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
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 "vermell" 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.


ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, 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"). 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 to 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 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,8

8 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); GSB (30); Jabel (47); Skelat (61); Handy (62); Lannyrte (65); Newhouse (70); GA (81); Narram (109); McGee (112); ArtCarded (155); Bales (156); Bridge (163); LaPrad (181); IJA (192); CPAA (193); Mark (207); Canada (209); Bedford (210); JVC (212); Thorpe (219); Bruce (218); Service (222); MSA (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.

The comments 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 minimal 11 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 "measurements," "record keeping," "time," and "personnel"). 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, p. 4, 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 JC (1); King (11); AGS (18); Estate (23); Schwartz (52); Handy (62); Nowlin (109); Bridge (163); MJSA (226); and Preston (229).
12 Argo (17); AGTA (49); Bates (156); LaPrad (181); Mark (207); and Matthey (213).
13 Jabel (47); Skakel (61); M.George (112); ArtCarved (155); IJA (192); Canada (209); and MJSA (226).
14 JC (1); Fasnacht (4); Thorpe (7); Honor (15); Argo (17); Estate (23); G&B (30); Jabel (47); Schwartz (52); Skalet (61); Handy (62); M.George (112); LaPrad (181); IJA (192); and Mark (207).
15 AGTA (49); G&B (81); Bridge (163); Bedford (210); JVC (212); and Preston (229).
16 ArtCarved (155) and Matthey (213).

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. 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 comments 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. 21 The changes the commenters specified, which they thought should be reflected in the Guides, are new gemstone enhancement techniques, 22 laser treatment of diamonds, 23 fracture-filling of diamonds, 24 new methods of metal plating, 25 diffusion-treated sapphires, 26 advanced testing techniques, 27 new synthetic gemstones, 28 and possible new platinum products. 29

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. 30 Another comment stated that greater economic advantage to the trade would occur if national and international standards are uniform. 31 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. 32 Some comments, however, identified parts of the proposed Guides that they contended are contrary to accepted industry practices. Specifically, Best and Service Merchantek 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. 33 Other responses to this question were not directly responsive because they did not contest the JVC’s proposals were out of step with current trade practices, but instead proposed adding new terms and standards to the Guides. 34 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); Honor (15); and Preston (229).
29 ArtCarved (155); LaPrad (181); and Preston (229).
30 Honor (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 JC (1); Fasnacht (4); Argo (17); Capital (19); Estate (23); Jabel (47); Skakel (61); Handy (62); Newhouse (76); AGTA (49); G&B (30); GIA (81); Lannyte (65); MJSA (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (23); Best (225); MJSA (226); and Preston (229).
35 Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).
36 Comment 244, p. 1. The Postal Service enforces 39 U.S.C. 3005, which prohibits persons from misusing the mail in false representaion and fraud actions. The Postal Service also brings actions under the criminal mail and wire fraud statutes, 18 U.S.C. 1341, 1342 & 1345. Id.
37 Comment 244, pp. 1-3.
38 JC (1); Handy (62); and M.George (112).
39 JC (1); Fasnacht (4); Thorpe (7); Honor (15); Argo (17); AGS (18); Estate (23); AGTA (49); Lannyte (65); MJSA (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (23); Best (225); MJSA (226); and Preston (229).
40 Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).
41 Comment 209, p. 1.
42 JC (1); Fasnacht (4); Thorpe (7); King (11); Honor (15); Argo (17); Handy (62); Lannyte (65); GIA (81); NA CA (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (23); Best (225); MJSA (226); and Preston (229).
43 Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and CPAA (193).
44 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.
45 Comment 244, pp. 1-3.
46 JC (1); Handy (62); and M.George (112).
47 JC (1); Fasnacht (4); Thorpe (7); King (11); Honor (15); Argo (17); AGS (18); Estate (23); AGTA (49); Lannyte (65); MJSA (112); ArtCarved (155); Bridge (163); IJA (192); Phillips (204); Bedford (210); JVC (212); Matthey (23); Best (225); MJSA (226); and Preston (229).
48 Estate (23); G&B (30); Jabel (47); AGTA (49); LaPrad (181); and IJA (192).
49 Fasnacht (4); Thorpe (7); Honor (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.”

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. JVC stated that paperwork and the printing of definitions and descriptions the JVC proposed as new requirements may increase consumer prices.

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. 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 people to shop and compare “on a level playing field.” 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. 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 anti-competitive.

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. 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. Service Merchandise and Best recommended rejecting the JVC petition to revise in favor of retaining the current Guides. Other comments were anti-competitive and offered insufficient benefit to the affected industries or their consumers to justify the additional efforts and costs that they allege will result.

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.

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. 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.
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 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 of the current Guides is captioned “Definitions,” and gives definitions for: “diamond,” “pearl,” “cultured pearl” and “imitation pearl.” In the JVC proposal, section 23.0.15 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

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 inclusion of 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 misinterpreted if they are not included in the Guides; Cross (165) p.1 (favoring inclusion, because the mislabeling of these products, “especially hollowware, has caused confusion by customers and harmed the business of legitimate manufacturers”); J.A. (192); Tru-Kay (196) p.1 (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 ‘Plated’ 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 “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.”63

LaPrad (181); Nowlin (109); ArtCarved (155); Service (222); Franklin (250); and NACSM (219). See infra for a discussion of the inclusion of items made from pewter.

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. 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 "trade names," 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.

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. 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 require that they would be subject to 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. 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.

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. However, if the Guides were to regulate the content of appraisals, standards for establishing a value would be needed.

The Commission believes that consumers, as consumers, are meant to be protected from deceptive practices addressed by the Guides. The revised Guides specifically requested comment on whether the Guides should be expanded to include appraisals of jewelry in addition to sales and offers to sell jewelry.

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 "manufacturing" from the list (possibly in error). The Commission has found no basis in the record for deleting "manufacturing" from the list of items not to be misrepresented.

The JVC proposed adding the following attributes to the list of...
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 §23.1.77

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 apply to 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

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 30, p.2.

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

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

77 Opposed to this provision were: 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 diamond 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), Skaté (61), NACAA (90), Bruce (218), and Preston (229) were also in favor of the disclosure of their system subjectivity in grading.

78 Certificates have no accepted meaning in the industry and are not defined in the standard dictionary for the industry (“Jeweler’s Dictionary” (3d ed. 1976)). See AGTA (49) p.5 (favoring the proposal, but stating that 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 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”)

79 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 do not entrust the public 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”).

80 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.

81 [MC (1); Fasnacht (4); Sibbing (5); Thorpe (7); King (11); Honora (15); Argo (17); AGS (18); Capital (19); G&E (30); Jabel (47); Schwartz (52); Skaté (61); Lannyte (65); GIA (81); Eisen (91); Nowlin (109); McGee (112); ArtCarved (155); Bales (156); Bridge (163); IAIA (192); Bedford (210); Matthey (213); Bruce (226); Shire (221); MJSA (226); Preston (229); Limon (235); ISA (237A); Leach (257); and AGTA (49)
The comments favoring these disclosures also generally favored the proposed section 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. 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.

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. Six comments stated that compliance could be expected only from legitimate operators. Five comments anticipated voluntary compliance by all concerned.

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. 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 transformed in the United States. 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. 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.

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...
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.90 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.91 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 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.92 The Commission believes that the term "solid gold" is not inherently deceptive or unfair.93 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 change to this section, and only suggested minor changes in the corresponding "safe harbor" provision in § 23.5(c)(1).94 However, Finlay argued that the word "gold" should be allowed in product advertising without a designation as to karat fineness.95 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 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.96 Subsection (7) advises against the use of the word "gold" in the context of a 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.97 This issue was addressed comprehensively by the Commission in 1977.98 Thus, the

90 To 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 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).

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

92 For 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).

93 This safe harbor provision simply states that an industry product comprised 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 footnote[ing 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."

94 Comment 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.

96 A 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.

98 Comment 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 that is described as "gold 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.

99 The 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 then 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 in 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.

1. 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 is not clear 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 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).

The Watch Band Guides contain almost identical terms 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.

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101 The National Stamping Act provides that, for articles of less than 100 millionths of an inch of fine gold or its equivalent (the standard for gold and its equivalents), the term “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 102 The FRN sought comment on how “gold plated” 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 have 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 term “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." 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 "plated." 106 Sheaffter 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 "plated." 107 Sheaffter 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 plated." 108

Some commenters stated that the relevant issue for consumers is durability, and not the method of plating. Sheaffter 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 electrolyplating 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.

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

Although the evidence indicates that the term "gold plate" has not been frequently used, because plating generally has been used 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.
consumer expectations. 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." 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 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. The comments that address gold-plated watches indicate that a one micron thickness may be durable. Benrus commented that thicknesses of up to ½ micron "are unsubstantial and wear very quickly," but that there is "a new industry standard" of one micron of gold plating (400 microns of an inch) which has substantial durability and reliability and gives years of satisfactory service." The U.S. Watch Council also noted that the watch industry has adopted 1 micron of thickness (described as 400 microns of an inch of 23 karat gold) as a standard for gold plating. 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.

The 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) (1986). 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. 350(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 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 that there are 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)(6)."

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," 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 of 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
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. 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)(1) and (c)(4) of the revised Guides, 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. The most frequently mentioned new method was “electroforming,” a process in which gold is deposited on materials that are removed, leaving a hollow item. (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. 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.

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 product line) noted that the insertion of nickel would actually sell 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.

Comment 249, p. 3; ArtCarved (155) (stating that “gold plate” should be allowed for all methods). Two comments, Estate (23) and G&G (30), stated that the method of application should be revealed, but gave no reasons. 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.” Korbelak (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. (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 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. 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 covering is covered with a base metal which is gold washed. Such a product complies 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.

(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 base 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” and “electroplating” for “plating.” This revision clarifies that products coated with gold by a process other than electroplating should not be called “gold electroplate.”

Gold Institute (13); Estate (23); Korbelak (27); G&G (30); Handby (62); Newhouse (76); Eisen (91); Phillips (204); Mark (207); Korbelak (27); Newhouse (76); Tru-Kay (196); Mark (207); Bruce (218); WGC (223); MJSFA (226); Citizen (236); 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 MJSFA stated the techniques can be adequately dealt with by the existing provisions in the Guides.

(125) Bruce (218) (stating that it produces this type of jewelry); Bailes (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, 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.

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

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.” Korbelak (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.

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

(128) 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* * *.” 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.”

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. 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 covering is covered with a base metal which is gold washed. Such a product complies 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.

(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).

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
...the JVC petition indicates that vermeil is susceptible to discoloration, presumably because the silver might tarnish. Because gold itself deters tarnishing, the thicker the coating of gold, the less likely the underlying silver will tarnish. However, Korbelak (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 Jewelry Dictionary is consistent with Korbelak’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 25 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 misrepresented 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 sterling silver, 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. 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. 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 for excluding these processes. The comments indicate that the sterling silver base is part of the common understanding of the term "vermeil."
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, 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” and “sterling silver” by itself or abbreviated on other products “is that buyers of the vermeil product as plated with silver unless all significant surfaces are coated with silver “which is of substantial thickness.” The JVC proposed continuing the use of the “substantial thickness” standard but adding a footnote stating this means thickness 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 comments 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. However, four of these suggested that additional data were needed. 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. Korbelak suggested 500 millionths of an inch where it is functionally necessary.

The Gold Institute made detailed recommendations, but only for silver plated flatware and hollowware. 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 rings) 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. However, the Commission has added a note to § 23.6(e) to provide some guidance to the industry regarding “substantial thickness” in connection

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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 hallowware 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 term “sterling”) whereas the Watch Band 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.

150 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 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.\(^\text{155}\)

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; 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.”\(^\text{156}\)

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 (g) and (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) 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.’”\(^\text{157}\) 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.”\(^\text{158}\) The proposed section defines the covered products as sterling silver in combination with gold.\(^\text{159}\)

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.\(^\text{160}\) 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

\(^{155}\)Rhodium, a member of the platinum group metals, is very hard.

\(^{156}\)Comment 13, p. 2.

\(^{157}\)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.
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,” “‘rhodium,’” “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.

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 marks” and includes 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.

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 1/2 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 . . . .”

162 Nowlin (109); LaFrance (181); Sheaffer (240); and Leach (258).

163 NACSM (219) p.7; Bailes (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 used as a substitute for gold). However, the Jewelery 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 as quality marks in § 19.2(g). However, the Jewelery 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.

167 This is consistent with the references to such marks in the National Stamping Act, which applies to articles “having stamped, branded, engraved, or printed thereof, or upon any bag, card, or label attached thereto, or upon the box, package, wrapper, or 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.”

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.
(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. 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.

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 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. 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.

The list includes all exemptions from the current Guides and, based on the comments, includes some additions. 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 practice over many years has been to apply the exemptions as listed for gold-filled to both gold-filled and silver," because the same reasons that certain parts are exempt in gold-filled jewelry are also applicable in silver jewelry. Tru-Kay explained that when the exemptions were first written, "many articles that were being produced in gold-filled, were not at that time being produced in sterling silver." Since this is no longer the case, Tru-Kay urged that "these exemptions be standardized in a consistent manner." 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.

General Findings, which makes small functional components of jewelry, suggested that there should be two additions to the gold exemptions. 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. 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 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 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." Adding these to the list of exemptions for silver is logical because silver is relatively soft. Gold
alloy, however, is relatively hard.\textsuperscript{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.\textsuperscript{183}


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” 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.\textsuperscript{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.”\textsuperscript{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.

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

\textsuperscript{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.

\textsuperscript{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”); NASCM (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”).

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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.

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.

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." 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.

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." 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 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." 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.

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." 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" * * * * * * *"

190 Preston (229) stated, at p.10, that the word "internal" should precede the word "lasering" in this section, 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. The Guides included this clarification in the revised Guides.

191 CT (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 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 JSA (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.
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. 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 when the lasering, will be upset when the same grade. It further stated that a lasering 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. 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 causing substantial, unavoidable injury that is not outweighed by any countervailing benefits. 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 laser 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. 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].” 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.

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.

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. AGS 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.” However, AGS also indicated that such reports do not usually contain such an evaluation of cutting. 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 than to state that 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.

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.”

ISA (237a) pp.54–56; Rapaport (233) p.3 (proposing a definition for a grade of “Properly Cut” round diamonds and numerical standards (which differ from ISA’s proposed numerical standards)).

Comment 230, p.5. AGS 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, i.e., 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.

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, 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. Proposal 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, and 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” 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 “.25 ct.” The latter is 1/4 ct; 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. Twenty-two comments supported limiting the use of the term “points” to oral representations. 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.

One comment noted that “points” is “a term that the layman is not familiar with.” 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” is used to misrepresent the value of a diamond. The comments clearly believe that the term “pt.” is being used to deceive the public, particularly in mail order transactions. The deception described in the comments appears to arise primarily when the abbreviation for point (“pt.”) appears in writing.

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 the term “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. The FRN solicited comments 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. Eight comments opposed the proposal.

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. GIA further stated that “[If] in our experience, if the total weight is stamped on the jewelry, the manufacturer usually makes sure that..."
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 a notice 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

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. MJSA explained that high-volume manufacturers sieved 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 MJSA 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 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., ½ 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 stones an efficient 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.

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

Comment 90, pp.1–2.

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.

This figure is exclusive of comments that simply favored all the changes suggested by the JVC. Bruce (218); Limon (235); and Schwartz (52).

NACSM (219); Service (222); Diamonique (224); Best (225); MJSA (226); Rapaport (223); and WRF (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; 83; 94; 95; 96; 97; 99; 100; 101; 102; 104; 105; 107; 108; 110; 114; 115; 117; 119; 121; 122; 127; 157; 158; 160; 164; 179; 180; 190; 191; 201; 211; 214; 220; 241; 243; 260; 263; and 264.

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 Fazenacht (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, Flesher Jewelers, Kings Jewelry, Louboutis, 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 Fife, who sells Meller 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 ½ 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,' '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 "centers on a scale 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").

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 points * * *?" Goldman (60) p.2. London Star stated, "This standard would considerably lessen the availability of stones within each size and therefore drastically widen 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.”

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.”

Ross-Simons suggested a tolerance of 5% or
.05 carat for a piece with multiple
diamonds, whichever is smaller.

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.”

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 ½ carat
diamonds is actually offered as jewelry
with ½ 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 “½ carat”
is accompanied by a disclosure of the
weight range that is used, it does not
imply a representation 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.”)

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.

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
dehceptive. 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 the current definitions were for the
three basic types of pearls “are lacking” in
the JVC petition.

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.

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.” The Commission has
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 pearl 247 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 definitely and clearly state 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 mullusks 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 mullusks 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.” The CPAA stated that it frequently receives complaints that imitation pearl 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.

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 comments stated that “to the untrained eye, Majorica imitation pearls look very much like

247 Finlay implied that retailers may be describing fresh water cultured pearls as simply “fresh water pearls” and objected to requiring advertisers to designate them as “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 shaped [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).

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.

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.”).
b. 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 “natura” 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

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 18 and note 31. The article noted 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.
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.
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." 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." Thus, the Commission has revised § 23.16(e) 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 pearl 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 commonly 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." 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." 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." 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 parts of § 23.16 of the current Guides, and therefore, the Commission has not included it in the Guides.

Another JVC provision 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 are nucleated. However, both the CPAA and AGTA used the expression "non-nucleated pearl" in their comments in response to the JVC. 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 provision 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." The only other comment relating to this provision was from Majorica, which requested the FTC "to withhold any further restrictions on the words 'organic.'"
"man-made," 'synthetic,' and 'created' while considering the creation of a new category of pearls 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." 277 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. 278

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.

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." 279 There is no evidence that consumers would be deceived by this term as applied to pearls that possess 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 characteristics that 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 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 or imitated product 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 geological sense by the Gemological Institute of America in*

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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.
279 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.
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. 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 proposed 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 or 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

282 Comment 193, p.9.
283 Id.
284 CPAA (193) p.9 (explaining, for example, that the “use of the term ‘Miski 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 “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 case law under Section 5.
286 Comment 217, p.1 (suggesting that cultured pearls with a 1/4 to 1/2 mm. coating of nacre should be marked “Service Grade” and those with more than 1/2 mm. marked “Heirloom Grade”).
287 Id. at p.2.
288 Id. at “Majorca Imitation Pearls,” Gems and Gemology 187 (Fall 1990), attached to Comment 240.
290 Id.
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
Numerous commenters noted that almost every natural gemstone is subject to some form of enhancement.

AGS stated that many new enhancement techniques have been developed since the Guides were issued and that "[c]oating processes are developed daily." 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." It questioned the value of disclosures under these circumstances and contended they would clutter written advertisements and increase prices. However, NACCA commented that its members receive complaints about failure to disclose stone enhancement.

Although the Guides currently recommend disclosure of color enhancement, some comments indicated that there is little such disclosure in the marketplace. However, some industry associations strongly encourage their members to disclose treatments.

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 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.

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." 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." 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." Bales (156) p. 10.

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). One commenter also suggested, 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; J.L (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) p.8-9.

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 (81) p.1; ArtCarved (155) p.1; LaPrad (181) p.1; IJA (190) p.1.

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").


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

See discussion infra of the 1990 Gemstone Enhancement Manual (attached to comment 49).
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. What appears to be the most permanent treatment—oiling—is definitely not permanent. 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.” 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 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. 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). For 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 a comment on whether the Guides should advise sellers to disclose to consumers in writing any 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); Argento (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”); Skale (61); NACAA (90); ArtCost (135); Bailey (156); Shore (221); and Leach (257).

313 Comment 81, p.3; Schwartz (52) p.3 (stating that there should be disclosure since “in many, if not most, gemstone enhancements are unstable . . . .”) .

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 communication”).
instructions and retailers will offer them to avoid future problems.\textsuperscript{116}

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 enhanced stone 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.\textsuperscript{117}

\textsuperscript{116} Comment 19, p.2 (noting that trade associations provide the industry with material on disclosure of material information, and that it is not necessary to include this in the Guides).

\textsuperscript{117} A 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.\textsuperscript{318} AGTA commented, however, that there should be no acceptable synonyms for the word “synthetic.”\textsuperscript{319} Other comments argued that the Guides should specifically identify terms other than “synthetic” that could 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.”\textsuperscript{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).\textsuperscript{321} The Note is superfluous and the Commission has deleted it.\textsuperscript{318} Comment 231, p.5.

\textsuperscript{317} Comment 49, p.17.

\textsuperscript{318} Comment 230, p.3. AGL also noted that the colored stone industry opposed this change, citing “this 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.

\textsuperscript{319} Chatham (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 (359) p.2, Others argued that synthetics made by the “melt” or “flame-fusion” process also should be allowed to describe the stones as “cultured.”\textsuperscript{322}

Although some companies have used the term “cultured” to describe their products for some time,\textsuperscript{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 commentators indicated that they regarded the term “cultured emerald” as deceptive.\textsuperscript{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 products 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.”\textsuperscript{325}

\textsuperscript{322} ICT (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 safe term for their products 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.

\textsuperscript{323} Crystal (24) p.3 (stating that it uses the term “cultured” to describe its “Ramara Cultured Ruby”); Chatham (231) p.31. (stating that Crystal and Emsprit Cultured Emeralds have been using the term “cultured” for flux-grown gems).

\textsuperscript{324} Krementz (208) p.1; Shire (221) p.1; River (254) p.3.
Comment 234 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 another foreign term or phrase is confusing and misleading, they should not use it.

Comment 235 stated, at p.11, that it would be unfair or deceptive not to disclose the fact that it is a created stone is not regarded as an imitation product. If used, it could be misleading to consumers. Thus, the Commission has not added this Note to the revised Guides.

Comment 236 states that "natural" as a product-term must be disclosed in equal prominence and size type as the term "created." However, there is not sufficient evidence to advise against the use of "natural" as applied to imitations. Further, there is no evidence that it is being used to imitate gemstones, where its use is more likely to deceive consumers. Thus, the Commission has not included the word "natural" as a "safe harbor" term to describe man-made gemstones. However, there is not sufficient evidence to advise against the use of "natural" as applied to synthetic gemstones. Further, there is no evidence that it is being applied to imitations, where its use is more likely to be misleading. Thus, the Commission provided no reasons.

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 conformity with approved gemological terminology. No evidence was offered to show that there is a need for guidance in this area. 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.
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. 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. 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” (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.” 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.

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.” 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.” Best noted that “gemstone” is “loosely used in the industry today to refer to both naturally occurring and laboratory

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; MJSA (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.” 348 AGTA agreed that “gemstone” should be limited to natural stones because it implies that the material occurred in nature. 349 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 not be accurate.” 351 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.” 352 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. 353

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.” 354 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. 355 Skalek 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.” 356 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.

344 Comment 225, attachment at p.8. 345 Comment 234, p.2. Friedman 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 prohibition “would be confusion on the part of consumers who would wrongly perceive that the prohibition is a negative reflection on the quality of Chatham’s product.” Comment 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 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); Unson Carbide (38); Manning (159); C.T. (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.”

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.

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. 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.”

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. 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, and has included a provision (like the provision for diamonds) that “perfect” should be 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. 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. 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:

106 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.

107 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.”

108 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, imitation diamonds, top color, well-cut gemstones as there are diamonds.”

109 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”).
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.

§ 23.2 Misleading illustrations.

The following are examples of acceptable markings and descriptions.

(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.

§ 23.3 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:

(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 sufficient 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...
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,” “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, and the minimum thickness throughout of which is equivalent to one-half micron (or approximately 20 millionths of an inch) of fine gold, may be marked or 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 “2µ 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 thickness may be marked or described as “Gold Filled” or “Gold Overlay” or “Rolled Gold Plate,” or an adequate abbreviation, when such plating constitutes at least 2/50th 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. Gold Overlay,” or “14K. R.G.P.”). When conforming to all such requirements except the specified minimum of 2/50th 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 K. 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 electroplating 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 7,100,000ths 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 Flash” or “Gold Washed.” When the electroplating is of the minimum 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 electroplating meets the minimum requirements for the term “Gold Electroplate” or “Gold Electroplated”), 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.

Note 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 thickness 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

3 The 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.

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

5 See footnote 3.

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 925/1,000ths 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 900/1,000ths 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.¹

(e) The provisions of this section relating to markings and descriptions of industry product and parts thereof are subject to the applicable tolerances of the National Stamping Act or any amendment thereof.²

Note 1 to § 23.6: The National Stamping Act provides that silver plated articles shall not "be stamped, branded, engraved or imprinted with 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.


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.

¹See footnote 3.

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 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 parts' 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."³)

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 placed as likely to be observed by purchasers, and should be so attached as to remain thereon until consumed or purchased.

Note 2 to § 23.9: Disclosure of identity of manufacturers, processors, or distributors. The National Stamping Act provides that every 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 part;

(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 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 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 lasing, 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 word "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, influencing, 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 "proper 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 (1⁄5 gram). A point is one one hundredth (1⁄100) of a carat.

(c) If diamond weight is stated as fractional 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, identify, or refer to any object or product that is not in fact a pearl.

(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 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," "pre-mature 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, online 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.

(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 product or name is immediately preceded with equal conspicuousness by the word "laboratory-grown," "laboratory-created," "[manufacturer name]-created," etc.
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, 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 rings, 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, and stud-back, 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

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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

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APPENDIX—LIST OF COMMENTERS AND ABBREVIATIONS—Continued

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The Commission is taking this action to streamline the Guides.


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. Much of the material in the 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]