterling, and the gold constituted at least 5% of the weight of the article. The Commission noted that the different metals were visually distinguishable "but casual inspection cannot determine the relative thickness of the gold layer and the silver." *Id.* at 651. The Commission stated that the suggested markings "could suggest to consumers that the amount of gold and silver. . . are approximately equal or, at least, would suggest more than five percent 14K gold." *Id.*

In an advisory opinion involving two visually indistinguishable metals, *Marking of 18 karat white gold ring with platinum baguette prongs*, 74 F.T.C. 1686 (1968), the Commission stated that a white gold ring with platinum baguettes could not be marked "18K-10% Plat." The Commission reasoned that "the consumer might conclude that all of the prongs, including those for the center stone, are of platinum composition. Under these circumstances, it is not enough to merely say that the ring contains 10% platinum and 90% gold without disclosing the true composition of the various parts of the ring." *Id.* The Commission suggested that the ring could be marked "18K-baguette prongs Plat."

¹⁵⁷ Comment 250, p.5.

¹⁵⁸ Footnote 2 in the current Guides references former Commercial Standard CS 51-35 ("Marking of Articles Made of Silver in Combination with Gold") but only to note that it sets out exemptions from an assay in quality. See discussion, *infra*, regarding Commercial Standards generally.

¹⁵⁵ Rhodium, a member of the platinum group metals, is very hard.

¹⁵⁶ Comment 13, p.2.

were being marketed in a manner that deceived consumers as to their metallic content.¹⁶¹

Finally, the JVC's proposal to permit quality marks only for sterling and gold items is unduly restrictive. For example, an article made of coin silver combined with gold could not contain a quality mark under the JVC proposal, nor could an article which contains any metal other than sterling silver or gold. For all these reasons, the Commission has not included in the Guides, the proposed provisions relating to articles made of silver in combination with gold.

5. Platinum: § 23.7

Section 23.7 of the current Guides states that it is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, in a way likely to deceive purchasers as to the true composition of the product. The JVC and a number of commenters proposed changes to this section. However, the Commission recently received a request for an advisory opinion from the JVC and Platinum Guild International for markings of platinum products. This request indicated that members of the platinum industry are interested in simplifying current Commission guidance regarding platinum descriptions and bringing this guidance into closer accord with international standards. The comments submitted in response to the FRN do not address some of these issues. Therefore, the Commission has decided that it would be beneficial to solicit additional comment from the entire industry on markings and descriptions of platinum products before making any changes in this section. A request for comment on these issues will be published in a separate Federal Register notice.

6. Pewter

The current Guides do not pertain to products made from pewter. The JVC recommended including a section on pewter and the FRN solicited comment on whether the guides should include a provision, and whether the standard of any alloy consisting of at least 900 parts per thousand Grade A Tin is appropriate.

Thirty comments addressed this issue, and most thought pewter should be included in the Guides and that the

proposed standard was appropriate. Four opposed the change, stating that the Guides should only address precious metals.¹⁶² One comment stated that there was no apparent need for regulation of pewter but another stated that there are "many companies that are abusing the representation of pewter products."¹⁶³

It appears that pewter has been increasingly utilized in costume or fashion jewelry. Nellie Fischer of the American Pewter Guild advised staff in a telephone interview that over the past five years her company's sales of pewter jewelry to the trade have increased by 40 percent.¹⁶⁴ Pewter jewelry and other pewter products are sold by at least some of the same entities that sell other products covered by the current Guides. The Commission has concluded that inclusion of a provision for pewter may prevent misrepresentations.

With respect to the proposed standard, Salisbury Pewter stated that "a 90% tin requirement is justified by the metallurgical restraints for strength and hardness."¹⁶⁵ The American Pewter Guild, a trade association, attached a list of historical references to pewter which indicate that pewter has virtually always had a tin content of at least 90%.¹⁶⁶ Ten pewter producers also supported the proposed standard.¹⁶⁷

Because pewter has historically contained at least 90% tin, consumers presumably expect pewter to have the qualities that are associated with an alloy containing at least 90% tin. Thus, the Commission has included a section on pewter in the Guides. Section 23.8(a) states that it is unfair and deceptive to describe a product as "pewter" if the description misrepresents the product's true composition. Section 23.8(b) states that a product may be described as "pewter" if it contains at least 90% tin, with the remainder composed of metals appropriate for use in pewter.

¹⁶² Nowlin (109); LaPrad (181); Sheaffer (249); and Leach (258).

¹⁶³ NACSM (219) p.7; Bales (156) p.9.

¹⁶⁴ Christopher R. Mellott, counsel for the Pewter Guild, compiles voluntary statistical reports from samplings of pewter manufacturers and, over the period from 1983 to 1990, found a six-fold increase in the value at wholesale of pewter jewelry sales.

¹⁶⁵ Comment 86, p.1.

¹⁶⁶ Comment 89 (also stating that pewter has been defined as containing 90% tin in the Guild's By-Laws since their adoption in 1976).

¹⁶⁷ Stieff (25); Empire (44); Woodbury (64); Lance (84); Web (85); Salisbury (86); Fischer (87); Seagull (111 and 120); Universal (178); and Heritage (215). Other comments favoring the proposed standard for pewter are: Fasnacht (4); Estate (23); G&B (30); Jabel (47); Bales (156); Canada (209); Bruce (218); MISA (226); and Preston (229).

7. Additional Guidance Relating to Quality Marks: § 23.8

The JVC proposed several changes in § 23.8 of the current Guides. The introductory paragraph of this section defines "quality mark" and gives specific examples of words (e.g., "gold," "karat," "silver," etc.) that are considered to be quality marks. (As noted previously, the Commission has added the word "vermeil" to this list of words that constitute quality marks.)¹⁶⁸

Part (a) of this section addresses the use of quality marks on articles that are made from more than one metal. The JVC suggested that the title be changed from "Deception as to applicability of marks" to "Deception as to application of marks" and that a definition of application be added. The definition of application suggested by the JVC includes bills, invoices, orders, statements, letters, and advertisements. However, this definition is inappropriate in the context of part (a) of this section, which is limited to deception in the use of quality marks, which do not encompass bills, invoices, etc. The term "quality mark" is defined as a mark "which has been stamped, embossed, inscribed, or otherwise placed, on any industry product and which indicates or suggests that such product is composed throughout of any precious metal or any alloy thereof or has a surface or surfaces on which there has been plated or deposited any precious metal or any alloy thereof."¹⁶⁹ Section 23.8 contains specific guidance for marks on the products themselves

¹⁶⁸ The Watch Band Guides differ from the Jewelry Guides with respect to quality marks in that they list the words duragold, diragold, noblegold, and goldine as quality marks in § 19.2(g). However, the Jewelry Guides, in a Note following § 23.8 on quality marks, reach the same practices by stating that quality marks "include those in which the words or terms 'gold,' 'karat,' 'silver,' 'platinum,' (or platinum related metals), or their abbreviations, are included, either separately or as suffixes, prefixes, or syllables." The Commission has added this sentence of this Note to the introductory paragraph of this section in the revised Guides (§ 23.9). The Commission does not believe it is necessary to add the words duragold, diragold, noblegold, and goldine to the examples of quality marks listed in current § 23.8.

¹⁶⁹ This is consistent with the references to such marks in the National Stamping Act, which applies to articles "having stamped, branded, engraved, or printed thereon, or upon any tag, card, or label attached thereto, or upon any box, package, cover, or wrapper in which said article is incased or inclosed, any mark or word indicating or designed or intended to indicate" the degree of fineness of the gold or silver in the article. 15 U.S.C. 294. A quality mark does not have to be placed on a product, but, if it is, it must be accurate within the tolerances prescribed by the National Stamping Act. 15 U.S.C. 294-296. The National Stamping Act goes beyond embossing quality marks on products to things surrounding the product (e.g., labels, wrappers), but not as far as bills, advertisements, etc., as the JVC proposes for the Guides.

¹⁶¹ The Franklin Mint (250) stated at p.4, that there is no evidence that a gold karat mark is misleading on a gold and silver item when the gold constitutes less than 1/20 of the total metal weight. Moreover, it also noted that the JVC did not propose any such prohibition for vermeil products, "which are but another form of gold and silver item. . . ."

(or attached thereto). Other sections of the Guides apply to claims made in bills, invoices, orders, statements, letters, and advertisements. Thus, the Commission has not included the proposed definition of application in the Guides.

Part (b) of this section addresses deception by reason of the difference in the size of letters or words in quality marks (e.g., GOLD electroplate). A Note following this section, entitled "Legibility of markings," recommends that quality marks be of sufficient size to be legible and be so placed as to be likely to be observed. The JVC has not suggested any changes to this section, or to the Note following it. The Commission agrees that the portion of the Note pertaining to legibility should remain unchanged.¹⁷⁰ However, the second sentence of the Note implies that quality marks should normally be engraved on products and that tag or labels can only be used when "such marking cannot be achieved without injury to the appearance of the product." The National Stamping Act indicates that quality marks can be applied by means of tags or labels, regardless of whether engraving would damage the product. The Commission has therefore modified this Note to clarify the fact that if a quality mark is used, it may be either engraved on the product or placed on a tag or label.

The second Note following this section currently states that it is the consensus of the members of the industry that quality marks on such items should be accompanied by identification of the manufacturer, processor, or distributor. The Commission has changed this Note to reference the requirements for identification contained in the National Stamping Act.¹⁷¹

¹⁷⁰ There is no requirement that there be a quality mark; however, it may be deceptive to place an illegible mark on a product, because consumers might interpret such a mark to mean the product is of higher quality than it actually is.

¹⁷¹ The Watch Band Guides differ from the Jewelry Guides in their treatment of quality marks in two respects (in addition to that discussed in note , supra). Section 19.2(g)(3) of the Watch Band Guides, dealing with the marking of watch bands composed of two metals of similar appearance, is adequately addressed by § 23.8(a) of the current Jewelry Guides, discussed above. Section 19.2(g)(1) of the Watch Band Guides provides that if a quality mark is concealed by packaging, it should appear on the outside of the packaging if the failure to so display it would deceive consumers. The Jewelry Guides do not require that products contain quality marks and, thus, do not require that a quality mark be visible in spite of packaging. The Commission believes it is neither unfair nor deceptive to fail to include a quality mark; hence, it is neither unfair nor deceptive to allow packaging to conceal a quality mark. Thus, the Commission has not included this provision in the revised Guides.

8. Exemptions From Assay

Some functional parts of gold alloy, gold-filled, silver and platinum items may need to be made of other sturdier metals to function properly, and thus, are exempt from any assay for quality. (An assay is a test made to determine the quantity of precious metal in a product compared to the weight of the whole product.) The current Guides include the exemptions for these parts that are set out in the various Voluntary Product Standards. Since trade practice for many years has been to make such parts of base metals, it is unlikely that consumers would expect them to be made of precious metal; hence, a claim that an item was silver would not be deceptive because the screws and rivets were made of base metal.

The current Guides list the exemptions for gold and gold-filled items in section 23.5(e) and (f) and for silver and for silver in combination with gold, in footnote 2.¹⁷² However, the Commission believes that detailed listings of the exemptions need not appear in the body of the Guides and has included the list of exemptions for all covered metal products in an Appendix.¹⁷³

The list includes all exemptions from the current Guides and, based on the comments, includes some additions.¹⁷⁴ Tru-Kay stated that there is a significant inconsistency in the Guides between the exemptions recognized in the manufacture of gold-filled jewelry and those which are exempted in the manufacture of silver jewelry. Tru-Kay stated that "industry trade practice over many years has been to apply the exemptions as listed for gold-filled to both gold-filled and sterling silver," because the same reasons that certain parts are exempt in gold-filled jewelry are also applicable in silver jewelry.¹⁷⁵ Tru-Kay explained that when the

¹⁷² The Guides contain no exemptions for products which are never assayed. This includes products made of gold or silver electroplate. (Such articles are not sold with the representation that they contain a specific percent by weight of precious metal.)

¹⁷³ The current Guides use the Appendix to list and classify the Guides. The JVC proposed placing this material first as a Table of Contents. The Commission believes that the existing list of section numbers and titles in the table of contents is sufficient and has omitted this classification from the revised Guides.

¹⁷⁴ In addition, because the revised Guides cover items other than jewelry, the exemptions are stated as applying to industry products, not to jewelry industry products.

The JVC proposed exemptions from assay for optical products, which are based on the VPS, with some additions. There were no comments opposing this proposal, and the Commission has included this list of exemptions for optical products in the Guides.

¹⁷⁵ Comment 196, p.2.

exemptions were first written, "many articles that were being produced in gold-filled, were not at that time being produced in sterling silver."¹⁷⁶ Since this is no longer the case, Tru-Kay urged that "these exemptions be standardized in a consistent manner."¹⁷⁷ The Commission agrees with this proposal and has expanded the list of exemptions for silver items to include all exemptions listed for gold-filled items.¹⁷⁸

General Findings, which makes small functional components of jewelry, suggested that there should be two additions to the gold exemptions.¹⁷⁹ First, it suggested the exemptions for karat gold jewelry include "metallic parts completely encased in nonmetallic covering." This would include base-metal pegs used in gluing pearls or stones to the findings. (According to General Findings, "the pegs are completely encased within the stone or pearl.") The current Guides exempt "metallic parts completely encased in nonmetallic covering" when they are included in articles made of silver in combination with gold.¹⁸⁰ On the basis of the comment, the Commission has determined that such parts should be added to the list of exemptions for gold alloy jewelry (and to the list of exemptions for silver items, under the rationale advanced by Tru-Kay). The second suggestion was that "bracelet and necklace snap tongues, i.e., clasps" (sometimes referred to as springs) should be added to the exemptions for rolled gold plate jewelry. Bracelet and necklace snap tongues are already an exemption for articles made of platinum, and the Commission has added this to the list of exemptions for rolled gold plate jewelry (and to the list of exemptions for silver items).

Donald Bruce also suggested that the mechanical parts of lockets be added to the lists of exemptions for silver and gold alloy jewelry. These are already in the list of exemptions for gold-filled jewelry (which exempt "field pieces and bezels for lockets"), and Bruce stated that "the trade practice has interpreted this for Silver and Gold as well" because a base metal hinged frame "offers stability and strength to the moving parts."¹⁸¹ Adding these to the list of exemptions for silver is logical because silver is relatively soft. Gold

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Silver is relatively soft. Hence, it is logical for the exemptions for gold-filled items to apply also to silver items.

¹⁷⁹ Comment 88, p.1.

¹⁸⁰ Footnote 2 to current Guides.

¹⁸¹ Comment 218, p.3.

alloy, however, is relatively hard.¹⁸² Nevertheless, because trade practice has interpreted this exemption as applying to gold lockets for some time, it is unlikely that consumers would believe that the field pieces and bezels of a locket advertised as 14 karat gold were 14 karat gold. Therefore, the Commission has added these exemptions to the list of exemptions of silver and gold alloy products.¹⁸³

9. Misuse of "Corrosion Proof," "Noncorrosive," etc.

The Watch Band Guides, 16 CFR 19.3, contain a section regarding the use of the terms "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," or any word or term of equivalent import. The JVC did not recommend any changes in this section. Thus, the Commission has included this provision, unchanged, in the revised Guides as the last section pertaining to metals (§ 23.10).

D. Diamonds (Category III): §§ 23.9–23.14

The current Guides address diamonds in the definition section, § 23.0, and in §§ 23.9–23.14. Section 23.9 describes practices which are unfair uses of the word "diamond." Sections 23.10–23.14 deal with misuse of the terms "perfect," "blue white," "properly cut," "brilliant," "full cut," and "clean." In addition, artificial coloring, imitation and synthetic diamonds, and the words "reproduction," "replica," "gem," "real," "genuine," and "natural" are addressed in §§ 23.18–23.21.

1. Definition

The Commission has moved the definition of "diamond" from § 23.0 to the beginning of the substantive sections that deal with diamonds (§ 23.11, which is renamed "Definition and misuse of the word 'diamond'"). The JVC proposed adding the following sentence to the definition of the word diamond: "It is the hardest natural substance and in 1818 was arbitrarily given 10 on the Mohs relative scratch hardness scale." The JVC also proposed adding, after the definition of diamond, a "Note"

¹⁸² As a result, the list of exemptions in the current Guides is much shorter for gold items than for silver items.

¹⁸³ The following were added to each list of exemptions: (1) karat gold: metallic parts completely and permanently encased in a nonmetallic covering, and field pieces and bezels for lockets; (2) gold-filled: bracelet and necklace snap tongues; (3) silver: field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; metallic parts completely and permanently encased in a nonmetallic covering. There were no additions to the exemptions for silver in combination with gold or for platinum.

regarding the Mohs scale and the standards for determining mineral "hardness."

A definition of diamond is helpful to the extent that it makes clear what can nondeceptively be represented to be a diamond. However, there is no indication that the current definition of diamond has ever failed to serve its purpose, and some comments indicated the current definition is better.¹⁸⁴ The Commission, therefore, is not adopting this proposal.

The Postal Service stated that mail order jewelry promoters sell "tiny, unattractive, industrial grade diamonds" as jewelry which "no one would buy if they saw them." It suggested that the Guides be modified to prohibit "advertisers from representing expressly or impliedly, that industrial or other non-jewelry quality diamonds are of jewelry quality."¹⁸⁵ The Commission agrees that such a practice is unfair and deceptive, and has included a Note that states the practice of advertising industrial grade diamonds as jewelry is unfair and deceptive. The provision advising against misrepresenting products visually, in § 23.2, also would apply to this practice.

2. Misuse of the Word "Diamond"

Section 23.9 of the current Guides deals with misuse of the word "diamond." Neither the JVC nor any of the commenters proposed a change in this section, and there is no other information indicating a need for changing this section.

3. Misuse of the Words "Perfect" and "Flawless"

Section 23.10 of the current Guides, and the accompanying Note, deal with the use of the words "perfect" and "flawless" to describe a diamond. The JVC proposed revising this section to focus on the use of the term "flawless," with a subsection stating that it is unfair to use the word "perfect" with respect to any diamond which is not flawless, or which is of inferior color or make. The organization of the current section is convoluted and difficult to understand. The Commission has determined that the proposed change will improve the clarity of the Guides, and has revised this section accordingly.

¹⁸⁴ AGTA (49) p.15 (commenting that either information should be added to the proposed JVC definition or the last sentence of that definition and the following Note should "be struck," adding that "AGTA prefers that both be struck from the guides"); NACSM (219) pp.25–26 (stating that the proposed addition to the definition is "not an improvement on the clarity of the mandates of the law").

¹⁸⁵ Comment 244, p.2.

To determine whether there was evidence that the term "perfect" has been used to mislead consumers, the FRN sought comment on whether the Guides should advise against use of the term "perfect." Thirty-two comments addressed this issue.

Seven comments indicated that the term "perfect" is acceptable as defined in the current Guides.¹⁸⁶ Twenty-eight commenters stated that the term "perfect" should be prohibited, and one stated it should be allowed only as a synonym for flawless.¹⁸⁷ However, the current Guides allow diamonds to be called "perfect" if they are flawless and not of inferior color or make, and there is no evidence that large numbers of consumers have been deceived by the use of the word "perfect."¹⁸⁸ The Commission has determined that the scheme in the current Guides adequately explains the type of diamond that nondeceptively may be described as "perfect" and that guidance that in effect totally bars the use of the word "perfect" would be an unwarranted infringement on free speech.¹⁸⁹

The JVC also proposed changing current § 23.10 to state that it is unfair to use the word "flawless" to describe a diamond "which discloses blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading." With the exception of the addition of "lasering," the changes appear to be simply a change in terminology. No reasons for the changes

¹⁸⁶ King (11); Estate (23); Lannyte (65); GIA (81); Bales (156); NACSM (219); and Best (225).

¹⁸⁷ JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (14) and (15) p.1 (stating that if diamonds can be called perfect, "it would open vast opportunities for deceptive advertising and many consumers would be hurt"); Argo (17); AGS (18) p.3 (favoring the prohibition because "[t]he potential for misuse is too great"); Capital (19); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bridge (163) p.2 (stating that "perfect" should not be allowed because relatively few diamonds "meet all these very high standards"); LaPrad (181); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MISA (226); Preston (229); Limon (235); Leach (258); and Solid Gold (261).

¹⁸⁸ Indeed, many consumers may regard the word as "mere puffing." One comment noted, "'Perfect' pertaining to anything is a dumb word and should arouse suspicion." Jabel (47) p.2.

¹⁸⁹ One comment stated that limiting the use of the term "perfect" as a synonym for "flawless" to those situations in which the diamond described is not "of inferior color or make" is meaningless because "inferior color or make" cannot be defined. Limon (235) p.2. The Commission agrees that the definition is not precise, but nevertheless believes that the word can be used in a non-deceptive manner.

in terminology are apparent (e.g., changing the terms "flaws, cracks, carbon spots, clouds or other blemishes or imperfections" to "blemishes, inclusions, lasering, prominent reflective whitish or colored grain lines, or clarity faults"). Thus, the Commission has not adopted these changes. However, the numerous comments which addressed lasering of diamonds in the context of a related JVC proposal, discussed below, indicate that lasering leaves channels or surface openings in a diamond that are similar to grains or other clarity faults. The Commission believes that it would be deceptive to describe a diamond that discloses internal lasering under the conditions specified in that section as "flawless," and therefore has revised this section.¹⁹⁰

The Commission also has included the JVC's descriptions of when the flaws are visible—i.e., "when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading." This is an updating of the current Guides (which refer to an examination "in normal daylight, or its equivalent, by a trained eye under a ten-power, corrected diamond eye loupe or equal magnifier") to reflect changes in available equipment.¹⁹¹

In the current Guides, the Note following § 23.10(a) also states that the use of a phrase such as "commercially perfect" for a diamond that has flaws is "regarded as misleading and in violation of this section." The JVC proposed expanding this portion of the Note to also cover the phrase "commercially flawless."¹⁹² The Commission believes that the provision in the revised Guides, which applies to use of the words "perfect," "flawless," or "any representation of similar meaning," is sufficient to prevent deception. The current Note is superfluous, and the Commission has deleted it.¹⁹³

¹⁹⁰ Preston (229) stated, at p.10, that the word "internal" should precede the word "lasering" in this section, apparently to clarify that "lasering" in this section is not meant to include the use of lasers to cut diamonds but rather the use of lasers to remove blemishes. The Commission agrees with this comment and has included this clarification in the revised Guides.

¹⁹¹ ICT (189) also suggested, at p.2, a modification of § 23.10, i.e., that the word "flawless" should always be accompanied by the magnification level at which no flaws are visible [for example, "flawless under 15X loupe"]. However, there is no evidence that such detailed information is material to consumers.

¹⁹² Eisen (91) stated, at p.1, that "commercially flawless" should not be allowed but did not offer any reasons.

¹⁹³ The JVC also proposed adding a Note that states that the term "internally flawless" may be

Section 23.10(b) states that it is unfair to describe a ring or other article of jewelry with a "perfect" center stone and side stones which are not "perfect," as "perfect," without disclosing that the description applies only to the center stone. The JVC proposed modifying this to apply to representations that stones are "flawless," and also proposed changing the reference to "center stone or stones" to "principal diamond or diamonds." Such a change appropriately includes jewelry in which the principal stone is not the center stone.

4. Disclosure of Treatments

Section 23.18 of the current Guides, entitled "Deception as to precious and semi-precious stones," contains a Note which states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by "coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means" should be disclosed and the fact that the coloring is not permanent, if such is the fact.

The JVC proposed moving the portion of this section that applies to diamonds into the diamond category, modifying it to apply to any diamond that has been treated (rather than colored) by certain methods, and adding the following treatments to this list of those that should be disclosed: the internal use of a laser beam, the introduction or the infusion of any foreign substance, or treatment "by any other means, without disclosure of the fact that the inherent quality and/or appearance of such diamond has been enhanced, and the result of this enhancement is not or may not be permanent, if such is the case."¹⁹⁴

Internal laser treatment and the infusion of a foreign substance are treatments that did not exist in 1959 when the Guides were last substantively revised. A laser treatment involves the use of a laser beam to improve the

used to describe a diamond "which meets the requirements set forth . . . but possesses only minor surface blemishes such as grain lines, polish or burn marks, scratches, nicks, or small naturals." No reasons were offered for this change. However, Lannyte (65) p. 5, stated "Do not play games with the word 'internally.' Any surface blemish has to exist on or in the surface to exist at all." Based on this comment, and the lack of other explanation for this provision, the Commission has not included this Note in the Guides.

¹⁹⁴ ISA (237A) proposed, at p.53, changing "internal use of laser beam" to "the penetration of a laser drilling technique and/or acid bath(s) which is customarily used by the trade to change the color of 'black' inclusions to 'white.'" It also suggested that "infusion of any foreign substance" should be followed by the words "fracture filled." However, the Commission believes that the words used in the JVC proposal adequately identify the processes that are being addressed.

appearance of diamonds having black inclusions by directing the laser beam at the black inclusion and then forcing acid through the tunnel made by the laser beam to remove the inclusion or to alter it so that the inclusion is not visible to the naked eye. "Infusion" treatment, also known as "fracture-filling," conceals cracks in diamonds by filling them with a foreign substance.

Thirteen comments opposed the disclosure of laser treatment stating that it is "a common practice" and "an extension of cutting, since soaking out surface black leaves no evidence of soaking. The channel left by the laser is often just one of several or numerous 'natural' cracks, inclusions, or grain."¹⁹⁵ Verstandig stated that the other treatments which the JVC proposed should be disclosed "are hardly-if at all-noticeable under a 10X magnification" but that lasering is obvious under such magnification. It also noted that while lasering produces a small surface opening, the majority of diamonds sold in the U.S. have similar surface imperfections, and disclosure of these is not required.¹⁹⁶

DMIA noted that lasering is "irreversible, does not add a foreign substance, is readily detectable with a ten power loupe, and does not require disclosure any more than * * * cutting an additional facet to improve the purity of a diamond." It also noted that GIA, which it described as a world-renowned diamond grading lab, refuses to grade diamonds infused with a foreign substance but does grade lasered diamonds, indicating on the grading report "inclusions, naturals, extra facets, as well as lasering."¹⁹⁷ In addition, it noted that resolutions have been adopted on "a world-wide basis requiring full disclosure of any "treatment" of diamonds such as irradiation which changes the color and atomic structure or the infusion of a foreign substance which produces a product no longer a pure diamond, but a "composite" material." It stated that "[l]asering, on the other hand, is not a "treatment" * * *."¹⁹⁸

¹⁹⁵ Green (6) p.1; see also London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); NACSM (219); and Service (222).

¹⁹⁶ Comment 154, p.2.

¹⁹⁷ Comment 26, pp.1-2.

¹⁹⁸ Comment 26, p.1. Roisen (31), David (194), H.R. Diamonds (195), ADS (197), and Weitz (200), all referred to the fact that the rules of the World Federation of Diamond Bourses require strict punishment of a member who fails to disclose treatment of a diamond, such as irradiation or infusion of a foreign substance. See the text of the joint resolution of the World Federation of Diamond Bourses and the International Diamond Manufacturers Association, as described in the

On the other hand, one comment contained an attachment that argued that internal lasering should be disclosed because it adversely affects the value of the diamond.¹⁹⁹ The attachment stated that lasered stones are inferior because they "are worth less than normal non-lasered stones of the same grade." It further stated that a diamond purchaser who is unaware of the lasering, will be upset "when the appraisal indicates laser treatment, or upon resale when the buyer offers a lower price due to lasering."²⁰⁰

However, the comments (including eleven comments from diamond dealers and a diamond trade association) indicated that lasering is a common practice and not an extraordinary process that would be deceptive to conceal from the consumer. Moreover, a consumer acting reasonably under the circumstances would be on notice of laser treatment before sale. A grading report would indicate that the diamond had been laser-cleaned, and, if the buyer chose to examine the diamond under standard ten-power magnification, the laser tunnels would be obvious to the buyer. Thus, the Commission has determined not to include lasering among the treatments that always should be disclosed to avoid misleading consumers.

By contrast, twelve of the thirteen comments that opposed disclosure of lasering stated that the fracture-filling process is a treatment of a diamond that should be disclosed to the consumer.²⁰¹ As previously noted, several of these comments stated that the rules of the World Federation of Diamond Bourses require disclosure of fracture-filling. Because fracture-filling is not the norm or what consumers acting reasonably under the circumstances would expect, it would be deceptive to fail to disclose fracture-filling. Consumers will not likely expect, in the absence of disclosure, that the stone was so treated. Thus, the absence of disclosure is also unfair in that it is likely to cause injury to consumers by affirmatively misleading their informed choice and so

Rapaport Diamond Report, July 17, 1992, p. 5 (attached to Rapaport (233)).

¹⁹⁹ Rapaport Diamond Report, July 17, 1992, p. 6, attached to Rapaport (233); see also Preston (229) p. 3; ISA (237A) p. 51.

²⁰⁰ Rapaport Diamond Report, July 17, 1992, p. 6, attached to Rapaport (233).

²⁰¹ Green (6); London Star (20); DMIA (26); Roisen (31); Werdiger (48); Verstandig (154); David (194); H.R. Diamonds (195); ADS (197); Weitz (200); Kwiat (203); and NACSM (219). Service (222) opposed all disclosure of diamond treatments, and did not specifically discuss fracture-filling. Best (225) opposed all the changes proposed by the JVC, but stated that fracture-filling "may justify some future study and potential regulation by the FTC."

causing substantial, unavoidable injury that is not outweighed by any countervailing benefits.²⁰² Accordingly, the revised Guides advise sellers to disclose this treatment.

The JVC also proposed that this section require the disclosure of treatment of a diamond "by any other means." However, the Commission believes that phrase is sufficiently vague to imply, for example, that removal of blemishes by lasering always should be disclosed, and thus, has not included this phrase in the section.

5. "Blue White": § 23.11

Section 23.11 of the current Guides prohibits the use of "blue white" to describe a diamond "which under normal, north daylight or its equivalent, shows any color or any trace of color other than blue or bluish." The JVC proposed prohibiting the use of this term.

The term "blue white" has apparently been misused in the past to describe poorer quality or "off color" diamonds.²⁰³ The use of blue white appears to have diminished because most of the industry now uses formal diamond grading systems. One comment suggested that "blue white" be restricted to "a diamond that has strong blue fluorescence and is of the D-G color range [in the GIA grading system]."²⁰⁴ However, the current Guides describe a proper use of blue-white and discourage its misuse. The Commission therefore has retained this section of the Guides.²⁰⁵

²⁰² *International Harvester Co.*, 104 F.T.C. 949, 1051 (1984). NACSM (219), at p. 26, pointed out that the process can sometimes be reversed by heat. For example, it is not uncommon for a diamond to be remounted and the heat from that process may partly melt out the foreign material used to fill the fracture. This adversely affects the appearance of the diamond and it may not be possible to remove the remainder of the fracture-filling material. See S. Lynn Diamond, "Filled Diamonds in the Spotlight," National Jeweler, Dec. 1, 1994, at 36, 42 & 43.

²⁰³ The definition of blue white in the Jewelers' Dictionary states: "Term, often abused, to describe the color of a diamond. As frequently abused, it includes anything from a Jager to a Silver Cape. . . . [n.b., Jager refers to a fine white diamond; Silver Cape is a yellow one.] Better Business Bureaus recommend avoidance of the term and the American Gem Society prohibits its use." "Jewelers' Dictionary" 28 (3d ed. 1976). However, the proprietor of Solid Gold (261) stated, at p. 2, that he has seen "many diamonds which are accurately described as having a bluish-white color."

²⁰⁴ Rapaport (233) p. 2 (stating that the "guides should not outlaw any terminology used by the trade" but instead should define it "so that it is not misleading").

²⁰⁵ ISA (237A) recommended, at p. 53, the addition of a definition of "normal north daylight" and an addition which would limit the use of the term blue white to "a diamond which is totally natural and free from any man induced treatments which exhibits a partially white body color and a partially blue body color. . . . The term blue body

6. Cuts of Diamonds and "Clean Diamonds": §§ 23.12- 23.14

Section 23.12 of the current Guides states that it is unfair to describe a diamond as "properly cut," "well made," or "modern cut" or words of similar meaning, if it is "lopsided, or so thick or so thin in depth as materially to detract from the brilliance of the stone." Section 23.13 restricts the use of the terms "brilliant," "brilliant cut" or "full cut" to a round diamond having at least 56 facets.²⁰⁶

The JVC did not propose any changes to these sections, but several comments did propose revisions. Two comments proposed certain numerical standards for describing "properly cut" diamonds.²⁰⁷ AGL proposed that the Guides state that it is unfair for "a diamond quality assessment report to itemize a series of percentages and non-integrated cutting details without reference to a meaningful and comprehensive evaluation of cutting in order to facilitate a consumer's understanding of these critical value components."²⁰⁸ However, AGI also indicated that such reports do not usually contain such an evaluation of cutting.²⁰⁹ No other comments addressed this issue. Because there is insufficient information in the record to evaluate the proposals, the Commission has not changed these sections.

Section 23.14 states that it is unfair to use the terms "clean," "eye clean," "commercially clean," "commercially white," or similar terms to mislead or deceive consumers. The JVC did not propose any changes to this section. Unlike other provisions of the Guides, this section does not provide guidance regarding the use of these terms, other

color is not to be blue caused by visible fluorescence" However, no evidence was provided that either of these additions were necessary, and the Commission has not included them in the Guides.

²⁰⁶ This section does allow certain other cuts (emerald, pear-shaped, heart-shaped, oval-shaped, and marquise) meeting the above-stated facet requirements to be described as "brilliant cut" or "full cut" if "disclosure is made of the fact that the diamond is of such form."

²⁰⁷ ISA (237A) pp. 54-56; Rapaport (233) p. 3 (proposing a definition for a range of "Properly Cut" round diamonds and numerical standards (which differ from ISA's proposed numerical standards)).

²⁰⁸ Comment 230, p. 5. AGI also suggested that the Guides state that it is unfair for any diamond or colored stone quality assessment reports or appraisals to fail to contain adequate tolerance information for each element that impacts on the value. *Id.* at 4. However, the Commission believes such a proposal, which would involve providing guidance on the manner in which appraisers and graders prepare reports, is beyond the scope of these Guides.

²⁰⁹ Comment 230, p. 5. Preston (229) stated, at p. 6, that "AGS attempts to train its members to specify cutting grades rather precisely. GIA, on the other hand, does not specify a cutting grade at this time."

than to state that they should not be used to deceive purchasers. Although one comment indicated that these terms are still in use,²¹⁰ the Commission has concluded that the admonition in § 23.1 not to misrepresent material characteristics of a product adequately encompasses misrepresentations regarding these terms. Therefore, the Commission has deleted this provision from the Guides.

7. Proposals Relating to Diamond Weight

a. Misrepresentation of weight. Section 23.16 of the JVC petition deals with misrepresentations of diamond weights, an issue which is not specifically addressed in the current Guides. The JVC's proposed preamble to this section states that the standard unit of weight for diamonds is the carat, defines the terms carat and point, and states that the abbreviation for carat is ct. The Commission has not included this preamble in the revised Guides. As discussed below, the Commission has included a provision relating to the use of "points" in the revised Guides, and that provision contains an explanation of the meaning of "carat" and "point."

The JVC suggested adding a section stating that it is unfair to misrepresent the weight of a diamond. Section 23.1 of the current Guides provides that it is unfair to misrepresent various material characteristics of industry products, including weight. However, the Commission has included this admonition against misrepresenting the weight of diamonds in section 23.17 of the revised Guides, and has provided additional guidance for diamond weight representations in that section, as discussed in detail below.

b. Use of "points". The JVC, in section 23.16(a), proposed that a section be added to the Guides stating that the use of the term "points"²¹¹ to represent the weight of a diamond is unfair except "in direct conversations." In some instances, according to the comments, consumers perceive a representation that a diamond is ".25 pt." to mean ".25 ct."²¹² The latter is 1/4th carat; the

former (.25 pt.) is 1/400th carat. To obtain more information about this issue, the FRN asked whether the use of "points" to describe diamond weights should be limited to oral representations.

Thirty-five comments addressed this issue. Four comments, including ones from the Postal Service and NACAA, supported eliminating use of the term "points" in either oral or written representations.²¹³ Twenty-two comments supported limiting the use of the term "points" to oral representations.²¹⁴ Nine comments stated that the use of the term should be permitted in written as well as oral representations, contending that the term can be used in writing in a manner that is not unfair or deceptive.²¹⁵

One comment noted that "points" is "a term that the layman is not familiar with."²¹⁶ The Postal Service favored a prohibition, stating that, in many situations, consumers do not actually see the jewelry before purchasing it, and the term point (*i.e.*, .25 pt.) is used to misrepresent the value of a diamond.²¹⁷

The comments clearly believe that the term "pt." is being used to deceive the public, particularly in mail order transactions.²¹⁸ The deception described in the comments appears to arise primarily when the abbreviation for point ("pt.") appears in writing.²¹⁹

Nevertheless, the term "point," with adequate disclosure, could be used in a non-deceptive manner. Therefore, the Commission has added a provision to the Guides which states that if the term

consuming public to make a 'point .25 carat' or '.25 point' gemstone appear to be describing a 1/4 carat gemstone"; Bedford (210) p.2 (stating "I have had some people come in thinking they were going to win a .25ct. diamond and they were actually getting a .025 point diamond"); Bruce (218) p.10 (noting that "we have seen advertisements where people confuse points with carats (pt. with ct.)").

²¹³ Honora (15); Lannyte (65); NACAA (90); and Postal Service (244).

²¹⁴ Fasnacht (4); Sibbing (5); Thorpe (7); Argo (17); AGS (18); Capital (19); Estate (23); Jabel (47); Schwartz (52); Skalet (61); GIA (81); Nowlin (109); McGee (112); Bridge (163); IJA (192); Phillips (204); Bedford (210); Matthey (213); Bruce (218); MISA (226); Preston (229); and Limon (235).

²¹⁵ G&B (30); ArtCarved (155); Bales (156); LaPrad (181); NACSM (219); Service (222); Diamonique (224); Best (225); and Leach (256). Diamonique (224) stated, at p.1, that prohibition of "point" or "pt." would "result in the use of fractional definitions of diamond weights as used in the past." However, other comments (discussed below), stated that fractions are currently in wide use, and are not deceptive.

²¹⁶ Bruce (218) p.10.

²¹⁷ Comment 244, pp.1-2.

²¹⁸ Thorpe (7) p.2 (stating that the "consumer sees a jewelry term they are 'familiar' with and read it as 0.25 ct.").

²¹⁹ However, one comment noted that problems also occur in television advertising. Sibbing (5) p.1 (stating "No more 'quarter point diamonds' as can be found on TV advertisements").

"point" is used in advertising (including television) or in point of sale materials to describe the weight of a diamond, the weight should also be given in decimal parts of a carat (*e.g.*, .25 pt. is .0025 ct.). The admonition to include the carat weight in decimals should deter sellers from attempting to mislead consumers. Furthermore, § 23.2 of the Guides addresses the use of misleading visual representations of diamonds.

c. Disclosure of minimum total weight. The JVC also proposed adding provisions to the Guides stating that it is unfair to fail to mark new industry products containing one or more diamonds with the minimum weight of the diamonds in the product and that it is unfair to refer to the weight of a diamond or diamonds in advertising for new industry products without disclosing the minimum total weight.²²⁰ The FRN solicited comment on this proposal.

Thirty-nine comments addressed this issue. Thirty-one comments approved marking jewelry, or tags or invoices attached to it, with the minimum weight of the diamonds set in it.²²¹ Eight comments opposed the proposal.²²²

Generally, the comments indicated a belief that marking new jewelry with the minimum diamond weight would prevent misrepresentation of weight by the manufacturer or other sellers farther down in the line of commerce. GIA stated that there was a tendency for "multistone rings and other jewelry sold as a given weight to weigh less than the indicated weight," especially where the ring is not stamped with the minimum weight.²²³ GIA further stated that "[i]n our experience, if the total weight is stamped on the jewelry, the manufacturer usually makes sure that

²²⁰ Apparently the proposal was limited to new products because, as one comment noted, "it is impossible to get exact measurements of a diamond weight when measuring diamonds when mounted." Bedford (210) p.2.

²²¹ JMC (1); Fasnacht (4); Sibbing (5); Thorpe (7); Honora (15); AGS (18); Capital (19); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Lannyte (65); GIA (81); NACAA (90); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (213); Bruce (218); MISA (226); Preston (229); Limon (235); and Leach (258). Two of these stated that diamonds under .10 carat should be exempt [Skalet (61) and ArtCarved (155)], and one stated that the minimum weight information should only be required on the invoice [Honora (15)].

²²² Argo (17); Schaeffer (211); NACSM (219); Service (222); Best (225); Sheaffer (249); and Franklin (250). (Solid Gold (261) also opposed this provision, but apparently did not understand that it would only apply to new jewelry.) Several of these comments stated that this requirement would increase costs.

²²³ Comment 81, p.2.

²¹⁰ Rapaport (233) stated, at pp.2-3, that the terms "clean," "eye clean," and "commercial white" are "regularly used by the diamond trade to describe diamonds," noting specifically that the term "eye clean" is "commonly used to describe diamonds that do not have inclusions that are visible to the naked eye."

²¹¹ The term "point" is used to express one-hundredths of a carat (*e.g.*, .25 ct = 25 points).

²¹² Limon (235) p.3 (stating that the proposal "was inspired by a nationally published advertisement for an item containing a diamond weighing '.25 pt. [which was] universally misread as '.25 ct.'"); Skalet (61) p.4 (stating that "considerable deception has been leveled at the

the weight is accurate," and believed that "requiring stamping of a minimum weight on the jewelry (particularly in combination with trademark stamping) would provide a strong deterrent against underweighting diamond content."²²⁴

NACAA commented that its members received complaints about exaggeration of the weights of stones (not limited to diamonds) and stated that it would be "helpful to consumers" for the Guides to require marking of minimum total weight on new items.²²⁵ However, the Guides already state that it is unfair to misrepresent the weight of a diamond (or any other jewelry). Moreover, none of the comments explained why it would be unfair or deceptive to fail to mark new jewelry containing diamonds with the minimum total weight of the diamonds, nor is there any obvious reason why a failure to so mark the jewelry, or to include this in advertising, would be unfair or deceptive.²²⁶ Therefore, the Commission has not included this provision in the revised Guides.

d. *Weight tolerance.* The JVC also proposed adding provisions to the Guides setting forth specific tolerances for diamond weight representations. The JVC proposed in sections 23.16(c)–(e) of its petition, a tolerance of .005 carat for weight representations for individual diamonds, whether mounted or unmounted, and a tolerance of .01 carat for weight representations pertaining to "two or more diamonds in a single product." This proposal generated 84 comments.²²⁷ Three comments specifically supported the JVC's proposed tolerance.²²⁸ Eighty-one commenters opposed the proposed tolerances.²²⁹

²²⁴ Comment 81, p.2. AGS (18) p.2 (stating, "The market place is replete with purveyors of diamond jewelry who overstate the total carat weight of multi-diamond items").

²²⁵ Comment 90, pp.1–2.

²²⁶ Indeed, if this practice is unfair or deceptive for "new" jewelry, logically it is also unfair or deceptive for "old" jewelry and for jewelry containing gemstones other than diamonds. LaPrad (181) p.2, and Limon (235) p.4, each suggested that the weight marking requirement should apply to colored stones as well as diamonds.

²²⁷ This figure is exclusive of comments that simply favored all the changes suggested by the JVC.

²²⁸ Bruce (218); Limon (235); and Schwartz (52).

²²⁹ NACSM (219); Service (222); Diamonique (224); Best (225); MISA (226); Rapaport (233); and NRF (238) submitted individual comments. The other 74 were form letters. In the interest of brevity, the 74 commenters are listed here by their comment number only: 28; 32; 33; 35; 36; 37; 39; 40; 41; 43; 45; 46; 50; 51; 53; 54; 55; 56; 57; 58; 59; 60; 63; 67; 68; 69; 70; 71; 72; 73; 74; 75; 77; 78; 79; 80; 93; 94; 95; 96; 97; 99; 100; 101; 102; 104; 105; 107; 108; 110; 114; 115; 117; 119; 121; 122; 157; 158; 160; 164; 179; 180; 190; 191; 201; 211; 214; 220; 241; 243; 260; 263; and 264.

One comment stated that the proposed tolerance was too small because few diamond scales are so finely calibrated, and that the tolerance should be .01 ct.—one hundredth of a carat.²³⁰ However, Commission staff telephoned several companies, and determined that most have scales that can weigh diamonds to .005 carats.²³¹

Numerous other comments opposed the tolerances because they would increase the cost of sorting diamonds, raise the price of diamonds for high-volume manufacturers, and increase prices for consumers. MISA explained that high-volume manufacturers sieve rather than weigh individual stones, and that the proposed tolerance would require manufacturers to "weigh, tag, and flute the stones to be incorporated in a piece of jewelry."²³² MISA stated that "the added costs of this procedure would be reflected in the price of the finished article and be passed on to the consumer."²³³

Although Bruce supported the proposed tolerance and opposed the use of fractions to describe diamond weights, it noted that "fractional diamond sizes are a convenience for the industry, in the trading of loose stones," and that "keeping track of diamond sizes for tagging purposes would require a little more care and planning, but it can be done."²³⁴

Many commenters stated that the current industry practice is to use fractions to designate weights of less than a carat, and that there is a standard tolerance for such fractional representations. Service explained that chain retailers use fractions to advertise

²³⁰ Rapaport (233) p.4. Diamonique (224) pp.1–2 (stating that current measuring devices are not adequate and the present tolerance is .01 carat). *But* see Fasnacht (4) p.2 (stating that weighing is fast and accurate with today's electronic scales).

²³¹ Commission staff interviewed 5 jewelers (Boone and Sons Jewelers, Fleisher Jewelers, Kings Jewelry, Loubons, and Jewelry by Design) in the Washington area about what kind of scales they use. No store utilized a scale that was not accurate enough to meet the proposed .005 carat tolerance. Staff also interviewed Ben Fine, who sells Melter Scales; Gaston Lopez, a sales representative of Gemological Institute of America, which sells several different makes of scales; and a representative from Dendritic Scales. All confirmed that they sell scales that are accurate to within 1/2 point.

²³² Comment 226, p.8.

²³³ Comment 226, p.8. NACSM (219) pp.20–21 (explaining that rough diamonds "are purchased most often from DeBeers * * * [and] sold to manufacturers * * * in parcels containing certain grade and quantities such as 'one fifths,' 'quarters,' 'one thirds,' 'halves,' 'carats,' etc. *The fractions refer to the approximate sizes of the diamonds* contained in the parcels"); Goldman (60) p.3 (stating that the international market "sells as a fifth of a carat, goods (diamonds) from 18 to 23 points").

²³⁴ Comment 218, pp.2–3 (also stating that "if people in the trade buy a single stone they will pay for it by its exact weight").

diamonds so that specific prices can be given for specific weights. Service explained that the proposed tolerance would be costly because it "would narrowly and unreasonably limit the range of weights available for particular fractions of a carat."²³⁵ For example, a fifth represents 20 points and under the JVC's proposed tolerances, only diamonds that weigh at least 19.5 points could be described as a fifth. Several commenters stated that they used the standards contained in the GIA publication, "Diamonds 3."²³⁶ This 1986 GIA booklet, states, at p.19, that "approximate weights are often stated in fractions," and it sets out a chart stating the average weight range associated with the various fractions (*i.e.*, 1/5 carat refers to .18 through .22 carat).²³⁷

Best noted that under the GIA tolerances, a diamond can be sold as half a carat if it weighs between .47 and .56 carats, but that the proposed tolerances would require it to weigh at least .495 carats. Best stated that under the JVC proposal it would be forced to either select stones that fall within the tolerances, so that prices for the size could be advertised, or to treat each stone individually, and not provide price information regarding the stones in advertising. It explained that because there is a limited supply of stones that fall within the JVC's proposed tolerances, demand will escalate for these stones and the cost of the stones will increase. Therefore, "[j]ewelers like Best would no longer be able to offer a consistently lower price alternative to the traditional high margin jewelers." Instead, Best would be forced to "price, mark and sell each item individually," which is the philosophy of a boutique

²³⁵ Comment 222, p.3. Numerous comments also indicated that there would be high demand for stones close enough to the fractions to be designated as fractions, and other stones could not be used by mass retailers. "If retailers were no longer allowed to sell 18 points as a fifth, then what would happen to all the 18 and 19 pointers * * *?" Goldman (60) p.2. London Star stated, "This standard would considerably lessen the availability of stones within each size and therefore drastically increase the price to the consumer." Comment 20, p.2. Of course, diamond weights can be, and often are, expressed in the decimal system. However, the mass marketers, for the reasons described above, state that it is more efficient for them to describe diamond weights as fractions.

²³⁶ Attachment B to NACSM (219). Best (225) pp.4–5 (stating that these standards "have been widely used and accepted for many years and have effectively become the national and international industry standard"); NACSM (219) p.11 (stating that these GIA ranges "merely recognize industry standards which have resulted from longstanding *accepted custom and usage*").

²³⁷ Attachment B to NACSM (219). The booklet notes that the ranges "may vary slightly from one firm or organization to another." *Id.* This is borne out by the comments.

jeweler, and "contrary to the way a mass merchandiser operates."²³⁸

Several comments suggested alternatives to the JVC proposal. MJSA suggested "a broader minus tolerance which is expressed in proportional terms rather than as an absolute quantitative measurement."²³⁹ Ross-Simons suggested a tolerance of 5% or .05 carat for a piece with multiple diamonds, whichever is smaller.²⁴⁰

The Commission agrees with the comments that state that the proposed tolerance may be too restrictive and may result in an increased cost to the consumer. However, consumers may not interpret a claim that a diamond is half a carat as meaning that it falls within the range set out in the GIA booklet. In fact, the GIA booklet states: "Customers also think in terms of fractions, but they tend to expect a half-carat stone to weigh exactly 0.50 carat."²⁴¹

Furthermore, diamonds are so expensive that receiving a diamond that is even a few points less than what was represented can be a significant loss to the consumer. In this respect it appears that at least for some industry members, current practice may be contrary to consumers' expectations and may not adequately apprise consumers of the terms of the seller's offer (*i.e.*, that jewelry advertised with 1/5 carat diamonds is actually offered as jewelry with 1/5 carat weight, plus or minus some tolerance the seller is using).

However, the Commission believes that a fractional representation of carat weight may be qualified so that it is neither unfair or deceptive. For example, if a claim such as "1/2 carat" is accompanied by a disclosure of the weight range that is used, it does not imply precision to the level of 0.005 carat. A decimal representation of carat weight, such as "0.47 carat," does imply accuracy to the level of the second decimal place—*i.e.*, .005 carat. Therefore, the level of tolerance applicable to a diamond weight claim depends on the type of claim that has been made.

Thus, the revised Guides clarify that representations of diamond weight

should indicate the weight tolerance that is being used. If diamond weight is stated as decimal parts of a carat, the stated figure should be accurate to the last decimal place. If a fractional representation is used to describe the weight of a diamond, the fact that the diamond weight is not exact should be conspicuously disclosed in close proximity to the fractional representation, and the range of weight for each fraction should also be disclosed. A Note following this section (23.17) explicitly states that, for claims made in catalogs, the disclosure should appear on every page where the claim is made, but that the disclosure may refer to a chart or other detailed explanation of the actual ranges used. (For example, "Diamond weights are not exact; see chart on p.X for ranges.")²⁴² These provisions also provide guidance for making weight representations for items with multiple stones.

e. Misrepresentation of weight of diamonds combined with other gemstones. Finally, one comment suggested that a provision be added to the Guides stating that it is unfair to represent the combined weight of two or more gemstones of different gemological varieties in any new single product as "total gemstone weight" or words of similar import, without disclosing with equal conspicuity the combined weight of the gemstone of each gemological variety in the products.²⁴³

However, the phrase "total gemstone weight" does provide notice that the weight given applies to all gemstones in the item, not just the most expensive. Thus, the Commission does not believe that a representation of "total gemstone weight" would inherently be unfair or deceptive. Consumers interested in a breakdown by gemstone category would be put on notice by the statement "total gemstone weight" that further inquiry is needed.

E. Pearls (Category IV): §§ 23.15–23.17

The current Guides address pearls in the definition section, § 23.0, and in §§ 23.15–23.17. Section 23.15 describes practices which are unfair uses of the word "pearl." Section 23.16 describes unfair uses of other terms, such as "cultured pearl," "Oriental pearl," and "natura." Section 23.17 describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating. In addition,

provisions in §§ 23.20 and 23.21, pertaining to the misuse of certain words (real, genuine, natural, gem, reproduction, replica, and synthetic) apply to pearls. The changes proposed by the JVC and by certain commenters are discussed below.

1. Definitions

a. Modifications of existing definitions. The Commission has moved the definitions relating to pearls from § 23.0 to the beginning of the substantive sections that deal with pearls (§ 23.18). The JVC proposed changes (in section 23.17 of its petition) in the three definitions pertaining to pearls ("pearl," "cultured pearl," and "imitation pearl") that currently appear in the Guides. No reasons were offered for changing the current definitions, and there was no allegation that they were inaccurate or caused any problems.

Four comments addressed the proposed changes in the definitions. The National Retail Federation stated that cogent definitions for the three basic types of pearls "are lacking" in the JVC petition.²⁴⁴ Three comments suggested changes in the JVC's proposed definitions, but did not explain why it is necessary to change the definitions in the current Guides, nor state that any misconceptions have occurred.²⁴⁵

Definitions are helpful to the extent that they make clear what can nondeceptively be represented to be a pearl, a cultured pearl, or an imitation pearl. There is no indication that the definitions of the three types of pearls in the current Guides have ever failed to serve this purpose. Consequently, the Commission has not changed these definitions.

b. Additional proposed definitions. The JVC proposed adding eleven new definitions of types of pearls to the Guides. The JVC offered no reason for adding definitions of these terms to the Guides, nor did it allege that these terms had been used to deceive consumers. The National Retail Federation noted that there are three basic types of pearls (natural, cultured, and simulated) and that the definition section proposed by the JVC "is unnecessarily detailed and confusing."²⁴⁶ The Commission has

²³⁸ Comment 255, p.8.

²³⁹ Comment 226, p.8.

²⁴⁰ Ross-Simons (67) stated, at p.1, that for catalog advertisers "a tolerance of just .01 ct on a piece of jewelry with multiple diamonds is too restrictive. . . . [because] we show a piece of diamond jewelry in our catalog and order backup items after the catalog is mailed." Ross-Simons further stated that for pieces containing several carats of diamonds, with multiple stones, a .01 ct. deviation is unrealistic, and would require it to either "understate the weight to be safe or overcharge the consumer." Comment 67, p.1.

²⁴¹ GIA booklet, p.19, attached as Exh. B to NACSM (219).

²⁴² Some mass retailers stated that they already provide the weight ranges in their catalogs and/or at the point of purchase. Best (225) p.5 and Service (222) p.3.

²⁴³ Limon (235) p.4.

²⁴⁴ Comment 238, p.2.

²⁴⁵ A&Z Pearls (29) p.1 (suggesting that the JVC's definition of "cultured pearl" be revised to include a better definition of the word "nacre" because it would "eliminate misinterpretations of the term therefore clearing any misconceptions of 'nacre' being formed by a human agency"); AGTA (49) p.15 (suggesting editing the JVC's proposed definition of "pearl"); CPAA (193) p.3 (suggesting editing the JVC's proposed definition of "pearl" and "imitation pearl").

²⁴⁶ Comment 238, p.1; NACSM (219) p.27 (stating that the definitions "seem unnecessary").

determined to include additional definitions in the Guides, as discussed below, only where there are specific reasons for doing so.

i. Definitions proposed by the JVC. The only apparent purpose for five of the proposed definitions appears to be to emphasize the fact that a cultured pearl (or whatever specific type of cultured pearl) must be described as a cultured pearl. The JVC proposed definitions, with accompanying sections regarding the use of the term "cultured," for the following pearls: Mabe cultured pearl, black pearl and black cultured pearl, natural color, fresh water pearl²⁴⁷ and sweet water pearl. However, § 23.15 of the current Guides already states that it is unfair to use the unqualified word "pearl" to describe anything other than a natural pearl and that it is unfair to use the word "pearl" to describe a cultured pearl "unless it is immediately preceded, with equal conspicuity, by the word 'cultured' or 'cultivated,' or by some other word or phrase of like meaning and connotation, so as to indicate definitely and clearly that the product is not a pearl." Because there is no information indicating a problem with these terms, or the adequacy of the existing provision, the Commission is not including these definitions in the Guides.

South Sea pearls: The JVC suggested the following definitions for South Sea pearls: "A natural pearl found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma." It suggested that a South Sea cultured pearl be defined as a cultured pearl "found in the salt water mollusks of the Pacific Ocean South Sea Islands, Australia and Burma." There was comment suggesting that there is a market for South Sea cultured pearls, and that such pearls are quite valuable. An article attached to the Rapaport comment stated that South Sea cultured pearls "have come to challenge the supremacy of the Japanese akoya [cultured pearls] in quality * * *. The South Sea pearls have a strong market because of one particular feature that makes them attractive: size."²⁴⁸ The CPAA stated that it frequently receives complaints that imitation pearl

²⁴⁷ Finlay implied that retailers may be describing fresh water cultured pearls as simply "fresh water pearls" and objected to requiring advertisers to use "cultured" for fresh water pearls, stating, "consumers have come to associate the term 'cultured pearls' with round pearls and that to use the term 'cultured' in conjunction with irregularly shapen [sic] fresh water pearls would create confusion." Comment 253, p.2.

²⁴⁸ Rapaport Diamond Report, July 17, 1992, p.24, attached to Comment 233 (noting that the South Sea pearls are the product of a different oyster than Japanese pearls).

companies are using foreign names to confuse consumers.²⁴⁹

The Commission therefore has revised the Guides to state that it is unfair or deceptive to represent a pearl or a cultured pearl as being a South Sea pearl when such is not the case. This statement, which includes a definition of the term, is included in section 23.20(g) of the revised Guides.²⁵⁰

Oriental pearl: The meaning of the term "Oriental pearl" is clear in the current Guides. There is no evidence that the lack of a separate definition has caused any confusion or resulted in any misuse of the term. There was no comment pertaining specifically to this proposed definition. Thus, the Commission has not included a separate definition in the Guides.

Blister pearls: The JVC suggested definitions for "blister pearl" and "cultured blister pearl" and proposed a section stating that it is unfair to use the term blister pearl unless it is a pearl which meets the definition (*i.e.*, a pearl "often hollow and irregular in form").

There is no evidence that blister pearls are more valuable than other pearls or that the term "blister pearl" is being used to deceive consumers. Moreover, misrepresentations of the word "pearl" are adequately covered in the Guides. The Commission therefore is not including the definitions relating to blister pearls in the Guides.

Seed pearl: Section 23.16(b) of the Guides states that it is unfair to use the term "seed pearl" or any similar term to describe any cultured or imitation pearl. The JVC proposed defining seed pearl as: "A small, natural pearl which measures approximately two millimeters or less." In a related portion of its petition, the JVC proposed a section that states that it is unfair to describe a cultured or simulated pearl as a seed pearl without using a qualifying term such as "cultured," "simulated," "artificial," or "imitation."

The proposed definition and related section would indicate it is not deceptive to describe cultured and artificial pearls as seed pearls, if qualified appropriately, whereas the current Guides appear to inhibit this. The Commission has concluded that this is a useful change because it allows products that consumers might wish to purchase (*i.e.*, cultured or artificial seed pearls) to be accurately described.

²⁴⁹ Comment 193, pp.13-14.

²⁵⁰ The CPAA suggested revising the JVC's proposed definition of South Sea pearl: "The word 'Burma' should be replaced with the words 'Southeast Asia.' Not only is Burma now officially called Myanmar, but there are other countries such as Malaysia, Indonesia, and Thailand in that region which are producing similar pearls." Comment 193, p.4. The Commission has made this change.

ii. Definitions suggested by other commenters. Keshi pearls: A & Z Pearls, CPAA, and AGTA proposed that a definition of "Keshi" pearls be added to the Guides.²⁵¹ A & Z Pearls and CPAA also proposed adding two more definitions relating to "Keshi" pearls (Keshi pearl, Sweet Water or Freshwater Keshi pearl, and South Sea Keshi pearl.) CPAA stated the word "Keshi" has been used in recent years "as a product name for seed pearls derived by accident as a by-product of the pearl cultivation process." CPAA proposed adding the term to the Guides "to further define what is and what is not a cultured pearl."²⁵² A & Z Pearls stated, "There is a lot of debate in the trade as to whether 'Keshi' pearls should be considered natural pearls. Like natural pearls, they grow accidentally, but they form in mollusks that are cultivated by man."²⁵³

The Commission believes that the JVC proposal—*i.e.*, allowing the term "cultured seed pearl" to be used to describe very small pearls that grow in mollusks cultivated by man—is an appropriate solution to this issue. However, there is no reason that the term "Keshi" could not also be used to refer to these pearls as long as it is not used to deceive consumers. There is no evidence that the term "Keshi" is being used to deceive consumers, and thus, the Commission has not included the term in the Guides at this time.

Organic pearl: Majorica suggested adding a definition for "organic pearl."²⁵⁴ This definition would permit Majorica pearls to be called "organic" rather than "imitation." An article attached to Majorica's comment noted that "to the untrained eye, Majorica imitation pearls look very much like

²⁵¹ AGTA (49) pp.15-16 (defining "Keshi pearls" as: "Pearls that grow accidentally in the soft tissue or the adductor muscle of cultured pearl-bearing mollusks. These tiny non-nucleated pearls are by-products of cultured pearls. The term 'Keshi' also refers to the bigger pearls without nuclei that are spontaneously formed in mollusks which bear South Sea cultured pearls and freshwater cultured pearls").

²⁵² Comment 193, p.8 (defining "Keshi pearl" as: "A non-nucleated pearl, usually less than 2 millimeters in size, that may be formed by an oyster in addition to the cultured product during the process of cultivation").

²⁵³ Comment 29, p.2 (defining "Keshi pearl" as: "A formation of some nucleated baroque shape pearls that grow 'accidentally.' The invasion of a foreign body (such as a nucleus shell or mantle tissue) stimulates the mollusk and induces abnormal production of nacre that forms to create 'keshi' pearls").

²⁵⁴ Comment 240, p.6 ("A pearl produced by means of manufacture characterized by a formation of layers obtained from guanine crystals, an organic substance from the scales of ocean fish around a nucleus.").

saltwater cultured pearls.”²⁵⁵ The article, authored by employees of the Gemological Institute of America, also implies that some other brands of imitation pearls, like Majorica pearls, are made from guanine crystals, although there may be other differences in the manufacturing process that make Majorica imitation pearls superior to most other imitation pearls.²⁵⁶

Majorica states that the current system of classification (*i.e.*, pearl, cultured, and imitation) “has narrowed the market for MAJORICA pearls as a real alternative to so-called cultured pearls” and “gives an unfair advantage to the cultured pearl industry.”²⁵⁷ One commenter noted that most cultured pearls today have only a small percentage of nacre (the iridescent coating), unlike pearls from 40–50 years ago. Thus, cultured pearls today may not look very different from imitation pearls.²⁵⁸

Majorica’s suggestion, however, involves renaming items that the public has for many years known as imitation pearls. This seems likely to provide more rather than less opportunity for deceiving consumers. NACAA noted, for example, that “consumers may be particularly confused by the many varieties of natural, cultured, and imitation pearls.”²⁵⁹ Moreover, two commenters noted that consumers currently confuse Majorica pearls with real or cultured pearls.²⁶⁰ Accordingly, the Commission is not including a definition of “organic pearls” in the Guides.²⁶¹

2. Misuse of the Word “Pearl”

Section 23.15 of the current Guides deals with misuse of the word pearl. Section 23.15 (a) states that it is unfair to use the unqualified word “pearl” to describe anything other than a natural pearl, and § 23.15(b) states that it is unfair to use the word “pearl” to describe a cultured pearl unless it is qualified by the word “cultured” or “cultivated,” or a word of similar import, to indicate that the product is

not a pearl. The JVC did not propose any changes in these two sections.

Section 23.15(c) states that it is unfair to use the word “pearl” to describe an imitation pearl unless it is immediately preceded, with equal conspicuity, by the word “imitation” or “simulated,” or by some other similar word or phrase. The JVC proposed adding the word “artificial” to this section. NACAA stated that the Guides should “require artificial pearls to be clearly labeled using one standard term.” It preferred the terms “imitation” or “artificial,” instead of “simulated,” because “consumers are more likely to understand what those words mean.”²⁶² The word “artificial” clearly indicates that a product is not a natural pearl. Thus, the Commission is including this term in the Guides as another example of a term (along with simulated) that can be used to describe imitation pearls.

CPAA suggested that the Guides include a section that states that it is unfair “to use the terms ‘faux pearl,’ ‘fashion pearl,’ ‘Mother of Pearl’ or any other proper name or noun term alone when describing or qualifying an imitation pearl product without including the words ‘imitation,’ ‘simulated’ or any other term of similar connotation within the same product description and with equal conspicuousness.” CPAA stated that the use of these terms “has been the number one marketing and advertising tool in the sale of imitation pearl products across the U.S.” CPAA explained that “many customers can not tell the difference between the products by sight alone,” and that “[w]ithout proper product designations such as natural, cultured and imitation, customers are often misled as to the true nature of the product that they are buying.”²⁶³ With respect to “faux” generally, NACAA stated that “we do not believe that most consumers know what it means” and the Postal Service stated that “the term ‘faux’ has been used to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry.”²⁶⁴

As noted, the Guides currently state that it is unfair to describe an imitation pearl as a pearl without a qualifier such as “imitation.” Although the Guides permit sellers to use terms other than imitation as long as they “indicate definitely and clearly that the product is not a pearl,” based on information from CPAA, the Postal Service, and NACAA, it appears that the terms faux pearl, fashion pearl, and Mother of Pearl are

inadequate to convey to a substantial group of unsophisticated consumers that the items are imitation pearls. Accordingly, the Commission has revised the Guides to state that it is unfair or deceptive “to use the terms ‘faux pearl,’ ‘fashion pearl,’ ‘Mother of Pearl,’ or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuity, by the word ‘artificial,’ ‘imitation,’ or ‘simulated,’ or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.”²⁶⁵

The JVC also proposed adding a new subsection (d) which states that it is unfair to use the word ‘pearl’ with an asterisk which references to a footnote explaining that the product is an imitation or cultured pearl. This proposal is similar to a Note currently in section 23.15 of the Guides. However, section 23.15(c) states that the word “pearl” should be “immediately preceded” by a qualifying word such as “imitation” or “cultured,” if the item is not a natural pearl. The Commission believes that this language advises sellers about how to avoid a deceptive use of the term “pearl.” The current Note is superfluous and the Commission has deleted it.

3. Misuse of Other Terms

a. *Proposed changes to existing subsections.* Section 23.16 of the current Guides consists of six subsections describing several terms that can only be used to describe specific types of pearls. The JVC did not suggest any changes in these sections.²⁶⁶

The only comment on these sections referred to § 23.16(e), which states that it is unfair to use the word “natural” or any similar word to describe a cultured or imitation pearl. CPAA suggested the words “natural,” “nature’s,” and “organic” be “added to the list of words that cannot be used to describe an imitation pearl product.”²⁶⁷ CPAA explained that these words have been used to describe imitation pearls, and argued that they “only serve to confuse the consumer and retail buyer as to the proper origin and intrinsic value of an imitation product.”²⁶⁸

²⁶⁵ The comments discussing the use of the word “faux” are discussed in more detail *infra*.

²⁶⁶ The JVC did suggest that subsection (b), which relates to the term “seed pearl,” be modified to allow the use of the term “cultured seed pearl” or the terms “simulated,” “artificial,” or “imitation seed pearl.” As noted above, the Commission has concluded that this change is useful and has included it in the revised Guides.

²⁶⁷ Comment 193, p.6.

²⁶⁸ *Id.*

²⁵⁵ “Majorica Imitation Pearls,” *Gems and Gemology* 185 (Fall 1990), attached to Comment 240.

²⁵⁶ The article notes that “pearl essence” (*i.e.*, guanine crystals) was discovered in the late 17th century. *Id.* at 181. It states that “the process used to produce most other imitation pearls involves dipping or painting the beads with a resin; thus, these imitations lack the iridescence of the Majorica product and its cultured counterpart.” *Id.*

²⁵⁷ Comment 240, p.5.

²⁵⁸ Russell (217) pp.1, 2, and 4.

²⁵⁹ Comment 90, p.3.

²⁶⁰ Lange (183) and CPAA (193) p.14.

²⁶¹ See below for a discussion of other proposals regarding the term “organic.”

²⁶² Comment 90, p.3.

²⁶³ Comment 193, p.9.

²⁶⁴ Comment 90, p.3 and comment 244, p.3.

On the other hand, Majorica requested that the Guides be revised to add a section stating that pearls made from guanine crystals can be described as "organic" pearls. It stated that elimination of the word "organic" would eliminate "the only real competition which cultured pearls have in this country."²⁶⁹ However, for the reasons stated above, the Commission has concluded that describing pearls made from guanine crystals as "organic" pearls is likely to mislead consumers. Nevertheless, there is a difference between the words "natural" and "nature's"—neither of which can inherently be used in a nondeceptive manner with respect to imitation pearls—and the word "organic." The Commission believes that the word "organic" could be used, with adequate qualification, to describe Majorica pearls in a truthful manner. For example, in its ads, Majorica describes its pearls as "organic man-made pearls" that consist of a translucent nucleus "coated with layers of pearlized essence, an organic material extracted from marine species."²⁷⁰ Thus, the Commission has revised § 23.16(e) of the current Guides to indicate that it is unfair or deceptive to use the term "natural" and "nature's" to refer to an imitation pearl. The Commission also has added a sentence to this section stating that it is unfair or deceptive to use the term "organic" to refer to an imitation pearl unless the term is qualified in such a way as to make clear that the product is not a natural pearl.

The JVC suggested adding the word "cultura" to § 23.16(f) of the current Guides, which states that it is unfair to use the word "cultured" or any similar word to describe an imitation pearl. However, the section as currently written prohibits the use of "any other word, term, or phrase of like meaning * * *." The word "cultura" is very similar to "cultured." Thus, § 23.16(f) already provides adequate guidance on how to avoid deceptive representations. However, CPAA stated that terms such as "semi-cultured pearl," "cultured-like," "part-cultured," and "pre-mature cultured pearl," have been used to describe imitation pearls, and argued that they "only serve to confuse the consumer and retail buyer as to the proper origin of an imitation product."²⁷¹ The Commission has determined that these terms are

deceptive when applied to imitation products and has included them in § 23.16(f) of the current Guides.

b. *Additional proposed provisions relating to cultured pearls.* The JVC proposed the addition of six new subsections relating to the failure to describe a cultured pearl as a cultured pearl. These proposed subsections relate to fresh water cultured pearls, Biwa cultured pearls, South Sea cultured pearls, black cultured pearls, and Mabe cultured pearls.

All of these have been discussed previously, in connection with the section on definitions, except Biwa pearls (which were not included in the definition section proposed by the JVC.) As noted, the Commission has concluded that § 23.15(b) of the current Guides, which states that it is unfair to use the word "pearl" to describe a cultured pearl unless the word "pearl" is "immediately preceded, with equal conspicuity," by the word "cultured" or a word of similar import, is sufficient to admonish sellers that they should adequately disclose that a cultured pearl—of whatever type—is cultured. Thus, the Commission has not included any of these proposed subsections except the ones dealing with South Sea pearls (discussed *supra*) and Biwa pearls.

The subsection proposed by the JVC for Biwa pearls states that it is unfair to use the term "Biwa pearl" without the qualifying term "cultured." The Commission has concluded that this portion of the proposed subsection is unnecessary. However, the proposed subsection also provides that "the term 'Biwa cultured pearl' must only be used when describing those formations which have the distinctive appearance of a fresh water cultured pearl taken from the fresh water mollusks inhabiting Lake Biwa within the island of Honshu, Japan."

CPAA commented that the term should be limited to "those formations which are grown in fresh water mollusks in the lakes and rivers of Japan." CPAA stated that the words "distinctive appearance" might allow imitation pearls and pearls from other countries to use the regional description. CPAA explained that "Biwa" represents all Japanese freshwater pearls because "first, many people currently refer to all Japanese origin freshwater cultured pearls as 'Biwa' and second, because freshwater pearl production in Japan is nearing extinction 'Biwa pearls' are appreciating in value."²⁷² CPAA stated that many U.S. importers use the term

"Biwa pearl" "to describe freshwater pearls that have a similar appearance to Biwa pearls but come from other countries such as China" and artificially inflate the prices of them, which "cost as little as 30 times less than the Biwas."²⁷³

Because of the evidence of deceptive use of this term, the Commission has included a provision in the Guides stating that the term "Biwa" should only be applied to pearls "which are grown in fresh water mollusks in the lakes and rivers of Japan."

c. *Other proposed provisions.* The JVC proposed that eight other subsections be added to the section dealing with misuse of specific terms (in addition to the proposed subsections described above.) The first such proposed subsection is general: "It is an unfair trade practice to use the term 'pearl,' 'oriental pearl,' 'cultured pearl,' 'cultivated pearl' * * * to describe * * * any such pearl product whose outer surface does not consist wholly of naturally occurring concentric layers of nacre secreted by that mollusk." This section duplicates other subparts of § 23.16 of the current Guides, and therefore, the Commission has not included it in the Guides.

Another JVC proposal prohibits the use of the term "non-nucleated pearl," because "cultured pearls of this type are formed by the introduction of mantle tissue within the body of the mollusk" and thus are nucleated. However, both the CPAA and AGTA used the expression "non-nucleated pearl" in their comments in referring to Keshi pearls.²⁷⁴ Moreover, whether or not the term "non-nucleated" is correct, no evidence has been offered to show that it is being used to deceive consumers as to a material fact. Thus, the Commission has not included this section.

Two of the additional proposed sections relate solely to imitation pearls. One states that it is unfair "to use the term 'man-made' or 'man-created' without using the term 'simulated' or similar term, to qualify the product as in 'man-made simulated pearls.'" CPAA commented that this section should state that it is unfair to use these terms "without also using the term 'simulated,' 'imitation' or any other term that has the same connotation and meaning when qualifying or describing an imitation pearl product."²⁷⁵ The only other comment relating to this provision was from Majorica, which requested the FTC "to withhold any further restrictions on the words 'organic,'

²⁶⁹ Comment 240, pp.6 and 11. The section requested by Majorica would limit the use of "organic" to any pearl other than an imitation pearl made from guanine crystals. *Id.* at 7.

²⁷⁰ Attachment to comment 49.

²⁷¹ Comment 193, p.6.

²⁷² Comment 193, p.7.

²⁷³ Comment 193, p.7.

²⁷⁴ Comment 193, p.8; comment 49, p.15.

²⁷⁵ Comment 193, p.6.

'man-made,' 'synthetic,' and 'created' while considering the creation of a new category of pearl to which the word 'organic' could properly and accurately be applied."²⁷⁶ CPAA may be arguing that the phrase "man-made" could be understood to mean cultured pearls, since such pearls are "started" by man. However, there is no evidence that consumers are interpreting the phrase "man-made" or similar phrases in this manner, and without such evidence, the Commission has decided not to include the section, as proposed by CPAA, in the revised Guides.

Four of the remaining five proposed subsections relate to the misuse of certain words, which are described in §§ 23.20 and 23.21 of the current Guides. Section 23.20 of the current Guides provides that it is unfair to use the words "real," "genuine," "natural," or "similar terms as descriptive of any article or articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated * * *." Although this section deals primarily with precious and semi-precious stones, it also applies to cultured or imitation pearls.

The subsection proposed by the JVC states that it is unfair to use these words or the word "precious" or similar terms to describe imitation or cultured pearls.

The Commission has reorganized the Guides so that this statement appears in the pearl section, making it more likely that industry members searching for guidance as to pearl advertising will see it. As noted above, the Commission already has included the term "natural" in the subsection dealing with the term "natura," § 23.20(e) of the revised Guides. Thus, the Commission has added a new subsection, 23.20(i), that states that it is unfair or deceptive to use the terms "real," "genuine," or "precious" as descriptive of an imitation pearl.²⁷⁷

This subsection does not state that the terms "real" or "genuine" are unfair or deceptive if used to describe cultured pearls. The Commission has determined that it is possible to truthfully describe "real" or "genuine" cultured pearls without implying that they are not cultured. In addition, there may be instances when cultured pearls could be truthfully described as "precious." Therefore, § 23.20(i) is limited to imitation pearls.

²⁷⁶ Comment 240, p.6 (emphasis added).

²⁷⁷ Although there was no comment on the inclusion of "precious" in this subsection, the Commission has determined that it is deceptive as applied to imitation pearls because "precious" in the jewelry industry implies rarity. Although imitation pearls can be of high quality, they are not likely to be rare.

Section 23.21(a) in the current Guides states that it is unfair to use the term "gem" or a similar term to describe "a pearl, cultured pearl, diamond, ruby, * * * which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." The JVC proposed a section recommending that the word "gem" not be used as a quality designation or description of natural pearls, "since there is no existing criteria for these terms, and their use to describe, imply, or represent quality could be misleading."

AGTA commented that this provision should only apply to sales to a consumer, stating, "The term 'gem' is traditionally used within the trade to describe particularly fine qualities of any given gemstone species, including pearls. To prohibit its use within the trade is restrictive of traditional practice and is unnecessary as it is clearly understood."²⁷⁸ There is no evidence that consumers would be deceived by this term as applied to pearls that "possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." Therefore, the Commission has retained current § 23.21(a) and has moved the portion relating to pearls to the pearls section of the Guides (revised § 23.20(j)). The Commission has included a Note after this section (which currently follows § 23.21(b) in the current Guides) which states that the use of "gem" with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualities and that imitation pearls should not be described as 'gems.'

Section 23.21(c) of the current Guides states that it is unfair to use the words "reproduction," "replica," or similar terms to describe a cultured or imitation pearl (or imitation precious or semi-precious stones.) The JVC proposed including this statement, as it pertains to pearls, in the pearls section. However, if the nature of the material used in a reproduction or replica is adequately disclosed, as advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair. Thus, the Commission has not added this section to the Guides.²⁷⁹

Section 23.21(d) of the current Guides states that the use of the term "synthetic" to describe cultured or imitation pearls is unfair. The term may be used for precious and semi-precious

²⁷⁸ Comment 49, p.16 (noting that there is not a similar prohibition of the use of the term 'gem' in the section on diamonds).

²⁷⁹ The Commission has deleted § 23.21(c) of the Guides, as discussed below, in the section pertaining to gemstones.

synthetic stones if they have "essentially the same optical, physical, and chemical properties as the stone named." The JVC proposed moving the portion of § 23.21(d) that pertains to pearls to the pearls section and adding that it is unfair to use the word "created" to describe cultured or imitation pearls. AGTA and CPAA both supported the proposal, and Majorica opposed it.²⁸⁰ No evidence was offered to explain why the use of the term "created" is unfair or deceptive as applied to cultured or imitation pearls. The Commission therefore has not included the proposed section regarding the term "created" in the Guides.

However, the term "synthetic" has been used with respect to gemstones to refer to a man-made substance that has all the physical, chemical and optical properties of the natural stone. Since cultured pearls do not have the same physical and optical properties as natural pearls, the use of this term may be deceptive. Furthermore, the use of the term "synthetic" to describe an imitation pearl might convince some consumers that the pearls were cultured rather than imitation. Thus, the Commission has included a new subsection, 23.20(k), which states that it is unfair or deceptive to use the word "synthetic" to describe cultured or imitation pearls.

Finally, the JVC proposed a subsection stating that it is unfair to use the term "semi-precious" to describe any pearl, cultured pearl, "or man-made industry product." No evidence was offered to show that this use of "semi-precious" would be unfair or deceptive, and there was no comment on this proposal. In the absence of such evidence, the Commission has decided not to add this provision to the Guides at this time.

d. *Additional provisions proposed by commenters.* CPAA proposed that several additional subsections be added to the section pertaining to "Misuse of terms." First, CPAA suggested a subsection stating that it is unfair to use the term "orient" to describe the properties of an imitation pearl.²⁸¹ CPAA stated that "the term 'orient' was first used in a gemological sense by the Gemological Institute of America in

²⁸⁰ AGTA (49) p.16; CPAA (193) p.7 (suggesting that the provision be modified to apply to "cultured, simulated, or imitation pearls" rather than to "cultured or imitation pearls"); Majorica (240) p.6 (requesting no "further restrictions" be placed on the use of "created" or "synthetic").

²⁸¹ Comment 193, p.8 ("Orient is gemologically defined as a subdued iridescence, occurring when white light is divided into its separate and distinct spectral colors as it passes through and is refracted back from the nacre secreted by mollusks whether surrounding a nucleus or not.").

order to explain and clarify quality points of natural and cultured pearls * * * many retailers and gemologists alike hold their [GIA] definitions to be the authoritative standard within the industry.”²⁸² However, an article from the GIA quarterly journal *Gems & Gemology* was attached to Majorica’s comment; the authors are all employees of GIA. The article states, “An iridescence resembling the orient seen on some cultured pearls may also be observed on Majoricas [an imitation pearl].” Thus, it appears that at least some imitation pearls can possess “orient.” Therefore, the Commission has not included this provision in the revised Guides.

CPAA also proposed a new provision, stating that it is unfair to use the terms “Japanese Pearls,” “Mallorca Pearls,” “Chinese Pearls,” or any other regional designation to describe cultured or imitation pearls without including the words “cultured, imitation or simulated.”²⁸³ CPAA explained that imitation pearl companies recently have used regional terms to describe their products, and that this misleads consumers about the true nature of the product.²⁸⁴

Majorica made a similar suggestion, stating that there is continued abuse of terms such as “Mallorca Pearl,” “Majorca Pearl,” and “Mayorca Pearl” and that they “have numerous examples of customers and distributors who have been deceived into purchasing pearls under the label of ‘Majorca’ or ‘Mallorca’ pearls believing them to have special qualities related to the Island of Majorca or, for that matter, that they are MAJORICA pearls.”²⁸⁵

The Commission has concluded that there is some evidence that regional descriptions are being used to mislead consumers. The Commission therefore has included a provision in the revised

Guides that states that the regional description of a pearl should be accompanied by a description of whether the item is a cultured or imitation pearl.

4. Misrepresentation as to Cultured Pearls

The JVC recommended no substantive changes in § 23.17 of the current Guides. As noted above, this section describes unfair practices involving false, misleading, or deceptive statements about cultured pearls, including the manner in which they are produced and the thickness of the nacre coating.

One commenter, Kenneth Russell, recommended that the Commission establish grades for cultured pearls based on the thickness of the nacre deposited by the mollusk, following the introduction by man of a mother-of-pearl bead. He noted that the thickness of the nacre “mainly determines their wearable value” and that this “indexing” information should accompany this product “just as karatage serves to rank gold jewelry.”²⁸⁶ He stated that most cultured pearls consist of 90 to 95% nucleus and very little nacre.²⁸⁷

The article attached to the Majorica comment stated that the thickness of the nacre in a cultured pearl “will vary depending on the amount of time the nucleated mollusk was allowed to grow before harvest.”²⁸⁸ The article attached to the Rapaport comment quoted a pearl industry source as saying that some of the lowest-quality Chinese pearls should not be on the market because “the nacre peels off the nucleus within a year.”²⁸⁹ The article notes that pearl grading is “a non-standardized process that gives dealers a lot of room for opinion.” It also notes that GIA has a grading system which “uses numerical grades to show differences in appearance, durability and value of pearl strands” and that some companies use their own methods.²⁹⁰

The literature indicates that the nacre on some cultured pearls might be so thin that they do not meet the expectations consumers have when an item is described as a cultured pearl. Section 23.17 in the current Guides admonishes against misrepresentations

about the thickness of the nacre on cultured pearls or the quality of pearls. However, it is not unfair or deceptive to fail to grade cultured pearls that contain a coating of nacre that is thick enough to meet minimal consumer expectations.

F. Precious and Semi-precious Stones (Category V): §§ 23.18–23.21

Guides in this part apply primarily to colored gemstones, precious (rubies, sapphires, emeralds) and semi-precious (amethyst, topaz, etc.) stones. The Guides refer to three types of gemstones: natural (i.e., mined from the ground); synthetic stones, which are laboratory-created and which § 23.21(d) describes as having “essentially the same optical, physical, and chemical properties” as natural stones; and imitation stones, which resemble natural stones but do not have the same properties.

1. Deception Generally: § 23.18

Section 23.18 states that any material misrepresentation with respect to precious or semi-precious gemstones is unfair. The JVC proposal omitted this section. Section 23.18 merely repeats the general admonition in § 23.1 against material misrepresentations of any industry product. Thus, the Commission has deleted this provision from the revised Guides.

a. Disclosure of Treatment

A Note following § 23.18 states that any artificial coloring or tinting of a diamond or precious or semi-precious stone by “coating, irradiating, or heating, or by use of nuclear bombardment, or by any other means” should be disclosed and the fact that the coloring is not permanent, if such is the fact. The JVC proposed, in section 23.20(c) of its petition, a section in lieu of the Note which requires the disclosure of any enhancement “by coating, application of colorless or colored oil, irradiation, surface diffusion, dyeing, heating or by use of nuclear bombardment, or by any other means.”²⁹¹ This proposal would expand the recommended disclosure about enhancements relating to color to all enhancements (e.g., those related to concealing cracks). In addition, it explicitly covers enhancement by applications of colored or colorless oil, surface diffusion, or dyeing.²⁹²

²⁹¹ Nassau (10) suggested, at p.1, three modifications to the JVC proposal: the addition of the word “impregnation” after the word “coating”; the addition of the words “wax, plastic, or glass” after “colored oil”; and the removal of the word “surface” (i.e., in “surface diffusion”).

²⁹² Although most of these techniques enhance color, application of colorless oil could arguably be used simply to cover inclusions. The current

²⁸² Comment 193, p.9.

²⁸³ *Id.*

²⁸⁴ CPAA (193) p.9 (explaining, for example, that the “use of the term ‘Misaki Japanese Pearls’ in several cases has led consumers to believe that they were purchasing Japanese cultured pearls instead of imitation pearl products”).

²⁸⁵ Comment 240, pp.8–10. Unlike the CPAA proposal, Majorica proposed to prohibit the use of the term “Mallorca” or any similar expression connoting the name of the Island of Mallorca, Spain in combination with the word pearl. (The CPAA proposal would allow an imitation pearl to be described as a “Mallorca imitation pearl.”) Majorica stated that it has sued distributors of pearls and has obtained relief which requires such distributors to “reduce the emphasis on [Mallorca] in their advertising and distribution.” Majorica asserts that it is unfair to require it to go to the expense of litigation every time such an abuse occurs. *Id.* However, Majorica’s specific complaint regarding the “passing off” of one manufacturer’s product for another is already adequately addressed by caselaw under Section 5.

²⁸⁶ Comment 217, p.1 (suggesting that cultured pearls with a ¼ to ½ mm. coating of nacre should be marked “Service Grade” and those with more than ½ mm. marked “Heirloom Grade”).

²⁸⁷ *Id.* at p.2.

²⁸⁸ “Majorica Imitation Pearls,” *Gems and Gemology* 187 (Fall 1990), attached to Comment 240.

²⁸⁹ “Rapaport Diamond Report” 26 (July 17, 1992) attached to Comment 233.

²⁹⁰ *Id.*

Numerous commenters noted that almost every natural gemstone is subject to some form of enhancement.²⁹³ AGS stated that many new enhancement techniques have been developed since the Guides were issued and that "[c]oating processes are developed daily."²⁹⁴ NACSM stated that up to 95% of colored gemstones are dipped in oil and that this treatment is "taken for granted by retailers and consumers alike."²⁹⁵ It questioned the value of disclosures under these circumstances and contended they would clutter written advertisements and increase prices.²⁹⁶ However, NACAA commented that its members receive complaints about failure to disclose stone enhancement.²⁹⁷ Although the Guides currently recommend disclosure of color enhancement, some comments indicated that there is little such disclosure in the marketplace.²⁹⁸ However, some industry associations strongly encourage their members to disclose treatments.²⁹⁹

The Commission is persuaded by the comments that many consumers do not have detailed knowledge about the nature and types of treatments used to enhance gemstones. However, consumers would expect their gemstone purchases to retain their appearance over time regardless of any treatments and to not require special care to retain their appearance. On the basis of the comments and for the reasons discussed below, the Commission has concluded

Guides recommend disclosure of techniques which artificially color gemstones, and the fact that the techniques are not explicitly mentioned may lead readers to assume that it need not be disclosed. Some comments gave this indication because they assumed that the disclosure of treatment with colorless oil was not currently advised.

²⁹³ Lannyte (65) p.8 (also suggesting, at p.10, that the guides state that it is unfair to state that a gemstone has *not* been enhanced when it has been, a suggestion that has been incorporated into § 23.1 of the revised Guides by including "treatment" in the list of attributes that should not be misrepresented); JGL (77) p.1; Majestic (115) p.1; Suberi (214) p.2; Bruce (218) p.12; NACSM (219) p.13; Impex (220) p.1; Best (225) pp.8-9.

²⁹⁴ Comment 18, p.2; AGTA (49) p.5 (noting several technologies (e.g., diffusion-treated sapphires, irradiated topaz) that "did not even exist on a commercial scale ten years ago"); GIA (81) p.2; Eisen (91) p.1; ArtCarved (155) p.1; LaPrad (181) p.1; IJA (192) p.1.

²⁹⁵ Comment 219, p.13 and letter to Secretary, p.1. See also "Epoxy-Like Resins," *Jewelers' Circular-Keystone* 176 (June 1994) (stating that "[t]he majority of emeralds sold today are epoxy resin impregnated" and noted that oil and epoxy resin are both designed to "soften or hide the effect of cracks and fissures").

²⁹⁶ *Id.*

²⁹⁷ Comment 90, p.1.

²⁹⁸ Lannyte (65) p.7; Impex (220) stated that the JVC proposal would "defy standard industry practices."

²⁹⁹ See discussion *infra* of the 1990 Gemstone Enhancement Manual (attached to comment 49).

that non-permanent treatments of various types (not just those that affect color), or any treatments that create special care requirements should be disclosed. There is no logical reason to limit disclosure to treatments that affect color. Further, consumers should be informed when the treatment is not permanent.³⁰⁰

Some comments argued that any treatment, even if it is permanent, may reduce the value of a stone and a failure to reveal treatment amounts to a representation that a stone is more valuable than it is. One commenter noted that treatments should be disclosed "since the stone gives the appearance to the consumer that it is a higher grade than what it actually is."³⁰¹ AGTA also stated that "the difficulty in detecting treatments presents opportunities for misrepresentation of the value" and that "the potential for overcharging consumers if the enhancements are not disclosed at every level of the trade is very real."³⁰² AGTA attached a May 1993 notice it issued to its members in which it referred to the fact that a number of knowledgeable wholesalers purchased diffusion-treated sapphires without knowing that they were treated.³⁰³

On the other hand, Service argued that failure to reveal treatment is not deceptive if the treatment is permanent, stating, "[i]t is unreasonable to require a retailer to disclose what has happened to a stone in the manufacturing process if the change is permanent." Service agreed that if the change is not permanent, the customer "wants to

³⁰⁰ By letter dated February 7, 1989, the JVC informed staff that it wished to revise its petition to "include disclosure in the colored gemstone provision the permanency and/or non-permanency of enhancement."

³⁰¹ Bales (156) p. 10.

³⁰² Comment 49, p. 5 (stating that it sees examples of overcharging too frequently and listing as "most notable examples," *i.e.*, diffusion-treated sapphire, Yehuda-treated and laser-drilled diamonds, and irradiated topaz, sapphire, and diamond); Chatham (231) p. 24 (stating that consumers are deceived by treated natural stones that are passed off as more valuable than they actually are).

³⁰³ AGTA recommended that diffusion-treated and irradiated gemstones always be described as "chemically colored by diffusion," and, if the color does not permeate the entire gem, that fact should be revealed with a warning that re-cutting or re-polishing is not recommended. Comment 49, p. 16. However, River (254) stated, at pp. 2-3, that many people find diffusion treated sapphire a better value, and that the problem of re-cutting is "blown out of proportion" since very few stones are re-cut or re-polished at a customer's request, and in the rare instance when a stone is broken, it is replaced. For these latter reasons, the Commission has not included the language suggested by AGTA (*i.e.*, a warning about re-cutting or re-polishing) in the Guides. Further, it is not practical for the Guides to address every conceivable issue that may arise in a jewelry transaction.

know if the color or quality may degrade over time and what the customer must do, if anything, to maintain the stone's quality and color. Requiring this information to be provided is acceptable."³⁰⁴

The Commission has concluded that it is not unfair or deceptive to fail to disclose a treatment that is permanent or that does not create special care requirements. As the Commission stated in *International Harvester*, 104 F.T.C. at 948, it may be deceptive for a seller "to simply remain silent, if he does so under circumstances that constitute an implied but false representation." These implied representations "may arise from the physical appearance of the product, or from the circumstances of a specific transaction, or they may be based on ordinary consumer expectations as to the irreducible minimum performance standards of a particular class of goods." *Id.* The Commission explained, however, that "[i]ndividual consumers may have erroneous preconceptions about issues as diverse as the entire range of human error, and it would be both impractical and very costly to require corrective information on all such points." *Id.* at 949.³⁰⁵ Thus, if an express or implied representation is made (in advertising or at the point of sale) that might imply rarity and therefore lack of treatment—*e.g.*, that the gemstones are of an exceptionally high quality—then the failure to reveal any treatment may be deceptive. However, if no such representation is made, consumers simply might not give any thought to whether the gemstones were treated, beyond assuming that all gemstones undergo some processing to achieve their finished state. Therefore, it is neither unfair nor deceptive to fail to reveal treatments that are permanent, and that do not create special care requirements.³⁰⁶

³⁰⁴ Comment 222, p.5.

³⁰⁵ Numerous comments noted that disclosure of treatment of all gemstones would be expensive for retailers. Service (222) p.5 (stating this is difficult because the stone probably changed hands a few times before being purchased by the retailer); Best (225) p.9 (stating that the retailer may not know of the enhancement); Finlay (253) p.2 (stating that it would be an "overwhelming task" for the retailer to obtain information about enhancement from the manufacturers). Others commented (without further explanation) that disclosure would "complicate" sorting, advertising, and selling. Philnor (93) p.1; PanAmerican (101) p.1; Fame (102) p.1; Orion (113) p.1; Precision (121) p.1.

³⁰⁶ The Commission does not believe that it would be unfair to fail to disclose the treatments because, even assuming there might be some consumer injury associated with such failure, the injury would be outweighed by the benefits to competition, see *supra* note 305, associated with not requiring the disclosure. See *International Harvester*, 104 F.T.C. at 949.

Nevertheless, most treatments of gemstones are not permanent, and most treatments create special care requirements. AGTA attached to its comment a copy of the 1990 *Gemstone Enhancement Manual*, which states, at p.3, that it was "developed by a coalition of jewelry industry leaders representing the various trade organizations, gemological scientists, and the trade press." This Manual gives examples of treatments that are not permanent, or that create special care requirements.³⁰⁷ What appears to be the most common treatment—oiling—is definitely not permanent.³⁰⁸ Although a new treatment with epoxy resin "leads to a longer lasting improvement in appearance which is not possible with volatile compounds like oils and paraffin used traditionally," experts have suggested that a number of problems may occur even with this treatment and that disclosure is necessary because otherwise a seller "could easily ask a price commensurate with a stone's appearance."³⁰⁹

Further, as noted above, most consumers probably do not have detailed knowledge about the nature and type of treatments that are used to enhance gemstones. Therefore, if consumers are unaware of the non-permanency of a treatment or the special care requirements associated with a treatment, the gemstone may not meet their expectations if the color fades or inclusions appear, etc. Accordingly, the Commission has included a section in the revised Guides that states that

³⁰⁷ For example, the Manual states that emeralds are usually oiled with colorless oil to improve appearance; the stability of this treatment is described as "fair to good." According to the Manual, oiled emeralds should not be subjected to temperature changes, steaming, chemicals, or ultrasonic cleaning machines. Moreover, numerous other stones that are commonly treated to improve appearance (e.g., Amazonite—usually waxed; Jadite—impregnated with colorless wax; Lapis Lazuli—impregnated with colorless wax or oil; Malachite—coated with wax) should not be cleaned in ultrasonic machines, according to the Manual. Ultrasonic cleaning machines are now sold to the general public by mass retailers.

³⁰⁸ An article entitled "Emeralds" in *National Geographic*, Vol. 178, July 1990, stated that oiling of emeralds probably lasts from a few months to a year or two "if the emerald is kept away from heat and out of the sun." *Id.* at 68. The oiling process involves submerging vials of emeralds in boiling water and then placing the vials in a pressure chamber to drive the oil even deeper into the cracks in the emeralds. This is not a process that the average consumer could repeat. The article noted, at another point, that the oil evaporates or seeps out "within a year or two" and that oiling "can puzzle and dismay emerald owners." *Id.* at p.49.

³⁰⁹ "Epoxy-Like Resins," *supra*, at 177. The article quotes experts who suggest that the filler may be harder to take out if it deteriorates and changes color, that it may turn cloudy over time, or that it may cause stress and increase the chances of gem breakage. *Id.* at 178.

non-permanent treatments and treatments that create special care requirements should be disclosed. This section explicitly states that certain treatments, such as application of colored or colorless oil or epoxy-like resins, surface diffusion, or dyeing, should be disclosed because they usually are either not permanent or create special care requirements. This recognizes that whether a treatment is permanent or invokes special care requirements may be dependent on factors such as the type of gemstone that is treated.

Several commenters noted that the current Guides do not specify whether disclosure of treatment should appear in advertising (as opposed to at the point of sale). Several retailers commented that disclosure of enhancement in advertising would be burdensome and would have a disparate impact on large chains, which do advertise, as opposed to small jewelry stores, which generally do not advertise. NRF suggested that whatever enhancement disclosures are required should be limited to the point of sale.³¹⁰ Because the potential deception arises due to the appearance of the product, the Commission has determined that disclosure at the point of sale is adequate to prevent the deception, except in the case of any solicitations where the product can be purchased without first viewing it (e.g., mail, on-line, or telephone orders). In those cases there should be disclosure that stones have been treated in the solicitation or, in the case of televised shopping programs, on the air.

b. Disclosure of special care requirements. The current Guides do not recommend the disclosure of special care requirements for treated stones, and the JVC petition did not propose that special care requirements be disclosed. However, the permanency of some treatments is dependent on the care exercised by the consumer. The FRN solicited comment on whether the Guides should advise sellers to disclose to consumers in writing any special care requirements and whether the method of disclosure should be specified.

Thirty-four comments addressed this issue. Seventeen comments stated that the Guides should not require such disclosure, with several stating that it would be a costly burden for the retailer.³¹¹ Eleven commenters favored

the disclosure of special care requirements.³¹² GIA and three other commenters stated that the Guides should require such disclosures if the stability of the enhancement may be affected by the care provided.³¹³ AGTA and CPAA both stated that they advocated responsible communication between retailers and their clients as to special care, but they deferred to the opinion of retail jewelers as to whether this should be required by the Guides.³¹⁴ AGTA suggested appending the current edition of the industry's *Gemstone Enhancement Manual* to the FTC guides to advise the industry about the current methods being used.³¹⁵

However, none of the comments explained why failure to disclose special care requirements would be unfair or deceptive. Although failure to reveal a fact material to consumers can constitute deception by omission, the Commission has determined that it is not inherently deceptive to fail to reveal special care requirements. First, as discussed *supra*, the Commission has revised the Guides to state that sellers should disclose enhancements that result in special care requirements. Therefore, having been informed that the stone was "enhanced," a consumer acting reasonably in the circumstances could be expected to inquire about the process and its permanence, and that inquiry should result in disclosure of special care requirements. For example, Capital commented that "as long as enhancement is faithfully disclosed, special care requirements will also be disclosed," since consumers will ask for

of these comments indicated that such disclosure should be recommended, rather than required.

³¹² Honora (15); Argo (17); AGS (18) p.3 (stating that "professional jewelers routinely disclose special care requirements"); Estate (23); Jabel (47) p.2 (suggesting that the "stone manufacturer might supply a 'care and feeding' card for every type of stone he handles"); Skalet (61); NACAA (90); ArtCarved (155); Bales (156); Shire (221); and Leach (257).

³¹³ Comment 81, p.3; Schwartz (52) p.3 (stating that there should be disclosure since "many, if not most, of gemstone enhancements are unstable . . ."); Bruce (218) p.12 (stating that "it is only when a stone is not permanently changed and may revert back to another color or shade that a ticket should be attached letting the consumer know of this, as well as other precautions"); Service (222) p.3 (stating that it does not oppose disclosing "the need for any particular care of a gemstone to insure its continued quality in appearance").

³¹⁴ AGTA (49) and CPAA (193).

³¹⁵ Comment 49, p.10 (stating that the Manual, unlike the Guides, is revised frequently and "if the guides attempt to address specific enhancements, the information may be obsolete before changes could be incorporated at the federal level"). *But see* River (254) p.2 (stating that the Manual uses letter codes to describe treatment, which it described as "an arcane method of communicating").

³¹⁰ NACSM (219) pp.9, 10, 13; Best (225) p.8; NRF (238) p.2.

³¹¹ JMC (1); Thorpe (7); Capital (19); G&B (30); Lannyte (65); Nowlin (109); McGee (112); Bridge (163); LaPrad (181); IJA (192); Bedford (210); Matthey (213); NACSM (219); MISA (226); Preston (229); Sheaffer (249); and Solid Gold (261). Some

instructions and retailers will offer them to avoid future problems.³¹⁶

Furthermore, according to the *Gemstone Enhancement Manual*, attached to the AGTA comment, special care requirements are quite common for many types of unenhanced stones. The Guides have not recommended the disclosure of special care requirements for these unenhanced stones. Because unenhanced stones have been sold for many years, the Commission presumes that over time consumers have become familiar with their characteristics and their care requirements. Similarly, consumers may expect that enhanced stones would require certain care requirements too. Therefore, the Commission believes that if the enhancement is revealed, it is not inherently unfair or deceptive to fail to reveal special care requirements. (Consumers who request, but do not receive special care requirements, presumably will choose to take their business elsewhere. Thus, sellers should have an incentive to provide such information.) However, since enhanced stones that have special care requirements are newer products in the marketplace, and consumers may not be as familiar with the requirements of these stones, the Commission has recommended that the seller disclose special care instructions to the consumer.

2. Deceptive Use of Names of Specific Stones: § 23.19

Section 23.19(a) in the current Guides states that it is unfair to use the unqualified name of a precious or semi-precious stone to describe a product which is not a natural stone. This section is not changed in the revised Guides (§ 23.23(a)).

Section 23.19(b) states that it is unfair to use the name of a precious or semi-precious stone (or the words "stone" or "birthstone") to describe a synthetic, imitation or simulated stone unless the name is immediately preceded by the word "synthetic," "imitation," or "simulated," whichever is applicable, or by some other word or phrase of like meaning, so as to disclose the fact that it is not a natural stone.³¹⁷

³¹⁶Comment 19, p.2 (noting that trade associations provide the industry with material on disclosing care information, and that it is not necessary to include this in the Guides).

³¹⁷A Note following this section states that qualifying these terms by means of an asterisk, which reference a footnote explanation, "is not to be regarded as compliance with the requirements of this section." The Commission believes that this section, which states that a qualifying term should immediately precede the name of the stone, adequately advises sellers of the proper disclosure.

Both the current Guides and the JVC petition allow the use of "synthetic" or words or phrases of like meaning to describe created stones that have the same properties as a natural stone. The purpose of this section is to prevent the deceptive impression that an item is a natural stone, and any word or words that accomplish that goal are acceptable. In *Chatham Research Laboratories*, 64 F.T.C. 1064, 1075 (1964), the Commission found that the phrase "Chatham-Created Emeralds" was not deceptive because the reasonable inference from the phrase was that "such emeralds are Chatham created and must therefore be synthetic since they are not created by nature." Chatham's comment stated that after almost 30 years of use, there is no evidence that "Chatham-created" is deceptive to consumers.³¹⁸

AGTA commented, however, that there should be no acceptable synonyms for the word "synthetic."³¹⁹ Other comments argued that the Guides should specifically identify terms other than "synthetic" that can be used, such as "laboratory created," "created," or "cultured." AGL noted that it introduced the term "Laboratory Grown (Synthetic)" some time ago because it seemed obvious that this would "increase the ability of a retailer to explain and the capacity of consumer to understand the basic differences between glass/plastic, i.e., imitations, and those products that are laboratory grown to emulate the characteristics and properties of a natural material."³²⁰

Chatham and numerous other commenters also suggested that synthetic stones appropriately could be described as "cultured." Chatham, Kimberley, and Crystal argued that this term should only be used for synthetics that were created by the "hydrothermal" or "flux" method (which they use).³²¹

The Note is superfluous and the Commission has deleted it.

³¹⁸Comment 231, p.5.

³¹⁹Comment 49, p.17.

³²⁰Comment 230, p.3. AGL also noted that the colored stone industry opposed this change, citing "the historical, 'universally understood' application of the term 'synthetic.'" However, AGL stated that there is a "conscious desire to leave the consumer in a quandary regarding the difference between 'synthetic' and 'imitation' products. . . . to reduce the capacity of the synthetic material manufacturer to penetrate the U.S. marketplace with their products." *Id.*

³²¹Chatham (231) pp.2, 31; Crystal (24) pp.1, 4; Kimberley (227) p.7 (stating that the hydrothermal process is the same process that creates "natural" emeralds); Matlins (205) pp.2-3, favored the use of terms such as "created" or "laboratory-grown" for flux-grown synthetic gems only, which she described as being very different from melt or "flame-fusion" synthetic products, in that the flux-grown products look more like natural stones and are more expensive to produce. Manning (159) p.2,

Others argued that synthetics made by the "melt" or "flame-fusion" process also should be allowed to describe the stones as "cultured."³²²

Although some companies have used the term "cultured" to describe their products for some time,³²³ no actual evidence about consumer perceptions arising from the use of a term such as "cultured ruby" was submitted. However, in *Chatham Research Laboratories*, 64 F.T.C. at 1074, the Commission found that the phrase "Chatham Cultured Emeralds" was deceptive. Further, several commenters indicated that they regarded the term "cultured emerald" as deceptive.³²⁴ Because there currently is insufficient evidence as to consumer perceptions regarding the use of the term "cultured," the Commission has not included the term in the Guides as a "safe harbor" (e.g., an example of an adequate disclosure). Furthermore, the Commission has concluded that there is not enough evidence in the record to establish "safe harbor" terms by which makers of flux-grown gems could distinguish their products from other created gems. However, such manufacturers can distinguish their products from others by means of truthful advertising.

Similarly, the Commission has determined that there is not sufficient evidence with respect to the consumer interpretation of a phrase such as "created emerald" (as opposed to

which uses the melt method to produce rubies, argued that solution growers [by which it appears to be referring to flux-growers] should be allowed to describe their products as "cultured" and melt growers to describe their products as "created" or "lab-grown" because "without the ability of solution growers to somehow separate their process from ours in fair descriptive language, they will be forced from the marketplace as too costly for the market to bear." *Diamonique* (224) p.3, stated without elaboration, that it favored "cultured" for gemstones that were produced by a method "which replicates that growth process of natural gemstones."

³²²ICT (189), which makes gemstones by the melt method, stated at p.3, that it objected to "reserving the word 'lab-created,' 'lab-grown,' or 'created,' to describe flux or hydrothermal methods of growth only." Service (222) stated, at p.2, that it is "unfair to allow sellers of low quality created stones to use the same term for their product as is used for the highest quality of created stones" but suggested this issue should be addressed in a "separate rulemaking." Friedman (234) stated, at p.3, that "cultured" would communicate to consumers "that they were purchasing a true, high-value gemstone, identical to a natural gemstone and made by a process which included human intervention." It apparently favored the use of "cultured" for both types of lab-created stones.

³²³Crystal (24) p.3 (stating that it uses the term "cultured" to describe its "Ramura Cultured Ruby"); Chatham (231) p.31 (stating that Crystal and Enspirit Cultured Emeralds have been using the term "cultured" for flux-grown gems).

³²⁴Krementz (208) p.1; Shire (221) p.1; River (254) p.3.

“laboratory created” or “Chatham-created”) to justify including it in the Guides as a safe harbor. As River stated, the description “laboratory grown” is clear immediately, without further explanation. However, terms such as cultured, created and synthetic “are not as clear to the general public and are more often misunderstood because they are not part of the common vocabulary in the special sense in which we use them.”³²⁵

Chatham argued that most consumers “understand synthetic to mean fake, artificial, and otherwise of low quality.” It also stated that it is essential that it “be able to honestly and accurately educate consumers that the only difference between its gemstones and natural is the environment in which the crystals grow.”³²⁶ The Commission is persuaded that the term “synthetic,” as applied to gemstones, is misunderstood by some consumers to mean something fake or artificial. Therefore, the Commission has included the phrases “laboratory grown,” “laboratory-created,” or “[manufacturer name]-created” in the revised Guides (now § 23.23).³²⁷ Although the Commission has determined that these terms more clearly communicate the nature of the stone, sellers can still use the term “synthetic.” The Commission has also included an admonition against misusing the terms “laboratory-grown,” “laboratory-created,” or “[manufacturer name]-created.”

The JVC also proposed adding a Note stating that if the term “created” is used to describe a synthetic stone, “the name of the firm or company using this product-term must be disclosed in equal prominence and size type as the term ‘created’ . . . [and] must be separated from the term ‘created by a dash (-) so as clearly to disclose the stone is man-made, i.e., Chatham-Created Emerald.” AGTA proposed prohibiting any synonym for “synthetic,” but urged that, if the Commission decided to allow the

continued use of the term “created,” then “the precise language” from the Chatham action should be incorporated into the Guides.³²⁸ The effect of the Note proposed by the JVC (and “urged” by AGTA) would be to prohibit the use of “created” except in precisely the form mandated by the Note. However, there is no evidence as to how most consumers interpret a phrase such as “created emerald.” The Commission has thus determined that there is no basis for advising against all but one specific use of the term “created.” However, although the terms “laboratory created” and “[manufacturer name]-created” will be included in the list of “safe harbor” terms, the term “created” alone will not be included in this list.

In the FRN, the Commission also sought comment on whether foreign words or phrases like “faux” should be added “to the list of terms in Section 23.24(b) [of the JVC petition] that are not to be used to describe industry products.” Thirty-five comments addressed this question.³²⁹ The Postal Service stated that “faux” has been used “by disreputable promoters to confuse unsophisticated consumers and enhance the apparent value of their costume jewelry.”³³⁰ Three other commenters stated that “faux” is only used to deceive and should be prohibited.³³¹ Six commenters, including NACAA, stated that “faux” should be prohibited because some consumers do not know what it means.³³² Three stated that “faux” is confusing and misleading.³³³ Thirteen other comments stated that “faux” should be prohibited but

³²⁸ AGTA (49) argued, at p.17, that a phrase such as “A Chatham-created emerald ring” implies not that the emerald was created, but that the ring was manufactured by Chatham.” (Emphasis added.) However, it provided no evidence that consumers interpret the phrase in that manner. If manufacturers or sellers of these items have reason to believe that consumers are misinterpreting this phrase, it would be unfair or deceptive not to correct the misunderstanding.

³²⁹ Only one of the comments focused on the issue of whether foreign words or phrases should be added to the list of terms that are not to be used to describe industry products. Sheaffer (249) stated, at p.5, that it is not necessary “to identify and specify . . . the many foreign terms which might be misleading if used in connection with an industry product” but instead believed it more desirable to add a general admonition that it would be unfair or deceptive “to use any foreign term which may be accurate and appropriate in its native language” but which is not otherwise generally used or understood.

³³⁰ Comment 244, p.3.

³³¹ Schwartz (52); Bridge (163); and CPAA (193).

³³² Honora (15); Skalet (61); NACAA (90); Bedford (210); MISA (226); and Preston (229). Bedford stated that a consumer might think that “faux” refers to the color of a “faux emerald.”

³³³ AGTA (49); Bruce (218); and Shire (221). AGTA gave an example, at p.11, of a consumer who thought that “faux” referred to the place of origin of a “faux emerald.”

provided no reasons.³³⁴ Nine comments believe the use of “faux” to describe industry products should be acceptable.³³⁵

The evidence shows that many unsophisticated consumers do not know what the word “faux” means and that it has been used to deceive them. Thus, the Commission has added a Note to the Guides that states that the use of the word “faux” to describe a laboratory-created stone is not regarded as an adequate disclosure of the fact that it is not a natural stone.

Finally, the JVC proposed the addition of a Note [following petition section 23.22] that states that descriptive words relating to species and varieties of gemstones must be in conformance with approved gemological terminology. No evidence was offered to show that there is a need for guidance in this area.³³⁶ Thus, the Commission has not added this Note to the revised Guides.

3. Misuse of the Words “Real,” “Genuine,” “Natural”: § 23.20

Section 23.20 states that it is unfair to use the words “real,” “genuine,” “natural,” or similar terms, to describe any “articles which are manufactured or produced synthetically or artificially, or artificially cultured or cultivated,” if such use is likely to deceive consumers. The JVC has proposed [in section 23.23(a) of its petition] expanding this section to include the words “precious” or “cultured” and to state that “it must clearly be disclosed that a man-made industry product is not a gemstone.” For the reasons discussed above, the Commission has not included the word “cultured” as a “safe harbor” term to describe man-made gemstones. However, there is not sufficient evidence to advise against the use of “cultured” as applied to synthetic gemstones. Further, there is no evidence that it is being applied to imitation gemstones, where its use is more likely to be misleading. Thus, the Commission

³³⁴ JMC (1); Fasnacht (4); Sibbing (5); AGS (18); Estate (23); G&B (30); GIA (81); Nowlin (109); McGee (112); LaPrad (181); Lange (183); IJA (192); and Leach (257).

³³⁵ Lannyte (65); Ross-Simons (67); ArtCarved (155); Bales (156); NACSM (219); ICT (189); Service (222); Best (225) and Franklin Mint (250). Two of these [NACSM (219) and ICT (189)] stated that “faux” has become part of the English language. Ross-Simons (67) stated that “faux” should be permitted because it romances the merchandise without deception.

³³⁶ There was little comment on this suggestion. Lannyte (65) stated, at p.11, that “it is totally inappropriate for a school to be THE authority on descriptive names as names will develop from within the trade usage in the same way as language usage changes. This smacks of censorship!”

³²⁵ Comment 254, p.3.

³²⁶ Comment 231, pp.2, 5, 22; Manning (159) p.4 (stating that there is no way to change the public misunderstanding of “synthetic”); River (254) p.3 (stating that consumers misunderstand “synthetic,” and noting that “their greatest experience is with synthetic fabrics” so that “it is difficult for a clerk in a retail store to explain that gemologists have a special meaning for the word synthetic”).

³²⁷ Although the revised Guides no longer list the word “synthetic,” some consumers may know the technical meaning that has been attributed to the word in the context of gemstones for many years, and they might be deceived into thinking that imitation stones described as “synthetic” have the same physical and optical properties as natural stones. Thus, the Commission has determined that the provision which limits the use of the word “synthetic” to certain circumstances continues to be useful.

has not added the word "cultured" to this section of the Guides.

The Commission, however, has determined that the term "precious" is deceptive when applied to synthetic or imitation gemstones because it implies rarity. Because synthetic or imitation gemstones can be produced in virtually unlimited quantities, they are not "rare" or "precious" like natural gemstones. Therefore, the Commission has included the word "precious" in this section (§ 23.24 of the revised Guides).

The JVC also proposed (in section 23.23(b) of its petition) a section which would in effect prohibit the use of the term "semi-precious" to describe any gemstones. The Commission has determined that "semi-precious" is deceptive when applied to synthetic or imitation gemstones (because it implies they occur naturally) and has included it in § 23.24 of the revised Guides.³³⁷ The proposal to ban its use as to natural gemstones is discussed below, as is the proposal that the Guides state that "it must clearly be disclosed that a man-made industry product is not a gemstone."

4. Deceptive Use of "Gem" and "Synthetic": § 23.21

Section 23.21(a) in the current Guides states that it is unfair to use the word "gem" to refer to a pearl or a stone (whether precious or semi-precious) "which does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem." Section 23.21(b) states that the word "gem" may not be used to describe a synthetic product unless that product meets the requirements of 23.21(a) and "unless such word is immediately accompanied, with equal conspicuity, by the word 'synthetic,' or by some other word or phrase of like meaning." A Note to section 23.21 states that "few cultured pearls or synthetic stones possess the necessary qualifications to properly be termed 'gems'" and that the use of the word "gem" therefore should be avoided. The Note also states that imitation pearls, diamonds, and other stones should not be described as "gems." Finally, the Note states that "Not all diamonds or natural stones, including those classified as precious stones, possess the necessary

qualifications to properly be termed 'gems.'"

The current Guides do not contain any admonitions as to the use of the words "gem stone" other than the general admonition, in § 23.18, against misleading representations used in connection with the sale of precious or semi-precious gemstones. Under the current Guides, few if any synthetic stones are likely to qualify as "gems," but synthetic stones may be described as "gemstones" (for example, in an advertisement for various varieties of stones), as long as the term is so qualified as to disclose that the product is not a natural stone.³³⁹ In addition, the Guides allow lower quality natural stones, which do not possess "the beauty, symmetry, rarity, and value necessary for qualification as a gem" to be referred to as gemstones as long as they are not of such low quality (e.g., industrial quality stones) that it would be deceptive to so describe them.

The JVC proposed changing this scheme. It proposed that the Guides state that the word 'gem' should not be used as a quality designation of gemstones. It also proposed that a definition of "gemstone" be added to the Guides, along with a provision stating that it is unfair to use the word "gemstone" to describe any object that does not meet the definition. The JVC defined gemstone as "a naturally occurring substance which has been carefully fashioned into a jewel suitable for use in jewelry, for personal adornment, display, etc. A gemstone possesses beauty, rarity, durability and value."

This definition is similar to the definition of "gem" in the current Guides but it limits the use of "gemstone" to natural cut and polished stones, suitable for use in jewelry, that are also durable. The JVC has provided no evidence indicating that industry members or consumers have misunderstood the definition of "gem" in § 23.21 in the current Guides, nor has it provided any evidence as to why the definition it suggests for "gemstone"

³³⁹ A synthetic stone is not likely to meet the rarity criterion necessary to be described as a gem, although it is conceivable that a particularly beautiful and difficult to create stone could meet the rarity criterion. In a separate section of its petition [23.24(a)], the JVC also proposed the addition of a section that states that it is unfair to use the word "gem" to describe a synthetic or imitation stone. Diamonique (224) noted, at p.4, that "there are differing quality levels with natural gemstones, as there are with man-made gemstones. If the term 'gem' is appropriate for natural material, it should also be appropriate for man-made material." The Commission has determined that the word "gem" may be appropriately used to describe a synthetic stone and has not added the proposed section to the Guides.

(which omits symmetry and adds durability to the qualities a gem must possess and excludes any synthetic stone) is more accurate or useful than the definition of "gem" in the current Guides.

The part of the proposal that would prevent natural stones from being described as gemstones unless they possessed beauty, rarity, durability and value was not discussed by most comments. However, the House of Onyx stated, "This is a broad statement that, if taken literally, would eliminate the vast majority of the Gemstones currently in the market."³⁴⁰ For example, under the scheme proposed by the JVC, a natural emerald that did not possess, e.g., rarity, would not be a gemstone. The Commission has determined to retain the current Guides, which allow lower quality natural stones, which do not possess "the beauty, symmetry, rarity, and value necessary for qualification as a gem" to be referred to as gemstones.³⁴¹

The proposed definition of "gemstone" also would prevent synthetic stones from being described as "gemstones." The FRN solicited comment on this proposal. AGS commented simply that it is essential "that a like size declaration of the words 'synthetic, imitation, etc.' accompany the description of the stone."³⁴² Service commented that the proposed definition of gemstone "is not needed to avoid deception of the consumer. As long as the consumer is ultimately advised whether or not the stone was naturally occurring * * * the interest in full disclosure has been satisfied."³⁴³ Best noted that "gemstone" is "loosely used in the industry today to refer to both naturally occurring and laboratory

³⁴⁰ Comment 162, p.2 (adding, at p.3, that most gemstones are not durable "in the true sense of the word," citing as examples amber, ivory, malachite, lapis lazuli, coral pearls, cameos, sodalite, and turquoise).

³⁴¹ One comment suggested that the words "rarity and value" be deleted from the current definition of gem in § 23.21, arguing that beauty and durability are the two basic properties of all gemstones. Lannyte (65) pp.6, 11. However, this comment appears to have confused the definition of "gemstone" with "gem." As noted, the current Guides suggest only a very limited use of the word "gem" is appropriate.

³⁴² Comment 18, p.3.

³⁴³ Comment 222, p.4 (noting that this proposal creates problems for "fair and competitive advertising"); Franklin (250) p.6 (stating that there is no reason the term should not be used for laboratory-created stones as long as it is properly qualified); Lannyte (65) p.9, 10 (asking "How does one refer to gemstones made by man when discussing them generically?" and suggesting that the Guides provide that it is unfair to use the word "gemstone" to refer to a synthetic stone without disclosing that it is "not the unassisted product of nature").

³³⁷ "Precious" stones are diamonds, emeralds, rubies, and sapphires. All other gemstones are "semi-precious."

³³⁸ Several comments that opposed banning "semi-precious" stated that its use with respect to synthetic or imitation gems would be confusing. AGTA (49) p.11; Schwartz (52) p.3; GIA (81) p.4; MISA (226) p.10.

manufactured stones.”³⁴⁴ Friedman stated, “[t]o our customers, the laboratory grown gems have gained acceptance as, and are, gemstones.”³⁴⁵ Chatham noted that it has used the terms “gemstone” and “gem” virtually from its inception in 1946 and that the terms “have been adopted and widely used by tradespeople in the jewelry industry * * * To date there has not been any suggestion (other than by the JVC) that consumers have been misled thereby.”³⁴⁶ Chatham also noted that the proposal would place Chatham gemstones “at a competitive disadvantage vis-a-vis their natural counterparts and would do so for no justifiable reason.”³⁴⁷

Although many commenters supported the JVC proposal, few gave any reason beyond stating that “synthetics are not natural.” GIA agreed that “gemstone” should be limited to natural stones because it implies that the material occurred in nature.³⁴⁸ AGTA stated that synthetics “emulate and often approximate the appearance of and have similar durability to that of

natural gemstones,” but they lack rarity, and allowing them to be referred to as “gemstones” will “further blur the distinction in the consumer’s mind as to the important differences between the two. In all probability, this will result in higher consumer prices for synthetic and simulated materials.”³⁴⁹ Other commenters agreed that synthetics should not be described as gemstones.³⁵⁰

The current Guides permit the use of, e.g., “synthetic ruby” or “imitation ruby.” The Commission is persuaded that consumers would understand that gemstones described as “laboratory-created gemstones” or “imitation gemstones” are not natural gemstones. Thus, the word “gemstone” is not deceptive when applied to synthetic or imitation stones, if its use is properly qualified by a word or phrase that discloses that the stone is not natural. The Commission therefore has added the word “gemstone” to § 23.19(b) of the current Guides, which states that the name of a precious or semi-precious gemstone as descriptive of a synthetic or imitation stone should be adequately qualified to disclose that it is not a natural stone. However, for the reasons described above, the Commission has not adopted the definition of “gemstone” suggested by the JVC nor changed the definition of “gem” in § 23.21 of the current Guides.

As noted, the JVC also proposed adding a Note recommending that the word “gem” or “similar term” not be used as a quality designation or as descriptive of gemstones because no criteria for these terms exist and “their use to describe, imply or represent quality could be misleading.” However, the JVC cited no evidence that such terms have actually been misleading to consumers. Moreover, as Onyx noted, “there are ‘Gem’ quality Gemstones as well as ‘trash’ quality in the same Gemstone.”³⁵¹ Truthful, and indeed informative, use of the word “gem” is possible and thus, the Commission has not adopted this proposal.

The JVC also proposed adding a section to the Guides stating that “gemstone” may not be used to describe any object “not fashioned for use as jewelry or personal adornment, e.g., statues, ashtrays, boxes, etc.” unless qualified by a term such as “carving” or

“engraving” [Petition 23.20(b)]. No explanation was offered as to how such a use could deceive consumers.³⁵²

The Commission has not included this section in the Guides because items other than jewelry are sometimes made of gemstones and it would not be deceptive to so describe them.

The JVC proposed that a section be added to the Guides stating that it is unfair to use the term “semi-precious” when referring to gemstones or any synthetic, imitation, or simulated stone. [Petition 23.23(b)] The FRN solicited comment on this proposal.

No explanation was offered as to why the term “semi-precious” was unfair or deceptive when applied to natural gemstones. Some commenters who favored the proposal stated that it is a “misnomer” or that it “gives a false impression of a gem having little intrinsic value; an impression which may not be correct.”³⁵³ However, sellers are not required to describe their wares as semi-precious; the import of the JVC’s proposal would be to prohibit those who wish to so describe their wares from doing so. AGTA commented that, while it believes “semi-precious” is denigrating to “natural gemstones other than Ruby, Emerald, Sapphire and Diamond which are traditionally referred to in the trade as the ‘precious gemstones,’” it did not believe it should be illegal to so describe natural stones.³⁵⁴ Skalet explained that the term “semi-precious” has been used in the jewelry and gemstone industry for generations “as a reference to natural gemstones of moderate value and wide availability.”³⁵⁵ Based on the comments, the Commission has concluded that there is no basis for advising against the use of this term to describe natural gemstones.

Finally, the JVC also proposed redrafting all sections pertaining to precious and semi-precious stones, removing the terms “precious” and “semi-precious” and substituting “gemstone.” However, there is no valid purpose for this change, and the Commission has determined that substituting the term “gemstone” for “precious and semi-precious stones” would make the Guides less clear.

³⁵² Onyx (162) p.3 (stating that the proposed prohibition “flies in the face of fact”); NACSM (219) p.13 (opposing the provision and describing it as a restrictive limitation for which no justification has been given); Service (222) p.5 (stating that there is no reason to prohibit a phrase such as “gemstone jewelry box”).

³⁵³ Thorpe (7) p.2; Capital (19) p.2.

³⁵⁴ Comment 49, p.10

³⁵⁵ Comment 61, p.5.

³⁴⁴ Comment 225, attachment at p.8.

³⁴⁵ Comment 234, p.2. Freidman did suggest that imitation gems should not be defined as gemstones. *Id.* at 3.

³⁴⁶ Comment 231, p.5. Chatham also attached a declaration from Robert Miller, a merchant who has sold both Chatham-created gemstones and natural gemstones for ten years. He stated that a prohibition on the use of the words “gem” or “gemstone” “would be inconsistent with current trade practice, in which the words ‘gemstone’ and ‘gem’ are an integral part of the marketing of Chatham products, as well as most other jewelry” and that “prohibiting sellers from using these common-place terms would hurt our ability to communicate with our customers about the very nature of Chatham products” and that the end result “would be confusion on the part of consumers who would wrongly perceive that the prohibition is a negative reflection on the quality of Chatham gemstones.” Miller declaration ¶ 8 and 9. Chatham also attached a declaration from Dr. Frederick Pough, who received a Ph.D. in Mineralogy from Harvard in 1935 and who has authored hundreds of articles on mineralogy. He states that the definitions proposed by the JVC “would represent a dramatic departure from the way in which the terms ‘gemstone’ and ‘gem’ have been understood and used in the trade and in gemological circles for several decades” and “as it is currently and loosely used, and as it has been used for years, the term ‘gemstone’ does not identify the source of the stone, or whether or not it is a ‘naturally occurring substance.’” Similarly, he stated “under no current definition of ‘gem’ of which I am aware, is the term limited to ‘naturally occurring substances.’” Pough declaration ¶ 8, 9, and 13.

³⁴⁷ Comment 231, pp.5, 9. The eight other commenters who sell significant quantities of synthetic gemstones also believe it is not deceptive to use the term for synthetic stones as long as it is qualified to indicate that the stones are not natural stones: Crystal (24); Union Carbide (38); Manning (159); ICT (189); Kimberley (227); Friedman (234); Kyocera (242); and River (254).

³⁴⁸ Comment 81, p.3 (stating “We consider this to be of minor importance, but believe neither stone nor gemstone should be used to describe an artificial product.”).

³⁴⁹ Comment 49, p.9.

³⁵⁰ One of these, LaPrad (181) stated, at p.3, that “gemstone” should also be prohibited as descriptive of any *artificially colored* natural stone.

³⁵¹ Comment 162, p.3; NACSM (219) stated, at p.12, that this would “limit the use of the English language;” AGTA (49) stated, at p.16, that the Note should be stricken or, if retained, “like language should be added to the diamond section.”

5. Misuse of the Words "Flawless," "Perfect," Etc.

The JVC proposed the addition of a new section [petition 23.21] that prohibits the use of the word "perfect" when applied to gemstones and limits "flawless" to gemstones that do not have blemishes. The JVC's definition of "flawless" is similar to the provision in § 23.10 of the current Guides, which applies only to diamonds.³⁵⁶ A claim that a colored stone is flawless when it is not is deceptive. The Commission has determined that the addition of this section clarifies the meaning of "flawless."³⁵⁷

Part (b) of the section proposed by the JVC prohibits the use of "perfect" as a quality description "of any gemstone other than a diamond." No reasons were offered as to why the use of "perfect" as applied to colored stones would always be deceptive, and numerous comments objected to this provision.³⁵⁸ On the basis of the comments, the Commission has not included this provision. However, the Commission has determined that the industry may need guidance as to the use of "perfect" with respect to gemstones,³⁵⁹ and has included a provision (like the provision for diamonds) that "perfect" should be

³⁵⁶ The JVC proposed that the Guides state that it is unfair "to use the word 'flawless' as a quality description of any gemstone which discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading." However, no reference was made, in the petition or the comments, to removal of blemishes by internal lasering of gemstones.

³⁵⁷ There was little comment about this provision. Diamonique (224) stated, at p.4, that the change "regarding the examination of gemstones under 10-power magnification is radical and would have far-reaching consequences. This proposed change replaces practices and guidelines currently in use worldwide, requiring examination of gemstones with the unaided eye." However, no other commenter stated that the proposal was a change from existing practices. Lannyte (65) suggested, at p.10, modifying the section to state that it is unfair "to use the words 'flawless' or 'perfect' or any other description which would lead a buyer to presume that such gemstone is totally without blemishes, inclusion or other faults when viewed by a skilled person under ten times magnification in adequate light."

³⁵⁸ Lannyte (65) p.11; ICT (189) p.2. AGTA (49) stated, at pp.15, 16, that it "prefers that the term 'perfect' be deleted from use in the trade for both diamonds and colored gems," but if the use of the term "perfect" is acceptable for diamonds, it should also be acceptable for colored gemstones. Otherwise, there "would be a passive inference that colored gemstones are less desirable than diamonds. There are certainly as many 'perfect,' i.e. flawless (under 10X magnification), top color, well-cut gemstones as there are diamonds."

³⁵⁹ Diamonique (224) p.3 (stating that "the Guides should contain more specific guidelines in this area, including a definition of the term 'perfect,' instead of simply limiting its use").

used only for a gemstone that is flawless and not of inferior color or cut.

The JVC proposed that the Guides state it is unfair to use "flawless" or "perfect" to describe synthetics or imitations. No reasons were offered as to why the use of "flawless" or "perfect" as applied to synthetic stones would always be deceptive. Thus, the Commission has concluded that there is not enough evidence to include this provision as to synthetic stones. However, because the terms imply that a stone is a finer quality and, accordingly, a greater value, when used to describe imitation stones, which are almost always flawless, they could be misleading.³⁶⁰ Thus, the terms "flawless" and "perfect" should not be used to describe imitation stones.

6. Misuse of the Words "Reproduction," or "Replica": § 23.21(c)

Section 23.21(c) of the current Guides states that it is unfair to use the words "reproduction," "replica," or similar terms to describe cultured or imitation pearls or any imitation of precious or semi-precious stones. The JVC proposed changing this section so that it only prohibits the use of "reproduction" or "replica" when applied to synthetic or imitation stones [petition 23.24(b)]. If the nature of the material used in a reproduction or replica is adequately disclosed, as is advised by other sections of the Guides, it is not clear that the use of these terms would be deceptive or unfair.³⁶¹ Accordingly, the Commission has deleted this entire section from the Guides.

List of Subjects in 16 CFR Parts 19 and 23

Advertising, Labeling, Trade practices, Watch bands and jewelry.

Accordingly, Part 23 is revised to read as follows:

³⁶⁰ NACSM (219) p.27 (stating that the proposal "fails to take into account a clearly recognized difference in the marketplace between a 'synthetic' . . . and an 'imitation' stone"); Diamonique (224) p.3 (stating that "cultured, synthetic and simulated gemstones would be described according to the same standards used for natural gemstones. To do otherwise would create confusion within the industry itself as well as among consumers").

³⁶¹ NACSM (219) p.27 (stating that the attempt to "ban" the word "reproduction" is dubious); ISA (237A) p.15 (stating that this would prohibit the use of "reproduction" and "replica" to describe "items which are in fact reproductions and replicas. We recommend more emphasis on section 23.1(a), the general paragraph which makes clear that the intent of the Guides is to prohibit deception and deceptive use of such terms").

PART 23—GUIDES FOR THE JEWELRY, PRECIOUS METALS, AND PEWTER INDUSTRIES

Sec.

- 23.0 Scope and application.
 23.1 Deception (general).
 23.2 Misleading illustrations.
 23.3 Misuse of the terms "hand-made," "hand-polished," etc.
 23.4 Misrepresentation as to gold content.
 23.5 Misuse of the word "Vermeil."
 23.6 Misrepresentation as to silver content.
 23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."
 23.8 Misrepresentation as to content of pewter.
 23.9 Additional guidance for the use of quality marks.
 23.10 Misuse of "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," etc.
 23.11 Definition and Misuse of the word "diamond."
 23.12 Misuse of the words "flawless," "perfect," etc.
 23.13 Disclosing existence of artificial coloring, infusing, etc.
 23.14 Misuse of the term "blue white."
 23.15 Misuse of the term "properly cut," etc.
 23.16 Misuse of the words "brilliant" and "full cut."
 23.17 Misrepresentation of weight and "total weight."
 23.18 Definitions of various pearls.
 23.19 Misuse of the word "pearl."
 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations.
 23.21 Misrepresentation as to cultured pearls.
 23.22 Deception as to gemstones.
 23.23 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gemstone," etc.
 23.24 Misuse of the words "real," "genuine," "natural," "precious," etc.
 23.25 Misuse of the word "gem."
 23.26 Misuse of the words "flawless," "perfect," etc.

Appendix to Part 23—Exemptions recognized in the assay for quality of gold alloy, gold filled, gold overlay, rolled gold plate, silver, and platinum industry products.

Authority: Sec. 6, 5, 38 Stat. 721, 719; 15 U.S.C. 46, 45.

§ 23.0 Scope and application.

(a) These guides apply to jewelry industry products, which include, but are not limited to, the following: gemstones and their laboratory-created and imitation substitutes; natural and cultured pearls and their imitations; and metallic watch bands not permanently attached to watches.¹ These guides also apply to articles, including optical frames, pens and pencils, flatware, and

¹ The Guides for the Watch Industry, 16 C.F.R. Part 245, address watchcases and permanently attached watchbands.

hollowware, fabricated from precious metals (gold, silver and platinum group metals), precious metal alloys, and their imitations. These guides also apply to all articles made from pewter. For the purposes of these guides, all articles covered by these guides are defined as "industry products."

(b) These guides apply to persons, partnerships, or corporations, at every level of the trade (including but not limited to manufacturers, suppliers, and retailers) engaged in the business of offering for sale, selling, or distributing industry products.

Note to paragraph (b): To prevent consumer deception, persons, partnerships, or corporations in the business of appraising, identifying, or grading industry products should utilize the terminology and standards set forth in the guides.

(c) These guides apply to claims and representations about industry products included in labeling, advertising, promotional materials, and all other forms of marketing, whether asserted directly or by implication, through words, symbols, emblems, logos, illustrations, depictions, product brand names, or through any other means.

§ 23.1 Deception (general).

It is unfair or deceptive to misrepresent the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance, durability, serviceability, origin, price, value, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note 1 to § 23.1: If, in the sale or offering for sale of an industry product, any representation is made as to the grade assigned the product, the identity of the grading system used should be disclosed.

Note 2 to § 23.1: To prevent deception, any qualifications or disclosures, such as those described in the guides, should be sufficiently clear and prominent. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

§ 23.2 Misleading illustrations.

It is unfair or deceptive to use, as part of any advertisement, packaging material, label, or other sales promotion matter, any visual representation, picture, televised or computer image, illustration, diagram, or other depiction which, either alone or in conjunction with any accompanying words or phrases, misrepresents the type, kind, grade, quality, quantity, metallic content, size, weight, cut, color, character, treatment, substance,

durability, serviceability, origin, preparation, production, manufacture, distribution, or any other material aspect of an industry product.

Note to § 23.2: An illustration or depiction of a diamond or other gemstone that portrays it in greater than its actual size may mislead consumers, unless a disclosure is made about the item's true size.

§ 23.3 Misuse of the terms "hand-made," "hand-polished," etc.

(a) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-made or hand-wrought unless the entire shaping and forming of such product from raw materials and its finishing and decoration were accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the construction, shape, design, and finish of each part of each individual product.

Note to paragraph (a): As used herein, "raw materials" include bulk sheet, strip, wire, and similar items that have not been cut, shaped, or formed into jewelry parts, semi-finished parts, or blanks.

(b) It is unfair or deceptive to represent, directly or by implication, that any industry product is hand-forged, hand-engraved, hand-finished, or hand-polished, or has been otherwise hand-processed, unless the operation described was accomplished by hand labor and manually-controlled methods which permit the maker to control and vary the type, amount, and effect of such operation on each part of each individual product.

§ 23.4 Misrepresentation as to gold content.

(a) It is unfair or deceptive to misrepresent the presence of gold or gold alloy in an industry product, or the quantity or karat fineness of gold or gold alloy contained in the product, or the karat fineness, thickness, weight ratio, or manner of application of any gold or gold alloy plating, covering, or coating on any surface of an industry product or part thereof.

(b) The following are examples of markings or descriptions that may be misleading:²

(1) Use of the word "Gold" or any abbreviation, without qualification, to describe all or part of an industry product, which is not composed throughout of fine (24 karat) gold.

(2) Use of the word "Gold" or any abbreviation to describe all or part of an industry product composed throughout of an alloy of gold, unless a correct

designation of the karat fineness of the alloy immediately precedes the word "Gold" or its abbreviation, and such fineness designation is of at least equal conspicuousness.

(3) Use of the word "Gold" or any abbreviation to describe all or part of an industry product that is not composed throughout of gold or a gold alloy, but is surface-plated or coated with gold alloy, unless the word "Gold" or its abbreviation is adequately qualified to indicate that the product or part is only surface-plated.

(4) Use of the term "Gold Plate," "Gold Plated," or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy, applied by any process, which is of such thickness and extent of surface coverage that reasonable durability is assured.

(5) Use of the terms "Gold Filled," "Rolled Gold Plate," "Rolled Gold Plated," "Gold Overlay," or any abbreviation to describe all or part of an industry product unless such product or part contains a surface-plating of gold alloy applied by a mechanical process and of such thickness and extent of surface coverage that reasonable durability is assured, and unless the term is immediately preceded by a correct designation of the karat fineness of the alloy that is of at least equal conspicuousness as the term used.

(6) Use of the terms "Gold Plate," "Gold Plated," "Gold Filled," "Rolled Gold Plate," "Rolled Gold Plated," "Gold Overlay," or any abbreviation to describe a product in which the layer of gold plating has been covered with a base metal (such as nickel), which is covered with a thin wash of gold, unless there is a disclosure that the primary gold coating is covered with a base metal, which is gold washed.

(7) Use of the term "Gold Electroplate," "Gold Electroplated," or any abbreviation to describe all or part of an industry product unless such product or part is electroplated with gold or a gold alloy and such electroplating is of such karat fineness, thickness, and extent of surface coverage that reasonable durability is assured.

(8) Use of any name, terminology, or other term to misrepresent that an industry product is equal or superior to, or different than, a known and established type of industry product with reference to its gold content or method of manufacture.

(9) Use of the word "Gold" or any abbreviation, or of a quality mark implying gold content (e.g., 9 karat), to describe all or part of an industry product that is composed throughout of

² See § 23.4(c) for examples of acceptable markings and descriptions.

an alloy of gold of less than 10 karat fineness.

Note to paragraph (b) § 23.4: The provisions regarding the use of the word "Gold," or any abbreviation, as described above, are applicable to "Duragold," "Diragold," "Noblegold," "Goldine," "Layered Gold," or any words or terms of similar meaning.

(c) The following are examples of markings and descriptions that are consistent with the principles described above:

(1) An industry product or part thereof, composed throughout of an alloy of gold of not less than 10 karat fineness, may be marked and described as "Gold" when such word "Gold," wherever appearing, is immediately preceded by a correct designation of the karat fineness of the alloy, and such karat designation is of equal conspicuousness as the word "Gold" (for example, "14 Karat Gold," "14 K. Gold," or "14 Kt. Gold"). Such product may also be marked and described by a designation of the karat fineness of the gold alloy unaccompanied by the word "Gold" (for example, "14 Karat," "14 Kt.," or "14 K.").

Note to paragraph (c)(1): Use of the term "Gold" or any abbreviation to describe all or part of a product that is composed throughout of gold alloy, but contains a hollow center or interior, may mislead consumers, unless the fact that the product contains a hollow center is disclosed in immediate proximity to the term "Gold" or its abbreviation (for example, "14 Karat Gold-Hollow Center," or "14 K. Gold Tubing," when of a gold alloy tubing of such karat fineness). Such products should not be marked or described as "solid" or as being solidly of gold or of a gold alloy. For example, when the composition of such a product is 14 karat gold alloy, it should not be described or marked as either "14 Kt. Solid Gold" or as "Solid 14 Kt. Gold."

(2) An industry product or part thereof, on which there has been affixed on all significant surfaces, by any process, a coating, electroplating, or deposition by any means, of gold or gold alloy of not less than 10 karat fineness that is of substantial thickness,³ and the minimum thickness throughout of which is equivalent to one-half micron (or approximately 20 millionths of an inch) of fine gold,⁴ may be marked or

³The term "substantial thickness" means that all areas of the plating are of such thickness as to assure a durable coverage of the base metal to which it has been affixed. Since industry products include items having surfaces and parts of surfaces that are subject to different degrees of wear, the thickness of plating for all items or for different areas of the surface of individual items does not necessarily have to be uniform.

⁴A product containing 1 micron (otherwise known as 1 μ) of 12 karat gold is equivalent to one-half micron of 24 karat gold.

described as "Gold Plate" or "Gold Plated," or abbreviated, as, for example, G.P. The exact thickness of the plate may be marked on the item, if it is immediately followed by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (as, for example, "2 microns 12 K. gold plate" or "2 μ 12 K. G.P." for an item plated with 2 microns of 12 karat gold.)

Note paragraph (c)(2) to paragraph (b): If an industry product has a thicker coating or electroplating of gold or gold alloy on some areas than others, the minimum thickness of the plate should be marked.

(3) An industry product or part thereof on which there has been affixed on all significant surfaces by soldering, brazing, welding, or other mechanical means, a plating of gold alloy of not less than 10 karat fineness and of substantial thickness⁵ may be marked or described as "Gold Filled," "Gold Overlay," "Rolled Gold Plate," or an adequate abbreviation, when such plating constitutes at least 1/20th of the weight of the metal in the entire article and when the term is immediately preceded by a designation of the karat fineness of the plating which is of equal conspicuousness as the term used (for example, "14 Karat Gold Filled," "14 Kt. Gold Filled," "14 Kt. G.F.," "14 Kt. Gold Overlay," or "14K. R.G.P."). When conforming to all such requirements except the specified minimum of 1/20th of the weight of the metal in the entire article, the terms "Gold Overlay" and "Rolled Gold Plate" may be used when the karat fineness designation is immediately preceded by a fraction accurately disclosing the portion of the weight of the metal in the entire article accounted for by the plating, and when such fraction is of equal conspicuousness as the term used (for example, "1/40th 12 Kt. Rolled Gold Plate" or "1/40 12 Kt. R.G.P.").

(4) An industry product or part thereof, on which there has been affixed on all significant surfaces by an electrolytic process, an electroplating of gold, or of a gold alloy of not less than 10 karat fineness, which has a minimum thickness throughout equivalent to .175 microns (approximately 7/1,000,000ths of an inch) of fine gold, may be marked or described as "Gold Electroplate" or "Gold Electroplated," or abbreviated, as, for example, "G.E.P." When the electroplating meets the minimum fineness but not the minimum thickness specified above, the marking or description may be "Gold Flashed" or "Gold Washed." When the electroplating is of the minimum

⁵ See footnote 3.

fineness specified above and of a minimum thickness throughout equivalent to two and one half (2 1/2) microns (or approximately 100/1,000,000ths of an inch) of fine gold, the marking or description may be "Heavy Gold Electroplate" or "Heavy Gold Electroplated." When electroplatings qualify for the term "Gold Electroplate" (or "Gold Electroplated"), or the term "Heavy Gold Electroplate" (or "Heavy Gold Electroplated"), and have been applied by use of a particular kind of electrolytic process, the marking may be accompanied by identification of the process used, as for example, "Gold Electroplated (X Process)" or "Heavy Gold Electroplated (Y Process)."

(d) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.⁶

Note 4 to paragraph (d): Exemptions recognized in the assay of karat gold industry products and in the assay of gold filled, gold overlay, and rolled gold plate industry products, and not to be considered in any assay for quality, are listed in the Appendix.

§ 23.5 Misuse of the word "Vermeil."

(a) It is unfair or deceptive to represent, directly or by implication, that an industry product is "vermeil" if such mark or description misrepresents the product's true composition.

(b) An industry product may be described or marked as "vermeil" if it consists of a base of sterling silver coated or plated on all significant surfaces with gold, or gold alloy of not less than 10 karat fineness, that is of substantial thickness⁷ and a minimum thickness throughout equivalent to two and one half (2 1/2) microns (or approximately 100/1,000,000ths of an inch) of fine gold.

Note 1 to § 23.5: It is unfair or deceptive to use the term "vermeil" to describe a product in which the sterling silver has been covered with a base metal (such as nickel) plated with gold unless there is a disclosure that the sterling silver is covered with a base metal that is plated with gold.

Note 2 to § 23.5: Exemptions recognized in the assay of gold filled, gold overlay, and rolled gold plate industry products are listed in the Appendix.

§ 23.6 Misrepresentation as to silver content.

(a) It is unfair or deceptive to misrepresent that an industry product

⁶ Under the National Stamping Act, articles or parts made of gold or of gold alloy that contain no solder have a permissible tolerance of three parts per thousand. If the part tested contains solder, the permissible tolerance is seven parts per thousand. For full text, see 15 U.S.C. 295, *et seq.*

⁷ See footnote 3.

contains silver, or to misrepresent an industry product as having a silver content, plating, electroplating, or coating.

(b) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "silver," "solid silver," "Sterling Silver," "Sterling," or the abbreviation "Ster." unless it is at least $925/1,000$ ths pure silver.

(c) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "coin" or "coin silver" unless it is at least $900/1,000$ ths pure silver.

(d) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as being plated or coated with silver unless all significant surfaces of the product or part contain a plating or coating of silver that is of substantial thickness.⁸

(e) The provisions of this section relating to markings and descriptions of industry products and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.⁹

Note 1 to § 23.6: The National Stamping Act provides that silverplated articles shall not "be stamped, branded, engraved or imprinted with the word 'sterling' or the word 'coin,' either alone or in conjunction with other words or marks." 15 U.S.C. 297(a).

Note 2 to § 23.6: Exemptions recognized in the assay of silver industry products are listed in the Appendix.

§ 23.7 Misuse of words "platinum," "iridium," "palladium," "ruthenium," "rhodium," and "osmium."

It is an unfair trade practice to use the words "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, as a marking on, or as descriptive of, any industry product or part thereof, under any circumstance or condition having the capacity and tendency or effect of deceiving purchasers or prospective purchasers as to the true composition of such product or part.

Note 1 to § 23.7: Commercial Standard CS66-38, issued by the National Bureau of Standards of the U.S. Department of Commerce, covers the marking of articles made wholly or in part of platinum. Markings on industry products which are in compliance with the requirements of CS66-38 will be regarded as among those fulfilling the requirements relating thereto which are contained in this section.

⁸ See footnote 3.

⁹ Under the National Stamping Act, sterling silver articles or parts that contain no solder have a permissible tolerance of four parts per thousand. If the part tested contains solder, the permissible tolerance is ten parts per thousand. For full text, see 15 U.S.C. 294, *et seq.*

Note 2 to § 23.7: See also § 23.9 entitled "Additional guidance for the use of quality marks."

§ 23.8 Misrepresentation as to content of pewter.

(a) It is unfair or deceptive to mark, describe, or otherwise represent all or part of an industry product as "Pewter" or any abbreviation if such mark or description misrepresents the product's true composition.

(b) An industry product or part thereof may be described or marked as "Pewter" or any abbreviation if it consists of at least 900 parts per 1000 Grade A Tin, with the remainder composed of metals appropriate for use in pewter.

§ 23.9 Additional guidance for the use of quality marks.

As used in these guides, the term "quality mark" means any letter, figure, numeral, symbol, sign, word, or term, or any combination thereof, that has been stamped, embossed, inscribed, or otherwise placed on any industry product and which indicates or suggests that any such product is composed throughout of any precious metal or any precious metal alloy or has a surface or surfaces on which there has been plated or deposited any precious metal or precious metal alloy. Included are the words "gold," "karat," "carat," "silver," "sterling," "vermeil," "platinum," "iridium," "palladium," "ruthenium," "rhodium," or "osmium," or any abbreviations thereof, whether used alone or in conjunction with the words "filled," "plated," "overlay," or "electroplated," or any abbreviations thereof. Quality markings include those in which the words or terms "gold," "karat," "silver," "vermeil," "platinum" (or platinum group metals), or their abbreviations are included, either separately or as suffixes, prefixes, or syllables.

(a) Deception as to applicability of marks. (1) If a quality mark on an industry product is applicable to only part of the product, the part of the product to which it is applicable (or inapplicable) should be disclosed when, absent such disclosure, the location of the mark misrepresents the product or part's true composition.

(2) If a quality mark is applicable to only part of an industry product, but not another part which is of similar surface appearance, each quality mark should be closely accompanied by an identification of the part or parts to which the mark is applicable.

(b) Deception by reason of difference in the size of letters or words in a marking or markings. It is unfair or deceptive to place a quality mark on a

product in which the words or letters appear in greater size than other words or letters of the mark, or when different markings placed on the product have different applications and are in different sizes, when the net impression of any such marking would be misleading as to the metallic composition of all or part of the product. (An example of improper marking would be the marking of a gold electroplated product with the word "electroplate" in small type and the word "gold" in larger type, with the result that purchasers and prospective purchasers of the product might only observe the word "gold.")

Note 1 to § 23.9: Legibility of markings. If a quality mark is engraved or stamped on an industry product, or is printed on a tag or label attached to the product, the quality mark should be of sufficient size type as to be legible to persons of normal vision, should be so placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumer purchase.

Note 2 to § 23.9: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that any person, firm, corporation, or association, being a manufacturer or dealer subject to section 294 of the Act, who applies or causes to be applied a quality mark, or imports any article bearing a quality mark "which indicates or purports to indicate that such article is made in whole or in part of gold or silver or of an alloy of either metal" shall apply to the article the trademark or name of such person. 15 U.S.C. 297.

§ 23.10 Misuse of "corrosion proof," "noncorrosive," "corrosion resistant," "rust proof," "rust resistant," etc.

(a) It is unfair or deceptive to:

(1) Use the terms "corrosion proof," "noncorrosive," "rust proof," or any other term of similar meaning to describe an industry product unless all parts of the product will be immune from rust and other forms of corrosion during the life expectancy of the product; or

(2) Use the terms "corrosion resistant," "rust resistant," or any other term of similar meaning to describe an industry product unless all parts of the product are of such composition as to not be subject to material damage by corrosion or rust during the major portion of the life expectancy of the product under normal conditions of use.

(b) Among the metals that may be considered as corrosion (and rust) resistant are: Pure nickel; Gold alloys of not less than 10 Kt. fineness; and Austenitic stainless steels.

§ 23.11 Definition and misuse of the word "diamond."

(a) A diamond is a natural mineral consisting essentially of pure carbon

crystallized in the isometric system. It is found in many colors. Its hardness is 10; its specific gravity is approximately 3.52; and it has a refractive index of 2.42.

(b) It is unfair or deceptive to use the unqualified word "diamond" to describe or identify any object or product not meeting the requirements specified in the definition of diamond provided above, or which, though meeting such requirements, has not been symmetrically fashioned with at least seventeen (17) polished facets.

Note 1 to paragraph (b): It is unfair or deceptive to represent, directly or by implication, that industrial grade diamonds or other non-jewelry quality diamonds are of jewelry quality.

(c) The following are examples of descriptions that are not considered unfair or deceptive:

(1) The use of the words "rough diamond" to describe or designate uncut or unfaceted objects or products satisfying the definition of diamond provided above; or

(2) The use of the word "diamond" to describe or designate objects or products satisfying the definition of diamond but which have not been symmetrically fashioned with at least seventeen (17) polished facets when in immediate conjunction with the word "diamond" there is either a disclosure of the number of facets and shape of the diamond or the name of a type of diamond that denotes shape and that usually has less than seventeen (17) facets (e.g., "rose diamond").

Note 2 to paragraph (c): Additional guidance about imitation and laboratory-created diamond representations and misuse of words "gem," "real," "genuine," "natural," etc., are set forth in §§ 23.23, 23.24, and 23.25.

§ 23.12 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word "flawless" to describe any diamond that discloses flaws, cracks, inclusions, carbon spots, clouds, internal lasering, or other blemishes or imperfections of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in diamond grading.

(b) It is unfair or deceptive to use the word "perfect," or any representation of similar meaning, to describe any diamond unless the diamond meets the definition of "flawless" and is not of inferior color or make.

(c) It is unfair or deceptive to use the words "flawless" or "perfect" to describe a ring or other article of jewelry having a "flawless" or "perfect" principal diamond or diamonds, and

supplementary stones that are not of such quality, unless there is a disclosure that the description applies only to the principal diamond or diamonds.

§ 23.13 Disclosing existence of artificial coloring, infusing, etc.

If a diamond has been treated by artificial coloring, tinting, coating, irradiating, heating, by the use of nuclear bombardment, or by the introduction or the infusion of any foreign substance, it is unfair or deceptive not to disclose that the diamond has been treated and that the treatment is not or may not be permanent.

§ 23.14 Misuse of the term "blue white."

It is unfair or deceptive to use the term "blue white" or any representation of similar meaning to describe any diamond that under normal, north daylight or its equivalent shows any color or any trace of any color other than blue or bluish.

§ 23.15 Misuse of the term "properly cut," etc.

It is unfair or deceptive to use the terms "properly cut," "proper cut," "modern cut," or any representation of similar meaning to describe any diamond that is lopsided, or is so thick or so thin in depth as to detract materially from the brilliance of the stone.

Note to § 23.15: Stones that are commonly called "fish-eye" or "old mine" should not be described as "properly cut," "modern cut," etc.

§ 23.16 Misuse of the words "brilliant" and "full cut."

It is unfair or deceptive to use the unqualified expressions "brilliant," "brilliant cut," or "full cut" to describe, identify, or refer to any diamond except a round diamond that has at least thirty-two (32) facets plus the table above the girdle and at least twenty-four (24) facets below.

Note to § 23.16: Such terms should not be applied to single or rose-cut diamonds. They may be applied to emerald-(rectangular) cut, pear-shaped, heart-shaped, oval-shaped, and marquise-(pointed oval) cut diamonds meeting the above-stated facet requirements when, in immediate conjunction with the term used, the form of the diamond is disclosed.

§ 23.17 Misrepresentation of weight and "total weight."

(a) It is unfair or deceptive to misrepresent the weight of a diamond.

(b) It is unfair or deceptive to use the word "point" or any abbreviation in any representation, advertising, marking, or labeling to describe the weight of a diamond, unless the weight is also

stated as decimal parts of a carat (e.g., 25 points or .25 carat).

Note 1 to paragraph (b): A carat is a standard unit of weight for a diamond and is equivalent to 200 milligrams ($\frac{1}{5}$ gram). A point is one one hundredth ($\frac{1}{100}$) of a carat.

(c) If diamond weight is stated as decimal parts of a carat (e.g., .47 carat), the stated figure should be accurate to the last decimal place. If diamond weight is stated to only one decimal place (e.g., .5 carat), the stated figure should be accurate to the second decimal place (e.g., ".5 carat" could represent a diamond weight between .495-.504).

(d) If diamond weight is stated as fractional parts of a carat, a conspicuous disclosure of the fact that the diamond weight is not exact should be made in close proximity to the fractional representation and a disclosure of a reasonable range of weight for each fraction (or the weight tolerance being used) should also be made.

Note to paragraph (d): When fractional representations of diamond weight are made, as described in paragraph d of this section, in catalogs or other printed materials, the disclosure of the fact that the actual diamond weight is within a specified range should be made conspicuously on every page where a fractional representation is made. Such disclosure may refer to a chart or other detailed explanation of the actual ranges used. For example, "Diamond weights are not exact; see chart on p.X for ranges."

§ 23.18 Definitions of various pearls.

As used in these guides, the terms set forth below have the following meanings:

(a) Pearl: A calcareous concretion consisting essentially of alternating concentric layers of carbonate of lime and organic material formed within the body of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk following the intrusion of some foreign body inside the shell of the mollusk, or due to some abnormal physiological condition in the mollusk, neither of which has in any way been caused or induced by humans.

(b) Cultured Pearl: The composite product created when a nucleus (usually a sphere of calcareous mollusk shell) planted by humans inside the shell or in the mantle of a mollusk is coated with nacre by the mollusk.

(c) Imitation Pearl: A manufactured product composed of any material or materials that simulate in appearance a pearl or cultured pearl.

(d) Seed Pearl: A small pearl, as defined in (a), that measures approximately two millimeters or less.

§ 23.19 Misuse of the word "pearl."

(a) It is unfair or deceptive to use the unqualified word "pearl" or any other word or phrase of like meaning to describe, identify, or refer to any object or product that is not in fact a pearl, as defined in § 23.18(a).

(b) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to a cultured pearl unless it is immediately preceded, with equal conspicuousness, by the word "cultured" or "cultivated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(c) It is unfair or deceptive to use the word "pearl" to describe, identify, or refer to an imitation pearl unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

(d) It is unfair or deceptive to use the terms "faux pearl," "fashion pearl," "Mother of Pearl," or any other such term to describe or qualify an imitation pearl product unless it is immediately preceded, with equal conspicuousness, by the word "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is not a pearl.

§ 23.20 Misuse of terms such as "cultured pearl," "seed pearl," "Oriental pearl," "natura," "kultured," "real," "gem," "synthetic," and regional designations.

(a) It is unfair or deceptive to use the term "cultured pearl," "cultivated pearl," or any other word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(b) It is unfair or deceptive to use the term "seed pearl" or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or an imitation pearl, without using the appropriate qualifying term "cultured" (e.g., "cultured seed pearl") or "simulated," "artificial," or "imitation" (e.g., "imitation seed pearl").

(c) It is unfair or deceptive to use the term "Oriental pearl" or any word, term, or phrase of like meaning to describe, identify, or refer to any industry product other than a pearl taken from a salt water mollusk and of the distinctive appearance and type of pearls obtained from mollusks inhabiting the Persian Gulf and recognized in the jewelry trade as Oriental pearls.

(d) It is unfair or deceptive to use the word "Oriental" to describe, identify, or refer to any cultured or imitation pearl.

(e) It is unfair or deceptive to use the word "natura," "natural," "nature's," or any word, term, or phrase of like meaning to describe, identify, or refer to a cultured or imitation pearl. It is unfair or deceptive to use the term "organic" to describe, identify, or refer to an imitation pearl, unless the term is qualified in such a way as to make clear that the product is not a natural or cultured pearl.

(f) It is unfair or deceptive to use the term "kultured," "semi-cultured pearl," "cultured-like," "part-cultured," "premature cultured pearl," or any word, term, or phrase of like meaning to describe, identify, or refer to an imitation pearl.

(g) It is unfair or deceptive to use the term "South Sea pearl" unless it describes, identifies, or refers to a pearl that is taken from a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia. It is unfair or deceptive to use the term "South Sea cultured pearl" unless it describes, identifies, or refers to a cultured pearl formed in a salt water mollusk of the Pacific Ocean South Sea Islands, Australia, or Southeast Asia.

(h) It is unfair or deceptive to use the term "Biwa cultured pearl" unless it describes, identifies, or refers to cultured pearls grown in fresh water mollusks in the lakes and rivers of Japan.

(i) It is unfair or deceptive to use the word "real," "genuine," "precious," or any word, term, or phrase of like meaning to describe, identify, or refer to any imitation pearl.

(j) It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a pearl or cultured pearl that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

Note to paragraph (j): Use of the word "gem" with respect to cultured pearls should be avoided since few cultured pearls possess the necessary qualifications to properly be termed "gems." Imitation pearls should not be described as "gems."

(k) It is unfair or deceptive to use the word "synthetic" or similar terms to describe cultured or imitation pearls.

(l) It is unfair or deceptive to use the terms "Japanese Pearls," "Chinese Pearls," "Mallorca Pearls," or any regional designation to describe, identify, or refer to any cultured or imitation pearl, unless the term is immediately preceded, with equal conspicuousness, by the word "cultured," "artificial," "imitation," or "simulated," or by some other word or phrase of like meaning, so as to indicate definitely and clearly that the product is a cultured or imitation pearl.

§ 23.21 Misrepresentation as to cultured pearls.

It is unfair or deceptive to misrepresent the manner in which cultured pearls are produced, the size of the nucleus artificially inserted in the mollusk and included in cultured pearls, the length of time that such products remained in the mollusk, the thickness of the nacre coating, the value and quality of cultured pearls as compared with the value and quality of pearls and imitation pearls, or any other material matter relating to the formation, structure, properties, characteristics, and qualities of cultured pearls.

§ 23.22 Deception as to gemstones.

It is unfair or deceptive to fail to disclose that a gemstone has been treated in any manner that is not permanent or that creates special care requirements, and to fail to disclose that the treatment is not permanent, if such is the case. The following are examples of treatments that should be disclosed because they usually are not permanent or create special care requirements: coating, impregnation, irradiating, heating, use of nuclear bombardment, application of colored or colorless oil or epoxy-like resins, wax, plastic, or glass, surface diffusion, or dyeing. This disclosure may be made at the point of sale, except that disclosure should be made in any solicitation where the product can be purchased without viewing (e.g., direct mail catalogs, on-line services), and in the case of televised shopping programs, on the air. If special care requirements for a gemstone arise because the gemstone has been treated, it is recommended that the seller disclose the special care requirements to the purchaser.

§ 23.23 Misuse of the words "ruby," "sapphire," "emerald," "topaz," "stone," "birthstone," "gemstone," etc.

(a) It is unfair or deceptive to use the unqualified words "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone to describe any product that is not in fact a natural stone of the type described.

(b) It is unfair or deceptive to use the word "ruby," "sapphire," "emerald," "topaz," or the name of any other precious or semi-precious stone, or the word "stone," "birthstone," "gemstone," or similar term to describe a laboratory-grown, laboratory-created, [manufacturer name]-created, synthetic, imitation, or simulated stone, unless such word or name is immediately preceded with equal conspicuousness by the word "laboratory-grown," "laboratory-created," "[manufacturer

name]-created," "synthetic," or by the word "imitation" or "simulated," so as to disclose clearly the nature of the product and the fact it is not a natural gemstone.

Note to paragraph (h): The use of the word "faux" to describe a laboratory-created or imitation stone is not an adequate disclosure that the stone is not natural.

(c) It is unfair or deceptive to use the word "laboratory-grown," "laboratory-created," "[manufacturer name]-created," or "synthetic" with the name of any natural stone to describe any industry product unless such industry product has essentially the same optical, physical, and chemical properties as the stone named.

§ 23.24 Misuse of the words "real," "genuine," "natural," "precious," etc.

It is unfair or deceptive to use the word "real," "genuine," "natural," "precious," "semi-precious," or similar terms to describe any industry product that is manufactured or produced artificially.

§ 23.25 Misuse of the word "gem."

(a) It is unfair or deceptive to use the word "gem" to describe, identify, or refer to a ruby, sapphire, emerald, topaz, or other industry product that does not possess the beauty, symmetry, rarity, and value necessary for qualification as a gem.

(b) It is unfair or deceptive to use the word "gem" to describe any laboratory-created industry product unless the product meets the requirements of paragraph (a) of this section and unless such word is immediately accompanied, with equal conspicuousness, by the word "laboratory-grown," "laboratory-created," or "[manufacturer-name]-created," "synthetic," or by some other word or phrase of like meaning, so as to clearly disclose that it is not a natural gem.

Note to § 23.25: In general, use of the word "gem" with respect to laboratory-created stones should be avoided since few laboratory-created stones possess the necessary qualifications to properly be termed "gems." Imitation diamonds and other imitation stones should not be described as "gems." Not all diamonds or natural stones, including those classified as precious stones, possess the necessary qualifications to be properly termed "gems."

§ 23.26 Misuse of the words "flawless," "perfect," etc.

(a) It is unfair or deceptive to use the word "flawless" as a quality description of any gemstone that discloses blemishes, inclusions, or clarity faults of any sort when examined under a corrected magnifier at 10-power, with adequate illumination, by a person skilled in gemstone grading.

(b) It is unfair or deceptive to use the word "perfect" or any representation of similar meaning to describe any gemstone unless the gemstone meets the definition of "flawless" and is not of inferior color or make.

(c) It is unfair or deceptive to use the word "flawless," "perfect," or any representation of similar meaning to describe any imitation gemstone.

Appendix to Part 23—Exemptions Recognized in the Assay for Quality of Gold Alloy, Gold Filled, Gold Overlay, Rolled Gold Plate, Silver, and Platinum Industry Products

(a) Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold industry product include springs, posts, and separable backs of lapel buttons, posts and nuts for attaching interchangeable ornaments, metallic parts completely and permanently encased in a nonmetallic covering, field pieces and bezels for lockets,¹ and wire pegs or rivets used for applying mountings and other ornaments, which mountings or ornaments shall be of the quality marked.

Note: Exemptions recognized in the industry and not to be considered in any assay for quality of a karat gold optical product include: the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, and nuts of screw assemblies; dowels; springs for spring shoe straps; metal parts permanently encased in a non-metallic covering; and for oxfords,² coil and joint springs.

(b) Exemptions recognized in the industry and not to be considered in any assay for quality of a gold filled, gold overlay and rolled gold plate industry product, other than watchcases, include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., field pieces and bezels for lockets, posts and separate backs of lapel buttons, bracelet and necklace snap tongues, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

Note: Exemptions recognized in the industry and not to be considered in any

assay for quality of a gold filled, gold overlay and rolled gold plate optical product include: screws; the hinge assembly (barrel or other special types such as are customarily used in plastic frames); washers, bushings, tubes and nuts of screw assemblies; dowels; pad inserts; springs for spring shoe straps, cores and/or inner windings of comfort cable temples; metal parts permanently encased in a non-metallic covering; and for oxfords, the handle and catch.

(c) Exemptions recognized in the industry and not to be considered in any assay for quality of a silver industry product include screws, rivets, springs, spring pins for wrist watch straps; posts and separable backs of lapel buttons; wire pegs, posts, and nuts used for applying mountings or other ornaments, which mountings or ornaments shall be of the quality marked; pin stems (e.g., of badges, brooches, emblem pins, hat pins, and scarf pins, etc.); levers for belt buckles; blades and skeletons of pocket knives; field pieces and bezels for lockets; bracelet and necklace snap tongues; any other joints, catches, or screws; and metallic parts completely and permanently encased in a nonmetallic covering.

(d) Exemptions recognized in the industry and not to be considered in any assay for quality of an industry product of silver in combination with gold include joints, catches, screws, pin stems, pins of scarf pins, hat pins, etc., posts and separable backs of lapel buttons, springs, and metallic parts completely and permanently encased in a nonmetallic covering.

(e) Exemptions recognized in the industry and not to be considered in any assay for quality of a platinum industry product include springs, winding bars, sleeves, crown cores, mechanical joint pins, screws, rivets, dust bands, detachable movement rims, hat-pin stems, and bracelet and necklace snap tongues. In addition, the following exemptions are recognized for products marked in accordance with section 23.8(b)(5) of these Guides (i.e., products that are less than 500 parts per thousand platinum): pin tongues, joints, catches, lapel button backs and the posts to which they are attached, scarf-pin stems, hat pin sockets, shirt-stud backs, vest-button backs, and ear-screw backs, provided such parts are made of the same quality platinum as is used in the balance of the article.

By direction of the Commission.
Donald S. Clark,
Secretary.

Note: The following appendix will not appear in the Code of Federal Regulations.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS

Abbreviation	No.	Commenter
A&D Gem	187	A & D Gem Corp.

¹ Field pieces of lockets are those inner portions used as frames between the inside edges of the locket and the spaces for holding pictures. Bezels

are the separable inner metal rings to hold the pictures in place.

² Oxfords are a form of eyeglasses where a flat spring joins the two eye rims and the tension it

exerts on the nose serves to hold the unit in place. Oxfords are also referred to as pince nez.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
A&Z	29	A & Z Pearls, Inc.
ADS	197	American Diamond Syndicate.
Affro	138	Affro Gems.
AGL	230	American Gemological Laboratories.
AGS	18	American Gem Society.
AGTA	49	The American Gem Trade Association, Inc.
Alarama	51	Alarama Jewelry Co., Inc.
Alfille	247	E.J. Alfille, Ltd.
Alie	106	A.E. Alie & Sons, Inc.
Almond	63	Almond Jewelers Inc.
AMG	79	AM-Gold Products, Inc.
APG	89	American Pewter Guild, Ltd.
Argo	17	Argo & Lehne Jewelers.
Armel	32	Armel Manufacturing Co.
ArtCarved	155	ArtCarved.
Artisans	124	Artisans Jewelers, Inc.
Assael	136	Assael Int'l Inc.
Assured	148	Assured Loan Co.
Astoria	56	Astoria Jewelry Mfg. Co., Inc.
Atlantic	135	Atlantic Gem Corp.
Aviv	40 and 41	Aviv Inc.
AWA	236	American Watch Association.
AWI	116	American Watchmakers Institute.
Bales	156	Bales Diamond Center & Mfg. Inc.
Bedford	210	Bedford Jewelers, Inc.
Benrus	22	Benrus Watch Co., Inc.
Best	225	Best Products Co., Inc.
Black Hills	59	Black Hills Gold Jewelry.
Bogo	201	Jerry Bogo Co.
Boston	125	Boston Findings & Jewelers Supply Co., Inc.
Brant	133	Brant Laird Antiques.
Brasilia	143	Brasilia Gems, Inc.
Bridge	163	Ben Bridge.
Brilliance	68	Brilliance-Diamond Importers.
Bruce	218	Donald Bruce & Co.
Canada	209	Consumer & Corporate Affairs Canada.
Capital	19	Capital Mfg./L. Dershowitz Co.
Capitol Ring	191	Capitol Ring Co., Inc.
Catholyte	34	Catholyte, Inc.
Chatham	231	Chatham Created Gems.
Cheviot	104	Cheviot Jewelry Co.
Citizen	228	Citizen Watch Co. of America, Inc.
Classique	96	Classique D'Or, Inc.
Cockrell	134	Charles Cockrell.
Collins	12	Collins Jewelry.
Colormasters	149	Colormasters Gem Corp.
Commercial	202	Commercial Mineral Co.
Consumers	158	Consumers.
Courtship	36	Courtship Int'l Ltd.
CPPA	193	Cultured Pearl Association of America, Inc.
Cross	165	A.T. Cross Co.
Crystal	24	J.O. Crystal Co., Inc.
David	194	W.B. David & Co., Inc.
Day	132	Day Co.
De'Nicole	175	De'Nicole Designs.
DeMarco	161	Joseph DeMarco.
Dendritics	167	Dendritics, Inc.
Diamonique	224	Diamonique Corp.
Diastar	99	Diastar Inc.
Disons	55	Disons Gems, Inc.
DMIA	26	Diamond Manufacturers & Importers Association of America, Inc.
Eastern	173	Eastern Gems, Inc.
Eaton's	248	Eaton's.
Eisen	91	Susan Eisen.
Emkay	146	Emkay Int'l, Inc.
Empire	44	Empire Silver Co., Inc.
Estate	23	Estate Jewelers.
Evvco	73	Evvco Enterprises, Inc.
Fabrikant	53	M. Fabrikant & Sons.
Faleck	50	Faleck & Margolies Manufacturing, Corp.
Fame	102	Fame Jewelry Inc.
Fargotstein	70	S. Fargotstein & Sons, Inc.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Fashion	35	Fashion Line Ltd.
Fasnacht	4	Fasnacht's Jewelry.
Fine	141	Fine Emerald Inc.
Finlay	253	Finlay Fine Jewelry Corp.
Fischer	87	Fischer Pewter, Ltd.
Flyer	95	J & H Flyer.
Foster	100	Foster, Inc.
Francis	139	Mrs. James B. Francis.
Franklin	250	The Franklin Mint.
Friedman	234	A.A. Friedman, Co., Inc.
G&B	30	Gudmundson & Buyck Jewelers.
Gehrkens	206	Kenneth A. Gehrkens.
Gem Vault	147	The Gem Vault.
Gem Gallery	131	The Gem Gallery.
Gemtron	145	Gemtron Corp.
General	88	General Findings.
GIA	81	Gemological Institute of America.
Gold Institute	13	Gold Institute.
Golden West	179	Golden West Manufacturing Jewelers, Inc.
Goldman	60	Frederick Goldman, Inc.
Gray	127	Gray & Co.
Green	6	Green Brothers.
Guyot	82	Maurice F. Guyot Jr.
Handy	62	Handy & Harman.
Hansen	174	Dr. Gary R. Hansen.
Harten	259	Harten.
Harvey	75	E.B. Harvey & Co., Inc.
Heritage	215	Heritage Metalworks, Inc.
Honora	14 and 15	Honora Jewelry Co., Inc.
H.R. Diamonds	195	H.R. Diamonds, Ltd.
ICT	189	ICT, Inc.
IJA	192	Indiana Jewelers Association.
Ijadi	171	Ijadi Gem, Inc.
Imperial	117	Imperial Jade Mining, Inc.
Impex	220	Impex Diamond Corp.
ISA	237 and 237A	International Society of Appraisers.
JA	3	Jewelers of America, Inc.
Jabel	47	Jabel Inc.
JCWA or Japan Watch	216	Japan Clock & Watch Association.
Jeffery	21	Robert K. Jeffery.
Jewelmasters	110	N.E.I. Jewelmasters of N.J. Inc.
JGL	77	JGL Inc.
JMC	1	Jewelry Merchandising Consultants.
JVC	212	Jewelers Vigilance Committee, Inc.
K's	45 and 98	K's Merchandise.
Kast	198	Joe Kast.
Kennedy	9	Kennedy's Jewelers.
Kimberley	227	Kimberley Created Emerald, Inc.
King	11	King's Jewelry.
KingStone	166	KingStone Gem Importers, Ltd.
Kittle	246	Clare Adams Kittle.
Knight	256	George R. Knight, Jr.
Korbelak	27 and 169	A. Korbelak.
Krementz	208	Krementz & Co.
Kurgan	107	I. Kurgan & Co., Inc.
Kwiat	203	Kwiat, Inc.
Kyocera	242	Kyocera America, Inc.
Lance	84	The Lance Corp.
Landstrom's	241	Landstrom's.
Lange	183	M. Lange Co., Inc.
Lannyte	65	Lannyte Co.
LaPrad	181	Robert E. LaPrad.
Leach	257	Leach & Garner Co.
Lee	153	Stewart M. Lee.
Leer	114	Leer Gem Ltd.
Light Touch	54	The Light Touch.
Limon	235	Robert Limon.
Little	164	Little & Co., Inc.
Littman	2	Littman & Barclay Jewelers.
London Star	20	London Star Ltd.
LP Gems	168	L.P. Gems, Inc.
Luria	28	L. Luria & Son.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
M&L	105	M & L Jewelry Manufacturing Inc.
Majestic	115	Majestic Setting Inc.
Majorica	240	Majorica Jewelry, Ltd.
Manning	159	Manning Int'l.
MAR	37 and 42	M.A.R. Creations Inc.
Mark	207	Richard C. Mark.
Mason	170	Mason-Kay Inc.
Mastro	190	Mastro Jewelry Corp.
Matlins	205	Antoinette Leonard Matlins.
Matthey	213	Johnson Matthey.
Mayfield's	185	Mayfield's Co.
McGee	112	McGee & Son.
MCM	152	MCM Gems.
Mendelson	33	Mike Mendelson & Assoc., Inc.
Mikimoto	72	Mikimoto (America) Co., Ltd.
MJSA	226	Manufacturing Jewelers & Silversmiths of America, Inc.
Moon & Star	172	Moon & Star.
Morton	199	Morton Jewelers.
Mueller	151	Ralph Mueller & Assoc.
Murray's	264	Murray's.
Nabavian	144	Nabavian Gem Co. Inc.
NACAA	90	National Association of Consumer Agency Administrators.
NACSM	219	National Association of Catalog Showroom Merchandisers, Inc.
Nassau	10	Kurt Nassau, PhD.
NAWC	251	North American Watch Corp.
New Era	129	New Era Gems.
New Castle	122	Kings of New Castle, Inc.
Newhouse	76	Leon M. Newhouse.
Nowlin	109	Nowlin Jewelry, Inc.
NRF	238	National Retail Federation.
NY Gold	39	The New York Gold & Diamond Exchange Inc.
Obodda	177	H. Obodda.
Ocean	176	Ocean Gem.
Odi-Famor	58	ODI/FAMOR, Inc.
Onyx	162	House of Onyx.
Orion	94 and 113	Orion Diamond Manufacturing Co., Inc.
Oroco	69	Oroco Manufacturing, Inc.
Overstreet	8	Overstreet's Jewelry.
PanAmerican	57 and 101	Pan-American Diamond Corp.
PGI	245	Platinum Guild Int'l U.S.A. Jewelry, Inc.
Phillips	204	Phillips Jewelers, Inc.
Philnor	93	Philnor Inc.
Postal Service	244	United States Postal Service.
Pounder's	130	Pounder's Jewelry.
Precision	121	Precision Design Inc.
Preston	229	F.J. Preston & Son Inc.
Ransom	184	King's Ransom.
Rapaport	233	Rapaport Corp.
Raphael	78	Raphael Jewelry Co., Inc.
Rare Earth	137	Rare Earth Gallery.
Renaissance	74	Renaissance.
Reys	260	Rey's Jewelers.
River	254	River Gems & Findings.
Roisen	31	Michal Ferman, Roisen & Ferman, Inc.
Ross Simons	67	Ross-Simons Jewelers.
Rosy Blue	108	Rosy Blue Inc.
Roubins	128	A. R. Roubins Sons, Inc.
Russell	217	Kenneth M. Russell.
Salisbury	86	Salisbury Pewter, Inc.
Sarantos	182	Susan E. Sarantos.
Saturn	46	Saturn Rings, Inc.
Schaeffer	211	H.K. Schaeffer & Co.
Schneider	119	Wm. Schneider Inc.
Schwartz	52	Charles Schwartz.
SCI	180	Stanley Creations, Inc.
SDGL	140	San Diego Gemological Laboratories.
Seagull	111 and 120	Seagull Pewter & Silversmiths Ltd.
Service	222	Service Merchandise.
Sheaffer	249	Sheaffer Inc.
Shire	221	Maurice Shire Inc.
Shor	258	Russell Shor.
Sibbing	5	Sibbing's Jewelry.

APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

Abbreviation	No.	Commenter
Siegel	255	Siegel & Assoc., Inc.
Simmons	71	R.F. Simmons Co., Inc.
Sites	123	Sites Jewelers.
Skalet	61	Skalet Inc.
Soft Wear	142	Soft Wear Jewelry.
Solid Gold	261	Solid Gold Jewelers.
Stanley	83	Loyd Stanely.
Stern	157	Louis P. Stern Assoc.
Stieff	25	Kirk Stieff.
Suberi	214	Suberi Brothers Inc.
Swezey	92	Swezey of Westport Inc.
Swiss Federation	232	The Federation of the Swiss Watch Industry.
Taylor	186	Taylor Gem Corp.
Thorpe	7	Thorpe & Co.
TIC	66	Tin Information Center.
Timex	239	Timex Corp.
TransAmerican	43	TransAmerican Jewelry Co., Inc.
Tru-Kay	196	Tru-Kay Manufacturing Co.
Tsavomadini	150	Tsavomadini Inc.
Ultimate	243	Ultimate Trading Corp.
Ultra Blue	160	Ultra Blue Mfg.
Union Carbide	38	Union Carbide.
Univ. Point	126	Universal Point.
Universal	178	Universal Pewter Corp.
USWC	118	U.S. Watch Council Inc.
Vardi	97	Vardi Stonehouse, Inc.
Verstandig	154	Verstandig & Sons, Inc.
Vijaydimon	80 and 103	Vijaydimon (U.S.A.) Inc.
Von's	16	Von's Diamond Jewelry.
Web	85	Web Silver Co., Inc.
Weinman	263	Weinman Bros, Inc.
Weitz	200	Sid Weitz, Inc.
Werdiger	48	Michael Werdiger, Inc.
WGC	223	World Gold Council.
Winston	252	Winston Studio & Imports.
Woodbury	64	Woodbury Pewterers, Inc.
Zahm	188	Philip Zahm.

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FEDERAL TRADE COMMISSION

16 CFR Part 19

Guides for the Metallic Watch Band Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission") announces that it has concluded its review of its Guides for the Metallic Watch Band Industry ("Watch Band Guides"). In a separate document published elsewhere in this issue of the Federal Register, the Commission is consolidating certain provisions of the Watch Band Guides with the Guides for the Jewelry Industry, renamed Guides for the Jewelry, Precious Metals and Pewter Industries. The Commission has decided to rescind the Watch Band

Guides. The Commission is taking this action to streamline the Guides.

EFFECTIVE DATE: May 30, 1996.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, Attorney, (202) 326-2966, or Laura J. DeMartino, Attorney, (202) 326-3030, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Guides for the Metallic Watch Band Industry ("Watch Band Guides"), 16 CFR Part 19, address claims made about watch bands that are not permanently attached to watchcases. The Commission requested public comment on the Watch Band Guides, the Guides for the Jewelry Industry ("Jewelry Guides"), 16 CFR Part 23, and the Guides for the Watch Industry, 16 CFR Part 245.¹ Much of the material in the

¹ 57 FR 24996 (June 12, 1992). The Commission published this Federal Register Notice soliciting comment, in response to a petition from the Jewelers Vigilance Committee ("JVC"). Among other revisions, the JVC proposed consolidating all three Guides into one.

Watch Band Guides duplicates information in the Jewelry Guides. For the reasons discussed in greater detail in the Federal Register Notice announcing revisions to the Jewelry Guides, the Commission is consolidating some of the provisions of the Watch Band Guides into the Jewelry Guides. Therefore, the Commission is rescinding the Watch Band Guides. On the basis of the discussion in the Commission's announcement of revisions to the Jewelry Guides, which is located elsewhere in this issue of the Federal Register, and which is incorporated herein, 16 CFR Part 19 is hereby rescinded.

List of Subjects in 16 CFR Part 19

Advertising, Watch bands, Trade practices.

PART 19—[REMOVED]

The Commission under the authority of Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), amends chapter I of Title 16 of the Code